

Submission by the Norwegian Forum on the Rights of the Child related to Norway for Universal Periodic Review 6th session

Children's rights in Norway: Key issues of concern

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

Reservations to the International Covenant on Civil and Political Rights

From a Child Rights perspective it is highly regrettable that Norway despite calls from the Committee on the International Covenant on Civil and Political Rights maintains its reservations to article 10, paragraphs 2 (b) (in addition to article 3, article 14 and to article 20, paragraph 1)of the International Covenant on Civil and Political Rights . The reservation to article 10, paragraph 2, b) is particularly grave as this article stipulates that “*Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication (...)*”, and “*Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*“ These reservations are highly contrary to art 37 of the Convention of the Rights of the Child which is incorporated into Norwegian legislation and interpretation of this article as stipulated in the General Comment no 10 from the Committee on the Rights of the Child on Children’s Rights in Juvenile Justice.

The Norwegian Government must:

- Withdraw its Reservations to the International Covenant on Civil and Political Rights.

Immediate signature and ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP)

The ICESCR-OP was adopted by consensus in the UN General Assembly on December 10th 2008 (GA resolution A/RES/63/117). However Norway’s position on the ICESCR-OP changed over the drafting period. In 2008 the government took a surprising turn in leaving its previous positive position supporting a holistic Optional Protocol. Currently the Norwegian government states reluctance against signature. The ICESCR-OP is a highly important instrument – also for children and adolescents.

The Norwegian Government must:

- As a state party to the ICESCR, sign and ratify the Optional Protocol as soon as possible.

B. Constitutional and legislative framework: Real enforcement of children’s rights requires rights based legislation – in order to fulfil to Norway’s international obligations

There is a need for reaffirmation of the principle of the interdependence and indivisibility of all human rights – including economic, social and cultural rights – to be justiciable. In this regard there is an urgent need for the State party to ensure that all the provisions of international Human Rights Obligations are given effect by its domestic courts¹.

The Norwegian Government must:

- Strengthen national legislation to ensure the justiciability of the UNCRC, e.g. ensuring the provisions in the Child Welfare Act as rights for the child, not only as an obligation to state party.

C. Institutional and human rights infrastructure: True independence of the Ombudsman for Children institution. Need to question procedure of appointment.

The duties of the Norwegian Ombudsman are to promote children's interests to public and private authorities and to investigate the developments of conditions under which children grow up. The Ombudsman has the power to investigate, criticise and publicise matters important to improve the welfare of children and youth. Act No 5 of March 6th 1981 and the corresponding instruction are the basis for the Ombudsman as an independent, non-partisan, politically neutral institution. However the Ombudsman is administratively under the jurisdiction of the Ministry of Children and Equality. The Minister for Children and Equality is also responsible for the selection and application of the Ombudsman for Children, before the final and formal approval of the decision by the Cabinet. This procedure gives reason to question the current and true independence and freedom of the scope of work of the Ombudsman for children. In order to strengthen the position of the spokesperson for Norwegian Children – it is essential to secure a procedure of selection and appointment – that is not dependent on associated political connections, networks or other partial influences. Children's rights to participation and to be heard – as set out in UNCRC are currently not secured in the process of appointing and Ombudsman for Children

The Norwegian Government must:

- Initiate an assessment of the institution of the Ombudsman for Children regarding the evaluation of the current appointment procedure and funding of the institutions in order to strengthen the true independence of the Ombudsman for Children. The principle of the Child's right to be heard must also be secured as this is currently neglected in the appointment procedure.

D. Policy measures: The principle of the best interest of the Child – UNCRC art 3

The principle of the best interests of the child is two folded, and shall be applied not only as a primary consideration in the assessment and decision of each case, but also when it comes to the procedures. It has not yet been integrated into all policies or judicial decisions affecting children. The majority of relevant professional groups, especially in the educational- and healthsystems, administration and the courts have inadequate competency, both with regard to the legal content of the Article and with regard to how the principle shall be implemented in practice in their respective specialist fields. Given the incorporation of the UNCRC into national legislation;

The Norwegian Government must

- Carry out a survey of to what extent and in what way the best interest of the child is actually adequately integrated in legal and administrative decisions in accordance with UNCRC Article 3, as a primary consideration with the view of applying it fully.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Implementation of international human rights obligations

1. Equality and non-discrimination

Children in almost every part of the society lack power and are therefore vulnerable to discrimination. Furthermore, there are many specific groups of children who are additionally susceptible to discrimination because they differ from others in some respect. It is the responsibility of the Norwegian Government to ensure that children under the jurisdiction of the State are not discriminated against when it comes to the rights set out by the UNCRC and other human rights instruments. At the very least, the State party must ensure that the State's own initiatives and systems follow this principle. As an example, children who live with functional impairments must be assured living conditions and a quality of life on a par with the rest of the population. Many families with children with disabilities need a wide range of coordinated services. However in many municipalities the services offered are still strictly divided into sectors and these sectors rarely coordinate nor cooperate which in practice means leaving the responsibility for the coordination to the families². Some families have been forced to move to other municipalities in order to receive fuller range of services.

The Norwegian Government must:

- Secure immediate mainstreamed sector-responsibility in the municipalities for children with disabilities to receive the full range of services they need. In addition all municipality sectors must have nationwide minimum standards to ensure equal fulfilment of rights. The Government should monitor all these sectors through close budget analyses in order to be able to map the local resource gaps. The Government must strengthen The County Governors office in its responsibility and mandate to supervise and instruct local municipality activities.

Discrimination of unaccompanied asylum seeking minors

Article 2 of the Child Welfare Services Act of 17 July 1992 stipulates that the State shall safeguard the rights of the Convention for *all* children under the State's jurisdiction. Norway has built up its child welfare system to be the body having principal responsibility for ensuring that children receive the necessary assistance and secure conditions for growing up, cf. Section 1-1 of the Norwegian Child Welfare Act. Despite this there are several examples of discrimination of unaccompanied children in the asylum seeking process.

E.g. children between 15 and 18 years do not receive the same protection and care as younger children. The child welfare office in the individual municipality is responsible for the care of Norwegian children who have a need for alternative care arrangements in accordance with Section 4-12 of the Child Welfare Services Act. However, as it is, children between 15 and 18 years old - who enter Norway unaccompanied as asylum seekers - are not placed in accordance with this stipulation. The responsibility for the care of this group of children is allocated to the immigration authorities without legal authority or any kind of judicial decision, which is highly discriminatory.

Another example of discrimination and limitation of the best interest of the child is the legislation proposed by the Norwegian Government in the Fall 2008 suggesting special and discriminatory measures for unaccompanied asylum seeking children between 16 and 18 regarding their rights to residence permits. The best interest of the child has in this discriminatory proposal been limited by age. Arguments on how to limit immigration has

been used to avoid the best interest of the child to be the primary consideration, contrary to the recommendations from the CRC in its General Comment no. 6; Treatment of unaccompanied and separated children outside their country of origin.

The Norwegian Government must:

- Take urgent action to ensure that no groups of children are exempted from the obligations of the State in the Child Welfare Act.
- Take urgent action to ensure that immigration limitation regulations do not discriminate certain groups of children nor compromise the best interest of the child.

Discrimination of children from leisure and cultural activities

Leisure and cultural activities offered to children in Norway are costly in terms of fees and this excludes children from families with financial difficulties from participating. Research³ shows that the proportion of ethnic minorities participating in organized spare time activities are far lower than ethnic Norwegian children⁴.

The Norwegian Government must:

- Lower or subsidize fees for common leisure and cultural activities in order to make all children able to participate. The Government should also aim at reduce and remove economic and cultural barriers that may hinder full participation.

2. Right to life, liberty and security of the person

According to UNCRC art 6 the State has an obligation to ensure *every* child's survival and development to the maximum extent possible. In this regard it is regrettable that the Health Services⁵ at primary and secondary schools have been limited over the years and are currently not easily accessible.

The Norwegian Government must:

- Strengthen general institutions such as Health Services at primary and secondary schools. This is also important in order to secure prevention of abuse and neglect and to identify children in need of special protection measures.

Medical treatment of children without legal Residence permits

Children without legal residence permits in Norway have a right, according to Norwegian law, to receive necessary medical treatment. But since the public health services do not accept children that do not have a national identity number, which every legal resident receives, they are often refused treatment.

The Norwegian Government must:

- Ensure full implementation of the right to medical treatment of children without legal Residence permits.

Vulnerable children and adolescents – Urgent need for better cooperation and strengthening of the Child Welfare System

In 2008, the Offices of the County Governors and the Norwegian Board of Health Supervision in the Counties carried out a review of the way municipal services cooperate in providing services to vulnerable children and adolescents⁶. It was assessed whether the municipalities organized and followed up cooperation between health, social and child welfare services for

children of school age and young people in the age-group 18-23 and 114 municipalities were included. The results showed that the majority of municipalities did not organize services so that cooperation could take place, and many of them did not follow up planned cooperation. The result of lack of follow up and lack of control of cooperation between services is that children and young people do not receive the services they necessitate. There is hence a major cause for concern about whether children and adolescents are identified at the right time and whether they receive the services they need. The municipalities have a responsibility to evaluate their services to prevent inadequacies, and to follow up inadequacies, and use this information to improve the services. This rarely happens with regard to cooperation in providing services for children and adolescents. The municipalities do not provide adequate training of staff.

The Norwegian Government must:

- Urgently take action to coordinate and evaluate the services to prevent inadequacies, and follow up inadequacies in order to secure that all children and adolescents receive the services they necessitate.

Legal guardians for unaccompanied minor asylum seekers

Norway provides unaccompanied minor asylum seekers with legal guardians meant to act in the interest of the children and safeguard their rights. However, there is great variation in terms of both recruitment and training (often none) of legal guardians, resulting in arbitrary differences in representation. Frequent moves and change of legal guardians make the situation for the older children especially unpredictable and difficult. The UN Committee on the Rights of the Child has repeatedly called for improved supervision of children living in reception centres. The many gaps are well known, and some temporary measures are in place, but Norway has stated that the issue will be dealt with systemically as part of a new foreigners' law expected in 2010.

The Norwegian Government must:

- Take immediate measures to secure the national guardian system for unaccompanied asylum seeking and refugee children and secure appropriate funding for this, including sufficient funding for interpreters.

Alarming documentation of violence and sexual abuse

It has been documented that the extent of violence and sexual abuse against children in Norway is a serious problem for the society. NOVA (Norwegian Social Research) has on behalf of the government implemented an extensive survey on violence against children and adolescents⁷. The survey documented that 25 % of the children asked refers to at least one incidence of violence from one of the parents, 7 % refers to physical violence from both parents. 10% of adolescents refer to seeing or hearing /witnessing at least one incident of violence against one of the parents. 8 % refers to experiencing severe violence from at least one of the parents. When it comes to sexual abuse, 22 % of the girls and 8 % of the boys reported having experienced less severe forms of sexual abuse. More severe sexual offences were less common: 15 % of the girls and 7 % of the boys reported such experiences. About half of the offences were committed by a friend, boyfriend, girlfriend, or an acquaintance. About half of the offences took place between young people in their teens. There is reason to believe that the survey just shows the tip of the iceberg, especially since the survey was done amongst adolescents in third grade of upper secondary, where many children already have dropped out.

The right to be protected from violence and sexual abuse and exploitation is fundamental in the sense that it largely determines the possibilities to fulfill other basic rights which determine positive child development. The vast majority of abused children remain silent about the abuse they have suffered. Identifying and locating the children who are abused for the production of child abuse images are also a major challenge for law enforcement and other child protection agencies. Identification of these victims is of vital importance to prevent the continuation of what may still be ongoing abuse.

Need for special protection of children in the Penal Code

The alarming documentation also calls for special protection of Children in the Norwegian Penal Code correspondingly to the suggested revision of the Children Act. The proposed clarification of § 30 in the Norwegian Children Act intends to make clear that the right of parents to use physical and psychological punishment has been fully eliminated in Norway. The right of parents to punish children physically was rescinded in 1972, but a Supreme Court decision in 2005 created uncertainty in the interpretation of provisions in the Children Act. The Norwegian Government is also currently revising the Penal Code. A prerequisite for an efficient legal protection of Children requires a holistic approach covering both physical and psychological violence. So far the propositions only point towards physical violence in the Penal Code. It needs to be stressed in the Penal Code that Children not only enjoy the same degree of protection as adults, but are entitled to special protection. Aspects of vulnerability and dependence must be included in this protection.

Trafficking

The reflection period granted victims of trafficking are not fit to provide adequate protection and care for children who have been victimized. Children are in a different and more vulnerable position than adults. There are few, if none, child friendly measures in combating trafficking. There is severe lack of information about the children who are possible victims of this industry and there are few steps taken to prevent vulnerable children from being victims of trafficking, eg. children from asylum centres are disappearing without the authorities taking appropriate action.

Alarming lack of coordination and resource allocation for rehabilitation

Many of the abused children will be in need of therapeutic support to guide them through the trauma of being abused. Article 39 of the UNCRC requires States to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of “any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment”. County Governors and the Norwegian Board of Health Supervision in the Counties have carried out supervision on the sectors in 40 municipalities and 21 unities for rehabilitation of children showing alarming lack of coordination, resource allocation and services for children in need of urgent rehabilitation. The department of Ministry of Health and Care Services presented in 2007 a national strategy for rehabilitation of children – but no resource allocation was made simultaneously.

The Norwegian Government must:

- Guarantee the right to rehabilitation measures and secure abused children immediate psychological support and treatment.
- Include the need for special protection of children against all forms of violence - physical *and*

psychological- in the current revision of the Penal Code to correspond with the current revision of the Children's Act.

- Secure educated staff in all sectors dealing with children and include mandatory learning about sexual abuse and violence in all vocational training and education of staff.
- Provide training for child protection professionals including victim identification, and the consequences of being abused for the production of child abuse images.
- Ensure political commitment and prioritisation of victim identification and allocation of resources and staff.
- Secure information about children in Norway who are victims of trafficking, and make this information transparent. Adapt more child friendly measures to secure children who are victims of trafficking, including strengthening of immigrations rights and care provided by the child welfare service. Initiate more appropriate measures for victim identification and close follow-up of vulnerable children at risk.

Alarming conditions for Children in prison

In Norwegian prisons children between 15 and 18⁸ are not separated from adults, neither in detention - while awaiting trial -nor as convicts. Several children are sharing cells with grown up criminals with long and extensive criminal records and who are 10-20 years older than the children.

Isolation - Children languish in pre-trial detention for months;

Investigations made by the Human Rights Committee of the Norwegian Bar Association has revealed that as many as 7 out of 10 imprisoned children have been kept isolated for an extended period of time, some up to 3 months or more without other "breaks" than one hour "airing" per day. Article 37 of UNCRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty and from this one can derive that children languishing in pre-trial detention for months constitutes a grave violation of article 37 (b).

The investigations have also uncovered alarming and discriminatory practices of children who do not speak Norwegian - as they have been denied communicating in their mother tongue. All prisons require that all forms of communication is in Norwegian. Less than half of the children have been offered education or other forms of vocational training. Less than ten percent have been given weekly "guidance by a youth counsellor. Less than 20 percent have received visitors from the Child Welfare Service or social services. 50 % of the children have been placed in prisons far away from their parents. The survey also found a 16 years old boy placed 2000 kilometres from his mother.

The Norwegian Government must:

- Urgently realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pre-trial detention as well, rather than "widening the net" of sanctioned children. There is an urgent need for national legislation prohibiting isolation.
- Prohibit placements of children in high-security prisons in Oslo and Ringerike prisons and the placement of children in cells with adults.
- Eliminate discriminatory practices of children in prison who do not speak Norwegian and secure sufficient provision of translators.
- Ensure education suited to the child's needs and abilities, and designed to prepare him/her for

- return to society; in addition every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;
- Promote and facilitate regular contacts between the child and the wider community, including communication with his/her family, friends and other persons or representatives and the opportunity to visit his/her home and family;
 - Ensure that every child in confinement has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close to the place of residence of his/her family as possible. Secure supervision from the Child Welfare Board or Social Service, while in prison and afterwards.

3. Right to privacy, marriage and family life

Protection of reputation and honour – Distribution of personal information through digital media

Distribution of sensitive information on children from private persons –such as spreading pictures on the Internet has been increasing. In some cases this distribution is caused by the children's parents due to parental conflicts, e.g. filming removal of children from the home by the Child Welfare Service. Sometimes the distribution of sensitive information through digital media is made by other children. Today there is no clear mandate for any authority to interfere and stop such private distribution⁹. According to UNCRC art 16 children have the right to protection from interference in their privacy, family, home and correspondence, and from libel or slander. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks. The distribution of personal and sensitive information through digital media is a severe violation of UNCRC art 16;

The Norwegian Government must:

- Give the Data Inspectorate mandate to – through revision of legislation to regulate and hinder distribution of information violating Children's rights to privacy, respect and reputation.

The child's right to maintain contact with both parents

According to UNCRC art 9 the States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

When the child's right to maintain contact with both parents is neglected due to conflicts between the parents

Approximately 50 % of the Norwegian married couples with children and parents living together without being married, do end their relationship. Some of these separations cause conflicts between the parents and affect and violate the children's right to maintain contact with both parents. One parent's violation of the children's visitation right even happens in cases where there have been court orders that the children should have visitation with both parents. Norway has received criticism from the European Commission on Family Law (CEFL) for the lack of measures to ensure fulfilment of court orders of visitation if one parent violates this.

The Norwegian Government must:

- Render appropriate assistance to the child in order to secure the right of the child to maintain contact with both parents if separated from one- unless this is deemed to be incompatible with the child's best interests.

Children of Convicts

The right for children to maintain contact with a parent in prison is violated through the visiting regulations in Norwegian prisons. Although The Execution of Sentence Act stipulates that contact between children and parent is important, and that visiting quotas can be extended for children, this is not a given right for the child and is not being implemented. In practise children often have only one hour a week for visiting¹⁰.

The Norwegian Government must

- Secure the right for children to contact with a parent in prison by giving the child an individual right to extended visits through the Execution of Sentence Act. Implementation of this right to contact between children and parents in prisons needs to be closely monitored to secure that this right is being fulfilled no matter which prison the parent is placed.

4. The Right to education

Immigrant and asylum seeking children and education

Asylum seeking children are now quite quickly enrolled into primary schools but do not receive tailored education. The quality of the education is not good enough¹¹.

The Norwegian Government must:

- Provide minimum standards and strengthen a holistic language training and include sufficient and earmarked resources for the municipalities to carry out this obligation.

Pupils with disabilities and special educational needs

Pupils with disabilities are according to the Education Act, chapter 5, entitled to special education. The municipalities are however not fulfilling these nationwide obligations to secure equal rights to education. Documentation in a recent report from the “National review on education in 2008” -where the County Governor’s was appointed by the Ministry of Education and Training to inspect educational activities at municipal and county level- and discovered alarming violations on pupils with special needs right to education.

The Norwegian Government must:

- Secure that all municipalities fulfil their obligations according to the Education Act.
- Ensure a possibility to sanction those municipalities violating the law and hence render the right to education justiciable as stipulated in UNCRC and ICESC.

5. The right to be heard

The Childs Right to be heard in any judicial and administrative proceedings

According to UNCRC art. 12 States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child,

the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. This right is violated in Norway with an alarming frequency. Due to the Norwegian incorporation of the UNCRC the Norwegian Government should be urged to fulfil the child's right to be heard and take action – at least (or as a minimum) in the following decisions:

Decisions according to the Child Welfare Act

The Norwegian Government must:

- Take urgent actions in order to enforce the child's right to be heard (age 7+) stipulated in §6-3 of The Child Welfare Act, as this right is massively neglected – due to incompetence and lack of education of staff.
- Initiate nationwide guidelines for involvement of the child in all phases of the different decisions according to the Child Welfare Act, including when the child has been placed in a foster home or institution and accordingly revise § 6-3 of the Child Welfare Act to include *all* decisions affecting the child as required by UNCRC art 12.

The Childs Right to be heard when parents split up:

The Norwegian Government must:

- Take urgent action to enforce the child's right to be heard in all cases when parents split up as stipulated as a mandatory requirement in The Children's Ac § 31 , and not leave this to subjective decisions by staff involved.

The Childs Right to be heard and the Immigration Act

The Norwegian Government must:

- Include The Child's right to be heard in the Immigration Act as a primary and decisive consideration in all decisions affecting the child.

The Childs Right to be heard as Victims in Criminal Cases

The Norwegian Government must:

- Secure real enforcement of the child victims' right to be heard within 2 weeks as stipulated by regulation and that testimony can be given to qualified and specialised staff.
- Secure the child victim right to be heard when a criminal case is reopened. Currently only the convicted person is summoned for questioning.

¹ From Ecosoc: Reports 2001, p. 1006) In this regard, the ICESC- Committee refers the State party to its General Comment No. 9 (1998) on domestic application of the Covenant.

² Grut, Lisbeth et.al: Sosial- og helsetjenester for personer med nedsatt funksjonsevne. Oversikt over utviklingen i perioden 2001-2006. Rapport, SINTEF Helse, 2007.

³ Kavli, Hanne (2007), En felles fritid. Livet etter skoletid blant barn og unge i Oslo. Fafo-rapport 2007: 22 (A common leisure. Life after school among children and young people in Oslo)

⁴ Jon Horgen Friberg og Heidi Gautun: Inkludering av etniske minoriteter i frivillige organisasjoner og fotballag for barn og ungdom I Oslo. Fafo-rapport 2007: 16.

⁵ The municipalities have provided pupils at Primary- and Secondary schools with the possibility to approach a nurse during school hours if they have health related problems. This service has however over the years been strictly limited, and most schools can today only offer consultation one or two hours per week – typically one nurse who shall cover several hundred pupils these few hours per week.

⁶ Helsetilsynet, rapport 5/2009: Utsatte barn og unge, behov for bedre samarbeid (Report available in Norwegian at http://www.helsetilsynet.no/upload/Publikasjoner/rapporter2009/helsetilsynetrapport5_2009.pdf).

⁷ NOVA Report 20/07, Violence and sexual abuse against children and young people in Norway, A questionnaire study among students in their last year of secondary school. (The report is only available in Norwegian, but a summary is available in English at <http://www.nova.no/index.gan?id=15705&subid=0&language=1>

⁸ Age 15 in the minimum conviction age in Norway

⁹ NOU 2009: 1, s. 139

¹⁰ Kilde: Foreningen for Fangers pårørende

¹¹ (Valenta 2008) *Asylsøkerbarns rett til skole*. Kartlegging av skoletilbudet til asylsøkerbarn. NTNU