



NGO SHADOW REPORT TO CEDAW 2011

Supplementing and commenting on Norway's 8th Periodic Report on the Implementation of CEDAW (Convention on the Elimination of All Forms of Discrimination against Women)

INTRODUCTION

This Shadow Report is a joint initiative by 30 Norwegian NGOs. Each organisation has contributed their expertise and knowledge in their particular field. The issues raised in particular sections reflect the concerns and the expertise of these organisations. This does not mean that all the supporting organisations necessarily endorse all the specific policy recommendations, where these are outside their remit.

The report has been made possible thanks to financial support from the Ministry of Children, Equality and Social Inclusion. The work has been coordinated and conducted by FOKUS - Forum for Women and Development - an umbrella organisation for 73 women's organisations in Norway. FOKUS' main goal is to work for an improvement of women's social, economic and political situation internationally, with an emphasis on the countries in the South.

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OTHER ORGANISATIONS THAT HAVE ALSO ENDORSED THE REPORT:

The Norwegian Centre Against Racism, Eritrean Women's Union, International Association of Women in Radio and Television, International Women's League for Peace and Freedom, International Organization for Migrants (IOM), KIM (Liaison Committee for immigrants and Norwegian authorities) The Norwegian Latin-America group, women's group, Network for Norwegian and Timorese Women (NET), Norwegian Red Cross, The Norwegian Nurses Organisation (NNO), Soroptimist International Union of Norway, Reform, Foundation Amatheia, Norwegian Church Aid, The Norwegian Woman and Family Association, Student Christian Movement in Norway and The Norwegian Society of Rural Women.

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ABBREVIATIONS

WEA: The Working Environment Act

BLD: Ministry of Children, Equality and Social Inclusion

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

Difi: Agency for Public Management and Government

EMK: European Convention on Human Rights

The Fafo Research Foundation: Independent research foundation focusing on social welfare policy, labour and living conditions, both in Norway and internationally.

FGM: Female Genital Mutilation

ILO: International Labour Organization

KVIBALD: Department of women's rights law, children's rights law, equality and discrimination rights law at the Faculty of Law, University of Oslo

LDO: Equality and Anti-Discrimination Ombud

NGO: Non-Governmental Organization

NKLM: National Centre for Emergency Primary Health Care

NOK: Norwegian kroner

NOU: Norwegian Official Reports

POD: National Police Directorate

PU: The Police Immigration Unit

SCR: Security Council Resolution

SSB: Statistics Norway

St. prp: Propositions to the Storting (white papers)

St. meld: Reports to the Storting

STRASAK: Police criminal case registry

UDI: Norwegian Directorate of Immigration

UNHCR: The Office of the United Nations High Commissioner for Refugees

WPATH: World Professional Association for Transgender Health

EXECUTIVE SUMMARY

In its study Holistic protection against discrimination (included in NOU 2009: 14), a public committee has proposed to combine all anti-discrimination legislation into a single Act that covers all bases.

The study proposes to remove the formulation (underlined) in the statement of legislative purpose: *“This Act shall promote equality between the genders and is in particular aimed at improving the status of women.”* Such amendment would be contrary to the obligation under international law under CEDAW, which requires dynamic action. Another consequence would be that differential treatment aimed at improving the status of women would be placed on a par with differential treatment aimed at improving the status of men.

It has furthermore been proposed to remove the present provision which states that discrimination on the basis of gender is prohibited also within the family and other personal relationships.

- A study should be made of what the practical consequences will be for the new Act on holistic anti-discrimination protection of incorporating CEDAW into the Human Rights Act.

During its consideration of Norway’s 5th, 6th and 7th periodic reports, the CEDAW Committee brought into focus the States’ obligation to provide women with minority backgrounds with the same rights and legal protection in all areas of life and rights as for men from their own group and women and men from the majority population.

At present, women immigrants are not receiving information about their right to protection against discrimination. Neither the authorities nor the LDO have a policy or strategy on how to reach out with information on anti-discrimination protection to women immigrants in order to create a genuine protection. This has been documented in the report “Diskriminering på tvers”.¹

- Information about anti-discrimination protection and about the Anti-Discrimination Ombud should be made available and easy to understand by women with a minority background.
- The duty to be active in the effort to facilitate holistic anti-discrimination protection must be strengthened.
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Disabled women constitute the largest minority group among women in Norway². The overall lack of attention paid by the Government to the absence of disabled women in both political and public life is alarming. This absence of participation is reflected in the official report itself.

¹ Nordstrøm, T., “Diskriminering på tvers – rapport fra et oppsøkende rettighetsinformasjonsprosjekt”. *Kvinnerettslig skriftserie, nr. 83/2010* (“Discrimination across the board - report from an outreach project concerning information on rights”. *Studies in Women’s Rights Law*, no. 83/2010).

² SSB, *Personer i alderen 15-66 år og personer med funksjonshemming etter arbeidsstyrkestatus og kjønn (Persons aged 15-66 years and persons with a disability according to work force status and gender*, SSB.no, Updated 6.9.2010, <http://www.ssb.no/emner/06/01/akutu/tab-2010-09-06-01.html> (searched 18.5.2011). – *In the work force survey 2010*, 18.7% of those asked stated that they had some form of disability.

- In its recommendations to Norway's 8th Periodic Report, the Committee must demand that Norway's next report addresses the issue of disabled women.
- Norway must ratify the UN Convention on the Rights of Persons with Disabilities.

Changing a person's legal gender status is enshrined in section 2-2(5) of the Regulations relating to population registration, which states only that: "The date of birth and personal identity number may be changed when the date of birth or gender status is changed." The consequence of this is that it is left to medical personnel to determine the gender status. This contravenes among other things the recommendations made by the Council of Europe³ and the Council of Europe's Commissioner for Human Rights⁴ in that a person's gender identity is considered to be so personal and complex that it must be regarded as a violation of integrity to demand anything of this nature. The practice also runs counter to Yogyakarta principle no. 3 on the right to recognition before the law.

- It should be made possible to change legal status without medical changes being required.

In family-related cases of violence and threats, restraining and exclusion orders may be relevant measures. As a rule, the prosecuting authority does not attend judicial reviews and it is not uncommon for the aggrieved party and the person issued with the order to meet in person in court without anyone present to attend to the aggrieved party. Many victims report personal attack alarms that malfunction. It is also a recurring complaint that breaches of exclusion orders are handled inflexibly. Several police districts require the person wanting to report the breach to attend the police station in person and to make an ordinary complaint after each breach.

- The restraining order scheme must be evaluated in terms of quality, effect and other relevant aspects.
- Aggrieved parties who have been granted restraining orders must be given greater protection of the law.

The number of rapes reported to the police has steadily increased in recent years, from 798 in 2005 to 1006 in 2009, a total increase of 26 per cent. The number of reported aggravated rape cases, defined according to the Penal Code as rape with multiple perpetrators, or rape where severe damage or harm is caused, has increased dramatically compared to other forms of rape, from 22 reported cases in 2005 to 51 reported cases in 2009. This is an increase of 131.8 per cent. In the same period, the number of reported attempted rapes increased slightly from 106 in 2005 to 120 in 2009.⁵ Statistics based on reported rape cases between 2003 and 2005 document that 84 per cent of rape cases reported to the police never came to court, mostly due to lack of evidence.⁶

³ Human Rights Watch, *Committee of Ministers of the Council of Europe Adopt LGBT Recommendations*, HRW.org, 4.6.2010, <http://www.hrw.org/en/news/2010/04/06/lgbt-recommendations-adopted-committee-ministers-council-europe> (searched 13.5.2011)

⁴ Hammarberg, Thomas, "Human Rights and Gender Identity" *CommDH/IssuePaper(2009)2*, (Strasbourg: Council of Europe Commissioner for Human Rights, 2009), <https://wcd.coe.int/ViewDoc.jsp?id=1476365> (searched 13.5.2011)

⁵ Politidirektoratet, Seksjon for analyse og forebygging, Kommenterte STRASAK-tall 2009 (National Police Directorate, Section for Analysis and Prevention, STRASAK figures with comments 2009). Politi.no, Updated 11.1.2010. https://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/Vedlegg_585.pdf (searched 10.05.2011)

⁶ Riksadvokatens utredningsgrupper, "En undersøkelse av kvaliteten på påtalevedtak i voldtektssaker som har endt med frifinnelse m.v", Rapport nr. 1/2007: s.4. (The Director of Public Prosecutions' Study Groups, "An investigation of the quality of the decision to prosecute in rape cases ending in acquittal, etc.", *Report no. 1/2007: p.4*)

Compared to other crimes, few rape cases end with a conviction in the courts. Between 2003 and 2005, the percentage of acquittals in rape cases was around 36 per cent.⁷ During the same period, the percentage of acquittals for all reported crimes was 7-8 per cent.

In its official report to the CEDAW Committee, Norway states that the increased number of reported rape cases probably reflects a greater willingness to report rape crimes. Regrettably there are no comparable incidence statistics available, so this statement is not backed up by any figures. Some researchers and practitioners actually do believe that both the occurrence and severity of sexual violence is on the increase in Norway, so this official statement remains questionable.⁸ The lack of reliable statistics on the incidence and prevalence of rape and sexual violence makes it difficult to identify appropriate measures to increase protection against rape and sexual violence, including preventive measures, and to understand, learn from and build upon progress and setbacks.

- Reinforce and develop preventive measures against rape and sexual violence in society at large. More extensive information measures and attitude-improving campaigns must be executed with the aim of preventing abuse against women. Preventive measures should include the education of children and young people about mutual respect in relationships, as well as the promotion of equality in public education messages, within the context of working towards substantive gender equality between men and women in all areas of life;
- A wide range of concrete measures targeting the legal system is needed to improve the quality of rape investigations and the judicial handling of rape cases. This includes training and education to change discriminatory attitudes towards women;
- Quality assure rape reception centres, improve coordination and organisation with expert competence in cases involving sexual crime in each police district, more use of video recordings, a handbook describing all investigative measures, skills building for police prosecutors and public prosecutors.

The shelters have neither the expertise nor the capacity to attend to women with serious mental health problems and/or problems involving drugs/intoxicants. This means that these women may experience problems getting help, and it may be difficult for them to obtain a safe and free place to stay if they need to escape from their home.

- The shelters must be guaranteed stable and predictable funding to enable them to make long-term plans for their work. The grant which is now to be included in the framework grants for operating the shelters must be earmarked.
- The State must ensure that women with serious mental illness and drug dependency who are exposed to violence are provided with a specialist crisis facility with treatment by health personnel with the appropriate expertise.
- Under the new scheme, the shelters must be provided with staff with adequate knowledge and specific expertise in working with people from ethnic minorities or with immigrant backgrounds.

⁷ Ibid.

⁸ Amnesty International, *Case Closed* (Oslo: Amnesty International 2008)

A study has shown that women with disabilities are five times more exposed to violence or threats of violence and discrimination as other women⁹. The study does not specify what a proportion of the violence is domestic violence.

Women with physical impairments do not have equal access to crisis centres as other women. In 2009, it was revealed that only 24 out of 50 crisis centres in Norway were accessible for women with physical disabilities¹⁰.

Involuntary part time work is a phenomenon affecting women in typical female occupations such as in health care, cleaning, and the hotel and restaurant trades. It is a result of stereotypical gender roles that have led to a practice involving rota work where part time jobs are normal in female occupations other than in male occupations. In Finland, only 8% of women work part time, whereas 43% of women have part time jobs in Norway.

- Establish by law the right to full time work
- The authorities must consider whether the legislation in this field could be further reinforced, including whether the employer's ability to exercise discretion (section 14-3 of the Working Environment Act) should be limited when considering whether the part time employee should be granted preferential rights.

Many minority women in Norway experience difficulties in entering the labour market. They are given inadequate information and training, and experience a long and difficult process to get their education and work experience accredited and approved. There are clear indications that women in Norway with a minority background experience discrimination and exclusion from the labour market. There is much evidence to suggest that women with a Norwegian surname have a better chance of being called in for job interviews than women with foreign names. Norwegian authorities point to cultural differences as the cause of a lower level of employment among immigrant and refugee women. It is essential to look into whether any structural adjustments can be made for the women who genuinely want to enter the labour

- Special priority must be given to providing information on the rights of immigrant women.

There is little knowledge about the living conditions and the particular health challenges facing lesbians and bisexual women. These groups tend to be "invisible", and this seems to be even more the case if they belong to an ethnic minority or are older. We also know very little about the situation for younger lesbians who need care or are disabled¹¹.

- The Government must initiate research that highlights particular challenges in relation to the health of lesbians.
- Norwegian elderly care must be made aware of new challenges and greater openness among the ageing homosexual and lesbian element of the population

⁹ Ramm, Jorun, *På like vilkår? Helse og levekår blant personer med nedsatt funksjonsevne* (Oslo: Statistisk sentralbyrå, 2010) (*On equal terms? Health and living conditions among persons with disabilities* (Oslo: Statistics Norway, 2010))

¹⁰ Sentio Research Norge, *Rapportering fra krisesentrene 2009*. (Oslo: Barne-, ungdoms- og familiedirektoratet, 2010) (*Reporting from the crisis centres 2009*. (Oslo: Directorate of Children, Youth and Family Affairs, 2010))

¹¹ Bjorkman M, Malterud K, "Lesbian women's experiences with health care: a qualitative study." *Scandinavian Journal of Primary Health Care* 2009; 27(4):238-43.

We have little information about the living conditions of trans-gendered in Norway, but what little information we have available indicates that this is a particularly vulnerable group¹². All information from comparable countries indicates very high suicide numbers and a high proportion that are outside working life. The Government's action plan from 2009¹³ proposes a number of initiatives for trans-gendered, of which very few have been accomplished.

- Trans-gendered must be offered more holistic treatment and the existing services should be included in the refund schemes.
- It must be possible for all gynaecologists and family doctors to determine sexual status.

¹² Council of Europe Commissioner for Human Rights, "Human Rights and Gender Identity." *CommDH/IssuePaper (2009)2*. <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1476365> (searched 13.5.2011)

¹³ Ministry of Children, Equality and Social Inclusion, *Bedre livskvalitet for lesbiske, homofile, bifile og transpersoner 2009-2012. (Better quality of life for lesbians, homosexuals, bisexuals and transpersons 2009-2012)* (Oslo: BLD, 2008)

INFORMATION RELATING TO ARTICLES OF THE CONVENTION

Article 2 Legislation

Article 2a) Basic Legislation

Currently, protection against gender discrimination in Norway is sanctioned by the Gender Equality Act¹⁴ and through the incorporation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the Human Rights Act¹⁵. The protection is not sanctioned by the Norwegian Constitution. This impairs the legal basis and symbolic value of the gender discrimination protection.

Recommendation:

- The gender discrimination protection to be incorporated into the Norwegian Constitution.

Article 2 b) Anti-discrimination legislation

Initiatives to provide information about CEDAW

At present, there are neither training nor information initiatives concerning CEDAW in the Norwegian public administration or the judicial system. Also, there is no plan or strategy with regard to whether or how these initiatives would be carried out.

Recommendations:

- Courses and information should be provided for the public administration and the judicial system concerning the content of and obligations set out in CEDAW.
- The mandate and normative basis for political and public committees established by the government to work with gender issues should be based on the provisions laid down in CEDAW.

Holistic anti-discrimination protection in law

In its study Holistic protection against discrimination (included in NOU 2009: 14), a public committee has proposed to combine all anti-discrimination legislation into a single Act that covers all bases.

The study proposes to remove the formulation (underlined) in the statement of legislative purpose: *“This Act shall promote equality between the genders and is in particular aimed at improving the status of women.”* Such amendment would be contrary to the obligation under international law under CEDAW, which requires dynamic action. Another consequence would be that differential treatment aimed at improving the status of women would be placed on a par with differential treatment aimed at improving the status of men.

¹⁴ Act relating to gender equality (Gender Equality Act). 1978-06-09-45.

¹⁵ Act relating to the strengthening of the status of human rights in Norwegian law (The Human Rights Act) 1999-05-21-30 section 2

It has furthermore been proposed to remove the present provision which states that discrimination on the basis of gender is prohibited also within the family and other personal relationships.

Recommendations:

- The statement of purpose must be maintained to the effect that the prohibition against gender discrimination is aimed at improving the status of women.
- A study should be made of what the practical consequences will be for the new Act on holistic anti-discrimination protection of incorporating CEDAW into the Human Rights Act.
- The protection against discrimination in the family and in the private sphere must be continued.

The organisation Reform wishes to dissent under the item Holistic Discrimination Act:

Reform does not agree with the recommendation to change the current Gender Equality Act to an Act on discrimination that “promotes positive discrimination to strengthen the status of women”. Although women more often than men would be in a less privileged position, the wording of the recommendation does not reflect the fact that the key objective of the equality endeavour in today’s society must be to promote formal and actual equal treatment of women and men.

Article 2 c) National Gender Equality Machinery

The Equality and Anti-Discrimination Ombud and the Tribunal’s remit and duties

The Equality and Anti-Discrimination Ombud (LDO), is obliged to ensure that the protection schemes against discrimination are complied within Norway. The Ombud is an independent national body¹⁶, and makes statements on cases involving complaints against discrimination. The statements are not legally binding and are reviewed by the Equality and Anti-Discrimination Tribunal.

Neither the LDO nor the Tribunal are able to award compensation in discrimination cases. Therefore, in order to win compensation, women who have been exposed to discrimination are obliged to file a complaint before the ordinary courts of law. This is very expensive and no legal aid is available in discrimination cases. Consequently, virtually all discrimination cases are dealt with by the LDO, which does not have the competence to ensure that those discriminated against are granted compensation. The lack of legal aid and the financial factors therefore result in a failure to gain access to justice. This is a weakness of the system for enforcing the anti-discrimination protection which, in reality, fails to ensure that the protection is real and effective.¹⁷

A survey has uncovered that women often believe they will get compensation if their cases are tried by the LDO and the Tribunal.¹⁸

¹⁶ The Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal [The Anti-Discrimination Ombud Act] 2005-06-10-40 section 3

¹⁷ McClimans, Else, I: *Comparative study on access to justice in gender equality and anti-discrimination law* (Brussels: Milieu Ltd., 2011)

¹⁸ Fjordholm, Finn Skre, "Er det meg, er det han, eller hva er det?": opplevelse og rettsregler i diskriminertes møte med Likestillingsombudet", *Kvinnerettslig skriftserie nr. 69/2007* ("Is it me, is it him, or what is it?: experiences and rules of law in the meeting between discrimination victims and the Equality and Anti-Discrimination Ombud", *Studies in Women's Rights Law*, no. 69/ 2007)

Recommendations:

- The Tribunal should be given the competence to order restitution in cases where breaches of the legislative prohibition against discrimination are found.

Information about rights – a prerequisite for exercising human rights

Legal empowerment in the form of providing information about rights and access to legal aid is an area given low priority by Norwegian authorities, particularly when it comes to women immigrants.

During its consideration of Norway's 5th, 6th and 7th periodic reports, the CEDAW Committee brought into focus the States' obligation to provide women with minority backgrounds with the same rights and legal protection in all areas of life and rights as for men from their own group and women and men from the majority population.

In cooperation with KVIBALD, JURK has documented discrimination against women immigrants by examining the information they have access to concerning their rights. The results indicate that women immigrants experience a significant degree of discrimination in terms of their immediate spheres of life. The problems concern access to housing, access to work, and movement in the public sphere.¹⁹

LDO has a duty to be active and to fulfil a prime mover role in creating de facto gender equality.²⁰ This duty should involve disseminating information about anti-discrimination protection to various groups. At present, this duty is unclear and not particularly detailed in State documents.²¹

At present, women immigrants are not receiving information about their right to protection against discrimination. Neither the authorities nor the LDO have a policy or strategy on how to reach out with information on anti-discrimination protection to women immigrants in order to create a genuine protection. This has been documented in the report "Diskriminering på tvers".²²

LDO is not well known and particularly few women immigrants take advantage of the Ombud to assist them in discrimination cases.²³ Furthermore, discrimination is not part of the Act relating to free legal aid. This results in few cases reaching the courts and the protection is not all that effective.²⁴

¹⁹ Nordstrøm, Tina. "Diskriminering på tvers – rapport fra et oppsøkende rettighetsinformasjonsprosjekt". *Kvinnerettslig skriftserie, nr. 83/2010* ("Discrimination across the board - report from an outreach project concerning information on rights". *Studies in Women's Rights Law*, no. 83/2010).

²⁰ The Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal [The Anti-Discrimination Ombud Act] 2005-06-10-40 section 3

²¹ Mali Gulbrandsen Asmyhr. "Tilrettelegging for minoritetskvinner på arbeidsplassen", *Kvinnerettslig skriftserie, nr 85/2010* ("Adapting the workplace to minority women", *Studies in Women's Rights Law*, no. 85/2010).

²² Nordstrøm, T., "Diskriminering på tvers – rapport fra et oppsøkende rettighetsinformasjonsprosjekt". *Kvinnerettslig skriftserie, nr. 83/2010* ("Discrimination across the board - report from an outreach project concerning information on rights". *Studies in Women's Rights Law*, no. 83/2010).

²³ Practice from LDO: www.ldo.no

²⁴ Else McClimans has undertaken a review of court practice in the field of discrimination law, *Rettspraksis og diskrimineringslovgivning (Legal practice and discrimination legislation)* (Oslo: 2008). See also "Diskriminering på tvers - rapport fra et oppsøkende rettighetsinformasjonsprosjekt". *Kvinnerettslig skriftserie, nr. 83/2010* ("Discrimination across the

Recommendations:

- The state obligation to provide guidance and information under section 11 of the Public Administration Act must be secured and improved.
- Discrimination should become one of the prioritised areas of the Act relating to free legal aid and in first line services.²⁵
- Information about anti-discrimination protection and about the Anti-Discrimination Ombud should be made available and easy to understand by women with a minority background.
- The duty to be active in the effort to facilitate holistic anti-discrimination protection must be strengthened.
- The work to provide information about rights must be given priority and the necessary funds be made available.
- Measures to prevent discrimination of women with a minority background must be strengthened, evaluated and analysed.

Rules setting a limit on income as a condition for free legal aid may cause a bias against women

The limits on income for obtaining free legal aid do not take into account expenses the applicant has and must have.²⁶ Many applicants have an income that is too high to receive free legal aid, but still struggle to pay for legal assistance. This is particularly the case for those with sole responsibility for children. As these people are most frequently women, this is a woman's problem.²⁷

In a Report to the Storting, the Ministry of Justice and the Police has proposed reforming the Act relating to free legal aid. One of the proposals is to establish first line services²⁸, which are intended to offer one hour of free legal advice for anyone wanting it. The scheme is currently being tried out in two Norwegian counties. It is a good proposal and very likely to improve the free legal aid services in Norway.

The first line services, and the documents on which they are based, lack a gender perspective. Gender stereotypical roles, opportunities and choices in society have neither been discussed nor given any weight. Nor is there any discussion of the needs of minority women and how to reach that particular group.

Recommendations:

- There is a need for a better developed free legal aid system. The income limits must be made more flexible.

board - report from an outreach project concerning information on rights". *Studies in Women's Rights Law*, no. 83/2010), which looks at LDO's practice and the practice of the courts.

²⁵ Ministry of Justice and the Police, *Om offentlig rettshjelp, Rett hjelp*, (About public legal aid. Correct aid.) St.meld.nr.26 (2008-2009) (Report no. 26 (2008-2009) to the Storting).

²⁶ Sections 1-1 to 1-3 of Regulations relating to the Act on free legal aid.

²⁷ *Barn 0-17, etter antall foreldre i familien, foreldrenes samlivsform og barnets alder. Prosent 20100, 2005-2010*. (Children aged 0-17, according to the number of parents in the family, the parents' living arrangements, and the child's age. Percentage 20100, 2005-2010). SSB, copyright 2010, http://www.ssb.no/emner/02/barn_og_unge/2009/tabeller/familie/fam0500.html (searched 28.09.10)

²⁸ Ministry of Justice and the Police, *Om offentlig rettshjelp, Rett hjelp*, (About public legal aid. Correct aid.) St.meld.nr.26 (2008-2009) (Report no. 26 (2008-2009) to the Storting.)

- The way in which the Act relating to free legal aid functions in practice for men and women must be analysed.
- The gender perspective of CEDAW and the Equal Rights Act must be incorporated into the first line services.

Article 2 d) Efforts by the Public Authorities to promote Gender Equality

Gender mainstreaming

In its eighth periodic report to the CEDAW Committee, Norway has promoted gender mainstreaming as its overarching strategy to achieve gender equality, although gender specific measures have also been accepted if they advance equality. However, this strategy has had limited effect as it has not been followed up in keeping with the intentions behind it. The focus on the situation of women has been weakened, and the idea that gender neutrality advances equality prevails. All over the world, gender mainstreaming strategies show that they are not generally followed up with the operationalization of an institutional structure, resources, working methods or approaches within various disciplines. This also applies to Norway.

According to Difi's evaluation of the effects of the work to integrate the gender and equality perspective into the sectorial departments' draft budgets²⁹, most departments have made advances since 2005-2009. The gender and equality perspective has become more clearly expressed in the draft budgets, but there are wide-ranging differences between the ministries. This work is important in the effort to advance equality in all areas of policy and must be followed up.

Breaches of the provisions of public authorities' Instructions for Official Studies and Reports³⁰ relating to consequence assessments in connection with studies on advancing gender equality appear not to have the same significance as consequence assessments of economic and administrative studies.

LDO makes only limited checks of studies and reports on gender equality. This applies both in terms of numbers and the spheres involved. Only 86 of the 430 municipalities in the country have been checked³¹, with the assessment dealing with gender equality in the workplace. There is no assessment of whether the municipal provision of services and planning has a gender perspective and advances equality, and so it receives no attention in the municipalities.

It is positive that the government has increased its focus on appropriations for women and for gender equality in the development budget, but - viewed in the context of the total budget - the portion allowed for women and gender equality is very modest. The total budget is NOK 27 billion (2010), of which NOK 1.4 billion is stated as being earmarked for women and gender equality. We would like to point out two specific places where it is impossible to specifically trace the funds. One is the development budget, and

²⁹ Agency for Public Management and eGovernment, "På sporet av kjønnspektivet – Integrering av et kjønns- og likestillingsperspektiv i budsjettarbeidet" ("On the track of the gender perspective – Integration of a gender and equality perspective in the budget work", *DIFI report 2009:1* (Oslo: Ministry of Children and Equality, 2009))

³⁰ The Instructions for Official Studies and Reports require that the consequences related to all public studies, initiatives and reform proposals shall be assessed, and if the proposals have consequences for gender equality, this shall be mentioned.

³¹ Likestillings- og diskrimineringsombudet, *Tre år med kontroll av kommuners likestillingsredegjørelser: Erfaringer 2007-2009* (Equality and Anti-Discrimination Ombud, Three years of control of municipal gender equality reports: *Experiences 2007-2009* (Oslo: LDO, 2010))

the other is the funds intended for the work with Security Council Resolution 1325. It is generally difficult to see what the funds intended for women consist of.

Recommendations:

- The use of the gender mainstreaming strategy is contingent on more knowledge and more resources for the local and regional work.
- Responsibility for the work to achieve gender equality must be placed at management level and the management must be held accountable for it. Public authorities must follow up and ensure that the policy is implemented in practice.
- In addition to mainstreaming, gender specific measures must be applied to a greater degree, to ensure equality for women.

Article 2 f) Measures to Abolish Discriminatory Laws and Practices

Disabled Women

Disabled women constitute the largest minority group among women in Norway³². The overall lack of attention paid by the Government to the absence of disabled women in both political and public life is alarming. This absence of participation is reflected in the official report itself.

The Committee does not mention disabled women in its Concluding Comments on Norway's 7th Periodic Report. However, according to General Recommendation No. 18, the States parties are recommended to report on the situation of disabled women

Recommendation:

- In its recommendations to Norway's 8th Periodic Report, the Committee must demand that Norway's next report addresses the issue of disabled women.
- Norway must ratify the UN Convention on the Rights of Persons with Disabilities.

Amendment to the legal gender status

Changing a person's legal gender status is enshrined in section 2-2(5) of the Regulations relating to population registration, which states only that: "The date of birth and personal identity number may be changed when the date of birth or gender status is changed." The consequence of this is that it is left to medical personnel to determine the gender status. This contravenes among other things the recommendations made by the Council of Europe³³ and the Council of Europe's Commissioner for Human Rights³⁴ in that a person's gender identity is considered to be so personal and complex that it must be regarded as a violation of integrity to demand anything of this nature. The practice also runs counter to Yogyakarta principle no. 3 on the right to recognition before the law.

³² SSB, *Personer i alderen 15-66 år og personer med funksjonshemming etter arbeidsstyrkestatus og kjønn* (Persons aged 15-66 years and persons with a disability according to work force status and gender, SSB.no, Updated 6.9.2010, <http://www.ssb.no/emner/06/01/akutu/tab-2010-09-06-01.html> (searched 18.5.2011). – In the work force survey 2010, 18.7% of those asked stated that they had some form of disability.

³³ Human Rights Watch, *Committee of Ministers of the Council of Europe Adopt LGBT Recommendations*, HRW.org, 4.6.2010, <http://www.hrw.org/en/news/2010/04/06/lgbt-recommendations-adopted-committee-ministers-council-europe> (searched 13.5.2011)

³⁴ Hammarberg, Thomas, "Human Rights and Gender Identity" *CommDH/IssuePaper(2009)2*, (Strasbourg: Council of Europe Commissioner for Human Rights, 2009), <https://wcd.coe.int/ViewDoc.jsp?id=1476365> (searched 13.5.2011)

In Norway we also operate with an all-or-nothing-approach, which is in violation of WPATH's Standards of Care and the recommendations of the Council of Europe's Commissioner for Human Rights and others. To change one's gender legally requires the removal of internal sex organs. This leads to many people having to go further than what they are comfortable with; they are forced into a standardised format that does not necessarily suit everyone – or things happen faster than they are psychologically prepared for. A growing number of countries, including Sweden and the UK, have already dealt with this problem and removed these requirements.

Recommendation:

- It should be made possible to change legal status without medical changes being required.

The three-year rule

Persons who have been granted a residence permit in Norway based on family reunification with a Norwegian spouse, must wait three years before being granted an independent residence permit. If the marriage is dissolved before this time, the person is forced to leave the country. Many women remain in a violent marriage in fear of what might happen if they seek a divorce. The three-year-rule does not give foreign spouses who wish to leave the marriage before the three years have passed the opportunity for a period of separation in line with other spouses under Norwegian legislation. These people may be caught in a violent marriage without any opportunity for a better alternative than remaining in the marriage³⁵. The purpose of the law is to prevent people wanting to stay in Norway from entering into pro forma marriages. As a result of the rule there are large numbers of unrecorded cases and few statistics on the issue.

If foreign spouses are able to render probable that they have suffered from violence in a marriage to a Norwegian resident, they are entitled to an independent residence permit even if the marriage is dissolved before the end of the three-year period. This is laid down in section 53(1)(b) of the Norwegian Immigration Act, in the section relating to domestic violence, but it is not clear exactly what is needed for women to be granted a residence permit on the basis of this rule. This has caused uncertainty concerning the rights of these women following marital breakdown.

Recommendations:

- Remove the three-year rule.
- The practice of the evidential rule when seeking a residence permit on an independent basis must be reviewed and made specific (the section relating to domestic violence).
- The authorities must improve information on rights after marriage. This may be done in connection with the introductory programme and Norwegian language training.

Women seeking asylum

Reception centres

In 2008 Amnesty International Norway launched a report³⁶ on violence against women living in reception centres for asylum seekers. For a number of reasons, female inhabitants of reception centres

³⁵ Tyldum, G. and M. Tveit, "Someone who cares: A study of vulnerability and risk in marriage migration from Russia and Thailand to Norway". *Fafo-report 2008:26*, (Oslo: Fafo, 2008)

³⁶ Amnesty International, *Frihet fra frykt – Vold mot kvinner i asylmottak (Freedom from fear – Violence against women in asylum centres)* (Oslo: Amnesty International 2008)

for asylum seekers are particularly vulnerable to gender violence. Previous exposure to sexual violence, the disruption of existing social networks, lack of language skills and social isolation are some of the reasons.

The main conclusion of the report was that female inhabitants of reception centres experience an extreme vulnerability and a lack of protection against gender-based violence, including sexual harassment and abuse. One of the reasons for this perceived vulnerability is the limited presence and accessibility of personnel at reception centres.

Violence against women at reception centres is largely underreported in official statistics due to insufficient registration routines. Amnesty's report also documents how the physical structure of the reception centres contributes to women's experience of a lack of safe spaces.

The Norwegian Government responded positively to the report, but has done nothing to increase the presence of personnel at reception centres.

Recommendations:

- Increase the general presence of personnel at reception centres for asylum seekers in Norway, especially in the evenings and at weekends, in order to ensure that women have adequate protection and support against gender-based violence.
- Carry out an assessment of all reception centres in Norway in order to identify further need for reconstruction to ensure women's access to safe spaces.
- Ensure continuous training on all forms of gender-based violence for personnel working in reception centres in order to enhance their capacity to intervene in an adequate manner.
- Facilitate the necessary cooperation between reception centres, local health authorities, women's organisations, crisis centres and other relevant institutions at local and regional level.
- Initiate a housing scheme especially for women with minority backgrounds who do not have access to the ordinary housing market.

Gender-based persecution

Women asylum seekers are a particularly vulnerable group. In many cases the family's application for asylum is based on the husband's political activity. Consequently, the woman's relationship with the abuser is the actual basis for the woman's opportunity to be allowed to stay in Norway. The woman has no guarantee that her individual need for protection will be recognised when her application is considered, and it may therefore be difficult for her to take the risk that leaving her husband would entail.

Gay men, lesbians and trans-gendered are often refused asylum under reference to them having to adapt to the cultural norms in their home countries³⁷. Sexual orientation and gender identity are key dimensions in a person's identity and enjoyment of life. If one has an identity as a gay man, lesbian, bisexual or trans-gendered, having to adapt to the cultural norms for gender roles and gender expression will in many places result in serious violations of basic human rights; see for example Yogyakarta principle no. 6 on the right to privacy.

³⁷ Source: SEIF (Self-help for immigrants and refugees) and LLH, which cooperate on asylum cases concerning sexual orientation and gender identity.

Lesbian and trans-gendered asylum seekers are very exposed at asylum centres, among other things because it is common to sleep in rooms containing others of the same nationality. Many of them experience the same persecution that they fled from. Currently, there are very few opportunities to rearrange their accommodation.

In 2008 the Norwegian Government introduced guidelines for considering cases of gender-related persecution. Few of these guidelines address persecution linked to sexual orientation and gender identity.

Norway is a world leader when it comes to pointing out the nations' responsibilities for preventing rape, violence and abuse against women and for recognising that women need special security and protection. Nonetheless, very few women are granted asylum in Norway even if they claim persecution of this very nature³⁸. The process of considering asylum applications contains a number of weaknesses, including serious flaws in assessing credibility, and what is considered as persecution.

Recommendations:

- Gender-based persecution should more frequently give grounds for asylum. The provisions of CEDAW and the UN Convention on the Rights of the Child must be complied with to a greater extent also in practice. Sexual orientation and gender identity must be incorporated into the guidelines in line with the recommendations by UNHCR and the Yogyakarta principles.
- Women who experience gender-based violence or threats of gender-based violence at asylum centres must be given the necessary protection and follow-up. If necessary, this may mean moving them to another asylum centre or to a crisis centre. In situations of this nature it is necessary to ensure that the woman herself is an active premise setter and participant in the decision on where to place her.
- Asylum seekers claiming sexual orientation and gender identity as grounds for asylum should be granted adapted reception facilities near large cities with active LGBT communities, so that they may feel safe without the need to live in hiding and isolation.

Article 3 Gender, Equality and Human Rights

Protection for women exposed to violence

Restraining orders

The restraining order (adopted in Norway in 1994, and expanded in 2003 to also permit restraining orders applying to their own home) is imposed by the prosecuting authority when there are grounds for suspecting that a person will commit a criminal offence, persecute another person or violate the peace of another.

According to the police statistics on formal complaints, in 2008 there were 1,059 breaches of restraining and exclusion orders, up 12.7% from 2007. The increase for the entire five-year period was 15.7%. In

³⁸ Freyr, Kamilla and Løvdal Lene, (ed.), *Kjønnsrelatert forfølgelse og norsk utlendingsforvaltning belyst gjennom saker fra Iran (Gender-related persecution and Norwegian immigration administration illuminated through cases from Iran (Oslo: 2008)* http://www.krisesenter.com/materiell/pdf/Rapport_om_kjønnsrelatert_forfølgelse.pdf (searched 13.5.2011)

2008, the number of persons issued with a personal attack alarm was 1,636, as against 1,370 the year before.

In several cases, the restraining order has proven ineffective as protection for women who are exposed to threats and violence. The scheme has never been evaluated or studied. No statistics exist on the number of restraining orders issued. There are also no statistics or codes in STRASAK on recorded cases of violence against women, and reported crimes of violence are not gender-determined. This is a major problem.

The conditions for being issued with a personal attack alarm appear to be person-dependent and arbitrary. No uniform practice exists. Women exposed to threats and violence should be treated equally all over the country. Women who experience repeated breaches of a restraining order find that their case is dropped, or that the police do not believe them and fail to investigate the case. Many women in Norway are therefore forced to live in hiding to preserve their life and health.

In family-related cases of violence and threats, restraining and exclusion orders may be relevant measures. As a rule, the prosecuting authority does not attend judicial reviews and it is not uncommon for the aggrieved party and the person issued with the order to meet in person in court without anyone present to attend to the aggrieved party. Many victims report personal attack alarms that malfunction. It is also a recurring complaint that breaches of exclusion orders are handled inflexibly. Several police districts require the person wanting to report the breach to attend the police station in person and to make an ordinary complaint after each breach.

Recommendations:

- The restraining order scheme must be evaluated in terms of quality, effect and other relevant aspects.
- Aggrieved parties who have been granted restraining orders must be given greater protection of the law.

Women at secret addresses

The European Convention on Human Rights (ECHR) determines that any person who is legally residing in a State's territory shall be entitled to move freely within this territory and be entitled freely to choose where to live. Due to the lack of real legal protection against threats of violence and murder, more than a thousand women and their children are living in hiding under codes/witness protection programmes and secret addresses to conceal their residence and their identity from their abuser/s.

Several of the women have incurred health problems and are receiving disability benefit. Due to the lack of financial support, many of them are forced to live on minimal resources.

Recommendation:

- The State must assume greater responsibility for women living under codes/witness protection programmes.
- The Government must develop a clear policy which focuses on the offender/s.

Article 5

Article 5 a) Gender Roles

Gender roles in education

Evaluations of action plans for gender equality in day care and pre-schools indicate that gender equality is a topic of which those who are responsible for the service only have a superficial awareness. Although various surveys indicate that boys and girls are treated differently on the basis of gender in day nurseries and schools, scant attention is paid to how gender stereotyping and attitudes manifest themselves in practice in the teaching work and in the care of the children at individual units³⁹.

It is important to focus on gender socialisation in day care and primary schools. Pre-school teachers, children and youth workers, social workers, social educators, child welfare officers, teachers and others who work actively with children, must be given sufficient training in, knowledge of and awareness of gender and socialisation. This may in the longer term help change the strongly gender- divided choices in education and occupations in Norway.

The Government has supported publication of a resource booklet on gender roles aimed at day care staff⁴⁰. The booklet provides concrete input as to how day care can work with gender equality as it is founded in the framework plan, including a focus on play materials in day care and stories where princes fall in love with princesses. A resource booklet for teachers of sex education in primary schools has been published which also includes homosexuality (Undervisning om seksualitet av Røthing og Bang-Svendsen, Kunnskapsdepartementet, 2009 (Teaching of sexuality by Røthing and Bang-Svendsen, Ministry of Research and Education, 2009)

No funds have been allocated to ensure that the content of the booklets is applied in educating teachers in sexual orientation and gender identity.

No functioning control mechanisms exist to ensure that pupils are not discriminated against on the basis of gender, gender identity or sexual orientation.⁴¹ This is particularly the case in private, religion-based or "faith" schools, but is also found in state schools. The LLH (The Norwegian LGBT Association)) have been in touch with pupils from various parts of Norway who experience discrimination and harassment by teachers in such schools. Often the discrimination is aimed at both gender and sexual orientation. It is also unclear as to what requirements the content of the education in these schools has to satisfy in terms of gender, gender identity and sexual orientation, and here, too, there are no functioning control mechanisms, either in relation to the content of the education or the school environment.

Recommendations:

- Clear requirements must be imposed on the teaching provided in private schools in respect of gender, sexual orientation, gender identity, ethnicity, etc.
- These requirements must be effectively enforced.

³⁹ Likestillingssenteret (The Centre for Equality) 2010

⁴⁰ Reform, *Gender Loops* (Oslo, 2010)

⁴¹ Barneombudet, "Forskjellen mellom å ha rett og få rett: Tilsyns- og klagesystemet i skolen". Rapport fra Barneombudet nr 4-2009 (Oslo: Barneombudet 2009) (The Ombudsman for Children in Norway, "The difference between being right and given right: The supervision and complaints system in schools". Report no. 4-2009 from the Ombudsman for Children (Oslo: The Ombudsman for Children 2009) <http://barneombudet.no/publikasjoner/tilsyn-og-/> (searched 13.5.2011)

- The enforcement system as regards dealing with bullying and harassment in schools must be changed so as to be genuinely effective.
- Teachers must be educated in gender stereotyping, sexual orientation, gender identity, etc.
- All schools/school owners must be able to prove that the work to combat gender stereotyping and for equality is presented in text books or other teaching materials.
- The Government must integrate into primary and secondary school curricula information campaigns and measures related to gender equality and violence.

Lack of change in educational choices for girls and boys

There is reason to call on the Government to set out the measures it intends to carry out to achieve a change in the kinds of education chosen by girls and boys.

The careers advice service in schools often gives occupational guidance for boys in technical subjects and for girls most frequently in health and social care subjects, and in academic subjects⁴². This reinforces the gender-divided pattern we have today.

There are few signs of men moving into areas dominated by women, while there has been a percentage-wise increase in women both in formerly male dominated and female dominated studies. In addition to women now dominating in higher education, they generally achieve better grades than men in upper secondary education. This has led to women becoming an increasingly better educated workforce compared to men⁴³.

Recommendations:

- The advice provided in primary, lower secondary and upper secondary schools for educational and occupational choices must be improved with a view to giving girls and boys de facto equal opportunities and choices.
- Public authorities must focus on recruitment initiatives across traditional gender choices also later in the course of individuals' careers, such as mentoring schemes and facilitated arrangements for education as part of on-the-job training. Men in particular must be given incentives and stimulus to choose female dominated education and occupations.

⁴²Ida Holt Mathiesen, Trond Buland and Brita Bungum, *Kjønn i skolens rådgiving – et glemt tema?*(Oslo: SINTEF Teknologi og samfunn, 2010) (*Gender in school career guidance – a forgotten topic?* (Oslo: SINTEF Technology and Society, 2010). <http://www.sintef.no/upload/KJ%20c3%98NN%20I%20SKOLENS%20R%20c3%85DGIVING%20-%20ET%20GLEMT%20TEMA.pdf> (searched 13.5.2011), and Trond Buland et al., *Skolens rådgiving – på vei mot framtida?* (Oslo: SINTEF Teknologi og samfunn, 2010) (*School career guidance – on its way towards the future?* (Oslo: SINTEF Technology and Society, 2010). <http://www.sintef.no/upload/SKOLENS%20R%20c3%85DGIVNING%20-%20P%20c3%85%20VEI%20MOT%20FRAMTIDA.pdf> (searched 13.5.2011)

⁴³ Barne- likestillings- og inkluderingsdepartementet, "Likestilling for likelønn", Stortingsmelding 6 (2010-2011)(Oslo: 2010) (Ministry of Children, Equality and Social Inclusion: "Equality for equal pay", Report no. 6 to the Storting (2010–2011)(Oslo: 2010))

Article 6 Violence, Trafficking in Women and Exploitation of Prostitution of Women

Men's violence against women is a serious, global problem with extensive health-related, social, societal and individual consequences. Social, political and economic changes in Norway have led to a change in the understanding of what constitutes violence against women from mainly being violence perceived only as physical violence and rape, to including psychological violence and abuse, sexual harassment, genital mutilation, forced marriage, homicide, exploitation of prostitution, and sex slave trafficking in women.

According to research⁴⁴ girls who are attracted to girls are more exposed to violence than other girls and boys, including boys who are attracted to other boys. This comprises the entire spectrum from harassment to gross violence. The reasons for this, and to what extent sexualised violence is part of this picture, are unknown. The survey does not state who the perpetrators of violence are.

Recommendations:

- The work to combat men's violence against women both at national and local levels must be further reinforced.
- The Government must present a proposal for implementing existing objectives as soon as possible.

Violence

Domestic violence coordinator

A scheme involving domestic violence coordinators has been established in all Norwegian police districts since 2002⁴⁵, and the police have been instructed how to handle cases of domestic violence.⁴⁶ Each police district must have at least one domestic violence coordinator in full-time post. The largest police districts are required to set up specialised teams to deal with domestic violence cases.⁴⁷ The 2002 initiative and the plan of action to tackle domestic violence were high-profile responses by the Government and are a step in the right direction.

A survey⁴⁸ has, however, revealed that only eight police districts have a domestic violence coordinator working full time on domestic violence-related issues. Oslo has a domestic violence team with three

⁴⁴ Stefansen, Kari et al. "Vold mot 'homofil' ungdom. Forekomst og fortolkninger". *Sosiologi i dag 2009-2* ("Violence against "homosexual" youth. Occurrence and interpretations". *Sociology Today 2009-2*)

⁴⁵ Justis- og politidepartementet, *Storingsproposisjon nr. 1 (2001-2002)* (Ministry of Justice and the Police, *Proposition no. 1 to the Storting (2001-2002)*).

⁴⁶ Politidirektoratets rundskriv 02/018 av 23 april 2002 og "Retningslinjer for politiets styrking av koordinatorfunksjonen for familievold og seksuelle overgrep" av 10. mars 2008 (Police Directorate's circular no. 02/018 of 23 April 2002 and "Guidelines for police reinforcement of the coordinator function for domestic violence and sexual abuse" of 10 March 2008)

⁴⁷ Justis- og politidepartementet, *Vendepunkt: handlingsplan mot vold i nære relasjoner 2008-2011* (Oslo: Justis- og politidepartementet, 2007) (*Ministry of Justice and the Police, Turning point: action plan against violence in close relationships 2008-2011* (Oslo: Ministry of Justice and the Police, 2007))

⁴⁸ Johansen, Marte, "Politiets familievoldskoordinator: Fungerer ordningen?" JURKS rapport nr.55 201. ("The police domestic violence coordinator: Is the scheme working?" *JURKS report no. 55 201*. (The Governors of Svalbard, Telemark, Vestoppland and Vestfinnmark have no domestic violence coordinator at all.)

domestic violence coordinators, whereas 19 police districts have failed to reach the targets laid down in the action plan. This illustrates that the scheme is fragmentary and unsystematically implemented.

Many cases involving violence or other abuse in a domestic setting appear to have a low investigative priority, which in turn affects the quality of the investigation / securing of evidence, with the consequence of the likelihood of a criminal conviction becoming needlessly low.

Victims of crime who have not been allocated counsel are aware of what court proceedings may involve and may find them incomprehensible and stressful. It is a paradox that, while the court is responsible for appointing defence counsel for every indicted person, and automatically does this unless defence counsel has been appointed on receipt of the indictment and request for listing of the case, providing equivalent assistance to the victim may be entirely incidental.

Recommendations:

- There should be legislation to enact the scheme for domestic violence coordinators.
- The Ministry of Justice and the Police and the Police Directorate must supervise and ensure that the police districts implement the mandatory initiatives and that they are allocated sufficient funds.
- A reporting scheme should be established. The scheme should be coordinated and the reports analysed by the Police Directorate.
- Priority must be given to domestic violence cases and domestic violence coordinators.

Rape

Though the authorities and justice system in Norway claim to give high priority to combating gender-based violence, including rape, the victims' right to justice is in practice often hampered. The cumulative failure to investigate and hold perpetrators to account can be observed as a process of attrition throughout the criminal justice system. This is not only a strong indication of the existence of pervasive gender-based discrimination against women in Norway, but also a systemic failure to ensure women's right to legal protection and equality with men before the law.

In January 2008, a government-appointed committee on rape estimated that every year between 8,000 and 16,000 women in Norway are victims of rape or attempted rape.⁴⁹

The number of rapes reported to the police has steadily increased in recent years, from 798 in 2005 to 1006 in 2009, a total increase of 26 per cent. The number of reported aggravated rape cases, defined according to the Penal Code as rape with multiple perpetrators, or rape where severe damage or harm is caused, has increased dramatically compared to other forms of rape, from 22 reported cases in 2005 to 51 reported cases in 2009. This is an increase of 131.8 per cent. In the same period, the number of reported attempted rapes increased slightly from 106 in 2005 to 120 in 2009.⁵⁰ Statistics based on

⁴⁹ Norges Offentlige Utredninger, *Fra ord til handling: Bekjempelse av voldtekt krever handling* (Oslo: Justis- og politidepartementet, NOU:2008:4) (Norwegian Official Reports, *From words to action: Combating rape requires action* (Oslo: Ministry of Justice and the Police, NOU:2008:4))

⁵⁰ Politidirektoratet, Seksjon for analyse og forebygging, Kommenterte STRASAK-tall 2009 (National Police Directorate, Section for Analysis and Prevention, STRASAK figures with comments 2009). Politi.no, Updated 11.1.2010. https://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/Vedlegg_585.pdf (searched 10.05.2011)

reported rape cases between 2003 and 2005 document that 84 per cent of rape cases reported to the police never came to court, mostly due to lack of evidence.⁵¹

Compared to other crimes, few rape cases end with a conviction in the courts. Between 2003 and 2005, the percentage of acquittals in rape cases was around 36 per cent.⁵² During the same period, the percentage of acquittals for all reported crimes was 7-8 per cent.

In its official report to the CEDAW Committee, Norway states that the increased number of reported rape cases probably reflects a greater willingness to report rape crimes. Regrettably there are no comparable incidence statistics available, so this statement is not backed up by any figures. Some researchers and practitioners actually do believe that both the occurrence and severity of sexual violence is on the increase in Norway, so this official statement remains questionable.⁵³ The lack of reliable statistics on the incidence and prevalence of rape and sexual violence makes it difficult to identify appropriate measures to increase protection against rape and sexual violence, including preventive measures, and to understand, learn from and build upon progress and setbacks.

International human rights standards state that the protection of the right to sexual integrity and autonomy should be the basis of any criminal law regarding rape and other forms of sexual violence. Consequently, rape is to be defined as sexual conduct in which the consent of the woman or girl involved is not truly or freely given.⁵⁴ However, the Norwegian penal system still links the question of guilt to the ability to prove that the sexual act was enforced through the use of violence or threats of violence.⁵⁵

Recent studies from the Sexual Assault Centre in Oslo and the Sexual Assault Care Centre at St Olav's Hospital in Trondheim have found that the police are not using existing forensic evidence to the full extent to back up the victim's allegation of rape.⁵⁶

Recommendations:

- Develop a National Plan of Action to prevent and combat rape and sexual violence;

⁵¹ Riksadvokatens utredningsgrupper, "En undersøkelse av kvaliteten på påtalevedtak i voldtektssaker som har endt med frifinnelse m.v", Rapport nr. 1/2007: s.4. (The Director of Public Prosecutions' Study Groups, "An investigation of the quality of the decision to prosecute in rape cases ending in acquittal, etc.", Report no. 1/2007: p.4)

⁵² Ibid.

⁵³ Amnesty International, *Case Closed* (Oslo: Amnesty International 2008)

⁵⁴ European Court of Human Rights, *application 39272/98, M.C. v. Bulgaria, Judgment of 4 December 2003*, paragraphs 154-166

⁵⁵ This is both according to the existing Norwegian Penal Code, see Odelstingsproposisjon no. 28 (1999-2000), Preparatory Notes on Changes in the Penal Code, page 29, as well as to the new Penal Code, see Odelstingsproposisjon no 22 (2008-2009),), Preparatory Notes on Changes in the Penal Code May 20, 2005.

⁵⁶ Stene, Ormstad & Schei. "Implementation of medical examination and forensic analyses in the investigation of sexual assaults against adult women: A retrospective study of police files and medical journals". *Forensic Science International, Volume 199, Issues 1-3*, 15 June 2010, pp. 79-84 and Haslie, Anita. Ubrukte beviser i voldtektssaker (*Unused evidence in rape cases*). Forskning.no, 15.9.2010, <http://www.forskning.no/artikler/2010/september/260108> (searched 11.5.2011)

- Adopt a legal definition of rape which defines rape and other forms of sexual violence as sexual conduct in any instance in which the consent of the persons involved is not truly and freely given, that is, given without coercion of any kind, in accordance with present human right standards;
- Conduct national surveys on the incidence of sexual violence and rape in Norway on a regular basis;
- Reinforce and develop preventive measures against rape and sexual violence in society at large. More extensive information measures and attitude-improving campaigns must be executed with the aim of preventing abuse against women. Preventive measures should include the education of children and young people about mutual respect in relationships, as well as the promotion of equality in public education messages, within the context of working towards substantive gender equality between men and women in all areas of life;
- A wide range of concrete measures targeting the legal system is needed to improve the quality of rape investigations and the judicial handling of rape cases. This includes training and education to change discriminatory attitudes towards women;
- Quality assure rape reception centres, improve coordination and organisation with expert competence in cases involving sexual crime in each police district, more use of video recordings, a handbook describing all investigative measures, skills building for police prosecutors and public prosecutors.

Murders of women

Norway tops the European statistics for homicides committed in close relationships. Between 2000 and April 2011, 93 women were killed by their partners/former partners or boyfriends.⁵⁷ It is important to conduct research into murders of women in order to identify risk factors and develop preventive measures. Due to a requirement for the consent of the convicted persons, the Government's planned mapping of intimate partner homicides has not yet been implemented.⁵⁸

A commission would be able to study matters that are assumed to be important for homicide prevention, and gain greater insight into the circumstances and events leading up to each individual incident.

Recommendations:

- More interdisciplinary research should be done into murders of women in general, and the causes of partner killing in particular.
- The authorities need to take more aggressive and purposeful preventive action to reduce the number of women killed each year.
- A commission should be established to investigate all murders of women committed by their cohabiting partner or ex-partner.

⁵⁷ Verdens Gang (VG)

⁵⁸ www.regjeringen.no/upload/JD/Vedlegg/Handlingsplaner/vendepunkt.pdf

Shelters

Since 1992, women and their children have spent more than one and a half million nights at Norwegian shelters. Of the total of 2368 stays at crisis centres in 2009, 89% of the women report that they have repeatedly been exposed to violence. About half of them arrived with children⁵⁹. The fact that so many women and children each year experience psychological and physical violence, rape, human trafficking and forced marriage, and need to seek protection at a crisis centre, denotes the enormous political challenges we are facing.

Every year, almost 2,000 children are forced to escape to shelters along with their mothers. There is currently no general treatment or counselling available to children who experience such a situation. The shelters are a low-threshold offer of accommodation and are not meant to undertake therapeutic treatment.

The shelters have neither the expertise nor the capacity to attend to women with serious mental health problems and/or problems involving drugs/intoxicants. This means that these women may experience problems getting help, and it may be difficult for them to obtain a safe and free place to stay if they need to escape from their home.

A new Act relating to shelters⁶⁰ came into force on 1 January 2010. The Act directs all municipalities to have a shelter for women, men and children who are exposed to violence and abuse in close relationships. The gender-neutral formulation of the Act was criticised during the first round of consultation, and several women's organisations were of the opinion that a gender-neutral Act on shelters was in contravention of CEDAW. The criticism was to some extent taken into account when the Act was actually formulated.

Under the Act, existing shelters are instructed to offer separate departments for men and women. Some elements of civil society have criticised the Act, as it is thought that joint centres for men and women, albeit with separate departments, do not sufficiently safeguard the needs of women for security and safety, and that they also contravene the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Civil society is concerned about the consequences of the Act on Shelters for the existing shelters. We fear that great differences will arise in the shelter service when the funding is brought within the framework grant to the municipalities in 2011. What the State fails to take into account is that shelters do not follow the same logic as other statutory services. It has proven to be the case that criteria other than demographic and social conditions have an important part to play.

Recommendations:

- Shelters, as a low-threshold service, must be accessible and adapted to various groups of women, including disabled women, women from ethnic minorities, lesbians and trans-gendered.
- The shelters must be guaranteed stable and predictable funding to enable them to make long-term plans for their work. The grant which is now to be included in the framework grants for operating the shelters must be earmarked.

⁵⁹ Sentio Research Norge, *Rapportering fra krisesentrene 2009* (Oslo: Barne- ungdoms- og familiedirektoraret, 2010) (*Reports from the crisis centres 2009*. (Oslo: Directorate for Children, Youth and Family Affairs, 2010) http://www.bufetat.no/Documents/Bufetat.no/Krisesentre/Statistikk/Rapport_statistikk%20krisesetre%202008.pdf (searched 13.5.2011)

⁶⁰ Act relating to provision of municipal crisis centres (Crisis Centre Act). 2009-06-19-44

- The State must ensure that women with serious mental illness and drug dependency who are exposed to violence are provided with a specialist crisis facility with treatment by health personnel with the appropriate expertise.
- The need to help men exposed to violence must be attended to without detriment to already existing shelters for women and children.
- The shelters must remain as an emergency reception service for women exposed to violence, but are not suitable for extended stays.
- Under the new scheme, the shelters must be provided with staff with adequate knowledge and specific expertise in working with people from ethnic minorities or with immigrant backgrounds.
- Measures must be taken to find suitable accommodation a distance away from the abuser/s after a stay at a crisis centre.

Women with disabilities

A study has shown that women with disabilities are five times more exposed to violence or threats of violence and discrimination as other women⁶¹. The study does not specify what a proportion of the violence is domestic violence.

Women with physical impairments do not have equal access to crisis centres as other women. In 2009, it was revealed that only 24 out of 50 crisis centres in Norway were accessible for women with physical disabilities⁶².

Women with disabilities are not included in the research that has been undertaken on violence and abuse against women in Norway, and there is therefore very little knowledge on the subject.⁶³

Recommendations:

- Norwegian authorities must take the initiative for, and secure funding of, research projects on violence and abuse against women with disabilities.
- All municipalities must introduce measures to increase the level of awareness and expertise among the staff and introduce organisational measures in the form of intersectorial coordination and a distinct allocation of responsibilities

⁶¹ Ramm, Jorun, *På like vilkår? Helse og levekår blant personer med nedsatt funksjonsevne* (Oslo: Statistisk sentralbyrå, 2010) (*On equal terms? Health and living conditions among persons with disabilities* (Oslo: Statistics Norway, 2010))

⁶² Sentio Research Norge, *Rapportering fra krisesentrene 2009*. (Oslo: Barne-, ungdoms- og familiedirektoratet, 2010) (*Reporting from the crisis centres 2009*. (Oslo: Directorate of Children, Youth and Family Affairs, 2010))

⁶³ Olsvik, Vigdis Mathisen, *Overgrep mot kvinner med nedsatt funksjonsevne: en kunnskapsoversikt* (Oslo: Nasjonalt kunnskapssenter om vold og traumatisk stress, 2010) (*Abuse against women with disabilities, an overview* (Oslo: Norwegian Knowledge Centre for the Health Services on violence and traumatic stress, 2010))

Re-trafficking

The ROSA Project (re-establishment, accommodation, security and assistance) was established in January 2005 to coordinate the provision of secure residential environments with access to the necessary assistance and information for women exposed to human trafficking according to Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings. ROSA is also intended to guide and inform the staff at the places of accommodation that offer help to the women on a daily basis.

Experience from ROSA indicates that most of the women the project encounters, identifies and assists, have had a so-called Dublin II Regulation procedure decision applied against them. Most of them have been brought to Europe via other countries, particularly Italy and Spain, before they enter Norway illegally. Therefore, the first contact these women have with the immigration administration is frequently the staff at the Police Immigration Unit (PU). Recently, the Norwegian Directorate of Immigration proposed a circular on the immigration administration's *responsibility to facilitate identification and provide follow-up of possible victims of human trafficking*. The circular is particularly focussed on the duty of the immigration administration, including the PU, to facilitate identification of possible victims of human trafficking. Given that Norway has commitments to maintain under the Dublin II Regulation, these new guidelines create practical challenges for the PU. The guidelines are intended to enable the PU to exercise its duty to identify women (and men) as possible victims of human trafficking, while also respecting their commitments described in the Dublin II Regulation. This Regulation has replaced the Dublin Convention and will have shorter deadlines for exchanging information between the member states. "The introduction of the amended Regulation opens up the possibility for more use of electronic case processing. This will lead to a more efficient exchange of information between the member states"⁶⁴. This is challenging, as the shortened deadlines and more extensive use of electronic case processing correspond poorly with the ROSA Project's experience that identifying someone as a possible victim of human trafficking is a time- and resource-consuming task.

Recommendations:

- The Norwegian guidelines for the Dublin II Regulation must explain in greater detail how to make arrangements for the PU to exercise its duty to identify persons with a Dublin II Regulation procedure decision applied against them.
- In the guidelines, possible victims of human trafficking with a Dublin II Regulation decision must as a principal rule be assessed on the basis of the same provisions as unaccompanied underage persons⁶⁵. (cf. Art. 3 no. 2 of the Dublin II Regulation) in an attempt to prevent re-trafficking.

Female Genital Mutilation

As of January 2011, the "voluntary" genital examination of girls from countries with an incidence of female genital mutilation (FGM) of 30% or more, has been part of the Government's national plan to combat FGM in Norway. Although this initiative has been tried out in two cities and in relevant communities since 2009, it has been met with little commitment and understanding by the relevant ethnic groups.

⁶⁴ Utlendingsdirektoratet, *Forklaring på regelverket*, UDI.no, (The Directorate of Immigration, *Explanation of the regulations*, UDI.no, <http://www.udi.no/upload/Regelverk/Konvensjoner/Dublin-forkl.pdf> (searched 13.5.2010)

⁶⁵ Ibid.

When Norway initiated this practice of “voluntary” genital examination, it was commented on in the world news. The practice has been condemned in the US Department of State’s 2010 Human Rights Practices Report, which put voluntary in quotation marks. It is of concern that African parents are stigmatised, and raises the question of whether this practice can be called voluntary.

Recommendation:

- Any plan of action to combat FGM must be a joint venture between the parents in the relevant ethnic groups and the Norwegian authorities.

Article 8 Representation at International Level

Implementation of UN Security Council Resolution 1325

The Norwegian Government has given priority to UN Security Council Resolution 1325, and was one of the first governments to launch an action plan in 2006. The weaknesses of the action plan have made it difficult to measure the results of Norway’s efforts to implement UN Resolution 1325. It has been a common view among the NGOs that it is rather difficult to measure the progress of the implementation, and also to track the money being spent on Resolution 1325 initiatives from the Norwegian national budget and the various ministries. The Norwegian Government is aware that measuring concrete results is a challenge⁶⁶.

The Norwegian Government’s report to CEDAW also reflects this challenge, because the report appears to be disproportionately concerned (with) outputs rather than effect. The percentage of women in the army, the police, and international missions, as well as the various gender advisors being sent abroad, and the production of guidelines, is easy to quantify, while the long-term effects are more complex and difficult to measure.

Even though the Government reports that NOK 30 million is earmarked each year for measures to strengthen women’s participation in peace negotiations, the report states that “women’s representation continues to be low”. The report could also say more about the support Norway gives to women who promote peace at grassroots level (except for Nepal, merely a list of countries is given).

The lack of visible results is part of an international trend, and it is widely understood that a lot has been done on the technical side of Resolution 1325 (with the four related UN resolutions 1820, 1888, 1889 and 1960, an ever growing number of national action plans, and a development on indicators), but that little has been achieved in reality. Thus women are continuing to be marginalised, exposed to sexual violence and excluded from peace negotiations while the international community is developing the tools necessary to take action. Norway is no exception.

Recommendations:

- The Norwegian Government should specify how to increase the level of women in all phases of peace processes and be more demanding towards the UN and other governments to adjust the gender balance within peace delegations and negotiating parties.
- The Norwegian Government should also increase the support to local women’s organisations and networks that are involved in peace initiatives and post-conflict reconstruction processes,

⁶⁶ Barne-, likestillings- og inkluderingsdepartementet, Norges 8. rapport til FNs kvinnekommisjon (Oslo: Barne-, likestillings- og inkluderingsdepartementet 2010) (The Department of Children, Equality and Family Affairs, *Norway’s 8th Report to the UN Women’s Anti-Discrimination Committee (CEDAW)* (Oslo: The Department of Children, Equality and Family Affairs 2010)): Annex 10

and ensure that the demands and expectations are brought forward from the grassroots to the negotiating parties.

- The Norwegian state budget should contain a separate line where all efforts spent on Resolution 1325 are included.
- The Government should report to the parliament on a yearly basis on its implementation of the resolution.

Article 11

11.1 a) The Right to Work

Full and part time, including involuntary part time

More often than men, women work part time, on shifts and rotas and in temporary employment. Furthermore, many women have less influence over their working day than men do. Both individually and collectively, women have a more exposed position in working life than men.

Many women work part time (673,800)⁶⁷, with 54,000 of these doing so because they cannot get longer hours. However, it is only those who have registered as actively looking for work and who are able to start in a full time position within a month that are defined as part time unemployed. On the basis of studies that have been made, there is reason to believe that the proportion of underemployed women is greater than this.

Most of those working part time involuntarily are found in the health and care sector in the state and municipal sectors. There is also extensive use of part time jobs in the hotel, restaurant, cleaning and commercial sectors. Here the involuntariness is less visible.

With temporary employment in a part time position it is difficult to refuse extra work/additional shifts at inconvenient times at short notice. These employees are at the disposal of their employers virtually round the clock. They need the extra pay and want regular, more extensive employment with their employer. The statutory provisions regulating temporary employment remain important for limiting this unfair practice. Employers in both the public and private sectors must accept more responsibility.

In order to realise the right to a full time post and to eliminate involuntary part time work, the public authorities, in their capacity as employers, must take action and reduce the scope of small, part time posts in their own offer of services.

Particularly within service provision there is a fear that social dumping is becoming an increasing problem, forcing down pay and worsening working conditions, as a result of unscrupulous rogue employers and a free flow of labour across national borders.

Involuntary part time work is a phenomenon affecting women in typical female occupations such as in health care, cleaning, and the hotel and restaurant trades. It is a result of stereotypical gender roles that have led to a practice involving rota work where part time jobs are normal in female occupations other

⁶⁷ Kjeldstad, Randi, "Hvorfor deltid?", Tidsskrift for samfunnsforskning, nr. 4 (2006) ("Why part time?". *Journal of Social Research*, no. 4 (2006))

than in male occupations. In Finland, only 8% of women work part time, whereas 43% of women have part time jobs in Norway.

Recommendations:

- Establish by law the right to full time work
- The authorities must consider whether the legislation in this field could be further reinforced, including whether the employer's ability to exercise discretion (section 14-3 of the Working Environment Act) should be limited when considering whether the part time employee should be granted preferential rights.
- The authorities must provide funding for projects related to social dumping with women in the target group.
- With respect to social dumping, the authorities must continue to contribute with initiatives to combat rogue employers, not least by following up by means of checks and inspections.

Minority women in the labour market

Many minority women in Norway experience difficulties in entering the labour market. They are given inadequate information and training, and experience a long and difficult process to get their education and work experience accredited and approved. There are clear indications that women in Norway with a minority background experience discrimination and exclusion from the labour market. There is much evidence to suggest that women with a Norwegian surname have a better chance of being called in for job interviews than women with foreign names. Norwegian authorities point to cultural differences as the cause of a lower level of employment among immigrant and refugee women. It is essential to look into whether any structural adjustments can be made for the women who genuinely want to enter the labour market, but fail to succeed.

Norwegian women have the highest rate of female labour participation in the world. The average labour participation of women in immigrant families is 10 percentage points less⁶⁸. Immigrant women are a complex group, and the likelihood of being in work depends on the time spent in Norway and on their country of origin. Women immigrants coming to Norway to establish a family with a person with a non-immigrant background are almost twice as likely to get work, compared with women arriving under a family reunification programme to join a refugee. The key to an independent occupational activity consists of language skills and accreditation and approval of competencies gained in their native country.

Experience suggests that single immigrant women with children are a particularly vulnerable group, exposed to social and economic stigmatisation. Furthermore, some immigrant women have disabled spouses who have accrued lower pension rights than is usual among ethnic Norwegians. Some immigrant men with families have worked outside the ordinary labour market, thus failing to accrue an adequate pensionable income. In the event of relationship breakdown, single women may experience huge financial and social problems. Some widows and single immigrant women lack the relevant work experience, education and satisfactory Norwegian language skills to be able to earn their own living.

⁶⁸ SSB, *Registerbasert sysselsettingsstatistikk for innvandrere, 4. kvartal 2009*, SSB.no, 22.6.2010, (Statistics Norway, register based occupational statistics for immigrants, 4th quarter of 2009, SSB No. 22.06.2010) <http://www.ssb.no/innvregsys/> (searched 13.5.2010) - Innvandrerkvinner hadde en sysselsettingsprosent på 57,1 i 4. kvartal 2009. For kvinner i hele befolkningen var andelen 67 % (Immigrant women had an occupational percentage of 57.1 in the 4th quarter of 2009. The percentage for women in the entire population was 67%).

Recommendation:

- Special priority must be given to providing information on the rights of immigrant women.

11.1 b) The right to equal employment opportunities

A gender segregated employment market is a result of the equally segregated educational system for male and female occupations. It is essential to undertake a comprehensive effort to map initiatives and allocate responsibility and accountability, to ensure that something is done in this field. Measures must be evaluated, with possible sanctions applied in the event of non-implementation. It is also necessary to keep a detailed focus on the problem to ensure that the diverse requirements of various groups are recognised. These groups may consist of the disabled, and various cultural/ethnic groups. Religious attitudes may also have a restrictive effect on the choices of some individuals. Schools, municipalities and employers may be given responsibility for drawing up effective action plans, under the supervision of various Ombuds. The Ombud will again need to be given competence to impose sanctions in the event of failure to comply with the duty to ensure that Article 11, cf. Article 5 is implemented.

Not only is involuntary part time working a problem, it is an added problem that part time working is so common amongst women, cf. Article 5 a, with the attendant consequences this has for amassing pension points, etc.

Recommendation:

A comprehensive mapping must be undertaken of the gender segregated employment market. The measures must be evaluated and the needs of the different groups must be identified.

11.1 d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value**The equal pay issue**

The pay disparity between women and men has remained stable at some 15% over the past 20-30 years. We have a long way to go in Norway before we achieve equal pay, despite the claimed efforts being made from various quarters. The collective pay bargaining system is unsuited to resolving the equal pay issue. This is evidenced by the pay statistics, history and the collective wage settlement in 2008 for the state and municipalities. As long as the majority of women work in the public sector, the different groups of women will continue to fight over the same money. The Commission on Equal Pay suggested spending NOK 3 billion on giving the female dominated occupations in the public sector a pay hike⁶⁹. The current government refuses to accept this. Equal pay is expensive.

The Government must employ means to ensure that pay in female dominated occupations is aligned with pay in male dominated occupations with corresponding levels of education. Positive short term proposals include a separate pay hike for women in the public sector and combined pots for low-paid occupations and women in the private sector. However, these improvements are within existing

⁶⁹ Norges offentlige utredninger, *Kjønn og lønn: Fakta, analyser og virkemidler for likelønn* (Norwegian Official Reports: Gender and Pay: Facts, analyses and means of achieving equal pay)(Ministry of Children and Equality, NOU 2008:6) p:35

structures. They need to be followed up with measures that reduce gender segregation, to prevent the effects from disappearing over time.

Recommendations:

- If the equal pay objective is to be attained, the statutory right to a full time position must be introduced
- The authorities must make the labour market parties responsible for reducing the pay gap between women and men
- In their capacity as employers the authorities must draw up a binding escalation plan and finance an equal pay hike.

Au pairs

There is reason to express concern over developments in the cultural exchange scheme for au pairs. A constantly growing number of au pairs are arriving in Norway. They are neither employees nor students, but participants in a scheme of cultural exchange where the objective is to give people from other countries the opportunity to live with a family in Norway to learn about Norwegian culture. The work the au pair carries out in the family should be of a secondary nature, and the authorities have decreed that au pairs shall not work for more than 30 hours a week and no more than five hours per day. The au pair scheme, as it is intended, may be a good cultural exchange scheme.

The survey made by Fafo in 2009⁷⁰ reinforces the impression that there is a widespread view held that au pairs are the same as housemaids, only cheaper. Contact made by au pairs with the Norwegian Confederation of Trade Unions (LO) supports this impression and the scheme does not function as intended for many. Some host families exploit au pairs as anything ranging from housemaids or nannies to pure slave workers. This is unacceptable. Au pairs participate in cultural exchange and are not employees within the meaning of the law. The way the scheme has developed, it is displaying the contours of social dumping.

The system whereby the au pair is obliged to go to the police if the agreement with the host family is breached, is not working. Many of those arriving from other countries have a difficult relationship with or no trust in the police due to the corrupt police in their own home country. It is also timely to ask what the police can contribute with in a situation like this.

Recommendations:

- A national body should be set up to supervise the scheme.
- When making its application, the host family must document that the children also have other care arrangements during the day, to ensure that the au pair's working day does not exceed five hours.
- Au pairs must be able to report to those supervising the scheme rather than to the police.

⁷⁰ Øien, Cecilie, *On equal terms? An evaluation of the Norwegian au pair scheme* (Oslo: Fafo, 2009).
<http://www.fafo.no/pub/rapp/20119/20119.pdf>

- The host family should pay the return fare to Norway – from the au pair’s home at the start and on completion of the agreement, and this must be documented to the Directorate of Immigration (UDI).
- The contact between the host family and the au pair should take place through a registered agency. The agency must be bound to find a new host family for the au pair if the contract is terminated or breached.
- Au pairs must be ensured a genuine opportunity to demand their rights, through the systematic provision of information about their rights and free legal aid measures.

11.1 e) The right to social security

The pension reform discriminates against women

With the new Norwegian state pension system⁷¹ the basis for calculating pensions was adjusted. Formerly, pension rights were based on the 20 best qualifying years of employment. The new system is based on all the years a person has worked. The people that fare worst are those who have had big fluctuations in earnings throughout their life. Women’s income frequently varies, as most women work part time⁷² and will have major income fluctuations over the years.

The new pension system represents a structural and indirect discrimination against women, as women are no longer able to select their best 20 years as the basis for their pension. Older women in particular are discriminated against. Many women who were born before 1954 will only receive the minimum state pension despite having worked from the age of 16-17. When the oldest of them had children, only 5% of children were able to obtain a place at a day nursery. This strongly curtailed the ability of these women to obtain paid work. Many were stay-at-home housewives for 10-15 years, perhaps longer. They have had insufficient time to accumulate 40 qualifying years of employment, they earn less and are also unable to accrue pension points for time spent as carers in the home, despite having had no child day care services, paid leave of absence or maternity benefit.

Women who worked before 1967 will not be able to include these years in the 40 years that now constitute the qualifying period for a state pension. Moreover, they will not receive any pension until they reach the age of 67.

Already, women are over-represented as recipients of the minimum state pension - and the new system will create more. Currently, half of all women pensioners receive the minimum state pension.⁷³ It is difficult to find information about the new pension reform. This has led to many women no longer knowing what they are entitled to.⁷⁴

⁷¹ Arbeidsdepartementet, "Opptjening og uttak av alderspensjon i folketrygden" *St.meld. nr. 5 (2006-2007) (Ministry of Labour, "Accrual and drawing of old age pension under the National Insurance System. Report no. 5(2006-2007) to the Storting.)*

⁷² Kjeldstad, Randi and Erik Nymo, *Kvinner og menn i deltidsarbeid - Fordeling og forklaringer.* (Oslo: SSB, 2004) (Women and men in part time work. Distribution and explanations. (Oslo: Statistics Norway, 2004)

⁷³ SSB, *Rentenist eller minstepensjonist*, SSB.no, 29.6.2005, (Rentier or recipient of minimum state pension, Statistics Norway no. 29.06.2005) http://www.ssb.no/vis/emner/00/02/10/ola_kari/inntekt_formue/art-2005-06-29-01.html (searched 28.09.10)

⁷⁴ Tove Bolstad, feature article in the newspaper *Aftenposten*, 10.05.11. "Ut av minstepensjonistfella" ("Out of the minimum pension trap")

Recommendations:

- The new pension reform should be re-evaluated with a view to identifying its differing impact on women and men. Any disparities must be rectified to ensure an equal impact on women and men.

11 2 b) Parental leave with pay or with comparable social benefits

Parental leave

It is important that paid leave for fathers should be increased. Without a corresponding increase in the mother's maternity leave, it is, however, problematic to further increase the father's quota of the parental leave as it underrates the mother's greater burden of pregnancy, birth and breastfeeding. A greater portion of the parental leave for the father will therefore require the entire parental leave to be extended. It is important for both mother and child to reinforce the rights of mothers and the right to breastfeed. It represents discrimination against the mother when legislation fails to treat the parents equally. Women should have a special right to 12 weeks leave in addition to the medical period in order to make the leave equal. This would also fulfil one of the requirements of ILO Convention No. 183, "The Maternity Protection Convention". However, the rules are still such that the opportunity for fathers to obtain paid leave during the period of joint parental leave is related to the mother's participation in employment or education or to her health.

With the current parental leave pattern, it is particularly important to include parents on parental leave in local pay negotiations in order to prevent mothers losing out on pay.

Recommendations:

- It is proposed to extend the period of maternity leave with full pay.
- Legislate for the right to take time off work for breastfeeding without loss of pay
- Give fathers/co-parents the opportunity to accrue rights independently to paid parental leave according to their own position and pay.
- Parents on parental leave must also be taken into consideration in local pay bargaining.
- As a pioneering country and as a country that has made great advances in gender equality, Norway should ratify ILO Convention No. 183 "The Maternity Protection Convention". The official report contains no explanation as to why Norway has failed to ratify this convention.
- The health of women after childbirth should be taken into account when dividing up the parental leave period. Women must have a statutory right to maternity leave at least as long as the parental leave for men.

The Reform organisation wishes to dissent in relation to parental leave after childbirth: Reform does not wish to support a demand for an increase of the mother's period of leave before the father is granted more of the leave period. We believe that the scheme involving a separate father's quota has been and is still necessary to ensure that fathers accept more responsibility in the home. This unequal treatment can be defended because parental leave continues largely to be under-used by fathers.

Article 12 Health

The equality perspective in terms of health means focussing on giving all members of society equal services. Women and men are met by the health service in different ways, and the impression is that the health service continues to assess the needs of individual patients on the basis of traditional gender

stereotyping.. Research into the field of gender and health has clearly confirmed the significance of gender for the way patients are prioritised within the health service⁷⁵. Despite this research, nothing much has happened in practice in the medical entities that actually treat patients.

Recommendations:

- The Government must ensure that women with the same type of complaints as men receive the same health services as men.
- An awareness of gender discrimination and its significance for health services must be included in the education and continued education of everyone working in the health service.
- Work and health must be included as a separate field in the National Resource Centre for Women's Health.
- The health service offered to vulnerable groups of women, especially women in drug, alcohol and prostitution environments, must be improved.
- More medical research must be undertaken that takes the anatomy of women into account.

Health service for women exposed to violence and abuse

In Norway, 23 sexual assault centres have been established for women exposed to violence and sexual abuse, and there are one or more centres in all the counties in the country. In 2007, the National Centre for Emergency Primary Health Care (NKLM) was given responsibility for the professional development, research and skills improvement related to the sexual assault centres.

Nearly half (48%) of the centres offered medical follow-up and 35% offered psychosocial follow-up⁷⁶. The funding of the centres is uncertain and varied, and national guidelines are required for municipal funding.

Despite an increased political focus, women and children exposed to violence and sexual assault are not provided with adequate and equal health services⁷⁷. The health-related consequences of men's violence against women and their children are serious. It is important to offer good, specialised health services to make the victims feel cared for and to ensure they are given adequate services both immediately after the assault and while being followed up. This is a field offering immense professional challenges. All the Norwegian counties now have sexual assault centres, yet the health services available to women and children who are victims of men's violence and sexual assault are still inadequate.

Recommendation:

- The national health service and the sexual assault centres must be given funding and expertise, and the service must be strengthened. The victims must be given health services without charge and without waiting lists.

⁷⁵ Norwegian Official Reports, *Kvinner helse i Norge* (Women's Health in Norway)(Ministry of Health and Social Affairs, NOU 1999:13)

⁷⁶ The National Centre for Emergency Primary Health Care, "Overgrepsmottak i Norge 2009." ("Sexual Assault Centres in Norway") Report no. 2-2010 (Bergen: Uni helse (Uni Health), 2010)

⁷⁷ Ibid.

Health initiatives for women exposed to trafficking in persons

According to the Palermo Protocols, Article 6, ratified by Norway in 2003, each State Party shall in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society, provide, in particular, medical, psychological and material assistance to victims of trafficking in persons. In the report on women in ROSA (2009)⁷⁸ women who are victims of human trafficking have told of the physical, sexual and psychological abuse and violence committed by the human traffickers, pimps and buyers. Many of the women have experienced physical abuse in the form of physical assault, torture, physical deprivation, being physically tied up and shut in, and forced to use drugs and alcohol. Often, many of the women who have been victims of human trafficking have multiple and serious physical injuries and therefore need help from the specialist health service. What ROSA has experienced is that it depends on the women's residence status in Norway as to who pays for their health services. Their need for health services and the scope of the services required varies with the scope of the injuries caused by the violations they have been exposed to.

Abortion is expensive (NOK 10,000) for women without the legal right to stay in Norway. Another big expense is psychological counselling. Women with an urgent need for, but without the right to this specialist health service, have their expenses met by ROSA. Often an interpreter is also needed, which significantly increases the costs of psychological counselling.

Recommendations:

- Regulations must be drawn up to give women who are victims of human trafficking and those who are "reflectants"⁷⁹, the right to receive special health services free of charge.

The health of women living in rural areas

The article "Ethnicity, self-reported health, discrimination and socio-economic status: a study of Sami and non-Sami Norwegian populations"⁸⁰ states that the Sami have a poorer self-reported health than Norwegians, and that the health of Sami women is generally poorer than the health of Sami men.

Sami-speaking women in typically Norwegian areas have the poorest health of all. This may be caused by pressure to become more Norwegian and to assimilate and the fact that the women have greater problems in communicating with their doctors than those living in municipalities where the health service take the Sami language into account.

Lesbians and bisexual women

There is little knowledge about the living conditions and the particular health challenges facing lesbians and bisexual women. These groups tend to be "invisible", and this seems to be even more the case if

⁷⁸ Paul, Rachel Eapen and Nilsen, Lene, *Challenging the Ad Hoc Norwegian Approach To Eliminate Trafficking* (Oslo: Krisesentersekretariatet Helse og rehabilitering, 2009) (The Crisis Centre Secretariat Health and Rehabilitation, 2009)

⁷⁹ Reflektanter: antatte ofre for menneskehandel som gis en midlertidig oppholdstillatelse på 6 måneder (refleksjonsperioden) mens de vurderer politianmeldelse. ("Reflectants": assumed victims of human trafficking who are given a temporary residence permit of six months (the period of reflection) while they consider whether to make a formal complaint to the police).

⁸⁰ Hansen, KL, Melhus M, Lund E, "Ethnicity, self-reported health, discrimination and socio-economic status: a study of Sami and non-Sami Norwegian populations." *International Journal of Circumpolar Health* 2010; 69(2)

they belong to an ethnic minority or are older. We also know very little about the situation for younger lesbians who need care or are disabled⁸¹.

In connection with the introduction of a new Marriage Act, it was stated that health personnel should be given the opportunity to be exempted from carrying out or assisting in artificial insemination of lesbians⁸². On 19 June 2008, the Norwegian Storting passed *anmodningsvedtak* no. 614 (a resolution to request an entity to take an action): «The Storting requests the Government to ensure that arrangements are made for health personnel who, for reasons of conscience, wish in individual cases to be exempted from carrying out or assisting in artificial insemination.»

In December 2008, the Council for Medical Ethics requested of the Ministry "that a doctor should be able to opt out of having to refer lesbian couples for assessment by the specialist health service as long as the doctor ensures that another doctor can do this. The Council states among other things that these cases are not a matter of urgency, and that no one will be deprived of a statutory right by having to contact another doctor. The Council argues that in these matters tolerance must be shown by all and that it must be accepted that others have a life stance that makes this difficult/impossible for them."⁸³

Older lesbians and homosexuals have spent the greater part of their life in a Norway where homosexuality was at first a crime and then a diagnosis. This may have marked their health and social network. Swedish research indicates that the health of older, lesbian women is particularly poor⁸⁴. There is no corresponding overview of the situation in Norway. LLH conducted a project in 2006 for its older members and found that many of them viewed their old age with fear and insecurity⁸⁵. For example, they described it as particularly burdensome when a home help or home nurse stated that they distanced themselves from their way of living. Furthermore, it is not unusual to experience harassment, hate campaigns and exclusion by other older people when living in old age accommodation or similar. The survey indicates that there is a need for skills building with regard to how these services meet their users. There is a need for more, and more certain, knowledge on this topic (Nuland, Bjørn Richard (2009), "Behov for skeiv eldreomsorg? "Aldring og livsløp nr 3-4), ("Need for more gay elderly care? "Ageing and lifecycle no. 3-4") not least with regard to what extent and how older lesbian and trans women are discriminated against when they become dependent on care. The situation for younger lesbian or trans women who are disabled or in need of care is also unknown.

Recommendations:

⁸¹ Bjorkman M, Malterud K, "Lesbian women's experiences with health care: a qualitative study." *Scandinavian Journal of Primary Health Care* 2009; 27(4):238-43.

⁸² Ministry of Health and Care Services, *Report no. 1 (2008-2009)*, to the Storting, 130.

⁸³ The Ministry's letter of 24.02.2009, 3rd paragraph

⁸⁴ Roth, N., Boström, G., Nykvist, K., *Hälsa på lika villkor hälsa och livsvillkor bland HBT-personer*. (Stockholm: Statens folkhälsoinstitut, 2006) (Health on different terms, health and living conditions among HBT persons) (Stockholm: The National Institute of Public Health)

⁸⁵ LLH, *Sluttrapport for prosjektet "gammel, grå og homo"*. (Oslo: LLH Oslo og Akershus. 2006) (LLH, Final report on the project: "Old, gray and gay")

- The Government must provide skills building in the national health service and other professional environments
- The Government must initiate research that highlights particular challenges in relation to the health of lesbians.
- Norwegian elderly care must be made aware of new challenges and greater openness among the ageing homosexual and lesbian element of the population
- The Government must revoke the right to opt out of assisting in artificial insemination for lesbian couples.

Transgender

We have little information about the living conditions of trans-gendered in Norway, but what little information we have available indicates that this is a particularly vulnerable group⁸⁶. All information from comparable countries indicates very high suicide numbers and a high proportion that are outside working life. The Government's action plan from 2009⁸⁷ proposes a number of initiatives for trans-gendered, of which very few have been accomplished.

Of those seeking a sex change operation, very few are given treatment. This is according to figures published by the Norwegian National Hospital (Rikshospitalet) and from a comparable study conducted by the Danish newspaper Politiken⁸⁸.

The Section for Transsexualism at the Rikshospitalet chooses not to follow the International Standards of Care⁸⁹ on significant issues, although stating that these have been adapted to Norwegian conditions. No reason is given as to why Norwegian conditions prevent, for example, adult persons from being given treatment. Because the condition is taboo, many persons discover late in life that they are transgender, and they, too, have an urgent need for treatment. In Norway, only the diagnosis F.64.0, trans sexualism, entitles people to treatment.

In addition, the Section for Transsexualism at the Rikshospitalet reviews the referring doctor's/psychologist's diagnosis, and considers them unqualified to make a diagnosis within the F.64 group. This external diagnosis is, however, valid in other countries (Sweden, Denmark, Germany, England and Thailand – and several others), where it provides the authority for gender-confirming/reassignment surgery. Consequently, the Rikshospitalet has the authority to review other Norwegian specialists, while no-one else is permitted to review their decisions. Because the Section is

⁸⁶ Council of Europe Commissioner for Human Rights, "Human Rights and Gender Identity." *CommDH/IssuePaper (2009)2*. <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1476365> (searched 13.5.2011)

⁸⁷ Ministry of Children, Equality and Social Inclusion, *Bedre livskvalitet for lesbiske, homofile, bifile og transpersoner 2009-2012. (Better quality of life for lesbians, homosexuals, bisexuals and transpersons 2009-2012)* (Oslo: BLD, 2008)

⁸⁸ Dannevig, K., *Tvinges til utlandet for kjønnskifte. (Forced to go abroad for a gender change)* Dagsavisen, 6.8.2010. <http://www.dagsavisen.no/innenriks/article498470.ece> (searched 12.2.2010) - Av omtrent 500 søkere er 400 blitt nektet kjønnsoperasjon i Norge i perioden fra 2005 til 2009 (About 400 out of 500 applicants were refused a sex change operation in Norway between 2005 and 2009)

⁸⁹ The World Professional Association for Transgender Health, Standards of Care. Wpath.org, http://www.wpath.org/publications_standards.cfm (searched 12.5.2011)

regarded as the only competent body, the right to a second opinion is lost in that it is necessary to go abroad to obtain one. Transpersons are poorly protected by the law within a field of medicine that is particularly complex and disputed.

Those denied treatment have no alternative prospects. This applies both to those who apply for gender-confirming/reassignment treatment at the Rikshospitalet, and those who do not want this but who are in an in-between category.

Recommendations:

- The monopoly status of the Section for Transsexualism at the Rikshospitalet should be removed and other specialists given the opportunity to make the diagnosis of transsexualism.
- Transpersons must be offered more holistic treatment and the existing services should be included in the refund schemes.
- It must be possible for all gynaecologists and family doctors to determine sexual status.

Article 16 Eliminate Discrimination of Women in all Matters Relating to Marriage and Family Affairs.

Sharing of pension rights after marital breakdown

Gender-neutral rules governing pension rights after marital breakdown hinders women's financial independence and may be discriminating against women in marriage.

Pension rights are accrued according to the number of years one has worked. Section 61(b) of the Norwegian Marriage Act⁹⁰ grants a spouse the right to exclude accrued rights from public and private pension schemes when sharing the assets after marital breakdown. The rule is basically gender-neutral. Under section 58 of the Marriage Act, the principal rule is that the spouses' total assets shall be shared equally, a so-called equal division of family assets. A statutory provision has now been included under section 31 of the Marriage Act stating that a spouse's work in the home shall be taken into account when considering who has acquired assets that have served for the spouses' personal use. According to long and well-established legal practice in Norway, payment of current consumer expenses can also be taken into account.

Nonetheless, the gender pattern between women and men leads more often to women getting a worse deal than men when assets are shared after marital breakdown. If the parents agree that one of them will stay at home with the children or will work reduced hours while the children are small, it is most frequently the mother who does so. This results in the spouse who works less accruing fewer pension points while at the same time enabling the other spouse to qualify for a better pension.⁹¹ When the typical practice and lack of knowledge as to the consequences are viewed in the context of the freedom to make agreements when dividing assets, plus the fact that the law contains no rules on how to conduct a private settlement, women may be losers in a divorce settlement. Enshrining in law equal rights to pension points after marital breakdown would further women's development opportunities and progress in that they would be in a better financial position as pensioners.

Recommendation:

- Pension rights accrued during the marriage shall be divided equally upon divorce.

⁹⁰ Act relating to marriages (Marriage Act). 1991-07-04-47 section 61(b)

⁹¹ Act relating to National Insurance (National Insurance Act). 1997-02-28-19 section 3-2(2)

- Care work performed in the home prior to the new National Insurance Act coming into force, which did not provide entitlement to approved care benefits, must be financially compensated.
- Retroactive accrual of pension benefits must be granted for care in the home also for accrual of pension rights under the previous National Insurance Scheme.

The Norwegian Nurses Organisation wishes to dissent under the summary of the paragraph: "Sharing of pension benefits after marital breakdown" and associated bullet point 1, on the following grounds: The call for sharing pension entitlements has been assessed previously. It is difficult to achieve for practical, technical and legal reasons, and has therefore been rejected. There is already a legal basis in the Marriage Act for the division of joint property which compensates spouse that is left unreasonably worse off due to the other spouse's pension scheme, although, in practice, this is virtually never applied by the courts of law.

Furthermore, sharing of pension rights also supports a woman's dependency on her husband's pension in a somewhat old fashioned manner. Applied to a defined benefit pension scheme, it could lead to very low pensions for both parties, particularly in the event of a guaranteed future gross benefits scheme. In its follow-up of the pension reform, the Government states that it will not support any sharing of accrued pension rights either in the National Insurance Scheme or in supplementary pension schemes. Instead, it will consider improving the rules on divorce under the Marriage Act.

Pre-nuptial agreements discriminate against women with minority backgrounds

Women arriving in Norway through marriage to Norwegian men without an immigrant background have become a steadily growing group of immigrants in Norway. Marriages between ethnic Norwegian men and foreign women doubled during the period 1996-2006. In 2008, some 10,000 women from Thailand, Russia and the Philippines were married to Norwegian men.

A survey has revealed that such minority women come poorly out of pre-nuptial agreements or marriage settlements. A key question is how the unequal positions of strength between the spouses when entering into these agreements, language barriers, and a lack of information about the workings of the Marriage Act, are and should be relevant elements when interpreting pre-nuptial arrangements between Norwegian men and minority women in situations where the wording of the agreement is unclear⁹².

Recommendations:

- The Government is requested to review the importance that elements such as unequal positions of strength, language barriers, pressurisation and force should have when evaluating, for example, unreasonableness under section 46(2) of the Marriage Act.

Inheritance rules in cohabitation

Many women have stayed at home or worked part time to care for their families. This has enabled their husbands or partners to be occupationally active and to have the highest earnings. In order to contract a marriage or enter into a cohabitation contract, the effort and consent of both parties are required. This results in the financially weaker party being unable to obtain security for herself and any children without the active cooperation of her partner.

⁹² Jansen, Marianne Willett, "Transnasjonale ektepakter". (Transnational pre-nuptial agreements) *Studies in Women's Rights Law*, no. 86/2010

With the inheritance rules for cohabitants from 2007⁹³, many women believe they have been given the right to inherit on the same terms as married women⁹⁴. However, the rules place cohabiting women in a poorer position. This is because they are only entitled to an inheritance equal to four times the National Insurance multiplier, which is currently approximately NOK 300,000, an amount that is very low after an extensive period of cohabitation. The amount is also highly inadequate if the joint home is to be taken over by the surviving cohabitant.⁹⁵

Recommendations:

- Cohabiting women should have the same legal protection as married women.
- Rules should be established for dividing assets left by cohabitants which transfer the duty to act to the financial strongest party.
- The State should provide information on the differences between the inheritance rules in and outside marriage, making women in cohabiting relationships aware of this difference.

Forced marriage is violence

Forced marriages generally affect women, and are basically domestic violence in the broadest sense. Some 80% of the calls made to the Norwegian Red Cross Information Helpline against forced marriage and genital mutilation are made by girls. Forced marriage does not only involve contracting a formal marriage, but also entails rape and violence in close relationships. The girl in question is exposed to enormous pressure and feelings of guilt as the criminal offence that a forced marriage in fact is, is as a rule committed by her closest family. In many ways it is a formal, non-prostitutional kind of trafficking where the female body is used to maintain traditions, faith, honour and sexual control, and/or financial control.

Experience also shows that some young men are in danger of being forced to marry due to their sexual orientation. When the parents become aware of or suspect that their son is homosexual or bisexual, they attempt to force him into marriage to avoid bringing shame upon the family⁹⁶.

Recommendations:

- The State must inform parents and young people of what forced marriage is, how it can be prevented, and how men may participate actively in creating equality and equal worth in marriage. This should be done by means of education and in cooperation with voluntary organisations.

⁹³Lov om endringer i arveloven mv. (arv og uskifte for samboere). (Act relating to amendments to the Inheritance Act, etc). (Inheritance and undivided possessions for cohabitants.) 2008-12-19-112

⁹⁴ Sverdrup, Tone, "Deling av formuen i samboerforhold", (Division of assets in cohabitation) (I: *Familieret og engagement. Hilsener til Svend Danielsen*, (Family law and commitment, Greetings to Svend Danielsen) edited by Lennard Lynge, Andersen & Dorrit Sylvest, Nielsen (København: Forlaget Thomson. 2009), 21 – 38

⁹⁵ Ibid. /And Sverdrup, Tone, *Stiftelse av sameie i ekteskap og ugift samliv* (Oslo: Universitetsforlaget, 1997) (Establishment of co-ownership in marriage and unmarried cohabitation.)

⁹⁶ Hertfordshire Constabulary's Official Website, *Forced Marriages*, http://snt.herts.police.uk/report/forced_marriages.htm (search 12.5.10)

- The follow-up of young people and young adults who sever connections with their families must be strengthened, and in the most serious cases the offer of a new identity must be a real possibility.
- The Government must provide skills- and competence-building in the support services.
- All women who are at risk of being forcefully married should be offered a secure, safe emergency facility free of charge when they need to escape, and the general protection under the law must be strengthened.