

## Committee against Torture

### **Concluding observations on the combined sixth and seventh periodic reports of Norway, adopted by the Committee at its forty-ninth session (29 October – 23 November 2012)**

#### **ADVANCE UNEDITED VERSION**

1. The Committee against Torture considered the combined sixth and seventh periodic reports of Norway (CAT/C/NOR/6-7) at its 1100<sup>th</sup> and 1103<sup>th</sup> meetings, held on 1 and 2 November 2012 (CAT/C/SR.1100 and CAT/C/SR.1103), and adopted the following concluding observations at its 1123<sup>th</sup> meeting on 16 November 2012 (CAT/C/SR.1123).

#### **A. Introduction**

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and to have submitted its periodic report under it, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation. The Committee welcomes the replies to the list of issues submitted within the requested deadline.

3. The Committee appreciates the open and constructive dialogue with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

#### **B. Positive aspects**

4. The Committee welcomes the State party's on-going efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including the adoption of:

(a) The Royal Decree of 11 April 2008, providing a comprehensive set of rules for persons staying at a detention centre, including the regulations dealing with conditions for temporary limitation of the rights and freedoms of persons kept at the detention centre, and the Immigration Act of 15 May 2008 on detention centres for foreign nationals, which includes their rights to receive visitors, to have access to health services and to associate with others;

(b) The amendments to the Criminal Procedure Act, which entered into force on 1 July 2008, strengthening the rights of victims in criminal proceedings, in particular for victims of sexual abuse;

(c) The Act of 2009 relating to Crisis Centres and the strengthening of the legal protection of victims of trafficking through the new Immigration Act of 15 May 2008 and the Immigration Regulations of 15 October 2009, entered into force on 1 January 2010.

5. The Committee also welcomes the efforts made by the State party to amend its policies, programmes and administrative measures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) The establishment of a supervisory board for the Police Immigration Detention Centre at Trandum in May 2008, with authority to ensure that foreign nationals' rights are safeguarded at the centre;

(b) The launch of projects and plans designed for police officers, such as "Security and Trust" in 2008 and "Awareness Gives Security" in 2011, to raise awareness about diversity, ethnic minorities and racism;

(c) The measures taken to improve the protection of victims of trafficking, such as the new Plan of Action against Human Trafficking, launched in December 2010.

## **C. Principal subjects of concern and recommendations**

### **Incorporation of the Convention into domestic law**

6. While noting the State party's explanation with regard to its general principles concerning the transformation of its international obligations into national law and the reasons for incorporating only the most general international instruments in its Human Rights Act, the Committee regrets that the State party has not changed its position with regard to the specific incorporation of the provisions of the Convention into domestic law (art. 2).

**The State party should further consider incorporating all provisions of the Convention into domestic law in order to allow the Convention to be directly invoked in court.**

### **Definition of torture**

7. The Committee notes that, despite its previous recommendations, the definition of torture of the Penal Code is not in full compliance with article 1 of the Convention, as it still enumerates only acts based on some specific forms of discrimination instead of referring to any form of discrimination. While noting that the State party is drafting a new Penal Code, which includes discrimination based on political views and sexual orientation, the Committee regrets the absence of a reference to "any reason based on discrimination of any kind" (art. 1).

**The State party should consider amending its current definition of torture in order to include any form of discrimination as an element of the definition of torture.**

### **National human rights institution**

8. While noting the intention of the State party to develop a strategy for the establishment of a national human rights institution that is fully compliant with the Paris Principles, the Committee expresses its concern that this had not yet occurred (art. 2).

**The Committee urges the State party to establish a national human rights institution with a mandate in accordance with the Paris Principles, and provide it with the necessary financial and human resources.**

### **Preventive detention**

9. The Committee expresses its concern regarding the system of preventive detention, in particular concerning the frequency by which it is used as well as, in some cases, its prolonged length. The Committee further notes with regret that minors between 15 and 18 years old may be subject to preventive detention (arts. 2, 11 and 16).

**The State party should revise its system of preventive detention, reducing its use to an absolute minimum. Taking into account the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the State party should also consider abolishing the practice of subjecting young offenders to preventive detention, except only in exceptional and extraordinary cases according to specific and strict criteria defined by law.**

#### **Pre-trial detention**

10. The Committee expresses its serious concern with regard to the extensive use of police detention cells for pre-trial detention longer than 48 hours and regrets that minors also continue to be subjected to this practice. The Committee regrets further that there is a lack of general and formalised routines on how to handle minors in pre-trial detention, as the Norwegian Ombudsman for Children has received reports by several minors describing their stay as “extremely exhausting”, with inadequate follow-up from the child welfare service and health care services (arts. 11, 12, 13 and 16).

**The State party should abolish the widespread use of police detention cells beyond the 48 hour term required by the law. The State party should use pre-trial detention of minors as a measure of last resort and should also ensure that child welfare emergency officers are available in all police districts. It should develop clear and foreseeable routines for treatment of minors in police custody and see they are effectively implemented in practice.**

#### **Solitary confinement**

11. The Committee regrets the widespread and, in some cases, prolonged use of solitary confinement, which might constitute a violation of the Convention. While noting with concern that almost one third of the cases concerned prisoners on remand, the Committee regrets that detailed statistics on the use and the length of solitary confinement are not yet available. The Committee also expresses its concern about the existing legal basis for the use of solitary confinement, as it is not formulated with sufficient precision, leaving the possibility for highly discretionary decisions, which prevents the possibility of administrative or judicial supervision. The Committee regrets that detainees are not always appropriately informed on the grounds for imposition of solitary confinement and that the systems for control and review do not appear to ensure that they enjoy appropriate legal protection (arts. 2, 11 and 16).

**In order to ensure full conformity with the Convention and taking into account the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Committee urges the State party to:**

- (a) Reduce the use of solitary confinement to the situations that are strictly necessary;**
- (b) Amend its legislative framework in order to limit the use of solitary confinement to exceptional circumstances;**
- (c) Guarantee due process rights to prisoners in decisions concerning solitary confinement;**
- (d) Evaluate and assess the existing practice of the use of solitary confinement and review the existing mechanisms for control and legal remedies;**
- (e) Establish a system in order to provide detailed statistics on the use of solitary confinement and disclose them publicly.**

### **Violence against women**

12. The Committee welcomes measures being taken to prevent gender-based violence, including the drawing up of the fourth national plan of action to combat domestic violence. Notwithstanding this development, the Committee has received reports on the increasing high rates of violence against women, including rape, and notes, with concern, the low number of complaints, investigations, prosecutions and convictions in rape cases (arts. 2, 12, 13 and 16).

**The Committee urges the State party to:**

**(a) Adopt a legal definition of rape in the Penal Code which clearly defines rape and other forms of sexual violence as any sexual conduct without the consent of the victim;**

**(b) Strengthen its efforts to prevent violence against women through, inter alia, the effective implementation of the White Paper *Fra Ord til Handling* (From Words to Action) and the establishment of sexual assault centres in each county;**

**(c) Combat practices and prejudices among the law enforcement personnel that constitute a barrier to reporting rape, sexual violence and violence against women;**

**(d) Conduct broader awareness-raising campaigns and training on sexual violence for law enforcement agencies, judges, lawyers and social workers who are in direct contact with the victims and for the public at large, in order to create all the appropriate conditions for victims to report such cases to the authorities;**

**(e) Initiate prompt, effective and impartial investigations concerning all alleged cases of violence against women and prosecute and punish perpetrators in accordance with the seriousness of their acts.**

### **Mental health care for prisoners**

13. The Committee regrets that prisoners with serious mental health problems are not always provided appropriate psychiatric health care. In particular, the Committee is concerned at the insufficient capacity of in-patient psychiatric wards to accommodate prisoners with serious mental illnesses and at the severe insufficiency of mental health care services available and provided to the prisoners within the prison facilities (arts. 11 and 16).

**The State party should take all measures to ensure that prisoners with serious mental health problems receive adequate mental health care, by increasing the capacity of in-patient psychiatric wards and providing full access to mental health care services within all prison facilities.**

### **Use of coercive measures in psychiatric health care**

14. The Committee, while noting the important steps being taken by the State party to reduce and ensure the correct use of coercive measures in mental health institutions, remains concerned with the widespread use of restraints and other coercive methods in psychiatric institutions, as well as by the lack of statistical data available, including on the administration of electroconvulsive treatment (ECT). The Committee is concerned that the provisions of the Mental Health Care Act, allowing for compulsory admission and treatment on the basis of either the “treatment criterion” or the “danger criterion”, leave the possibility for wide discretionary decisions to such an extent that it might lead to arbitrary and unwarranted practice (arts. 2 and 16).

**The State party should ensure that every competent patient, whether voluntary or involuntary, is fully informed about the treatment that it is intended to prescribe and**

given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. The State party should provide clear and detailed regulations on the use of restraints and other coercive methods in psychiatric institutions aiming to reduce the use of restraints substantially. The State party should also establish a system for the collection and publication of uniform statistical information on the use of restraints and other coercive methods, including the incidence of ECT.

#### **Detention of foreign nationals and non-refoulement**

15. The Committee expresses its concern regarding the use of lengthy detention for asylum-seekers who enter the State party undocumented. The Committee also regrets the lack of full legal protection for persons fleeing States due to generalized violence who can neither show that they are individually at risk, nor are considered to be at risk of torture if returned, as article 2 of the Aliens Act requires an individualized risk in order for persons to qualify for subsidiary protection in the State party (arts. 3, 11 and 16).

**The State party should consider reducing the use and length of detention for asylum-seekers who enter the State party undocumented. The State party should also consider refraining from returning foreign nationals to States in situations of internal armed conflict or generalized violence, on humanitarian grounds.**

16. The Committee regrets that the legal safeguards prescribed by law are not always guaranteed to all asylum-seekers and foreign nationals pending expulsion, such as the right to information concerning their rights in a language they understand and the right to free legal aid in the case of expulsion. The Committee notes with concern the publishing of a consultation paper by the State party on the possibility to restrict further the right to free legal aid (arts. 3, 11 and 16).

**In order to fulfill its obligations under article 3 of the Convention, the State party should guarantee all necessary legal safeguards to ensure the rights of persons facing expulsion or return. The State party should also provide appropriate legal aid to foreigners in all expulsion cases if necessary to safeguard their rights and establish procedures to ensure that foreign nationals are informed of their rights in a language they understand.**

#### **Trandum Holding Centre**

17. While welcoming with appreciation the improvement of the facilities at Trandum Holding Centre, the Committee notes the findings of the annual reports of the Supervisory Board for the Police Immigration Detention Centre at Trandum, raising remaining concerns with regard to health and the overall conditions of detention at the centre, in particular with regard to unhealthy sanitary conditions and overcrowding. Furthermore, the Committee notes with concern the increased numbers of detainees at Trandum, as well as the few cases of excessively long duration of detention (arts. 10, 11 and 16).

**The State party should ensure that persons are held at Trandum only according to the law and only for the duration prescribed by law. The State party should ensure that all detention conditions are in total conformity with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, in particular with regard to the sanitary conditions and overcrowding.**

#### **Training on the prohibition against torture and ill-treatment**

18. While noting that different training programmes for law enforcement personnel on the provisions of the Convention, including the prohibition of torture, are systematically

held, the Committee regrets that there is no available information on the impact of trainings on reducing incidents of excessive use of force and ill-treatment. The Committee regrets that the training is too theoretical, providing little knowledge of the practical use of human rights provisions. The Committee is also concerned about the lack of systematic training of health personnel on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (art. 10).

**The State party should ensure that educational programmes and practical training for law enforcement personnel on the provisions of the Convention, including on the limitations on the use of force and on the principles of non-discrimination, proportionality and last resort to force, are regularly provided. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of relevant training programmes on the incidence of cases of torture, excessive use of force and ill-treatment. In addition, the State party should provide systematic, thorough and practical training in the application of the Istanbul Protocol to all relevant health personnel.**

#### **Use of restraints and arrest techniques**

19. In light of the case concerning Mr. Eugene Obiora, who died in 2006 after police officers arrested him, the Committee notes the criticisms of the Parliamentary Ombudsman on the State party's insufficient compliance with its obligations in respect of the use of restraints exercised on a person, and on the lack of appropriate knowledge concerning arrest techniques and the absence of continued training (arts. 2, 10, 11 and 16).

**The State party should take immediate steps to improve and update the arrest techniques, in order to avoid such cases as the death of Mr. Obiora, and should improve its training programmes in order to keep the law enforcement officers updated on the appropriate arrest techniques.**

#### **Prompt, effective and impartial investigations**

20. The Committee notes that the State party has taken measures to further improve the handling of complaints against the police concerning acts of ill-treatment and the investigation of relevant allegations. Nevertheless, the Committee remains concerned about allegations concerning violations of the Convention committed by law enforcement officials, including allegations relating to discriminatory excessive use of violence, and about the lack of impartiality of subsequent investigations (arts. 12 and 13).

**The State party should closely monitor the effectiveness of the new procedures for the investigation of alleged violations of the Convention committed by law enforcement officials, in particular those in which discriminatory treatment based on ethnicity is alleged. The State party is requested to provide detailed information on the results of the on-going review.**

#### **Minorities and other vulnerable groups**

21. The Committee notes with concern allegations of cases of ill-treatment, harassment, incitement to violence and hate speech towards minorities and other vulnerable groups in the State party, including persons belonging to the LGBT community (art. 16).

**The Committee recalls that, in the light of its General Comment no. 2 on the implementation of article 2 (CAT/C/GC/2), the special protection of minorities or marginalized individuals or groups especially at risk is part of the State party's obligation to prevent torture or ill-treatment. In this respect, the State party should enhance efforts to eradicate any instances of violence and ill-treatment of vulnerable**

**groups, including through increased awareness-raising and information campaigns to promote tolerance and respect for diversity. The State party should ensure that violent acts, discrimination and hate speech are systematically investigated, prosecuted and the alleged perpetrators prosecuted, if found guilty, convicted and sanctioned with penalties commensurate with the gravity of the offence.**

#### **Missing minors and trafficking**

22. The Committee has received reports of NGOs raising concerns about the number of unaccompanied minors who have not returned to asylum centres in the State party, including the 68 children that were still missing from these centres on 31 August 2012. The Committee is also concerned about the provision in the Immigration Regulations (Section 8-8) which grants unaccompanied asylum-seeking minors between the ages of 16 and 18 years a temporary permit that expires at the age of 18, as this may encourage minors to leave the asylum centres before their permit expires. Furthermore, while welcoming the different measures taken to combat human trafficking such as the new Plan of Action against Human Trafficking launched by the Government in December 2010, the Committee notes with regret that trafficking in persons still remains a problem in the State party, especially concerning girls (arts. 2 and 16).

**The State party should strengthen its efforts to prevent minors from going missing from asylum centres by allocating sufficient resources to the immigration authorities to prevent and investigate every case of missing minors. The police should be provided with all the necessary resources to investigate and prosecute cases of trafficking.**

#### **Detention of minors**

23. While welcoming the continued efforts of the State party to establish two separate prison units for young offenders, the Committee notes with concern that, despite the reduced number of children in prison, minors are almost always detained with adults (arts. 11 and 16).

**The State party should ensure that minors are always segregated from adults, either in pre-trial detention or after conviction, in accordance with international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). The State party is urged to establish the second unit for the detention of juveniles as soon as possible.**

#### **Data collection**

24. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security and prison personnel, as well as on the number of asylum seekers, the use and length of solitary confinement and the occurrence of trafficking and domestic and sexual violence, including means of redress (arts. 2, 11, 12, 13, 14 and 16).

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, the number of asylum seekers, the use of solitary confinement and the occurrence of trafficking and domestic and sexual violence, as well as on means of redress, including compensation and rehabilitation, provided to the victims.**

**The Committee draws the attention of the State party to the recently adopted General Comment (CAT/C/GC/3) on article 14 of the Convention which explains the content**

**and scope of the obligations of States parties to provide full redress to victims of torture.**

25. The Committee urges the State party to continue its efforts to aiming at ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment as soon as possible.

26. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

27. The State party is requested to disseminate widely the report submitted to the Committee and the committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

28. The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations related to solitary confinement, detention of foreigners, and missing minors and trafficking, as contained in paragraphs 11, 15, 16 and 22.

29. The State party is invited to submit its next report, which will be the eighth periodic report, by 23 November 2016. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

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