



**International Covenant on  
Civil and Political Rights**

Distr.: General  
11 November 2010

Original: English

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under the Covenant**

**Sixth periodic report**

**Norway\*,\*\***

[25 November 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* Annexes may be consulted in the files of the Secretariat.

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## I. Introduction

1. The sixth periodic report of Norway is submitted in accordance with Article 40, paragraph 1 b, of the International Covenant on Civil and Political Rights and the request of the Human Rights Committee in its concluding observations on Norway's fifth periodic report to submit the report by October 2009 (CCPR/C/NOR/CO/5).

2. To facilitate examination of the report, reference is made to Norway's previous periodic reports: the fifth periodic report, submitted in 2004 (CCPR/C/NOR/2004/5) the fourth periodic report, submitted in 1997 (CCPR/C/115/Add.2); the third periodic report, submitted in 1992 (CCPR/C/70/Add.2); the second periodic report, submitted in 1988 (CCPR/C/42/Add.5); the initial report, submitted in 1977 (CCPR/C/1/Add.5); and the supplement to the initial report, submitted in 1979 (CCPE/C/1/Add.52). During the preparation of this report, due regard has been paid to the guidelines regarding the form and content of periodic reports from States Parties HRI/GEN/2/Rev.6 and the concluding observations of the Human Rights Committee on Norway's fifth periodic report (CCPR/C/NOR/CO/5).

3. The Norwegian Ministry of Justice and the Police has coordinated the reporting process. A large number of ministries have contributed to the report, and Norwegian civil society has played an important role. The Ministry of Foreign Affairs and the Ministry of Justice started the reporting process by holding a joint meeting to inform organisations of the process and invite them to submit contributions and suggestions for Norway's report. The challenges and possible solutions pointed out by civil society were communicated to the relevant line ministries and taken into account when the report was written. Finally, a brief consultation process was held on the draft report before the report was finalised.

## II. Information in relation to each of the articles in parts I, II and III of the Covenant

### A. Article 1

4. Reference is made to paragraph 3 and 4 in Norway's fifth periodic report (CCPR/C/NOR/2004/5), where information was given on the ongoing discussion on how to apply the concept of self-determination to the Sami people. Reference is also made to the replies by the Government of Norway to the list of issues (CCPR/C/NOR/Q/5) to be considered in connection with the examination of the fifth periodic report (CCPR/C/NOR/Q/5/Add.1), paragraphs 1–14, regarding the Procedures for Consultations between the State Authorities and Sámediggi. For further details on the consultation procedures, reference is also made to the information given under Article 27.

5. In 2008 the Government of Norway (hereafter "the Government") presented White Paper No. 28 (2007–2008) *Sami Policy*. In the White Paper the concept of self-determination for the Sami people is discussed with reference to the United Nations Declaration on the Rights of Indigenous Peoples and the ongoing work on a Nordic Sami Convention. An unofficial translation of the relevant sections of the White Paper (section 1.3.6 and 1.3.7) is enclosed (appendix 10).

## **B. Article 2**

6. As regards the legal protection against discrimination on the grounds of personal qualities or opinions, reference is made to the review under article 3 and article 26 below. For a presentation of human rights education, training and research, reference is made to Norway's Common Core Document (hereafter "the Core Document") paragraphs 130 to 134 and 156 to 166.

### **The status of the Covenant in domestic law**

7. The Covenant and its protocols are incorporated into Norwegian law by the Act of 21 May 1999 No 30 relating to the strengthening of the status of human rights in Norwegian law (the Human Rights Act). Reference is made to paragraphs 6 and 7 of Norway's fifth periodic report for a presentation of the Human Rights Act. For further information, see the Core Document paragraphs 99 to 107.

### **Legal aid**

8. In the Norwegian civil legal aid scheme a division is made between matters that are subject to means testing and matters that are not. As of 1 January 2009, the income limits that determine whether a person is eligible for means tested legal aid have been raised to NOK 246,000 for a household of one, and NOK 369,000 for a household of two. Clients who receive means tested legal aid in court proceedings are charged with 25 per cent of the total cost, limited to a maximum of NOK 4,350. For legal advice outside court proceedings, a fixed charge of NOK 870 has been introduced. Households with a net income less than NOK 100,000, and persons receiving legal aid in matters that are not subject to means testing, are not charged.

9. The scope of the legal aid system has been broadened, ensuring legal aid to offended parties who consider reporting offences such as trafficking in human beings, genital mutilation, forced marriage and domestic violence.

10. Persons seeking asylum are provided legal aid by a non-governmental organization. Public funded legal aid in terms of legal assistance is as a principal rule only provided at the administrative appeals stage.

### **Protection of the victim**

11. Through amendments to the Criminal Procedure Act, in force 1 July 2008, the rights of victims in the criminal procedure have been strengthened, in particular for victims of sexual abuse. More victims are given free legal counsel to assist them during the police investigation and trial. Imposing on the police and prosecuting authorities a duty to report regularly to the victims about the progress and development of the case also strengthens the victims' right to information. During trial, victims are granted some procedural rights equal to that of the defendant – like the right to examine witnesses in court and the right to comment on evidence presented in court.

12. The Government has created a nationwide network of Children's Houses – built on the Icelandic model. Here, children who have been subject to sexual abuse or violence, or who have witnessed violence or abuse in intimate relationships, are offered help, care and treatment. This includes new methods of interviewing and medical examination.

### **Participation in international operations and human rights obligations**

13. When the Norwegian Armed Forces operate abroad in the context of international operations, it is of high priority to give effect to the commitment under the Covenant to

respect the rights recognized in the Covenant for all individuals within its power or effective control.

14. In Afghanistan, apprehension of individuals is conducted as assistance to the national authorities in accordance with the mandate of ISAF and the bilateral agreement between the two governments, for the purpose of prosecuting the individuals before a national tribunal. In cases where there are specific grounds for suspicion that the individuals could be subjected to torture and/or other inhumane treatment, however, Norwegian armed forces will not hand over the individuals. In such cases, release will be considered as an alternative. Norway is responsible for making sure that individuals in the custody of Norwegian Armed Forces are treated in line with our commitments under the Covenant as well as other relevant human rights and humanitarian law obligations. This includes the responsibility to ensure that also our allies respect and conform to these obligations.

15. As regards concrete measures to make sure that the rights under the Covenant are given effect *de facto*, soldiers and personnel are given thorough education in international humanitarian law and human rights before being sent on international missions. Norwegian Armed Forces go through an initial period with mandatory training in, *inter alia*, mandate for the operation, human rights and international humanitarian law. In addition to this, trained legal advisers with a high knowledge and expertise within the field of legal and human rights issues are as a rule also part of the national contingents deployed to international operations.

16. According to a survey initiated by the Norwegian Ministry of Defence, the Defence Staff and the Norwegian Red Cross in 2009, soldiers' general knowledge and understanding of international humanitarian law and human rights has improved since a similar survey was conducted in 2004. This is clearly a result of the Norwegian authorities' efforts to improve and coordinate the education and training programmes soldiers are subjected to. Noting this positive development, the Norwegian authorities are still committed to further strengthening and enhancing the quality of training and education in human rights and international humanitarian law for soldiers and other relevant personnel.

17. In 2001, an individual brought a case against Norway and other nations before the European Court of Human Rights (hereafter ECtHR) in Strasbourg alleging violation of the European Convention on Human Rights (hereafter ECHR) in relation to detention during the NATO-led KFOR operation in Kosovo. The Court came to the conclusion (in the case of Behrami, Behrami and Saramati against Norway and other nations, ECtHR decision of May 2007) that the case was inadmissible due to lack of jurisdiction. In its decision, the Court also stated that it found it evident that KFOR's security mandate included issuing detention orders.

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

18. Reference is made to paragraphs 23 to 24 of Norway's fifth periodic report regarding specialised bodies to investigate cases against members of the police and the prosecuting authority.

19. *The Norwegian Bureau for the Investigation of police affairs* is organized as an independent service outside the police and the public prosecuting authority. It was founded 1 January 2005. The organization reports administratively to the Ministry of Justice and the Police and professionally to the Director of Public Prosecutions. The Bureau investigates all cases in which employees in the police service and the public prosecuting authority are accused of criminal offences or illegal use of force in the service, and it conducts routine

investigations of events in which someone, as a result of an action by police in service, has been seriously injured or has died.

20. The Bureau is an investigative agency with police authority and prosecution competence at public prosecuting level within its sphere of activity. The Bureau itself conducts its cases in the courts. This independent competence to decide on prosecution is intended to remove any suspicion that close ties between the prosecuting authority and members of the police in the same district could influence the decision on whether or not to prosecute.

21. The system of complaining and reporting misconduct executed by the police, hereunder the organisation and the work of the Bureau, was evaluated in 2009, cf. the official Norwegian report NOU 2009:12 Et ansvarlig politi. Åpenhet, kontroll og læring (A responsible Police. Transparency, Control and Training). The report is being followed up in the Ministry of Justice and the Police.

#### **Dissemination of Norway's report and the Committee's concluding observations**

22. In its concluding observations of April 2006 on Norway's fifth periodic report, the Committee requested that the concluding observations and the fifth periodic report be widely disseminated in Norway. Norway has an established practice of distributing concluding observations to both the relevant authorities and representatives of civil society. As a part of the follow-up of the conclusions, the Ministry of Foreign Affairs arranged a consultation meeting between the ministries concerned and representatives of civil society. The concluding observations were translated into Norwegian, and can be found at the Government's web page <http://www.regjeringen.no/nb/dep/ud/dok/veiledninger/2004/iccr.html?id=88149>, along with a summary of the conclusions, previous reports and links to useful pages, *inter alia* the text of the Covenant and the jurisprudence and general comments of the Committee.

### **C. Article 3**

#### **The present situation of women**

23. In 2009 the *CEDAW was incorporated into the Human Rights Act* and the convention has thus been given precedence, cf. the Core Document paragraph 106.

24. Reference is made to Norway's fifth report, paragraphs 30–36, to the Committee's concluding observation paragraph 3 c and to the Core Document paragraphs 234 to 237. The issue of violence in close relationships is treated under article 7. Gender equality is also briefly touched upon, with further references, under article 26.

25. To promote gender equality, the main strategy is gender mainstreaming, including gender budgeting. This means awareness and practical tools to implement gender equality in all of the Government's policy areas.

26. A Commission to provide an overview over *differences between women and men's pay* and consider measures to reduce pay differences submitted its report to the Government in March 2008. The report shows that women on average earn 15 per cent less than men per hour. The new government is about to follow up the report through a tripartite cooperation between the Employer Organisation, the Trade Unions and the State.

27. Norway is strongly committed to *gender balance in the corporate sector*. The boards in all fully state-owned companies, including both private and public limited companies, as well as public limited liability companies with private owners, are obliged to have a certain minimum representation of each gender, amounting to approximately 40 per cent, at the board.

28. There are *gender differences in health*, which may affect quality of life and lifetime careers. The life expectancy of men was 71 years in 1970 and 78.2 in 2007, and for women the corresponding figures increased from 77 to 82.7 during the same period. This is inter alia related to the reduced mortality from cardiovascular diseases over many years and low infant mortality. Boys/men have a higher risk of death than girls/women right from the first year of life. However, absence from work because of illness and the use of preventative and other health services is lower among boys/men than girls/women. There are also gender differences in cause of death that cannot be contributed solely to biological factors, but are connected to social situations and lifestyle where also the cultural expectations made of men and boys play a role.

29. *Equality in parenthood* is a key to equal opportunities between men and women in the labour market. Parental leave is paid for 46 weeks with 100 per cent pay or 56 weeks with 80 per cent pay (parental benefits). The father's quota of ten weeks (since 1 July 2009), which is reserved for the father, is included in these weeks.

30. One of the highest profile political goals in recent years has been to achieve *full kindergarten coverage of high quality and at a low price* for parents. In Norway, children have a legal right to a place in a kindergarten (since 1 January 2009). The municipality has a statutory obligation to provide the amount of kindergarten places needed. Since 2004 there has been a limit for the maximum share to be paid by the parents at €299 Euro (around 2,330 NOK) per month (2009). For 2010 the maximum amount is 2,330 NOK per month and 25630 NOK per year. The last figures show that in 2008 87 per cent of all children between 1–5 years old benefited from a place in a kindergarten.

31. A new Working Environment Act entered into force on 1 January 2006. The new legislation makes it easier to combine work with family life through measures like flexible working hours, right to be exempt from overtime, ICT based home office and the right of each of the parents to up to ten days of paid leave per year to take care of sick children.

32. 85 per cent of mothers with children below 16 years of age are in the labour force (2008). The total fertility rate was at 1.96 children per woman (2008), the highest since 1975. However, there are still challenges inter alia with regard to male dominance in leading positions in the media and in management positions, systematic differences in the media's use of women and men as sources, sharing of housework and parental leave and a high percentage of women working part-time. In Norway's next report to the Committee on the Elimination of Discrimination against Women (CEDAW), which is due in September 2010, a detailed description of the present situation of women in Norway will be given.

#### **D. Article 4**

33. There is nothing new to report under this article.

#### **E. Article 5**

34. There is nothing new to report under this article.

#### **F. Article 6**

##### **Action taken to increase life expectancy. Infant mortality**

35. The statistics show that the infant and perinatal mortality in Norway has been fairly stable between the years of 2004 to 2008, at around 3.4 and 4.5 per 1,000 respectively. In

order to further improve the care of expectant mothers and newborn babies, the following measures have been taken:

(a) In 2006 (the last official statistics) the prevalence of maternal smoking at onset and at the end of pregnancy was 16 and 9 per cent (as compared to 20.7 and 14.0 per cent in 2000);

(b) The Governmental Action Plan on Nutrition (2007–2011) includes clear goals and quantitative targets for breastfeeding and spells out several activities to be undertaken by the health authorities. Most important among these are the Baby-Friendly Hospital Initiative and a project to establish Baby-Friendly well-baby clinics in all counties;

(c) The mother-to-mother support group for breastfeeding, Ammehjelpen, raises the interest in breastfeeding and supports breastfeeding women. They receive financial support from the Government;

(d) To prevent rickets, a nationwide program of free vitamin D supplements to infants with a non-western immigrant background has been established in 2009;

(e) The Norwegian nutritional authorities have since 1998 recommended that women should take a daily folate supplement prior to and in early pregnancy to prevent neural tube defects. The recommendation is followed up with information campaigns, including web pages and brochures.

### **Malnutrition among elderly**

36. Malnutrition is prevalent among institutionalized elderly people and can lead to unfavourable outcomes. Malnutrition is related to falls and fractures, lost independence, reduced respiratory and cardiac muscular ability, apathy, oedema, poor wound healing and an increase in complications including infections, pressure sores and skin ulcers. The Norwegian Directorate of Health has this year (June 2009) published National guidelines on the prevention and treatment of malnutrition. This is one important step towards better nutritional care in hospitals, nursing homes and among homebound elderly people receiving home care.

### **HIV and AIDS**

37. In June 2009 six ministries launched a new national HIV strategy called “Aksept og mestring” (Acceptance and Coping). The main features are:

(a) Cooperation across sectors;

(b) The aim is to reduce the number of new infections and ensure that all HIV-positive people in Norway are given good care and follow-up;

(c) The population’s level of knowledge on HIV needs to be increased;

(d) HIV-positive people’s participation in the workforce must be ensured;

(e) International work in the field of HIV/AIDS will continue;

(f) Research on preventive measures will be extended;

(g) Cooperation between a HIV-positive person, his/her general physician and the specialist doctor will be improved. More follow up will take place in the municipalities through better coordination of services.

38. The responsibility of the individual to protect him/herself from infection and refrain from infecting others, both in Norway and abroad, applies particularly to persons suffering from HIV and other infectious diseases, as laid down in the Communicable Diseases Control Act and the Penal Code.

**The Act relating to control of communicable diseases**

39. Since Norway's fifth report several regulations concerning communicable diseases have been issued:

40. The National Pandemic Preparedness Plan was updated in 2006 and details the roles of the Ministry, other central health bodies and regional and municipal authorities. Another revision was underway when the new influenza A (H1N1) struck in April 2009. The finalization of this document has been postponed in order to include experiences from the present pandemic.

41. The regulations concerning the control of tuberculosis that came into force in 2003 were revised in 2009. The aim of the revision was to make the regulations simpler and less detailed. All municipalities and regional health enterprises must have a tuberculosis control program. The regulations also set out an obligation for certain groups of people to undergo an examination for tuberculosis.

42. Modifications have recently been made in the vaccination program for children:

- (a) A booster dose of the pertussis vaccine is given at the age of 7 years (2006);
- (b) A seven-valent pneumococcal vaccine was included (July 2006);
- (c) A vaccine against Human Papiloma Virus (HPV) is included in the vaccination programme offered to girls at age 12–13 (September 2009);
- (d) BCG will no longer be given to healthy Norwegian teens (September 2009).

43. All vaccination in Norway is voluntary.

**Traffic deaths**

44. The following statistics show the number of traffic deaths in recent years:

2002: 310

2003: 280

2004: 257

2005: 224

2006: 242

2007: 233

2008: 255

45. On average, 257 persons have been killed in traffic accidents each year during the last seven years. Of these, on average 27 were children under the age of 18. This has led to the adaption of Vision Zero, which is a vision of zero fatalities and serious injuries in road traffic. It requires that means of transport and transportation systems should be designed to promote safe behaviour and to protect against fatal consequences in the event of human failure. The vision is based on ethics, science and mutual responsibility. In 2009, the Government set a quantified target of 1/3 reduction in the number of killed and seriously injured persons from 1200 per year to a maximum of 775 by 2020.

**Suicides and murders by psychiatric patients**

46. National guidelines for preventing suicide in the specialized mental health-care services were launched in January 2008.

47. Regarding murders and other serious crimes committed by persons suffering from known mental illness, a select committee was established on April 24th 2009 on the initiative of the Minister of Health and Care Services. The committee's mandate is to research possible failures in health and welfare systems and processes in the follow-up of the persons in question. Along with recommendations on measures to be taken in order to prevent future tragedies, a report will be handed over to the Ministry before the end of May 2010.

### **Terrorism**

48. The current legislation on terrorist acts and terrorist-related offences is recently revised. In December 2008 a new section 147c entered into force. This provision implements the Council of Europe Convention on the Prevention of Terrorism articles 5–7; see the present report under article 19. The new General Civil Penal Code 2005, which is planned to enter into force on 1 January 2012 (hereafter “the Penal Code 2005”), contains a separate chapter on terrorist offences and terrorist activities, cf. appendix 5. The new provisions on terrorist offences and activities were adopted by Act of 7 March 2008, but have not yet entered into force. The new provisions will enter into force at the earliest in 2012.

49. In its concluding observations on Norway's fifth periodic report, the Committee expressed its concern about the potentially overbroad reach of the definition of terrorism in section 147 b of the General Civil Penal Code of 1902 (hereafter “the Penal Code 1902”). In the General Civil Penal Code of 2005, the definition of terrorism is more restricted; in order for a criminal act to be considered a terrorist act, the act has to be committed with a so-called “terrorist intent”. According to the Penal Code 2005, it constitutes terrorist intent if the act is committed with the aim of either (a) seriously disrupting a function of vital importance to society, such as legislative, executive or judicial authority, power supply, safe supply of food or water, the bank or monetary system or emergency medical services or disease control, (b) seriously intimidating a population, or (c) unduly compelling public authorities or an intergovernmental organization to perform, tolerate or abstain from performing any act of crucial importance for the country or organization, or for another country or another intergovernmental organization.

### **New provisions on genocide, crimes against humanity and war crimes**

50. On March 7 2008 separate and detailed provisions on genocide, crimes against humanity and war crimes were adopted as part of a new chapter 16 of the Penal Code 2005. Chapter 16 entered into force on the date of adoption. By these amendments Norway is able to prosecute all crimes that currently fall within the jurisdiction of the International Criminal Court, thus complying with the principle of complementarity envisaged in the Rome Statute. The definitions of the crimes draw in most part on the Rome Statute. Chapter 16 also includes a separate provision on superior responsibility, as well as a provision on conspiracy and incitement to genocide, crimes against humanity and war crimes. Aiding and abetting and the attempted commission of these crimes is punishable according to general principles included in the general part of the Penal Code 2005. The principle of statutory limitation envisaged in the general part does not apply in regard to the crimes listed in chapter 16, provided that the prohibited act is subject to at least 15 years imprisonment. The maximum penalty for genocide, crimes against humanity and serious war crimes is 30 years imprisonment.

## G. Article 7

51. Information on pre-trial detention and police custody is given under article 9 in this report.

### Female Genital Mutilation (FGM)

52. Reference is made to Norway's fifth report, paragraph 76 and to the Committee's concluding remarks paragraph 12.

53. Norway passed a *law prohibiting female genital mutilation (FGM)* in 1995, amended in 2004. This prohibition also applies when the procedure is carried out outside Norway. For certain groups of professional practitioners and employees, it is a punishable offence not to attempt to prevent FGM.

54. The prohibition of FGM has later been incorporated into the Penal Code 2005 (not yet in force). *The penalty has been extended* to imprisonment for a term not exceeding six years (before three years) for "ordinary" FGM, cf. section 284, and to imprisonment for a term not exceeding 15 years (before six or eight years) if the mutilation is considered severe, cf. section 285. This applies if the operation has resulted in sickness or incapacity to work for a certain period, if an incurable blemish, flaw or injury has been caused or if the operation has resulted in death or serious injury to body or health.

55. For the crime of FGM, the Penal Code 1902 section 68 was amended by Act of 19 June 2009. The amendment entered into force immediately. Now the *statute of limitations* (up to 10 years) begins to run when the victim has reached the age of 18. The aim is to prevent the crime from being time-barred before the victim can be assumed to be sufficiently mature to decide whether she wants to press charges. See under article 2 for a presentation of the new procedural rights of *inter alia* victims of FGM.

56. The Government presented its *third Plan of Action to Combat Female Genital Mutilation* on 5 February 2008. The Plan of Action will apply in the period 2008–2011. The long-term goal of the plan is to prevent genital mutilation of girls. At the same time, the plan emphasises that girls and women who have been victims of genital mutilation must receive good, appropriate treatment. The plan consists of 41 continued and new measures and has been divided into six main areas: effective enforcement of legislation, competence building and the transfer of knowledge, prevention and opinion-building, available health services, extra efforts at holiday times and stronger international efforts. Coordinated cooperation between the police, the immigration authorities, Foreign Service missions, the child welfare authorities, the family welfare authorities, the health and social services and other public and voluntary services is a prerequisite for success in combating FGM. The action plan has been translated into English and may be downloaded from the Government's web-page (<http://www.regjeringen.no/en/dep/hod/Subjects/the-department-of-public-health/action-plan-for-combating-female-genital.html?id=524234>).

57. In 2005, the Storting asked the Government to *consider the introduction of clinical examination of the sexual organs of all girls, including the question* whether such examinations should be compulsory. Neither the Directorate of Health nor the Institute for Social Research (ISF) nor the Centre for Human Rights (SMR) recommended compulsory examinations. The latter found that compulsory genital examinations would be in contravention of the right to privacy in ECHR and of the prohibition against discrimination in the Convention on the Rights of the Child. On the basis of the above studies and other considerations, the Government decided that compulsory genital examinations are inappropriate.

58. Instead the Government decided to introduce an *offer of counselling and voluntary genital examination* to all girls and women who come from areas where, according to the

World Health Organisation, the incidence of female genital mutilation is 30 per cent or more. This offer will be part of the municipal health examination; it will be carried out by a qualified doctor and will be carried out within one year after arrival. Furthermore, counselling and genital examination will be offered to all relevant groups of girls (immigrants and those born in Norway of immigrant parents) before starting school (5–6 years old) in the fifth grade of primary school (10–11 years old), and in tenth grade (15–16 years old). The genital examination may only be carried out with valid consent of the patient/parent/guardian, in compliance with the Patients' Rights Act.

59. FGM is a grave assault, which must be characterized as “*inhuman treatment*”, and both national and international law (among others the CCPR) prohibits return of persons to such treatment. Furthermore, it is stated clearly in the preparatory works behind the new Immigration Act, which was adopted May 15 2008 and is planned to enter into force January 1 2010 (hereafter “the Immigration Act 2008”), that risk of FGM *may give grounds for protection* in Norway.

60. In immigration cases where risk of FGM in the country of origin has been raised, Norway has granted asylum, subsidiary protection or humanitarian status in accordance with the individual assessment. In a newly updated report, the Norwegian Immigration Appeals Board informs that it has decided 103 cases where risk of FGM has been a relevant issue. 23 persons have been granted asylum or subsidiary protection because of risk of FGM if returned to the country of origin. The Board has rejected 11 cases from Egypt, Nigeria, Cameroon and Niger on the basis of insufficient risk of FGM. In the remaining cases, many of whom are family members of those granted asylum or subsidiary protection, the Board has granted humanitarian status.

#### **Coercive measures in prisons during execution of sentences**

61. The following figures indicate the use of coercive measures in Norway the past decade. It should be noted that the prison population was larger in 2008 than in 1998, cf. the Core Document paragraph 64.

<i>Year</i>	<i>Security cell</i>	<i>Security bed</i>	<i>(Tear) Gas</i>	<i>Baton</i>	<i>Handcuffs</i>	<i>Protective shield</i>
1998	292	14	2	0	6	
1999	302	18	1	0	48	
2000	282	6	0	0	5	
2001	359	16	0	0	9	
2002	351	21	0	0	12	
2003	343	21	0	0	220	6
2004	339	15	4	0	146	18
2005	283	15	2	1	600	17
2006	336	16	3	5	398	30
2007	275	15	0	1	401	30
2008	328	10	2	0	109	20

#### **Coercive measures and deprivation of liberty in health care**

*Health care for patients objecting to health care while lacking the necessary capacity to consent*

62. A new chapter 4 A about health care for patients objecting to health care while lacking the necessary capacity to consent, has been added to the Patients' Rights Act. These

are patients who, on account of physical or mental disorder, senile dementia or mental retardation, are clearly incapable of understanding what the consent entails. The new chapter came in to force on 1 January 2009. The criteria for evaluating whether a patient has the necessary capacity to consent are stipulated in chapter 4 of the Act. This new legislation is limited to somatic health-care. In the area of mental illness, coerced intervention is sanctioned separately under the Mental Health Care Act.

63. The purpose of the new provisions is to provide necessary health care in order to prevent significant harm to health and to prevent and limit the use of force. The health care must be provided in such a way that it ensures respect for the individual's physical and mental integrity and should as far as possible be in keeping with the patient's right to self-determination.

64. Before health care to which the patient objects may be provided, attempts must have been made to gain the patient's confidence, unless it is obvious that such attempts are pointless. If the patient maintains his objection, or if the health personnel know that the person concerned is very likely to maintain his objection, an administrative decision may be made regarding health care if failure to provide health care may lead to significant harm to the patient's health, the health care is deemed to be necessary, and the measures are proportionate to the need for health care. Even if these conditions are fulfilled, health care may only be provided when, after an overall assessment, this clearly appears to be the best solution for the patient.

65. Administrative decisions regarding health care pursuant to this chapter may only be made for up to one year at a time. The Act also stipulates provisions regarding the right of the patient and others to information about the decision, the right to complain about the decision etc. If a health care decision is not appealed and the health care continues, the County Board of Health Supervision must, when three months have elapsed since the decision was made, of its own volition assess whether there is still need for the health care.

#### *Use of coercive measures towards mentally retarded persons*

66. As mentioned in paragraph 70–71 of Norway's fifth periodic report, the Storting, by Act of 19 December 2003 No 134 added a permanent chapter 4A to the Act relating to Social Services. The chapter contains provisions relating to the rights of, and the restriction and control of the use of coercion and force towards, certain categories of mentally retarded persons.

67. The use of coercive measures is being followed closely by the offices of the county governors and the Norwegian Board of Health Supervision. The legislation is under evaluation by the Norwegian Directorate of Health. The use of coercive measures has been reviewed by Nordland Research Institute and the findings are presented in NF-report No 1/2008.

#### *Deprivation of liberty in connection with mental health care*

68. Reference is made to Norway's fifth periodic report paragraph 87–97. Some amendments to the Mental Health Care Act came into force on 1 January 2007. The main amendments are as follows:

69. *Prohibition against transfer from voluntary to compulsory mental health care:* According to section 3–4 the prohibition does not apply in cases where discharge means that the patient constitutes an obvious and serious risk to his or her own life and those of others. In connection with supervision, a written account must be sent to the supervisory commission drawing particular attention to the fact that a decision regarding transfer has been made.

70. *Segregation*: According to section 4–3 an administrative decision on segregation shall be made if segregation is maintained for more than 24 hours. Before the amendment the limit was 48 hours.

71. *Serious eating disorder*: According to section 4–4 nutrition can, as part of the treatment of a patient with a serious eating disorder, be given without the consent of the patient, provided that this is considered to be absolutely necessary.

*Coercion in mental health-care – changes in practice*

72. Coercive treatment of mental illness, emergency ward and safety measures have been the object of special attention from the authorities since 2006, but will still need further follow-up from the health authorities and the treatment system.

73. Although the validity of data is questionable, international statistics indicate a high frequency of use of coercion in mental health-care in Norway compared to other countries. Variations in reported data between and within the Norwegian health regions clearly show a potential for reducing the amount of coercive admission and treatment.

74. “The Action plan for reduced and controlled use of coercion in mental health-care” was launched in June 2006. The plan has four main goals: Increased voluntariness, safeguarded use of coercion, increased knowledge and better documentation on the use of coercion.

75. In 2008 a national network for development of knowledge and for research on the use of coercion in mental health-care was established at the University of Tromsø. The project “User-oriented alternatives to coercion” carried out by SINTEF Health in cooperation with 6 emergency wards, was finished in 2008. The project has shown promising possibilities for reducing coercive treatment in hospitals. Measures have also been taken to improve documentation of coercion, inter alia the new guidelines for registration of patient decision-making applied in the electronic patient journal. An autonomous working group has evaluated the need for the treatment criterion in the Norwegian Mental Health Care Act. The group has also reviewed and elaborated the action plan mentioned above. The group expresses concern about the high and varying figures for the use of coercion in Norway and has proposed several measures to be taken by the health authorities and treatment units. The Ministry of Health and Care Services has launched a process for following up the report.

*Protection of whistle-blowers in psychiatric institutions*

76. In a shadow report to Norway’s fifth report several Norwegian Human rights’ organizations recommend that whistle-blowers in psychiatric institutions should be given extra protection against negative sanctions.

77. On 1 January 2007 new general provisions in the Working Environment Act concerning the protection of whistle-blowers entered into force. These provisions in the Working Environment Act apply to all employment relationships. According to Section 2–4 an employee has a right to report censurable conditions at the undertaking. The employee is to follow an appropriate procedure when such a concern is being raised. In any case, the employee has the right to report in accordance with the duty to report censurable conditions or the undertaking’s routines for reporting such conditions. The same applies to reporting to supervisory authorities or other public authorities. According to the provision the employer has the burden of proof that a report has been made in breach of the provision.

78. Section 2–5 states that retaliation against an employee who makes a report pursuant to Section 2–4 is prohibited. If the employee submits information that gives reason to believe that such retaliation has taken place, it shall be assumed that retaliation has taken

place unless the employer substantiates otherwise. This applies correspondingly to retaliation against an employee who makes known that the right to report pursuant to Section 2–4 will be invoked, for example by providing information. Anyone who has been subject to retaliation in breach of these provisions may claim compensation without regard to the fault of the employer.

#### **Children of persons suffering from mental illness, substance abuse problems or serious illness**

79. Children of persons suffering from mental illnesses, substance abuse problems and of those suffering from serious illnesses in general are vulnerable and in need of particular attention and follow-up by care providers. In order to strengthen the legal position of children of the above-mentioned patients, the Government has initiated changes in the Patient Rights Act expected to enter into force in 2010.

#### **Experimental treatment and clinical trials**

80. Act of 20 June 2008 No 44 on medical and health research (the Health Research Act) was enacted by the Storting 5 June 2008 and came into force 1 July 2009. The purpose of the Act is to promote good and ethically sound medical and health research. The Act applies to all medical and health research on human beings, human biological material or personal health data. A research project must be approved in advance by a regional committee for medical and health research ethics.

81. According to the Health Research Act, consent must be obtained from participants in medical and health research, unless otherwise laid down in law (Section 13). Consent must be informed, voluntary, express and documented. The patient must be given information concerning the purpose, methods, risks, discomfort, consequences and any other information of significance for the validity of the consent. Consent to take part in a research project may be withdrawn at any time.

82. For a research participant who is legally incapacitated, physically or mentally incapable of giving consent or is a minor, an informed, voluntary, express and documented consent must be obtained from a legally authorised representative. Research including people who lack competence to consent may only be done if the potential risks or disadvantages for the person are insignificant, the individual involved is not averse to it and there is reason to assume that the results of the research may be of use to the person concerned or other people with the same age-specific disorder, disease, injury or condition. For minors, it is in addition a requirement that similar research cannot be done on people who are not minors. And for people who lack competence to consent, it is a requirement that there is no reason to believe that the person concerned would have been averse to participating in the research project if they had had the capacity to consent, and that similar research cannot be done on people who have the capacity consent.

#### **Sexual offences**

83. Rape poses a special challenge for the legal system and health services. Both the frequency of reported rape and the number of reported rapes that culminate in a conviction are low. An estimated 90% of all rapes and attempted rapes are never brought to the police's knowledge. The number of *formal reports* of rape has increased by 34% during the last five years. In the Government's view, there is no reason to believe that this is due to an increase in rape. It is more probable that the increase indicates that more victims are contacting the police, and that there is more openness about rape today, than there was a few years ago. 1067 cases were reported in 2008. The aim is to further increase the percentage of committed and attempted rapes that are reported.

84. To improve the situation for rape victims the Government established a committee to study the situation of rape victims (the Rape Committee) in 2006. The Committee's report was launched in January 2008. The Committee suggests preventive measures and measures to help ensure that victims are treated in a better and more coordinated manner by official agencies. The Committee's proposals for measures are followed up by the ministries that are responsible for each field. In addition the Government has strengthened the treatment on offer from the health services to people who have been subjected to rape and other sexual abuse, *inter alia* by setting up rape and violence crisis centres in every county. See also under article 2 regarding the protection of the victim and legal aid.

85. On 27 October 2007, the Norwegian Minister of Justice signed the Council of Europe Convention on the Protection of children against sexual exploitation and abuse. The Penal Code 2005 chapter 26 (sexual offences) reflects the obligations in the convention. The provisions differentiate sexual offences towards adults from sexual offences towards children. In addition, when it comes to sexual offences towards children under the age of 14, every sexual activity is to be considered rape, regardless of the circumstances.

86. The minimum penalty for rape through sexual intercourse (vaginal and anal intercourse, insertion of the penis into the mouth, insertion of an object into the vagina or rectum and, if it is committed on a child under the age of 14, the insertion of penis in and between the labia majora and the labia minora) is in the Penal Code 2005 imprisonment for three years, whereas in the Penal Code 1902, the minimum penalty is imprisonment for two years. In the preparatory works it is stated clearly that the Government finds the present level of punishment set by the courts to be too low in cases of sexual offences. With reference to case law, the Government suggests that the average punishment should be substantially increased.

#### **Violence in close relationships**

87. Reference is made to the Committee's concluding remarks paragraph 10 regarding domestic violence and to article 2 in this report regarding the protection of the victim and legal aid.

#### *The extent of gender based violence/ violence in close relationships*

88. The extent of domestic violence against women and children in Norway is not known exactly. This applies to abuse of women, physical abuse of children, children as witnesses to violence and sexual abuse of children. However, a number of studies clearly indicate that such violence is far more widespread than initially assumed and also far more dangerous than initially assumed. Among the 32 victims of murder in Norway in 2008, 6 were women murdered by their *intimate partner*. In the period of 1997 to 2008 the number of women murdered by their *intimate partners* was 82. This constitutes between 20% and 30% of the murders committed every year.

89. A nationwide survey carried out in 2005, showed that approximately nine per cent of women over fifteen years of age in Norway have been victims of severe violence from their current or former partner one or more times in the course of their lives. The term severe violence comprises attempted strangulation, use of weapons, and beating the head against an object or wall. Barely two percent of men have experienced a severely violent act.

90. The number of children who seek shelter with their mother in a crisis centre offers an indication of the number of children who grow up in an environment of domestic violence. Out of a total of around 3,250 persons who spent one or more nights at a crisis centre in 2008, 1,500 were children.

*Measures to combat violence in close relationships*

91. The Government is committed to combating violence in intimate relationships. In December 2007, the Government launched a *third action plan* against violence in intimate relationships, applicable to the period 2008–2011 (“The Turning Point”). Prepared in collaboration by five ministries, the 50-measure plan is based on the need to see the work against such violence in an integrated, cross-sector perspective. The plan has the following targets:

- (a) The victims shall be guaranteed the necessary help and protection;
- (b) The spiral of violence shall be broken by strengthening the treatment services offered to the perpetrator;
- (c) The victims shall be offered facilitated conversations with the perpetrator;
- (d) Knowledge and cooperation in the support apparatus shall be strengthened;
- (e) Research and development work shall be implemented;
- (f) Violence in intimate relationships shall be given enhanced visibility;
- (g) Violence in intimate relationships shall be prevented through changes in attitude.

92. A *special penal sanction* for violence in intimate relationships entered into force on 1 January 2006. This also covers mental abuse.

93. The relevant provisions in the Penal Code 2005 take, to a far greater degree than previously, the violence that goes on behind closed doors seriously. *The punishment for abuse in intimate relationships is increased* from three to six years, and for aggravated abuse from six to 15 years. A major increase in sentencing is also proposed within these frameworks; it shall be accounted an aggravating factor in sentencing if a child has been witness to the violence.

94. A full-time *family violence coordinator* has now been appointed in all police districts. The coordinator is to help ensure that the police meet the victim of violence and her family and friends with understanding, knowledge and insight – in both professional and human terms. In the largest police districts, separate teams are being established to work on violence and abuse in intimate relationships.

95. Most of the shelters in Norway have up to now been private institutions relying partly on voluntary work, cf. Norway’s fifth report paragraph 75. In the spring 2009 the Storting passed a new act that imposes upon the *municipality a legal obligation to provide shelter services* and co-ordinated assistance for victims of violence in close relationships. The law emphasises that it is a public responsibility to make sure that victims of domestic violence receive protection and assistance.

96. The Government has initiated a *survey of a selection of spousal homicide cases*. The object is to strengthen the knowledge base regarding risk factors and possible warning signs. This survey will help develop better and more focused protective measures and better prevention strategies. As part of the preventive work, two pilot projects for testing of the registration tool *Spousal Assault Assessment Guide – Police Version* are under way. This is a tool that the police can use to evaluate risk factors for future serious spousal violence.

97. The 22 measures included in the *Strategy plan against child sexual abuse and physical abuse (2005–2009)* have been or are being implemented. This plan focuses upon preventing and uncovering abuse, giving assistance, research and competence rising. The Ministry of Children and Equality is financing the project (2004–2009) “Children who live with violence in the family.” A basic goal of this project is to raise the level of competence

in the child welfare services and thereby provide adequate help to a higher number of exposed children.

98. In April 2006, *amendments to the Children Act* entered into force to contribute to better protection of the child in child custody cases where violence and abuse are suspected. It is emphasized in the Act that if access is not in the best interests of the child, the court must determine that access shall not be granted. Furthermore, it is emphasized that decisions concerning parental responsibility, permanent residence and access shall take into account that the child must not be exposed to violence or in any manner be treated in such a way that the child's physical or mental health is exposed to injury or danger. On 1 January 2007, amendments entered into force which impose a legal obligation on the public sector to appoint a supervisory person in particular instances in cases where supervision is made a condition for access. Amendments which stipulate that a parent who is charged with, accused or sentenced for having caused the other parent's death, no longer shall receive the parental responsibility for the child automatically entered into force on the same date.

99. White Paper No. 104 (2008–2009) *suggests specifying in the Children Act that all violence against children is prohibited*, even if it happens as a part of bringing up a child.

100. The Norwegian Minister of Justice and the Police, Knut Storberget, hosted the *29th Conference of Council of Europe Ministers of Justice in Tromsø 18–19 June 2009*. The Ministers of Justice discussed ways to combat domestic violence by identifying the problems and developing and promoting a common approach to breaking the silence, and supporting and empowering the victims. Norway is also committed to the ongoing work of the Council of Europe's ad hoc Committee on preventing and combating violence against women and domestic violence, and strongly supports the adoption of a *new Council of Europe convention* on violence against women including domestic violence.

### **Bullying and violence at school**

101. The last national campaign against bullying was launched in 2009 when the Government together with key national partners signed a Manifesto against bullying. In the manifesto the signatories commit themselves to work actively, both together and independently towards their defined target groups, to ensure that children and young people are not exposed to offensive words or actions such as bullying, violence, racism, homophobia, discrimination or exclusion. For further information, see Norway's 4th Periodic Report to the Committee on the Rights of the Child (appendix 8) paragraphs 359 to 360 and 399 to 403.

### **Asylum procedures**

#### *Norwegian Practice and UNHCR's recommendations*

102. Reference is made to the Committee's concluding observations paragraph 11. A new regulation has been adopted in the Immigration Regulations with regard to the so-called internal relocation alternative. The new regulation states that the right to be recognised as a refugee pursuant to the Immigration Act, shall not apply if the foreign national may obtain effective protection in other parts of his or her country of origin than the area from which the applicant has fled, provided the situation in the return area does not give grounds for granting a residence permit based on strong humanitarian considerations.

103. The Immigration Act 2008 (appendix 3) regulates the eventuality of a new practice regarding return of asylum seekers that is contrary to UNHCR recommendations. If a practice contrary to UNHCR's recommendations concerning protection is established, these changes should as a rule be put forward to the Grand Board of the Immigration Appeals

Board, except if the new practice is based upon instructions from the Ministry of Labour and Social Inclusion.

*The European Union's Dublin II Regulation*

104. Norway is a signatory to the to the European Union's Dublin II Regulation. The Regulation enables Norway, like all other signatory states, to assess, against specific criteria, which of the states parties to the Dublin II regulation is responsible for examining asylum applications lodged in their territory. The Regulation aims to ensure that each claim is examined only once by one member state and thus to prevent asylum seekers from applying for asylum in several member states. Norway's practice under the Regulation is founded on an expectation that other member states comply with their international obligations, e.g. UN's Refugee Convention.

105. There was a significant increase in applications for asylum in Norway last year (121% from 2007 to 2008). The Government has taken measures to limit the number of asylum seekers who are not in need of protection, and furthermore to prevent that Norway receives a disproportionate amount of the asylum seekers coming to Europe, and has in particular introduced a few changes in the practice regarding Dublin cases. First of all Norway has previously had a broader use of the derogation clause in the Dublin Regulation, meaning that the Regulation was not applied in cases, where applicants had a spouse/cohabitant, children, siblings or parents residing in Norway. Today, Norway has a more restrictive practice. As a rule, family connection beyond the nuclear family does not give grounds for an exception to the Dublin procedures.

106. Secondly, Norway has changed its practice regarding asylum applications from unaccompanied minors. In the past Norway did not apply the Dublin Regulation, meaning that all applications for asylum by unaccompanied minors would be examined on its merits in Norway. Norway has experienced a massive influx in applications from minors (from 403 unaccompanied minors in 2007 to 1647 by 30 September 2009). In October 2008 Norway started to apply the Dublin Regulation in cases with unaccompanied minors where family members were absent and the minor previously had applied for asylum in another member state.

107. In late 2007/beginning of 2008 Norway made a halt in the transfers to Greece, due to reports on the situation for asylum seekers there. Following an individual assessment, Norway now applies the Dublin Regulation in cases where Greece is the responsible member state. There is, however, a slightly wider possibility for an exception to the Dublin procedures where Greece is responsible member state according to the Regulation, although the threshold remains high.

108. Until August 2009, Norway did not transfer families with children to Greece either. However, the Government decided to revise this practice and has instructed the Directorate of Immigration to resume transfers of families with children. This means that the Dublin regulation is to be applied to this group, on an individual assessment of each case, considering that the ability to handle the situation for asylum seekers in Greece differs from family to family and is connected to the degree of vulnerability.

*The Istanbul protocol*

109. Norwegian asylum procedure is regarded to be in accordance with the Istanbul protocol. The Norwegian Directorate of Immigration has so far not arranged any training that deals with the Istanbul Protocol specifically. Insofar as the methods in the protocol are applicable to asylum procedures, the view of the Directorate is that these methods are in most respects complied with. Relevant personnel are given the training required, for example by giving courses regarding asylum interviews for new staff.

110. The Immigration Appeals Board has included the Istanbul Protocol in its human rights training programme. The programme is based on an internal document regarding the prohibition of torture. Reference is made to the Istanbul Protocol in this document, in addition to universal and regional human rights conventions.

111. In relation to the issue of whether or not sufficiently reliable evidence has been provided that a person has been subjected to torture, the Immigration Appeals Board has also developed a checklist available to all caseworkers where reference is made to national instruments and the Istanbul Protocol.

#### **Asylum seekers, refugees and health care**

112. In 2003 the Norwegian Directorate of Health released national guidelines for the treatment of asylum seekers and refugees by the health services. The document is currently being revised. The new edition will emphasize the necessity of offering persons suspected to be victims of torture a consultation or an examination by a physician or a nurse. If necessary, a referral to the specialist health services should be made.

113. The Norwegian Directorate of Health has, in addition, initiated the development of information for staff at centres for asylum seekers. The contents of the Istanbul protocol will be integrated in the educational material.

114. During the last years five competence centres on violence, traumatic stress and suicide prevention have been established. The centres' primary tasks include giving support, guidance and supervision to both the primary health care and specialist health services. In addition they contribute to the establishment of a competence network and cooperation in each region.

115. The regional health authorities are responsible for establishing specialist health services within the field of traumatic stress.

#### **Ratification of the Optional Protocol to the UN Convention Against Torture (OPCAT)**

116. Ratification of the Optional Protocol to the UN Convention Against Torture (OPCAT) is currently under consideration by the Ministry of Justice.

## **H. Article 8**

### **Trafficking**

117. Reference is made to paragraph 84 and 85 of Norway's fifth periodic report and to the Committee's concluding remarks section 12 regarding trafficking in human beings. After the last report, the Government has launched *two action plans on trafficking*. The current one runs from 2006 through 2009. In 2008, Norway also *ratified the Council of Europe Convention on Action against Trafficking in Human Beings*, which, *inter alia*, imposes a duty to take measures in order to prevent trafficking.

118. Based on the current action plan, several measures have been implemented. Since 1 July 2008, victims of trafficking have the right to assistance of counsel remunerated by the State, cf. under article 2 on the protection of the victim. In order to combat trafficking in human beings, *paying any person to commit a sexual act was criminalised* by Act 12 December 2008 No 104, cf. new section 202 a of the Penal Code 1902. This amendment entered into force 1 January 2009.

119. As of December 2006 the so-called *reflection period was extended from 45 days to 6 months*. This implies that victims who are in Norway illegally may be granted a temporary residence permit with duration of 6 months. These permits require that the alleged victim of

trafficking is willing to receive assistance and to consider reporting human traffickers. If the victim has reported the perpetrators, if the police have started an investigation and if the victim has co-operated with the police, a *residence permit* for up to one year at a time may be granted. This one-year permit may be renewed, but does not constitute grounds for a permanent residence permit. On May 15th 2008 the regulation was revised to encompass a wider range of persons, including citizens of EU/EEC and foreigners with residence permits in other Schengen states.

120. Further, in November 2008, a new instruction was introduced which implies that victims of trafficking who witness in court cases against the perpetrators, as a main rule, shall be granted a residence permit. The purpose of this regulation is to aid victims of trafficking with prosecuting the perpetrators and to protect the victims against reprisals. The regulations regarding permits for victims of trafficking are now included in the new Immigration Regulation (planned to be put into effect 1 January 2010).

121. Finally, legal protection of victims of trafficking is strengthened in the Immigration Act 2008. Most importantly the law states that former victims of trafficking shall be considered members of a special social group, in accordance with the Refugee Convention. Alternatively, the new law states that being a victim of trafficking shall be considered possible humanitarian grounds for granting a residence permit.

## I. Article 9

### Pre-trial detention

122. Two sets of time limits are applicable to people who remain in detention. One time limit is established to reduce the time spent in *police custody* after arrest, cf. Article 7 of the Convention. Prison accommodation shall be made available *within 48 hours* after a remand is made, unless this is impossible for practical reasons. The other time limit relates to the *right to be brought before a judge* after the arrest. If the prosecuting authority wishes to detain the arrested person, he or she must be brought before a judge at the latest on *the third day* after the arrest, cf. Article 9 section 3 of the Convention. Even if the arrested person cannot be brought before a judge on the third day after the arrest at the latest, the person shall be transferred from police custody to prison on the second day after the arrest, unless this is impossible for practical reasons.

#### *Police custody (pending trial)*

123. Reference is made to paragraph 62–63 of Norway's fifth periodic report. Prison accommodation shall be made available within 48 hours after a remand is made, unless this is impossible for practical reasons, cf. regulation 30 June 2006 regarding police custody § 3–1. The use of police custody in Norway has led to criticism, *inter alia* from the UN committee against torture. This criticism has been based on the fact that the arrested are not always transferred from police custody to an ordinary prison cell within two days of their arrest. In 2008, a total of 21,907 persons were placed in police detention. 1,365 of these (6.23%) stayed for more than 48 hours in police custody.

124. The main reason for the excessive time spent in police custody has been the lack of available cells for remands in ordinary prisons, partly due to the fact that vacant prison cells cannot always be found within a reasonable distance from the police district concerned. This is partly because Norwegian prisons for several years have had capacity problems, and partly due to geographical factors. In some parts of Norway, the considerable distances between the police custodies, the ordinary prisons and the courts renders it difficult to provide for the necessary and timely transportation of the arrested person. However, the

situation has been followed closely, and considerable work has been done to reduce the time spent in police custody.

125. Priority has also been given to solving the capacity problems in Norwegian prisons; see under article 10 on elimination of prison queues. Thus, the prisons are now able to accommodate persons in custody. The Government therefore believes that the right to be transferred from police custody to an ordinary prison cell in accordance with the regulations will be fulfilled in the years to come. Nevertheless, in order to assess the need for concrete measures, Norway has introduced an improved tool for recording statistics on the use of police custody. The situation will be followed closely, and if improvements cannot be detected, the Government will make sure that appropriate action is taken.

*The right to be brought promptly before a judge/duration of pre-trial detention*

126. Reference is made to paragraph 86 of Norway's fifth periodic report regarding amendments to section 183 of the Criminal Procedure Act. The amendments entered into force 1 July 2006. The time limit for bringing an arrested person who the prosecuting authority wishes to detain before a judge is currently "as soon as possible and at the latest the third day after the arrest".

127. To verify the effectiveness of the above-mentioned amendments, the Ministry of Justice and the Police is in the process of collecting various statistics and data from among others the Central Bureau of Statistics and the National Police Directorate. The evaluation of the amendments is still going on, and it is thus too early to draw any conclusions. The statistics that have been collected until now indicate that there has been an *increase* in the number of persons in police custody for more than 48 hours (before they are brought before a judge). Furthermore, they indicate a *reduction* in the number of persons who spend less than 15 days in pre-trial detention. However, there appears to have been an *increase* in the number of pre-trial detentions lasting between 15 and 29 days. This increase is more than twice the number of reductions in pre-trial detentions lasting less than 15 days, and this was not expected.

128. It is the Ministry's opinion that the amendments to some degree have achieved the desired results. Although there seems to have been an increase in the number of pre-trial detentions lasting between 15 and 29 days, a larger percentage of this group is now convicted and transferred to prison to serve a sentence. In these cases the period spent in pre-trial detention is deducted from the sentence.

129. Even though these findings are based on limited data, the Ministry is concerned about the apparent increase in the total number of days spent in pre-trial detention. The Ministry will continue to review the development in the coming years so that firmer conclusions may be drawn. In a letter 17 June 2009, the Ministry of Justice and the Police asked the National Police Directorate to collect new statistics in order to review the use of pre-trial detention.

130. In recent years, the courts have imposed increasingly strict requirements for progress in investigations if extended detention on remand is to be approved. The law also instructs the court to pre-schedule the main hearing in cases where the accused remains in custody. These measures contribute to the reduction of the pre-trial detention period. The Ministry is also of the opinion that the cases generally are better prepared when presented to the Court, and that the work of the judges, the Counsel of the Defence and especially the Police has become somewhat more efficient.

*Solitary pre-trial confinement*

131. Reference is made to the Committee's concluding observations paragraph 13 regarding the provisions for solitary pre-trial confinement, and Norway's fifth report

paragraph 55–60. Section 186a of the Criminal Procedure Act clearly states that longer periods of isolation can be imposed only in exceptional cases, and only where serious crimes are involved. Section 46 of the Execution of Sentences Act states that the Correctional Service shall give priority to initiatives aimed at reducing the negative effects of isolation.

132. A maximum limit on the duration of solitary confinement for remand prisoners was considered during discussions on the amendments to the Criminal Procedure Act. The Ministry of Justice and the Police found that longer periods of isolation could be necessary in exceptional cases, and therefore chose not to impose an absolute maximum limit. This view was endorsed by the Storting. Longer periods of isolation are particularly likely in cases involving transnational crime, or cases otherwise involving investigation abroad, where there is a danger of interference with evidence.

133. Of a total of 3,344 remands in custody that ended in 2008, 423 had been subject to a period of total isolation and 122 to partial isolation. Of incidences of total isolation 7 % lasted less than 7 days and 94 % less than 6 weeks. In 2008 six persons were subject to a period of total isolation lasting between 60 and 89 days, and one person was subject to partial isolation lasting between 90 and 182 days. In 2008, no one was subject to a period of total isolation lasting more than 90 days.

134. In 2008, total isolation was used in combination with other forms of restriction as shown in the table below.

<i>Total isolation</i>	<i>Number of days with restrictions</i>						<i>In total</i>
	<i>&lt;7</i>	<i>7–13</i>	<i>14–29</i>	<i>30–41</i>	<i>42–59</i>	<i>60–89</i>	
No access to letters, visits, radio, TV or newspapers	2	5	15	0	0	2	<b>24</b>
No access to letters, visits	14	33	185	8	14	4	<b>258</b>
Control of letters and visits/ no access to radio, TV, newspapers	0	0	7	0	0	0	<b>7</b>
Control of letters and visits	2	7	35	2	5	0	<b>51</b>
Total isolation not combined with other restrictions	10	12	41	1	0	0	<b>64</b>
<b>In total</b>	<b>28</b>	<b>57</b>	<b>283</b>	<b>11</b>	<b>19</b>	<b>6</b>	<b>404</b>

135. In the first nine months of 2009 no one has been subjected to total isolation for more than 90 days and only one person between 60 and 89 days.

136. The legal framework for remand in custody generally, and the imposition of restrictions during the period of custody in particular, has been substantially amended in recent years. Section 186a of the Criminal Procedure Act entered into force on 1 October 2002. The Ministry of Justice and the Police will monitor its application, and actual practice will be evaluated as part of future reviews of the Criminal Procedure Act.

#### *Improving conditions for remand prisoners*

137. A new regulation concerning the use of police detention facilities was introduced in July 2006. A key consideration behind the new regulation was the need to avoid deaths during police detention and in general to improve conditions for remand prisoners. The new regulation established both one central as well as several local control mechanisms. The central mechanism is composed of representatives from the National Police Directorate and the relevant state prosecutors' office. They carry out inspection visits to ensure that

detention facilities are equipped and used according to all relevant regulations, especially matters concerning the prisoner's health conditions. Each police district must in addition establish a local control mechanism, which is also responsible for ensuring that prisoners are given proper information about their rights.

138. The 2006 regulation states that a person who is unable to take care of himself because of intoxication must be examined by a doctor before being placed in a police cell. During his or her stay in police custody, every prisoner has the right to contact a doctor for necessary health assistance. In any case, prisoners who are ill or appear to be intoxicated must be checked on at least every half hour.

139. In 2008, the Ministry of Justice and the Police appointed a commission to consider various control mechanisms concerning the police. The commission delivered its report in May 2009. An important finding was that the new control mechanisms for detention facilities represented an important step forward in exposing as well as preventing unwanted incidents. The commission recommended that representatives from civil society should be included as members of the control mechanisms. It was also recommended that a written information folder for prisoners be produced.

140. For further details on health care and incidents of death in prisons, reference is made to article 10.

#### **Imprisonment of foreign nationals**

141. Reference is made to paragraphs 105–111 of Norway's fifth report. The Immigration Act 2008 essentially carries on section 37 (detention for identification purposes) and 41 (detention for the purpose of implementing decisions) in the current Immigration Act regarding detention, but there are some new provisions.

142. According to section 106, first paragraph *litra b*, a foreign national may be arrested and remanded in custody if it is *most likely* that the foreign national will evade the implementation of a decision requiring him or her to leave the realm. According to the current Immigration Act, the requirement for arrest and custody is that it is *necessary* to do so in order to ensure implementation. Arrest and custody should not be resorted to if confiscation of passport, an obligation to report, or a particular place of residence may be used instead, cf. Norway's fifth report paragraph 109.

143. A foreign national who is arrested and remanded in custody pursuant to section 106, first paragraph, should as a general rule be placed in a holding centre for foreign nationals (Trandum). The Immigration Act 2008 section 107 carries on section 37d in the current Immigration Act. Section 37d was amended in 2007. The purpose was to give clear and precise legal rights for foreign nationals and to set clear limits for control and use of force by the police.

144. According to the Immigration Act 2008 section 106, second paragraph, arrest is decided by the *chief of police or the person authorised by the chief of police*. According to the current Immigration Act, the *prosecuting authority* orders the arrest. Remand in custody pursuant to section 106, first paragraph *b* and *c* may be decided for a maximum of four weeks at a time. The overall period of custody may not exceed 12 weeks, unless there are particular reasons to do so. According to the current Immigration Act detention is decided for two weeks at a time, and total detention may not exceed six weeks. Remand in custody pursuant to section 106, first paragraph *litra a* can be set to more than four weeks at the time when the decision is reviewed if there are particular reasons to believe that a review after four weeks will be irrelevant.

145. The following table contains compiled and updated figures for detainees held at Trandum as well as regular prisons. Data for regular prisons prior to 2007 are not available.

Figures concerning detainees at Trandum have been extracted from Trandum's own compilation of statistics while the Ministry of Justice's Department of Prison, Probation and After Care has provided information on those held in regular prisons.

<i>Year</i>	<i>Number of detainees at Trandum</i>	<i>Detained by court decision</i>	<i>Number of detainees in regular prisons</i>	<i>Total number of detainees</i>
2003	5 515	164		
2004	4 365	271		
2005	2 856	436		
2006	2 093	376		
2007	1 724	409	152	<b>1 876</b>
2008	1 882	411	147	<b>2 029</b>
2009 January–May	955	223	89	<b>1 044</b>

146. The second column shows the number of detainees at Trandum for each year in question. The vast majority of detainees at Trandum are held in police custody, either prior to deportation or awaiting presentation before a court. The last column shows the total number of detainees, including both Trandum and regular prisons.

147. The table below shows the number of cases where force has been deemed necessary along with figures showing how many detainees were subjected to force. Please note that a detainee may have been subjected to force on several different occasions.

<i>Year</i>	<i>Women</i>	<i>Men</i>	<i>Total number of detainees</i>	<i>Total number of decisions to use force</i>
2005, May–December	6	61	<b>67</b>	
2006	8	275	<b>283</b>	
2007	4	213	<b>217</b>	<b>253</b>
2008	6	117	<b>123</b>	<b>187</b>
2009, January–May	4	32	<b>36</b>	<b>60</b>

148. Statistics regarding the number of detainees subjected to force are available from May 2005. The number of decisions to use force was added January 1, 2007. The statistics have been extracted from Trandum's own compilation of statistics.

## J. Article 10

149. Some information relevant to Article 10 may be found under Articles 7, 9, 17 and 24.

### Juvenile offenders

150. The age of criminal responsibility in Norway is 15 years. Between the age of 15 and 18 children are criminally responsible and subject to the ordinary provisions of criminal law, but with certain modifications due to their young age. Furthermore, they have special rights that must be protected even when they commit a crime.

151. Norway has made a reservation regarding Article 10 paragraphs 2(b) and 3, regarding the obligation to keep young criminal offenders and convicted persons separated from adult prisoners, (cf. Article 37 c in CRC). A guiding principle of the Norwegian Correctional Services is that a convicted person should serve his/her sentence in close

proximity to his/her home, cf. Section 11 first paragraph in the Execution of Sentences Act. Furthermore, there are very few juveniles in Norwegian prisons (usually between five and ten individuals). If the principle of juveniles' separation from the adult population were to be adhered to, along with the principle of proximity, the result would be to place them in almost total isolation. In the Government's view, such a solution will not be in the child's best interest, and, hence, unsatisfactory, cf. CRC Article 37 c). The above-mentioned considerations form the basis for why the reservation is being upheld.

152. Nevertheless, Norway recognises that challenges remain regarding juveniles in prison, particularly regarding sentences served together with older prisoners, sentences served far away from their homes and their families, that juveniles to an unacceptable extent are being isolated in their prison cells, as well as the fact that juveniles are not being sufficiently followed up after being released.

153. To avoid juveniles serving their sentences in prisons together with adults or in total isolation, Norway is presently establishing separate prison units for young offenders. In the course of 2009 two special prisons for juveniles will become operational. These facilities will contain small flats providing accommodation for the offenders' families to spend time with them while they serve their sentence. Moreover, the juveniles will, to a much greater extent than in normal prisons, be able to partake in the prison community. Multidisciplinary follow-up programs will also be provided upon release. There is reason to stress that by such actions Norway does not wish to facilitate greater juvenile imprisonment than today. The goal is, on the contrary, to be able to provide a better alternative than general imprisonment in those cases where the penalty for a crime cannot be paid in any other way than through service of a sentence in prison.

154. The recent policy on juvenile offenders is based on the principle of restorative justice. A key factor to success in this regard, is cooperation between the different levels of public administration, between the justice and child support services and the police and prosecuting authority and between government and civil sector. Serving a sentence in a child welfare institution as well as mediation board solutions are both commendable alternatives to prison service with regard to this group. Additionally, the current Government has announced an escalation in the frequency of community sentences, cf. article 14.

155. In August 2009 the Government launched an *Action plan* for Crime Prevention ("Gode krefter"). State driven support for community involvement and effective local partnerships are core elements in the action plan. The Action plan *inter alia* includes the following measures:

- (a) Further increase the use of mediation board solutions;
- (b) A number of local projects. The sanctions imposed have included waiver of prosecution based on a "contract" with the juvenile offender and suspended sentences with individually adapted conditions. The results of these projects will be followed up in the preparation of new legislation proposed in the report NOU 2008: 15 "Barn og straff" ("Children and penalty").

#### **Electronic Monitoring – an alternative to prison**

156. Norway established electronic monitoring as an alternative to imprisonment 1 September 2008. The new legislation was passed in August 2008. To begin with, this is a 2-year pilot project limited to 6 out of 19 counties, and the anticipated number of offenders being tagged in this period is 130 at any given time. The aim of implementing electronic monitoring is to find a humane and reliable alternative to imprisonment, prevent recidivism and lower the prison populations. By February 2009 the number of offenders that had been

tagged was 192, only eight of those were sent back to prison due to misconduct. On average, about 70 offenders are being electronic monitored at any time.

157. Special units for electronic monitoring have been established within the existing local probations offices. These units have a well-qualified multidisciplinary staff of both prison officers and social workers. There is a great emphasis on dynamic security and close follow-up from the staff. The offender has to accept a very tight supervision and control scheme, and having a suitable occupation is part of the conditions. The offender also has to participate in a motivational and crime preventive program, and other activities individually matched to the offender's need for rehabilitation. The goal is to maintain and advance the social and economic capabilities of the offender and in this way to prevent recidivism.

158. The target group for electronic monitoring in Norway during the pilot period is offenders sentenced to less than 4 months of imprisonment, or those with less than 4 months left of a longer sentence. In principle, all offenders within this target group may serve their sentence with electronic monitoring. However, as a main rule, offenders convicted of violence and sexual crimes are excluded. Juvenile offenders and 'first-time' offenders are a priority target group.

### **Elimination of prison queues**

159. Overcrowding in prisons, a phenomenon common in other countries, has not occurred in Norway as persons convicted of less serious crimes have had to wait for a prison place to become available. This has resulted in the so-called 'prison queue', an undesirable consequence – but seen as more humane and less damaging than overcrowding. Those forced to wait more than two months after their sentences have become legally binding, have been regarded as being 'in the queue'. Both the previous and present Governments have set the removal of the prison queue as a primary goal and have implemented specific targeted initiatives aimed at its reduction and total removal. These initiatives can be summed up as follows:

(a) Effective use of available prison places. A usage rate of 94 % has been the goal and has been achieved to an acceptable degree. (Between 96 % in 2003 and 93 % in 2008);

(b) The creation of new, permanent and temporary, prison places. Since 2006, 398 new prison places have been opened and a new prison with 251 places is due to open in the town of Halden in 2010;

(c) As a temporary measure, all prisoners have been considered for extra early release, on a sliding scale up to 20 days before the normal release date. In 2008 extra early release saved 43 000 prison days. This initiative has now been phased out;

(d) Doubling up. The placing of two inmates in a cell designated as a single person cell has been used to a limited degree, normally with the cooperation of the inmates concerned, and only in cells where an extra bed was seen as acceptable. Doubling up was the least desirable initiative and the first to be withdrawn as of April 2008;

(e) Electronic monitoring (EM). Although the prison queue was not the main reason for implementing EM, it helped justify the investment necessary to start a pilot project.

160. There are currently (on 1 October 2009) 47 prisons in Norway and 3,582 prison places. On 30 June 2006 the prison queue reached a peak of 3,380 persons. By 1 October 2009 the figure was down to 350. This downward trend is expected to continue but at a slower rate and will most likely level out a little above zero.

### **Education in prisons**

161. Tuition at a primary, secondary and upper secondary education level, as well as theoretical and practical courses, are being provided in all prisons. In the course of 2010 prisoners who are studying will get limited access to the Internet. This to ensure that the education offered is in accordance with the prevailing public curriculum framework.

### **Women in prison**

162. As a general rule, the same laws and regulations apply to both female and male prisoners in Norway. However, some special adjustments are implemented to alleviate the impact of imprisonment on the family life of female prisoners, as well as their children. In general, it is an aim for the Government to allow more women to serve their sentences in a prison with a low security level or in a halfway house. More sentences should also be served outside of prison.

#### *Pregnant and breast-feeding women*

163. Reference is made to the Committee's concluding observations paragraph 16. There is no practice in Norway of separating infants from mothers who are due to serve a prison sentence. Unless the woman herself wishes to serve the sentence immediately, the execution of a sentence imposed on a woman who is pregnant or gave birth less than six weeks before sentencing, shall be deferred, cf. Section 459 of the Criminal Procedure Act and Section 29–4 of the Prosecution Instructions. This also applies to women who breast-feed, unless the baby is more than nine months old. Therefore, applications for leave of absence to breast-feed are almost non-existing. If the Correctional Service were to handle such an application, the prisoner's nationality would not be a criterion for denying her leave of absence to breast-feed. However, with regard to other evaluations, such as the risk of escape, nationality might be a factor of importance. Finally, it should be stressed that if a breast-feeding mother were to be imprisoned, e.g. for security reasons, every measure possible would be taken to ensure that her infant was properly breast-fed.

164. There are presently no special prison units in Norway where mothers can serve their sentence with their children. However, pursuant to Section 12 of the Execution of Sentences Act, a sentence may wholly or partly be served in an institution, for instance in a "Maternity Home" where mothers can stay with their infants.

165. As mentioned above, Norway implemented electronic monitoring as an alternative way of executing a sentence 1 September 2008. A positive experience so far, is that the percentage of women compared to men serving their sentence in their homes with electronic monitoring is higher than the percentage serving in prisons. In 2008, 9 % of the prisoners were women, whereas women constituted 14 % of those serving their sentence with electronic monitoring. Serving a sentence in this manner enables the sentenced person to work or study and/or take care of family and children.

### **Incidents of death in prisons**

166. The following figures indicate the incidents of death in Norwegian prisons the past five years:

2009: 2	Ila og Ullersmo
2008: 11	Trondheim (5), Ullersmo (1), Tromsø (1), Skien (1), Arendal (1), Bergen (1), Oslo fengsel (2)
2007: 5	Ila, Drammen, Bergen, Oslo (2)

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2009: 2	Ila og Ullersmo
2006: 4	Ila, Ullersmo, Ilseng, Drammen
2005: 5	Ullersmo, Kongsvinger, Ringerike, Oslo (2)

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167. Within the same period, 30 additional incidents of death occurred amongst persons who were not serving time in a prison, but who were under the care of the Correctional Services. Some of the deaths are the results of suicide, while others are natural. Incidents of death are currently subject to assessment. This research work will soon be finalized. The results will be used as basis to develop strategies on how to prevent prison deaths; as well as strategies on how to handle incidents if/when they occur. With regard to conditions for remand prisoners, reference is made to article 9 above.

#### **Health care in prisons**

168. Prisoners have the same patient rights as the population in general, limited by security restrictions only. Surveys made in Norwegian prisons reveal a significantly higher frequency of mental disease symptoms within the prison population than in the general population. Occasionally, problems arise concerning the provision of satisfactory assistance to prisoners with acute mental illnesses, and Norway has, as a result, received criticism from the European Committee for the Prevention of Torture (CPT).

169. The Government's aim is to provide adequate treatment for prisoners with mental problems as well as for prisoners with problems concerning substance abuse. There are currently five to six prisons where a health care service for prisoners with mental diseases is provided within the prison facilities. In the remaining prisons, community mental health care services come to the prisons by appointment or the prisoner is transported to an outside clinic.

170. Close cooperation between the justice and health care authorities has been established to strengthen the treatment program availability for prisoners with mental diseases. The need for separate resource departments for this group of prisoners is also being examined at this time.

171. Special measures are taken by the health and justice authorities in order to meet certain health challenges among prisoners. Some examples are:

(a) In the course of 2009 a total of 9 units for coping with substance abuse will be established in Norwegian prisons;

(b) The opportunity to serve a sentence in health-care institutions providing treatment for drug abuse and mental illness will be strengthened further.

#### **Criteria for lightening restrictions and assigning favourable arrangements for prisoners – individual assessments**

172. The letter of 29 July 2004 ("Implementation of Punishment and Pre-trial Detention for Individuals involved in Organized Crime") from the Central Administration of the Correctional Services to the Regional Directors referred to in the "Supplementary report to Norway's fifth Periodic report on the ICCPR", became the object of considerable criticism from lawyers and human rights groups. However, not all the criticism was legitimate. The letter merely prescribed how existing laws and regulations were to be interpreted. The main content has later been enacted through a new provision in the Supplementary Guidelines to the Execution of Sentences Act, Section 1.8.

173. Each prisoner is considered individually when determining whether he or she shall be entitled to a leave of absence, parole, etc. This is an important principle in Norwegian law, it is enshrined in laws and regulations, and it was also stressed in the above-mentioned letter. However, good behaviour does not necessarily equal low security risk, and for prisoners convicted of organised crime, the security evaluations should be utterly thorough. Simultaneously, special attention must be paid to ensure that infringements of international human rights are avoided.

#### **K. Article 11**

174. There is nothing new to report under this article.

#### **L. Article 12**

175. There is nothing new to report under this article.

#### **M. Article 13**

176. Reference is made to Norway's fifth periodic report paragraph 146–152. The Immigration Act 2008 and the new regulations do not make any significant amendments to the legislation regarding the expulsion procedures elaborated upon in the previous report.

177. Expulsion cases are occasionally brought before the Norwegian Supreme Court. As described in the fifth periodic report, paragraph 152, the Court tries whether the Ministry has struck a fair balance between the foreign national's interest on the one hand and the State's interest in preventing disorder or crime on the other (i.e. whether the expulsion is a disproportionate measure pursuant to the current Immigration Act sections 29 and 30 (which corresponds to the Immigration Act 2008 section 70)). Two recent judgments regarding this issue can be mentioned, although these do not represent any significant change or development in the case law. The judgments were pronounced on 30 April 2009 and are published in Norwegian Supreme Court Reports 2009, respectively p. 534 et seq. and p. 546 et seq.

178. In the first judgment (p. 546 et seq.), the Supreme Court held that it would be a disproportionately severe reaction to expel the foreign national with a re-entry ban of five years, taking into consideration the seriousness of the offences leading to the expulsion and the foreign national's connection to the country. In this case, the foreign national in question had been found guilty of several serious criminal offences, including violence, narcotics and robbery. However, the fact that he had arrived in Norway at the age of nine and had spent most of his childhood and his whole youth here, and also the fact that he had no links with his country of origin apart from that of nationality, was found to entail that expulsion amounted to a disproportionately severe reaction.

179. In the second judgment (p. 534 et seq.), the Supreme Court held (with two dissenting votes) that it would not be disproportionate to expel a foreign national with a re-entry ban of two years. In this case, the foreign national had grossly and repeatedly contravened the Immigration Act. The foreign national had arrived in Norway as an adult (21 years old) and had only lived here for six years when she was expelled by the Directorate of Immigration. The Court therefore unanimously found that the foreign national's own connection to Norway was too weak to make the expulsion disproportionate. The Court then assessed whether the expulsion would be a disproportionately severe reaction against the foreign national's family, namely her two daughters who were born in Norway and had lived their whole life here (at the time of the judgment they were five and

six years old). The majority of the Court (three judges) found that the expulsion would not constitute any unusual strain on this family compared to other families who were separated by an expulsion order, and that the expulsion therefore did not amount to a disproportionately severe reaction in this case.

## **N. Article 14**

180. With regard to pre-trial detention, reference is made to the information under article 9 above.

### **The right to review by a higher tribunal**

181. According to the Norwegian Criminal Procedure Act, an appeal to the Court of Appeal can only be denied if the Court finds it obvious that the appeal will not succeed. No reason need be given for the decision to deny appeal. It can be challenged before the Appeals Committee of the Supreme Court, but only on grounds of procedural errors.

182. On 17 July 2008, the UN Human Rights Committee decided that the lack of a duty to give reasons for such a decision violated the rights under article 14, paragraph 5, to have a conviction and sentence reviewed by a higher tribunal, because the decision of the Court of Appeal did not disclose the reasons for denying the appeal, cf. communication No. 1542/2007.

183. Following this decision, The Supreme Court decided in a judgement 19 December 2008, published in Norwegian Supreme Court Reports 2008 p. 1764, that section 321, second paragraph in the Criminal Procedure Act does not fully comply with article 14, section 5 of the Covenant. The reasons behind decisions by the Court of Appeal have to be given in order for the appellant to be able to exercise his right to review. In a White Paper of May 2009, The Ministry of Justice and the Police proposed amendments to the Criminal Procedure Act to reflect the duty of the Appeal courts to give reasons for decisions to deny an appeal.

### **Withdrawal of reservations**

184. There have been no legislative amendments that enable the Government to withdraw its reservations to Article 14, paragraphs 5 and 7. In a judgement 12 June 2009 (Supreme Court Reports 2009 p. 750), the Supreme Court in plenary stated that the Norwegian reservations regarding article 14 paragraph 5 does not violate the Norwegian Constitution section 110 c, which states that it is the responsibility of the authorities of the State to respect and ensure human rights.

## **O. Article 15**

185. Section 3, first paragraph of the Penal Code 2005, referred to in Norway's fifth report paragraph 163, is adopted, but has not yet entered into force.

## **P. Article 16**

186. Legal capacity is today merely regulated in the Act on legal guardianship 22nd April 1927 and in the Act on legal incapacity 28th November 1898. In White Paper No 110 (2008–2009) the Government has put forward a bill with a proposal of a new Act on guardianship. This new law will replace the existing acts from 1898 and 1927.

187. The proposed act marks a distinct shift in attitude towards persons with special needs, mental diseases or disabilities. The act stresses that such vulnerable persons are not just “objects” of charity and social protection, but also persons with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as far as possible. The proposed act also identifies areas where adaptations have to be made for these persons to effectively exercise their rights. According to the proposal it will be possible to legally incapacitate a person, but never to a greater extent than absolutely necessary and always tailored to the person’s circumstances. Also, when a person is legally incapacitated in a certain field, it is stressed that the person shall be heard and that the wishes and preferences of the person shall be taken into account as far as possible. The person himself shall also be entitled to effective access to the courts to claim alterations or abolishment of the incapacity-order.

188. The proposed legislation is also meant to fulfil the obligations in the Convention on the Rights of Persons with Disabilities, which entered into force 3rd May 2008. It is in particular the Convention article 12 and 13 that are relevant in this respect.

## **Q. Article 17**

### **Preventive use of covert coercive measures for investigation**

189. In 2008, the Ministry of Justice and the Police appointed a committee for the Evaluation of Investigation Methods (the Methods Evaluation Committee). The committee was asked to carry out a post-legislative evaluation of the “rules governing new investigation methods” that were introduced in the Criminal Procedure Act and the Police Act in 1999, amended in 2005. These rules authorised the police to make use of covert coercive measures when investigating serious crime, i.e. methods of investigation that are authorised by law and used without the person targeted by the method being aware of it. The committee delivered its report 26 June 2009, published in NOU 2009: 15. As one of their findings, the majority of the committee concluded that the power to carry out covert audio surveillance in a private home for preventive purposes pursuant to section 17 d of the Police Act is contrary to the Constitution. Section 102 of the Constitution prohibits the searching of private homes except in criminal cases. Following this report, the Government decided that the police should not make use of covert audio surveillance in private homes for preventive purposes until further notice.

### **Integrity and the Individual – a report from the Commission for Privacy Protection**

190. In January 2009, the Commission for Privacy Protection gave their report NOU 2009: 1 *Integrity and the Individual*. The report contains an overall assessment of how privacy protection of the individual should be preserved during times when social developments entail increasing registration and use of personal information. The Commission has, among other things, provided an account of the challenges with which privacy protection is faced in today’s society, along with an assessment of how privacy protection should be maintained in the face of other, often contradictory, considerations and values. Furthermore, the Commission has evaluated existing measures for privacy protection and presented suggestions for new principles and measures. Among the suggestions made by the Commission for Privacy Protection is a proposal for a separate provision in the Norwegian Constitution concerning privacy protection. The report is being followed up by the Ministry of Government Administration and Reform.

## R. Article 18

### **The relationship between the State and the Church**

191. Reference is made to the Committee's concluding observations, paragraph 15. In 2008 the Government submitted a White Paper (*St.meld. nr. 17 (2007–2008)*) to the Storting concerning the future relationship between the State and the Church of Norway. In accordance with the agreement of 10 April 2008 between all the political parties represented at the time in the Storting, the White Paper recommended comprehensive changes in the constitutional framework concerning the relationship between state and church. The White Paper has been discussed in the Storting, and formal proposals to amend all the seven articles in the Constitution establishing the state-church-system have been submitted in Document No. 12:10 (2007–2008). This includes a proposal to repeal Article 2, second paragraph, second sentence providing that individuals professing the Evangelical-Lutheran religion are bound to bring up their children in the same faith. Also in accordance with said agreement in the Storting, the Government envisages the establishment of faith- and life stance-neutral ceremony rooms for burials and weddings at a municipal level.

192. In accordance with Article 112 of the Constitution the proposals will be voted on during the next parliamentary term, between 2009 and 2013.

### **Teaching of religion and moral education**

193. Reference is made to the Committee's General Comment No. 22 and to Norway's fifth report, paragraph 176, as well as to the Committee's concluding observations paragraph 4.

194. The former compulsory school subject entitled "Christian Knowledge and General Religious and Ethical Education" (CREE) has over the last years been subject to criticism from a human rights perspective by groups of parents who have made complaints both to the Human Rights Committee and to ECtHR. To follow up the view adopted by the Human Rights Committee on 3 November 2004, in 2005 the Norwegian Ministry of Education made some amendments to the sections of the Education Act relating to this subject, including changes in the exemption rules as well as a new curriculum for this subject.

195. In June 2007 ECtHR ruled against the Government, stating that the Christian component of the subject constitutes a violation of the European Convention of Human Rights, specifically Article 2 of Protocol No. 1 to the convention.

196. Therefore, the Government has taken the following steps to eliminate any doubt that the legal and curricular provisions in this field are in agreement with international law: In 2008 Section 2–4 of the Education Act was completely redrafted, and the name of the subject in question was changed to "Religion, Philosophies of Life and Ethics". The new wording of section 2–4 underlines the fact that the subject must be taught in an objective, critical and pluralistic manner to ensure that different religions and philosophies of life are dealt with on an equal footing. A new exemption scheme was also adopted as part of the amendments to the Education Act. On 9 December 2008 the Storting also adopted a new purpose clause in the Education Act; cf. Norway's comments regarding Article 2 of the Covenant. The new purpose clause can no longer be considered to give undue preference to the Christian faith, as compared to other religions and philosophies of life.

## S. Article 19

### The balance between freedom of expression and other human rights

197. Since Norway's previous report, there has been considerable debate concerning the balance between freedom of expression and other human rights. Several cases before the Norwegian Supreme Court and before the ECtHR illustrate how such conflicts cannot be solved on a general basis, but must be examined in light of the concrete facts in the relevant case. Three aspects of the ongoing debate are mentioned here.

#### *Freedom of expression vs. the protection of private life*

198. One debate is the balance between the freedom of expression and the protection of private life (particularly the freedom of the press to publish pictures and other material of a defamatory or personally sensitive nature). Traditionally, Norwegian law has emphasised the protection of private life more than the ECtHR, leading to several convictions for violation of ECHR article 10 (freedom of expression).

199. In *A vs. Norway* of 9 April 2009 (application no. 28070/06), the ECtHR for the first time came to the opposite conclusion, holding Norway responsible for giving too much preference to the right to freedom of expression (at the expense of the right to respect for private and family life).

200. A national television station, TV2, and the main local newspaper, *Fædrelandsvennen*, gave the impression that the applicant (A) was the most probable perpetrator of the murders of two girls. The articles and report contained sufficient elements to identify A. A brought defamation proceedings against *Fædrelandsvennen* and TV2. As regards the TV2 report, the domestic courts delivered judgment in his favour. In respect of the *Fædrelandsvennen* articles, however, the Supreme Court referred to the interests of the general public and concluded that, on balance, the newspaper had been right to publish the articles. However, in its judgment, the ECtHR concluded that the publications in question had gravely damaged A's reputation and found that Norway had violated Article 8 (right to respect for private and family life) of ECHR.

201. Taking into consideration that in earlier cases, the ECtHR has found violation on the opposite grounds, the case *A vs. Norway* does not necessarily indicate any shortcomings in the Norwegian legal regime. The fact that TV2 was sentenced in the domestic courts for its reporting in the same case, lends weight to the same conclusion. In Norway's view, the case rather illustrates the necessity of taking great concern in striking the right balance between two rights that are, at times, in conflict.

202. In this regard, it is also worth mentioning that the legislation leading to earlier ECtHR convictions recently has been revised as part of the work with the Penal Code 2005 (not yet in force). Both the criminal liability for defamation as well as the right to a judgment declaring a statement to be null and void have been dropped. Simultaneously, a new provision on compensation and damages for non-economic loss as a legal sanction for defamation has been implemented in the Act on Torts.

### Hate speech and the freedom of expression

203. Another debate concerns the right to express views that may affront other people's religious convictions and feelings. In 2009 the Storting decided that a provision that attaches criminal liability to *blasphemy* will *not* be included in the Penal Code 2005, on the grounds that a democratic society such as Norway should be robust enough to tolerate such views.

204. Simultaneously, the decision was made to strengthen the protection of individuals against being insulted or exposed to *hatred because of religious beliefs*; cf. the new Penal Code 2005 section 185. The same provision gives protection against *racial abuse of minorities*, cf. also section 135 a of the Penal Code 1902 and paragraph 186–188 of Norway’s fifth periodic report. To improve the protection for minorities against racial abuse, the scope of the provision was adjusted in 2005 (entered into force 1 January 2006). Likewise, the provision was altered to cover grossly negligent violations as well. The wording that determines how mortifying the expression must be in order to be punishable was not altered. The provision must still be read in conjunction with the freedom of expression. The section now states:

*“Any person who wilfully or through gross negligence publicly utters a discriminatory or hateful expression shall be liable to fines or imprisonment for a term not exceeding three years. An expression that is uttered in such a way that it is likely to reach a large number of persons shall be deemed equivalent to a publicly uttered expression, cf. section 7, No. 2. The use of symbols shall also be deemed to be an expression. Any person who aids and abets such an offence shall be liable to the same penalty.*

*A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his or her*

- (a) Skin colour or national or ethnic origin;*
- (b) Religion or life stance; or*
- (c) Homosexuality, lifestyle or orientation.”*

#### *Terrorism and the freedom of expression*

205. A third, recent debate in Norway concerns the freedom of expression and the suppression of terrorism. The effort to suppress terrorism requires the states to define a borderline between the freedom of expression and criminal liability for public provocations that may incite terrorist acts.

206. In December 2008, a new provision of the Penal Code 1902 stating that public incitement to commit a terrorist offence, recruitment, and training for terrorism, is prohibited, entered into force (section 147 c). A person who violates this provision is liable to imprisonment for a term not exceeding 6 years. This provision implements the Council of Europe Convention on the Prevention of Terrorism articles 5–7. When preparing the new provision, the Norwegian Ministry of Justice considered that a criminalization of indirect provocations in general would impinge on the freedom of expression. Thus section 147 c is worded in such a way that it only applies to incitements to the carrying out of acts of terror or acts related to terror (direct provocations). To what extent indirect provocations violate the provision, must be decided on a case-to-case basis, emphasizing not only the Convention article 5 but the freedom of speech as well.

#### **Political advertisements in broadcasting**

207. Act No. 127 of 4 December 1992 on Broadcasting section 3–1(3) bans paid political and religious advertising on television. On 11 December 2008 the ECtHR found that the Norwegian Media Authorities’ sanctions against a minor political party that ran three ads in the run-up to the 2003 elections constituted a violation of the freedom of expression as stated in ECHR article 10.

208. In a White Paper to the Storting (*St.meld. nr. 18 (2008–2009)*), the Government addressed ECtHR’s ruling by reinforcing the national public broadcaster NRK’s obligation

to provide a broad and balanced coverage of elections. According to the new statutes of NRK, the broadcaster must normally include all parties of a certain size in its edited election coverage. The Government has also taken measures to ensure that smaller political parties will be able to use Frikanalen as a channel to reach the electorate. Frikanalen is a television channel open for all NGOs. The Government's view is that these actions address the core of the problems expressed in the ruling in a better way than an abolition of the ban. The Committee of Ministers in the Council of Europe will be reviewing Norway's measures.

#### **Media ownership and editorial freedom**

209. Reference is made to Norway's fifth report paragraph 201–203. In 2004 the Media Ownership Act was revised. As a result of the revision the scope of the Act was extended to apply to electronic media and national thresholds for ownership concentration in several media markets (Multimedia Ownership) were introduced. The national threshold for ownership concentration within one media market was raised from 33.3 to 40 percent and all ownership restrictions at a local level were abolished. At the same time regional restrictions for ownership concentration in the daily newspaper market were introduced. After yet another revision in 2006 the national threshold for ownership concentration within one media market was reduced to 1/3.

210. *Act No. 41 of 13 June 2008 relating to Editorial Freedom in the Media* entered into force on 1 January 2009. The purpose of the Act is to ensure editorial freedom in the media, in particular from interventions by media owners or their representatives. Pursuant to the Act any mass medium must appoint an editor. This editor shall – within the framework of the fundamental views and aims of the medium – be free to lead the editorial department and editorial work and to shape the opinions of the medium, even if these opinions are not shared by the owner/publisher.

### **T. Article 20**

211. Finding a suitable delimitation of the *actus reus* of a prohibition against propaganda for war, poses serious difficulties. Furthermore, if due consideration taken is to the right to freedom of expression secured in the covenant, there does not seem to be, from Norway's point of view, any urgent need to prohibit by law any propaganda for war. There are no current plans to withdraw Norway's reservation to article 20 paragraph 1.

212. With regard to legislation on racial and religious hatred, see the comments under article 19.

### **U. Article 21**

213. There is nothing new to report under this article.

### **V. Article 22**

#### **Freedom of association**

214. Reference is made to Norway's fifth report. Since that report a new Supreme Court ruling relating to freedom of association has been given. In a Supreme Court judgment of 24 November 2008 the question of whether employees who benefited from a collective agreement, but were not themselves members of the union which was party to the agreement, could be forced to pay a fee which shall compensating a proportionate part of

the union's expenses concerning negotiating, controlling and maintaining the collective agreement. The Supreme Court found that the monitoring fee, which the Norwegian Seamen's Union imposed on non-members covered by their collective agreement, was unlawful and unwarranted.

215. The Court first laid down that freedom of association is a fundamental human right protected under international law (the ECHR article 11, the Revised European Charter article 5 and the International Covenant on Civil and Political Rights article 22) as well as a part of Norwegian law. The Court also underlined that both the positive and the negative aspect of the principle of freedom of association are covered.

216. As to the question of the lawfulness of the wage monitoring fee in question, the Court stated that, per se, it is neither contrary to the relevant international instruments nor to Norwegian law that workers who are not organized in the union are obliged to pay a fee to cover the union's expenses in monitoring that they have the pay and other terms of work they are entitled to, provided, however, that some conditions are met. Firstly, the fee must only be used to control these workers' wages and working conditions, and secondly, it must be possible to supervise and check that the fee is not used for other purposes, as that would mean that the workers were forced to support a union they do not want to be a member of. Thirdly, the monitoring fee imposed upon unorganized workers must not be disproportionate. Applying these principles the court found that the monitoring fee was unlawful and unwarranted, as the fee was too high (equal to ordinary membership fee) as well as disproportionate, and the union was also unable to show that the fee was used solely for legitimate purposes, i.e. the monitoring tasks.

## W. Article 23

### Comprehensive Marriage Act

217. The marriage act was amended 17 June 2008, in force from 1 January 2009. The amendment gives *lesbians and gay men the right to enter marriage on the same basis as heterosexuals*.

218. Before a marriage is entered, there will be a check of whether marriage requirements are fulfilled. This check will be conducted by the national population registry authorities (tax offices). The Church of Norway and other belief communities have the right — though not the obligation — to conduct same-sex marriages.

219. Norway's Registered Partnership Act was repealed 1 January 2009. The repeal means that it is no longer possible to enter new partnerships in Norway or at Norwegian foreign stations. The amendment to the Marriage Act includes provisions for converting partnerships into marriages. A partnership that cannot be converted will remain in force. Partnerships will in the main have the same legal effects as marriage. Partnerships entered into abroad, under a foreign authority, will still be recognized in accordance with Norwegian law.

220. An amendment to the Biotechnology Act provides a right for *cohabiting and married lesbians to be considered for assisted reproductive technology* on the same basis as heterosexual couples. The biological mother's cohabitant/spouse will be granted co-mother status according to the Children Act if she has consented to the fertilization, the fertilization has taken place at an approved health-care facility in Norway or abroad and the sperm donor's identity is known.

### **The right to family reunification and family establishment**

221. In September 2008 the Government introduced 13 measures aimed at decreasing the number of asylum seekers without a need for protection as a means to handle the sudden spike in asylum applications. The number of asylum seekers arriving in Norway increased by 121 % from 2007 to 2008.

222. One of the measures is that persons who have been granted residency on humanitarian grounds must have four years of education or work experience in Norway to be granted family reunification with existing or new family members. The same conditions apply for those who have been granted refugee status, but only related to family establishment. The rule as regards family establishment is planned to enter into force 1 January 2010 in the Immigration Act 2008. The condition in relation to family reunification has not been adopted as of yet.

223. In general, it is a condition for family reunification that the family member living in Norway (reference person) must meet an income requirement (subsistence requirement). The requirement is income equivalent to civil service pay grade 8 (NOK 217 600 as of 1st May 2009). The subsistence requirement is satisfied when a person can maintain himself/herself and the applicant on his/her income alone or with the income of the applicant, or when the applicant is self-sufficient. The reference person must meet this requirement alone when the applicant and/or the reference person is under the age of 23.

224. The Ministry has made the following amendments in the new Immigration Regulations, which are due to come into force 1 January 2010, with a view to tightening up the subsistence requirement:

(a) A condition is introduced to the effect that only the anticipated income of the *reference person* may be included in the calculation when assessing whether the subsistence requirement is satisfied. Today, the income of the spouse is also included in the calculation;

(b) The reference person must have had an income that was sufficient to satisfy the subsistence requirement, also in the year *before* the permit is granted. This must be documented by a certificate of tax paid on declared earnings;

(c) It has been made a condition that the reference person did not receive social assistance in the year before the permit is granted;

(d) The current system, whereby an exemption is generally made from the subsistence requirement for the spouse or cohabitant of a Norwegian national over 23 years of age, is abolished;

225. Exemptions are made for certain groups; *inter alia* refugees and persons who receive long-term national insurance benefits.

226. One of the main reasons for the tightening of the requirement is to combat forced marriages. Stricter requirements as regards the income of the reference person will encourage young people to establish their own foundation in life through education and employment, thereby becoming less dependent on their family in financial and practical terms. They will thereby also be better prepared to stand up for their own rights and wishes in connection with marriage and resist possible pressure from their family.

### **Action plan against forced marriage**

227. Reference is made to Norway's fifth report, paragraphs 212–214.

228. On 29 June 2007, the Government presented its *third action plan against forced marriage*. The action plan covers the period 2008–2011 and contains 40 continued and new

measures to combat forced marriage. The plan comprises a broad range of initiatives aimed at preventing forced marriage and providing help, support and protection for victims of such abuse. The authorities have the primary responsibility for combating forced marriage, and an overarching goal of the new action plan is to strengthen public sector support for efforts in this field.

229. The action plan includes measures in the following areas: effective enforcement of legislation, prevention, increased expertise and cooperation, effective and readily accessible help, strengthening of international efforts and collaboration, and strengthening of knowledge and research. A special campaign page has been established in connection with the action plan. An English translation of the plan can be found on the Internet page ([www.tvangsekteskap.no](http://www.tvangsekteskap.no)).

230. As a result of the *second Action Plan* against forced marriage, several *legislative amendments* have been passed.

231. From 1 June 2007, the *Marriage act* states that when at least one of the parties is a Norwegian national or permanent resident of Norway, a marriage contracted into outside Norway will not be valid in Norway if:

- (a) One of the parties to the marriage is under the age of 18 when the marriage takes place;
- (b) The marriage is entered into without both parties being physically present during the marriage ceremony (marriage by proxy or telephone marriage);
- (c) One of the parties is already married.

232. After amendments in 2003, *penal provisions* have been incorporated into Norwegian legislation for the purpose of preventing forced marriage. Section 222, second paragraph, of the Penal Code 1902 imposes a clear prohibition against forcing a person to enter into marriage. The penalty is imprisonment for a period of up to six years. Section 220 was amended in 2003 to safeguard children. The provision imposes a penalty (imprisonment for four years) on any person who enters into marriage with a child under the age of 16, or who aids and abets such a marriage.

233. In 2006, for the first time, the Norwegian Supreme Court considered the issue of sentencing in a *criminal case* pursuant to the new provision in section 222, second paragraph. A man and one of his sons were convicted of having threatened his oldest daughter with violence in an attempt to force her to marry at the age of 17. The District Court sentenced the two men to imprisonment for ten and eight months, respectively. The case was appealed to the Court of Appeal, which increased the penalties to one year and nine months and one year and five months. The case was further appealed to the Supreme Court. The Supreme Court emphasised that forced marriage is a gross violation of an individual's freedom and independence as well as being, almost without exception, also a gross violation of a person's right to decide over his or her own body. The father was sentenced to a prison term of two years and six months and the son to a term of two years.

## **X. Article 24**

234. The action plans and measures against violence in close relationships, trafficking in women and children, racism, forced marriages and genital mutilation mentioned under other articles all include measures designed to protect children.

235. Concerning measures to protect children and the family in general, reference can be made to Norway's report in 2008 to the UN Committee on the Rights of the child, see appendix 8.

### **Amendments to the Children Act**

236. In April 2006, *amendments to the Children Act* entered into force to contribute to better protection of the child in child custody cases where violence and abuse are suspected, see article 7 regarding measures to combat violence in close relationships.

237. In January 2007, the Government appointed a governmental Committee to review the parental responsibility, permanent residence and right of access to parent provisions of the Children Act. The primary objective of the review is to assess changes to the Children Act from a perspective where both parents are regarded to be of equal importance for the child and where one tries to support the development of a society where parents' time, responsibility, care and co-determination over essential aspects of the child's life remain central.

238. In June 2009 the Government presented a White Paper to the Storting (Ot.Prp. 104 No. (2008–2009) that will review the provisions of the Children Act regarding parental responsibility, permanent residence and right of access to parents. The White Paper also suggests a specification that all kinds of violence against children are prohibited, even if it happens as a part of bringing up a child.

### **Protection of children in their use of cell phones and the Internet**

239. Since 2001, the Ministry of Children and Equality has had the responsibility for the project "Plan of Action – Children, Young People and the Internet". The plan of action has as its main goal to contribute to giving children, young people and families relevant information so that they may utilise the Internet and cell phones in a safe manner. The plan of action is an integrated part of the Norwegian project financed by EEAs Safer Internet Programme. The measure has had great attention, nationally and internationally, and an extremely good and useful internet site to help children, young people, parents and the educational system make safe and sensible use of the Internet has been developed. The projects cooperate with the Norwegian National Criminal Investigation Service (KRIPOS).

240. In September 2008, in order to increase efforts in preventing offences against children on the Internet, KRIPOS established an online police station, the so-called "Red Button"-campaign. People on line can report directly to the police by pressing a button — "the Red Button" — available on several web pages. The "Red button" will report directly to the police about sexual exploitation of children, trafficking of human beings and racist expressions on the Internet. The aim of this campaign is that the red button will be available on as many web pages as possible, especially web pages used by children. The Government also cooperates with Internet service providers to block web sites, which display child abuse images. If one tries to get into a site that is on the list, one will be met with a message from the police, informing that the site contains illegal images.

241. Also, the Penal Code 1902 section 201 a now states that a person who makes arrangements to meet children under the age of 16 with the intention of abusing them ("grooming"), shall be liable to fines or imprisonment for a term not exceeding 1 year. This provision was adopted 13 April 2007 and entered into force the same day.

### **Transfer of responsibility of care for unaccompanied asylum seekers under the age of 18**

242. Responsibility for the welfare for unaccompanied minors has traditionally been placed under the migration authorities. In its declaration of assent in 2005 the Government promised to transfer this responsibility to the child welfare authorities. As of December 2007, the Child Welfare Service has had the responsibility of care for unaccompanied asylum seekers under the age of 15. This means that the children are under the care of the child welfare service from arrival, during the processing of the asylum application, and

until the child has been given a place to live, or until the child is due to leave the country. Care centres for unaccompanied asylum seekers under the age of 15 have been established, and are run by the State Child Welfare (Bufetat).

243. In June 2009, the Government decided that the transfer of responsibility for the care of unaccompanied asylum seekers between the ages of 15 and 18 to the Child Welfare Service is to be postponed until after 2010. Since the autumn of 2007 Norway has experienced a steep rise in the number of unaccompanied minors arriving in the country (from 403 unaccompanied minors in 2007 to 1,647 by 30 September 2009). The high numbers of unaccompanied minors have caused logistical difficulties in carrying out the reform.

244. Consequently the responsibility for the care of unaccompanied minors over 15 years is still with the migration authorities. This group is accommodated in reception centres particularly adjusted for this group. Their living conditions have been improved in the last two years, both with regard to care and more available leisure activities.

## Y. Article 25

### Monitoring of elections

245. Norway's obligations with respect to election observation were added to our Election Law by Act of 8 May 2009. It came into force for the first time at the Storting Election in 2009. The purpose of the section is dual: Emphasize the international responsibilities of Norway when it comes to election observations, and emphasize the obligation of the municipalities to accept election observers.

246. New Section 15–10 of the Election Act reads:

*“(1) The Ministry may accredit national and international election observers from institutions or organisations to monitor the conduct of elections to the Storting or to municipal and county councils.*

*“(2) The municipalities have an obligation to accept accredited election observers and pave the way for monitoring of elections.”*

## Z. Article 26

### Protection against discrimination – new initiatives

247. Reference is made to the Core Document paragraphs 183 to 236 for an in-depth description of the legal framework regarding protection against discrimination, and to paragraphs 237 et seq. regarding the organization of the Government's efforts to promote equal rights and prevent discrimination.

248. In June 2009 the *Commission to propose a comprehensive anti-discrimination legislation* submitted its proposal for a compiled and more comprehensive anti-discrimination legislation. The Commission also proposed an anti-discrimination provision in the Constitution and considered the question of ratification and implementation of The Human Rights Convention Protocol no. 12 on discrimination. For further details, see the Core Document paragraphs 230 to 234.

249. The *Gender Equality Act* came into force in 1979 and has subsequently been amended several times, most recently in 2005. Reference is made to Norway's fifth report; paragraph 27 et seq. Gender equality is also touched upon under article 3 above. For a more elaborate elucidation of measures to prevent discrimination against women, reference can

further be made to Norway's seventh report to the CEDAW (enclosed), cf. particularly section 1.1.2 for a description of the amendments in 2005. The Government submitted a bill to the Storting in October 2009 proposing to *clarify the special exception for religious communities*. Such discrimination must be founded in the general provision for justified unequal treatment. The conditions are to be that the unequal treatment has a just cause, that it is necessary and that it does not disproportionately negatively affect the person or persons subject to the unequal treatment.

250. A new *Anti-Discrimination and Accessibility Act*, giving protection against discrimination on the ground of disability, entered into force on 1 January 2009, cf. the Core Document paragraphs 207 to 214. An English translation of the Act is enclosed (appendix 2).

251. In May 2009 the Government presented its *Action plan for universal design and increased accessibility 2009–2013*, see the Core Document paragraphs 244 to 245.

252. Norway signed the *UN Convention on the Rights of Persons with Disabilities* on 30 March 2006. Ratification of the convention will require amendments in legislation, and the Government is now assessing these issues. The Government is planning to present its proposal for ratification to the Storting in 2010. Norway has not signed the optional protocol. The question of signature/ratification is under consideration.

253. The fight against *ethnic discrimination*, and measures to include immigrants in the Norwegian society, are covered in depth in Norway's 19th/20th report under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which will be submitted autumn 2009. See particularly paragraph 63 on Norway's new plan of action to promote equality and prevent ethnic discrimination (2009–2012). With regard to immigrants and education, see paragraphs 173 to 198. With regard to measures to include immigrants in the labour market, reference can be made to paragraphs 146 to 159 in the above-mentioned report.

#### **The Committee's concluding observations on reports of discriminatory police stops**

254. In paragraph 17 in its concluding observations on Norway's fifth periodic report, the Committee notes with concern reports of a high incidence of discriminatory police stops of persons based on their apparent ethnic origin.

255. After a widespread public and parliamentary debate in 2004 on how to address allegations of "ethnically biased policing", it was decided to introduce visible registration numbers on police uniforms from 1 January 2005. The intention of this arrangement was to make it easier to file complaints against the police in cases where a person thought he/she had been wrongfully controlled. It was considered that in cases where members of minority communities experienced being stopped and searched based on (alleged or real) "racial/ethnic profiling" on the part of the police, such an arrangement might be helpful.

256. As part of the previous "National Action Plan against Racism and Discrimination" (2002–2006), cf. Norway's fifth report paragraph 232 et seq, the Government funded a three-year research project on the relationship between the police and ethnic minorities (Ragnhild Aslaug Sollund (2007): *Tatt for en annen* ("Mistaken for someone else"). The aim of the project was to reveal possible discriminatory practices in the police. The results of the research project did not corroborate the allegations that the police would stop and search persons solely based on their ethnicity. The researcher concluded that the practice of the police is understandable, sometimes unavoidable, but that the consequences are problematic. The police and minority youth often meet with mutual scepticism and stereotypes, which can lead to a self-fulfilling prophecy, and a circle of mutual distrust. A number of recommendations were put forward: the police must always justify or explain

why they stop members of the public, all stops should be registered, and the police should reflect on the manner in which they approach the public.

257. As part of the new National Action Plan towards Equality and Against Ethnic Discrimination (2009–2012), a number of new and ongoing measures combating ethnic discrimination have been included:

258. The Ministry of Justice and the Police, the Police Directorate as well as local police districts, have regular dialogue meetings with minority and immigrant organisations.

259. In 2008, the Police Directorate started the project “Security and Confidence – policing in a multi-ethnic environment”, which is currently being implemented in four police districts, as well as one special agency (“the Police Immigration Office”). The purpose of this project and other training programs is to achieve professional behaviour on the part of police officers and a relationship built on trust between minority/immigrant communities and the police. The measures will be evaluated and the results will lay the foundation for further training in this area.

260. One main measure towards combating discrimination is the Police Directorate’s plan to increase diversity (“Mangfoldsplan” 2008–2013). The plan includes inter alia measures to increase the recruitment of ethnic minorities to the police and measures to include ethnic minorities as a topic in training.

## **AA. Article 27**

### **Sami policy**

261. Reference is made to paragraph 238 in the Norway’s fifth periodic report.

262. The Norwegian Sami policy was extensively accounted for in the autumn 2008 in Norway’s Report on ILO Convention No 169 concerning indigenous and tribal peoples (the ILO report), and is also widely covered in Norway’s 19th/20th report under the International Convention on the Elimination of All Forms of Racial Discrimination (the *CERD report*). Both reports are enclosed (appendices 6 and 7).

### **The Consultation Agreement between the State Authorities and Sámediggi (the Sami Parliament)**

263. The Government and the Sami Parliament (hereafter Sámediggi) have agreed on “*Procedures for Consultations between the State Authorities and Sámediggi* of 11 May 2005” (appendix 11); cf. the Committee’s concluding observations paragraph 5. The scope and content of the agreement is elaborated on in the ILO report, see particularly section 1.2.

264. The procedures have led to increased awareness of the duty to consult throughout the state apparatus. From January 2008 through May 2009, formalized consultations have taken place in 40 different cases, resulting in an agreement in all but a few. Two examples of cases in which there have been consultations are the proposals for a new Nature Management Act (appendix 1) and a new Mining Act.

265. In order to fulfil the obligations under article 27 several provisions in *the Mining Act* were adopted to secure Sami interests in form of procedure and executive work, including provisions that require that significant emphasis be placed on affected Sami interests, and provisions that require participation from Sámediggi and other Sami organizations. These provisions have already been in force for three years, due to amendments in the existing Mining Act when the Finnmark Act was adopted. A new Mining Act was adopted by the Storting in the spring of 2009, and will enter into force 1 January 2010. The provisions in

the existing Mining Act to secure Sami interests in form of procedure and executive work are continued in the new act.

266. Consultations with The Sámediggi and the Sami Reindeer Herders Association about the new Mining Act were conducted in accordance with The Procedures for Consultations between the State Authorities and Sámediggi of 11 May 2005. Agreement was achieved on several provisions, but agreement concerning provisions that affect Sami rights and interests outside the county of Finnmark and profit sharing when mines are located in traditional Sami lands and affect the Sami community, was not achieved.

267. Sámediggi called for provisions in situations where Sami interests were affected outside the county of Finnmark. In the Government's view, the introduction of provisions such as these must await the follow up of the report from the Sami Rights Committee II. Further, Sámediggi requested that the fee for mining operations in Finnmark be transferred to Sámediggi, not the landowner, the Finnmark Estate, as in the existing Mining Act. The Finnmark Estate is the landowning institution in the county of Finnmark. It owns approx. 96 % of the land and was established to maintain and balance the rights and interests of both the Sami people and the other inhabitants of Finnmark.

268. The process of following up the report from the Sami Rights Committee II will establish a base for considering future legal amendments concerning Sami rights outside the county of Finnmark, including possible amendments to the Mining Act. The report will be followed up in consultation with Sámediggi.

269. There are special provisions for Finnmark in the new Mining Act. Concerning preliminary examination of minerals in Finnmark a person or company wishing to conduct preliminary examination of minerals must, no later than two weeks prior to the commencement of such preliminary examination, provide notification to Sámediggi, the landowner and the appropriate area and district boards for reindeer husbandry and, if possible, the affected reindeer siida.

270. Licensed prospecting and licensed extraction in the county of Finnmark may be rejected if Sami interests weigh against granting the special application to enact prospecting or extraction. When considering such applications, significant emphasis is to be placed on due consideration of Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. If the application is granted, conditions may be stipulated in order to safeguard such considerations. If the Ministry grants the application an appeal to the King in Council from Sámediggi or from the Finnmark Estate as landowner will have suspensive effect.

271. For mining operations in Finnmark, the authorities may give regulations stipulating a larger fee to the Finnmark Estate. Sámediggi appoint half of the Finnmark Estate's board members. This ensures a larger fee, which benefits both the Sami interests and the other inhabitants of Finnmark County.

272. The Government proposed the *Nature Management Act* in April 2009. The Act was passed by the Storting 16 June 2009 and entered into force 1 July 2009 except Chapter IV on Alien species. The Act has implications on Sami rights and interests in Norway. Therefore consultations between the Government and the Sámediggi on several aspects of the Act relating to Sami interests were an integral part of the legislative process. The cooperation between the parties was on a long term basis and extensive. Matters discussed include the purpose of the Act and collective and individual rights in light of public international law. The consultations led to changes in the Act; cf. in particular section 1 and 14 of the act.

### **The Finnmark Act**

273. The act relating to legal relations and management of land and natural resources in the county of Finnmark (*Finnmark Act*) was adopted by the Storting in the spring of 2005. An English translation of the act is enclosed (appendix 4). Reference is made to Norway's fifth periodic report paragraph 251 et seq., where the process prior to the adoption of the act, and parts of its content (including the regime of the Finnmark Estate) have already been elucidated. Some significant amendments were, however, made to the Finnmark Act after 2005. In addition to the Finnmark Estate, the Storting decided to establish a special Finnmark Commission, which is mandated to identify and recognise existing rights to land and natural resources in Finnmark, cf. section 29 et seq. If there is still disagreement concerning rights in areas investigated by the Finnmark Commission, the parties may bring the case before the Uncultivated Land Tribunal for Finnmark. This is a special court that passes legally binding judgments. These amendments are described in more detail in the ILO report section 2.1 and the CERD report paragraphs 18 and 19.

### **The Coastal Fisheries Committee and the Sami Rights Committee II**

274. The Finnmark Act contains no provisions concerning *fisheries in the sea outside Finnmark*. An official report on the rights to these fisheries was completed in February 2008 (NOU 2008: 5). The public hearing ended in December 2008, and the report is currently being processed within the Norwegian Ministry of Fisheries and Coastal Affairs. For further information, reference is made to the ILO-report section 2.7.

275. When it comes to *Sami areas south of Finnmark* and the questions relating to the Sami population's right to use of land and water, the *Sami Rights Committee* delivered its official report in December 2007 (NOU 2007: 13 and NOU 2007: 14). The Committee concludes, *inter alia*, with a proposal for the creation of an Identification of Rights Commission and an uncultivated land tribunal, modelled on the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark. The report is currently being processed within the Norwegian Ministry of Justice and the Police. Reference is made to the ILO report section 2.2.

### **Sámediggi (the Sami Parliament)**

276. *Sámediggi* was established in 1989 in order to be a representative body for the Sami population in Norway.

#### *Elections to Sámediggi*

277. Extensive work has been carried out in order to meet the need for greater proportionality of representation in Sámediggi. The voting provisions in the Sami Act were therefore revised by the Storting in June 2008. Agreement was reached between the Government and Sámediggi before the amendments were submitted to the Storting, and the amendments were based on recommendations from an expert commission appointed by Sámediggi. The amendments included a reduction in the number of constituencies from thirteen to seven and changes in the distributions of seats. The election for the Sámediggi in September 2009 was the first time the new set of rules has been applied.

278. Prior to the 2009 Sámediggi elections almost 14,000 individuals had registered in the electoral register for Sámediggi. This is an increase of more than 1300 compared to the registrations for the elections in 2005.

#### *The formal status and authority of Sámediggi and procedures for consultations*

279. In 2006 the Government and Sámediggi appointed a joint working group on the formal status and authority of Sámediggi and Procedures for consultations on issues

relating to budget questions. The working group's mandate was to suggest procedures for consultations between the Government and Sámediggi on issues pertaining to the annual budgets, and to assess the formal status and authority of Sámediggi. The working group presented its report in 2007.

280. Following this, the Government in 2008 presented a draft on "Procedures for consultations on issues relating to budget questions" to Sámediggi. Sámediggi, however, has asked for more time in order to assess the draft.

281. The Government has started preparatory work on drafting a proposal for legislative amendments necessary for the possible establishment of Sámediggi as a separate legal entity. The process will be conducted in close consultation with Sámediggi, in accordance with the Procedures for Consultation. However, no final conclusion has yet been reached on the issue.

### **Sami languages**

#### *Plan of Action to strengthen Sami languages*

282. One of the aims of White Paper No. 28 (2007–2008) Sami Policy was to strengthen Sami languages. A plan of action was, therefore, presented in May 2009, and is intended to cover the period 2009–2014. The Ministry of Labour and Social Inclusion was responsible for drawing up the plan of action. The work has been carried out in cooperation with the ministries in charge of the various affected fields and in consultation with Sámediggi.

283. The object of the plan is to lay the foundation for broad-based, long-term efforts to reinforce Sami languages. The main goals are to strengthen tuition in and of North, South and Lule Sami, increase the use of Sami languages in all areas of society, and highlight these languages in the public sphere.

284. The Government has taken several steps to develop and promote use of Sami languages in everyday life. Section 1–5 of the Sami Act states for instance that the Norwegian and Sami languages shall be accorded equal status. Some of the sections in the Sami Act are limited to a special administrative district, and give concrete linguistic rights to the Sami people in the area concerned. These rights concern the public sector, and imply that the Sami people have the right to use their language in all contact with public sectors, such as the judicial system, the health system, etc.

#### *The administrative district for Sami languages*

285. The administrative district for Sami languages and the provisions in the Sami Act constitute a set of minimum rules. However, the public sector is encouraged to make further improvements. For instance, public officials are encouraged to reply in Sami to incoming letters written in Sami.

286. The administrative district for Sami languages was established by the Sami Act, and is being augmented by Royal Decree. Today the administrative district consists of the municipalities of Karasjok, Kautokeino, Nesseby, Porsanger and Tana in Finnmark County, Kåfjord and Lavangen in Troms County, Tysfjord in Nordland County, and Snåsa in Nord-Trøndelag County. Tysfjord was included in 2006 and Snåsa in 2008. Lavangen Municipality in Troms County is included as of October 2009.

#### *Use of Sami languages in the public sphere*

287. The Government's official webpage contains public information translated into the North Sami language, for instance the Sami Act and various other acts, White Papers and

press releases on Sami matters. Some documents are also published in South Sami and/or Lule Sami.

288. In order to ease the use of all characters in the Sami alphabet, including those not used in the majority language, the Ministry of Labour and Social Inclusion has developed a project website called [www.samit.no](http://www.samit.no). The purpose of the website is to establish a tool where the public sector and others can seek assistance and support in writing Sami.

289. Electronic proofing tools for use in electronic word-processing (spell checkers and automatic hyphenators) for North Sámi and Lule Sámi were released in 2007, while similar tools for South Sámi are being developed. The project has been jointly funded by the Government and Sámediggi. The proofing tools are downloadable free of charge to all users.

#### **The International Centre for Reindeer Husbandry (ICR)**

290. The International Centre for Reindeer Husbandry (ICR) was established by the Government in 2005 in Kautokeino, as a contribution to the unique international cooperation of circumpolar reindeer herding peoples. ICR is an independent professional unit, with its own board and budget. Its activity is funded by the Government through annual grants.

291. ICR is to be a knowledge base for providing and exchanging information and documentation between different reindeer peoples, national authorities and research and academic communities at both national and international levels. The Centre will thus contribute to creating lasting value for, improving information on, and enhancing the understanding of world reindeer husbandry and reindeer peoples, their traditional knowledge and their future development.

#### **Other Sami policy questions**

292. With regard to other Sami policy questions, reference is made to Norway's fifth periodic report, the ILO report (appendix 7) and the CERD report (appendix 6):

- (a) Sami statistics, CERD report paragraph 6 and the Core Document paragraph 260;
- (b) The White Paper No. 28 (2007–2008) on Sami Policy, ILO report section 1.1;
- (c) Traditional Knowledge, ILO report section 4;
- (d) Education, Norway's fifth report paragraphs 240 and 241, ILO report section 6 and CERD report paragraphs 183 to 185, 208 and 213 to 216;
- (e) Norwegian Labour and Welfare Service, ILO report section 3;
- (f) Draft Nordic Sami Convention, ILO report section 7 and CERD report paragraphs 20 to 22;
- (g) UN Declaration of Indigenous peoples, ILO report section 7;
- (h) Sami Pathfinders project, CERD report paragraph 276;
- (i) East Sami issues, CERD report paragraphs 16 and 17;
- (j) Gáldu – Resource Centre for the Rights of Indigenous People, Norway's fifth periodic report paragraph 242.

### Recent immigrant groups

293. Recent immigrant groups run a great variety of *voluntary organisations*. These are mainly local organisations, although regional and national ones exist. Immigrant organisations, including religious communities, receive a substantial part of their funding from various government sources.

294. Since September 1997, the Norwegian Broadcasting Corporation (NRK) has broadcast a *multicultural television series* called “Migrapolis”. “Migrapolis” is produced by a multiethnic staff. In 2005 it acquired a permanent broadcasting slot on Wednesdays at 2230 hrs on NRK1, and since then it has enjoyed a stable audience of around 320,000 viewers. Radio Migrapolis has become established on NRK P2 on Sundays, presenting a broad range of issues. These radio broadcasts and the [nrk.no/migrapolis](http://nrk.no/migrapolis) website are more relevant on a daily basis than the TV broadcasts since they have a shorter production time.

295. “Utrop” is a non-political, religiously independent *newspaper*. “Utrop” offers a website, newspaper and TV services which provide news, entertainment etc. about multicultural Norway. “Utrop” aims to work as the minorities’ arena for free information and debate about multicultural society and culture. The “Utrop” website was established in 2001, and the first edition of the newspaper was published in 2004. “Utrop” is published every two weeks. The newspaper receives government support from Arts Council Norway.

### National minorities

296. The Ministry of Labour and Social Inclusion administers financial support to minority non-governmental organizations and support for projects relevant to national minorities.

297. Reference is made to Norway’s fifth report paragraph 284 on *ex gratia* payments for the Romani people, Roma, Sami and Kven.

#### *The situation for the Kven culture*

298. Reference is made to Norway’s fifth report paragraph 274. Several measures are taken in order to improve the situation for the Kven culture and language. On the 25 April 2005 the Government decided that the Kven is to be recognized as a separate language. This decision was formalized by a Royal Decree on 24 June 2005. In 2006 the University of Tromsø started a one-year course unit on Kven language and culture. Funding has been granted for the development a new grammar and orthography for the Kven language, as well as funding for a series of novels written in Kven. Funding has also been given to the publication of a collection of traditional Kven songs, and translations of comics.

299. The Kven-Finnish newspaper Ruijan Kaiku, which is an important source of information exchange for the Kven minority, is given annual grants from the authorities. In 2009 the grants amount to 1.4 million NOK.

300. A Kven archive has been established at the Department of Recent Cultural History at Tromsø Museum, in cooperation with the University of Tromsø. The archive is primarily being augmented with material from research projects on Kven language, literature and culture.

301. The Research Council of Norway allocated NOK 5 million over a five-year period (2003–2007) for the project “Kven and Skogfinn in the Past and the Present”.

302. The Kven Institute (formerly “Kvæntunet – Centre for Kven language and culture”) is located in Finnmark County, and is funded by public grants. The institution’s task is to develop, document and disseminate knowledge and information on Kven language and culture, and promote the use of this language in Norwegian society. The institute has

appointed a Kven language council, which will draw up principal guidelines for Kven grammar and orthography and in 2008 a decision-making body was appointed. On the basis of this, the work on standardizing the Kven language is expected to make faster progress in the future.

303. The Halti centre for Kven culture is situated in Troms County, and also receives grants from the Government. The main function of the centre is to revitalize Kven language and culture in the region, while serving as a meeting place for the Kven.

*The situation for the Roma*

304. Reference is made to Norway's fifth report paragraph 284 (ex gratia payments for Roma).

305. In 2009 the Government presented a plan of action to improve the living conditions for the Roma in Oslo with Norwegian citizenship. Most of this group lives within the municipality of Oslo. The plan of action is prepared in cooperation with the Roma and the municipality of Oslo.

306. The Government regards dialogue with the group as essential, and an important measure in the plan will therefore be the setting up of a consultative body for Roma, where the Roma themselves participate.

307. The municipality of Oslo has, in cooperation with the Roma, developed a model for adult education of young Roma. The project started in 2007, and aims to improve proficiency in reading and writing, mathematics and digital skills within the group. The plan of action suggests further development of the project through the establishment of a Centre for counselling regarding housing, work, social service, etc.

*The situation for Romani people/Tater*

308. Reference is made to Norway's fifth report paragraph 284 (ex gratia payments for the Romani people and paragraph 283 (the Romani People/Tater culture fund).

309. Statutes for the Romani People/Tater culture fund have been adopted and a board is appointed. The majority of the board is Romani People/Tater. The state appoints one board member, serving in a personal capacity.

310. In 2006 a new department for the documentation and presentation of the culture and history of the Romani people/Tater was opened at Glomdal Museum by his Royal Highness the Crown Prince of Norway. Information is presented through films and exhibitions. The main theme of the permanent exhibit (Latjo Drom) is the history and cultural identity of the Romani people/Tater, while also focusing on the minority group's encounter with mainstream society and the injustices committed by the latter. The plan is to expand the exhibition as new knowledge and issues arise.

*The situation for Jews*

311. Reference is made to Norway's fifth report paragraph 278. The Jewish museum in Oslo opened in 2008. The museum receives grants through the central government budget. The purpose of the museum is gathering, conserving and spreading information about Jewish immigration, livelihood and integration of Jews in Norwegian society.

*The situation for the Skogfinn community*

312. Reference is made to Norway's fifth report paragraph 270. The Museum for Forest Finn Culture in Norway (NSM) was established in 2005 and receives grants through the central government budget. The NSM is a museum for all Forest Finn settlements in

southern Norway and collaborates with Finno-Ugric countries and areas, such as Finland, Estonia and Finno-Ugric settlements in Russia, and with Kven and Sami groups in Norway.

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