

Advance Unedited Version

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Committee on the Elimination of Racial Discrimination

Concluding observations on the twenty-first and twenty-second periodic reports of Norway*

1. The Committee considered the combined twenty-first to twenty-second periodic reports of Norway (CERD/C/NOR/21-22), submitted in one document, at its 2373rd and 2374th meetings (CERD/C/SR. 2373; CERD/C/SR. 2374), held on 17 and 18 August 2015. At its 2385th and 2386th meetings, held on 25 and 26 August 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the combined twenty-first to twenty-second periodic reports of the State party, which included responses to the concerns raised by the Committee in its previous concluding observations. The Committee wishes to commend the regularity in reporting to it which allows a continuous dialogue with the State party on the implementation of the Convention. Also, the Committee welcomes the open and constructive dialogue with the State party's delegation consisting of representatives of various bodies, as well as responses to questions asked by Committee members.

B. Positive aspects

3. The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in June 2013.

4. The Committee also welcomes the adoption of the following legislative and policy measures:

- (a) A new Anti-Discrimination Act on Ethnicity, on 13 June 2013;
- (b) A new Law creating a new national human rights institution, on April 2015;
- (c) Action Plan 2013-2016: "We need the skills of immigrants";
- (d) Action Plan to Combat Forced Marriage, Female Genital Mutilation and Severe Restrictions on Young People's Freedom (2013-2016);

* Adopted by the Committee at its eighty-seventh session (3-28 August 2015).

(e) Democratic Readiness against anti-Semitism and Racism (DEMBRA) three-year programme.

5. The Committee also welcomes the facilitation by the State party of the participation of the vibrant and dynamic civil society organizations in the Committee's work, as well as the participation of the National Human Rights Institution of Norway, the Equality and Anti-Discrimination Ombud (Ombud), the Ombudsman for Children and the Sami parliament (Sámediggi). It further welcomes the establishment by the State party of an annual National Dialog Conference with minority organizations.

6. The Committee notes with appreciation the apologies expressed by the Prime Minister of the State party to the Roma on the occasion of the International Roma Day 2015, for the treatment and policies of the Norwegian Government regarding the Roma before, during and after the Second World War.

C. Concerns and recommendations

Statistical data on the ethnic composition of the population

7. While taking note of the position of the State party with regard to the collection of data based on ethnicity, the Committee regrets that the State party's report once again does not contain statistical data on the different groups that compose its population or recent, reliable and comprehensive data on economic and social indicators that could be used, in particular, to assess the extent of the enjoyment of economic, social and cultural rights by the Sami indigenous people, minorities and migrants, compared to general population in the State party.

8. In the light of both its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and paragraphs 10 to 12 of its reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide it with all available indicators on the composition of its population, all other information on mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information about descent, or national or ethnic origin derived from social surveys. In the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied. Such information should be collected on a voluntary fashion, based on self-identification and anonymity, and including with regard to national minorities.

Definition of racial discrimination

9. The Committee is concerned about the absence of the term "race" as a ground for discrimination in the new Anti-Discrimination Act adopted in 2013 (art. 2).

10. The Committee reiterates its recommendation that the State party include in its anti-discrimination legislation, all grounds of discrimination contained in article 1 of the Convention or find other effective ways to ensure that all these grounds are taken into account by the authorities.

Status of the Convention in the domestic legal order

11. While taking note of the explanations provided by the State party, the Committee remains concerned about the fact that unlike other human rights treaties, the Convention is not incorporated into the Human Rights Act of 1999 which has precedence over ordinary domestic legislation (art. 2).

12. The Committee invites the State party to review its position and to consider incorporating the Convention into the domestic legal order at a level which gives the Convention precedence over ordinary domestic legislation, in particular through the Human Rights Act of 1999.

National Human Rights Institution

13. The Committee notes with appreciation the adoption by the Parliament, in April 2015, of a new law creating a new national human rights institution. However, the Committee notes that the new institution is not yet fully established as the Director and the Advisory Council have not yet been appointed (art.2).

14. The Committee encourages the State party to finalize the process of establishing the newly created National Human Rights Institution, facilitate that it seeks accreditation before the International Coordinating Committee of National Institutions for the promotion and protection of human rights (ICC), and to provide it with the human and financial resources needed for the fulfilment of its mandate, in accordance with the Paris principles.

Racist hate speech, including speech over Internet and incitement to racial hatred

15. While noting the position of the State party on approaches to combat hate speech, the Committee is concerned about the increase in hate speech and xenophobic discourse by politicians and in media and other public platforms, including via Internet, contributing to fuelling racist hatred, intolerance, stereotypes, prejudices and stigmatisation of some specific groups, such as ethnic and national minorities and indigenous peoples, including Sami people, non-western European migrants, Roma and asylum-seekers. The Committee is also concerned that article 135a of the Criminal Code which penalizes discriminatory expressions and hate speech, is not always adequately and effectively applied to prevent and protect against hate speech, in particular by prosecuting those responsible. While noting that some measures have already been taken by the State party, the Committee is concerned about the lack of a long-term strategy aimed at firmly combating hate speech (art. 2, 4, 5, 6).

16. In light of its general recommendations No. 7 (1985) and No. 15 (1993) relating to the implementation of article 4 of the Convention and its general recommendations No. 30 (2004) on discrimination against non-citizens, and recalling its general recommendations No. 35 (2013) on combating racist hate speech, the Committee reminds the State party of the importance of safeguarding the rights of vulnerable groups in need of protection against racist hate speech and, therefore, recommends that the State party take appropriate measures to:

- (a) Strongly condemn and distance itself from racist hate speech and xenophobic discourse emanating from certain politicians and media and call upon politicians and media professionals to ensure that their public statements do not contribute to fuelling intolerance, stigmatization and incitement to hatred;
- (b) Ensure that hate speech is effectively investigated under the Criminal Code of the State party, and that the persons responsible are adequately prosecuted, and, if found guilty, punished;
- (c) Collect and make available statistics on the number of hate speech cases reported, the number of cases brought to court, and the outcome of these cases;
- (d) Conduct awareness raising campaigns to counter hate speech and develop a long-term strategy to adequately combat hate speech and encourage follow-up to the report of the Media Responsibility Committee presented in 2011;

(e) Conduct research on the prevalence and harmful effects of hate speech, and include such information in school curricula and teaching materials.

Hate crimes

17. While noting with appreciation the work of the Oslo Police District with respect to hate crimes, the Committee is concerned about: a) the lack of a clear definition of hate crime in the Criminal Code of the State party; b) the lack of a coordinated system for the registration of hate crimes by the Police across all police districts of the State party; c) the very low number of hate crimes reported to the Police and brought to domestic courts; d) the absence of statistical data on hate crimes with regard to investigations, prosecutions, convictions and sanctions; d) the absence of a clear and comprehensive national strategy to combat hate crime and the lack of awareness among the population on the hate crime phenomenon and its harmful effects (art 4, 6).

18. In light of its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention, the Committee recommends that the State party:

(a) Adopt a clear definition of hate crime in its Criminal Code to enable the Police to adequately address hate crime;

(b) Develop a national system of registration of hate crime with clear standards and guidelines to ensure a uniform registration; and provide adequate training to police officers and all law enforcement officers on how to address hate crime;

(c) Address the significant underreporting of hate crime by conducting awareness-raising campaigns as well as research on the causes and harmful effects of hate crime;

(d) Investigate all instances of hate crime, prosecute those responsible and if convicted, punish them with appropriate penalties;

(e) Provide the Committee with statistical data on complaints, investigations, convictions and sanctions for acts of hate crime;

(f) Develop a comprehensive national strategy, including training programs to raise the sensitivity of the Judiciary, to firmly combat hate crime.

Prohibition of organizations that promote racial discrimination

19. While taking note of the State party's approach of penalizing conduct by individuals belonging to organizations which promote and incite racial discrimination, the Committee remains concerned that the State party has not yet included in its criminal legislation provisions declaring organizations which promote and incite racial discrimination illegal, in conformity with article 4 (b) of the Convention (art. 4).

20. Recalling its general recommendations No. 1 (1972) on States parties' obligations, No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) on organized violence based on ethnic origin and No. 35 (2013) on combating racist hate speech, which state that the provisions of article 4 of the Convention are of a preventive and mandatory nature, the Committee recommends that the State party adopt specific legislation to implement all aspects of article 4 of the Convention, including the provisions that organizations which promote and incite racial discrimination shall be declared illegal and prohibited.

Discrimination in access to the labour market

21. The Committee is concerned about the high unemployment rate of persons belonging to ethnic minorities or with migrant background. The Committee is particularly concerned at reports that such persons face barriers to access to the labour market due to prejudices based on stereotypes of their ethnic or national origin as well as language skills, in the public as well as in the private sector. The Committee is also concerned about the low level of compliance with the activity and reporting duty set out in the Anti-Discrimination Act which requires employers to make active, targeted and systematic efforts to promote equality irrespective of their ethnic or national origin. Moreover, the Committee is concerned about the low impact the Action Plan to Promote Equality and Prevent Discrimination (2009-2013) had to prevent discrimination in the labour market (art. 2, 5).

22. Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party, as a matter of priority, adopt more concrete and preventive measures to combat racial discrimination in the labour market against ethnic minorities and persons with migrant background. The Committee recommends that the State party ensure follow-up measures on the activity and reporting duty set out in the Anti-Discrimination Act, and implement measures to guarantee equal recruitment processes both in the public and the private sectors, irrespective of the ethnic background of the applicants. The Committee further recommends that the State party ensure the effective application of its anti-discrimination legislation, consider adding a sanction for non-compliance with the activity and reporting duties, more clearly specify the content of the activity and reporting duties, and effectively monitor the implementation of its action plan “We need the competence of immigrants” (2013-2016). Moreover, the Committee recommends that the State party continue to develop integration measures and ensure that migrants acquire language skills without unnecessary barriers.

Norwegian companies operating abroad

23. While noting that the State party has enacted a White paper “Active Ownership-Norwegian State Ownership in a Global Economy”, the Committee is concerned that the State party has not yet adopted measures with regard to companies registered in Norway whose activities negatively affect human rights of local communities, in particular the rights of indigenous peoples and minority groups, outside Norway, in particular in mining activities (art. 5).

24. The Committee recommends that the State party take appropriate legislative measures to prevent companies registered in Norway from carrying out activities that negatively affect the enjoyment of human rights of local communities, in particular the rights of indigenous peoples and minority groups, outside Norway, and hold them accountable, taking into account the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, on the responsibility for respecting human rights in host countries, adopted by the Human Rights Council in 2011.

The situation of Roma and Taters

25. While noting measures taken by the State party, the Committee is concerned about: a) the persistent discrimination, stereotypes and intolerance towards Roma and Taters living in the State party; b) the persistent difficulties and inequalities faced by Roma and Taters in accessing employment, housing, healthcare services and education, compared to the rest of the population of Norway; c) the low level of education among Roma and Taters, coupled with lower school attendance of Roma children; d) the reports of negative effect of the

frequent recourse of separation of Roma children from their families, as protection measures (art. 2, 5).

26. Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:

- (a) Develop appropriate strategies and policies aimed at responding adequately to difficulties faced by the Roma and Taters in accessing employment, housing, healthcare services and education in order to be fully integrated in the Norwegian society;
- (b) Firmly combat acts of racial discrimination and stereotypes, including by effectively applying its anti-discrimination legislation;
- (c) Combat hate speech and intolerance towards Roma and Taters;
- (d) Conduct and strengthen its awareness-raising campaigns in order to build on confidence and promote understanding;
- (e) Enhance measures aimed at improving school attendance of Roma children and carefully review its practice of placing Roma children in institutional settings or welfare services;
- (f) Implement the recommendations of the Commission set up to assess the discriminatory assimilation policies including by providing compensation to the Roma and Taters.

The situation of the Sami

27. While noting the Action Plan for the Sami languages adopted by the State party, the Committee remains concerned at reports that Sami mother-tongue teaching is not adequately protected and that schools do not always fulfil the mother-tongue teaching requirements due to a lack of sufficient teaching materials, financing and staffing. The Committee is also concerned about the vulnerable situation of the East Sami culture due in particular to the restrictive regulation of reindeer herding and fishing and hunting, which constitutes an important part of their culture, and about the insufficiency of measures to preserve it. (art. 5).

28. Recalling its General observation no. 23 (1997) on rights of indigenous peoples, the Committee recommends that the State party reinforce its measures to effectively ensure the promotion and the preservation of the Sami languages, in particular those under threat by ensuring that Sami mother-tongue teaching requirements are fulfilled and securing teaching materials as well as financial and staffing resources for schools; and guarantee the effective implementation of the Action Plan for Sami languages. The Committee also recommends that the State party increase its efforts to effectively apply the Finnmark Act and preserve the land rights of East Sami and their culture including by finding an appropriate solution to secure the reindeer herding, fishing and hunting that is important to East Sami.

29. The Committee is concerned that, while the Finnmark Act recognizes that the Sami have acquired collective and individual rights in Finnmark through long-term usage of land and resources, there remain significant gaps in translating the legal recognition into practice, thus resulting in reality in limited recognition and protection of rights over their lands. The Committee is also concerned about:

- (a) The low progress in establishing legal frameworks or specialized mechanisms to identify Sami land and resource rights outside Finnmark despite the proposals by the Sami Rights Committee's report with regard to the clarification of the right to land and water of Sami outside Finnmark;

(b) The fact that the legislation, in particular the Finnmark Act, the Mineral Act and the Reindeer Husbandry Act, does not provide sufficient safeguards regarding the obligation to consult the Sami, in particular the rights to free, prior and informed consent, for all projects and concessions granted to companies in particular for extractive activities and for other development projects that have an impact on their livelihood, in particular reindeer herding;

(c) The fact that the funds used to provide legal aid to those seeking recourse to the Uncultivated Land Tribunal for Finnmark come out of the budget of the Tribunal, thus restraining the work of the Tribunal;

(d) The fact that the 2012 amendments to the fisheries legislation (the Marine Resources Act, the Fisheries Participation Act and the Finnmark Act) did not recognize that the Sami have established rights to fisheries and other renewable marine resources in the Sami coastal area, and that the legal frameworks may therefore not be able to withstand future reform.

30. The Committee recommends that the State party:

(a) Take concrete steps to ensure full practical effect of the legal recognition of the Sami rights to their lands and resources as provided for in the Finnmark Act to enable them to maintain and sustain their livelihoods;

(b) Follow up on the proposals of the Sami Rights Committee, including by establishing an appropriate mechanism and legal framework, and identify and recognize Sami land and resource rights outside Finnmark;

(c) Put into place consultation procedures for the establishment of necessary economic parameters for the Sami Parliament, and ensure that the Sami Parliament is consulted on financial initiatives and budgetary measures which may have a direct impact on the Sami community;

(d) Guarantee that all administrative and legislative mechanisms that allow for extractive activities in Sami lands, in particular those under the Finnmark Act, the Mineral Act and the Reindeer Husbandry Act, be reviewed in order to guarantee adequate consultation with the affected Sami communities, in particular the right to free, prior and informed consent, mitigation measures, compensation and benefit sharing.

(e) Follow up the allocations for the survey and recognition work of the Finnmark Commission and the Finnmark Land Tribunal and ensure that they have adequate financial resources at their disposal, including or legal aid to those seeking recourse to the Tribunal;

(f) Review the fisheries legislation, and ensure that it fully recognizes the Sami fishing rights based on immemorial usage and local customs.

Free legal aid in discrimination cases and damages for non-economic loss

31. The Committee is concerned that the Anti-Discrimination Tribunal and the Ombud are not authorized to grant damages for non-economic losses. The Committee is also concerned that free legal aid is granted only as an exception and on ad hoc basis for discrimination cases in legal proceedings. (art. 6).

32. The Committee recommends that the State party consider to allow the Anti-Discrimination Tribunal and the Ombud to grant damages for non-economic losses in order to guarantee a more effective enforcement of the anti-discrimination legislation. The Committee also recommends that the State party review the conditions for free

legal aid in order to enable complainants to easily resort to legal proceedings before courts in discrimination cases.

Intersectional discrimination and violence against minority and migrant women

33. The Committee welcomes measures taken by the State party to combat gender-based violence and discrimination as well as trafficking in persons. However, the Committee remains concerned about:

- (a) The three-year residence requirement under the Immigration Law which may create problems for foreign women married for less than three years to Norwegian nationals who are victims of domestic violence, for obtaining a residency permit, due to difficulties in proving that the relationship is abusive. These requirements may also prevent victims from leaving abusive relationships and from seeking assistance and protection;
- (b) Reports that the residence requirement may be extended to five years to obtain residence permit independently;
- (c) Reports that assistance and protection measures to women victims of trafficking are not sufficient nor sufficiently accessible and that the protection offered, including the granting of residence permits, depends on the level of their collaboration with the justice system;
- (d) The fact that women in prostitution without residence permit are discouraged to report offences for which they were victims and have their cases investigated by the police, including in case of gender-based violence such as rape;
- (e) The unavailability of adequate health services for women in prostitution (art. 5).

34. **Recalling general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:**

- (a) **Intensify its efforts to address the issue of violence against women, in particular women from minorities, and review its practice on residence permits to avoid the application of the law having the effect, in practice, of forcing women victims of domestic violence to remain in abusive relationships;**
- (b) **Consider not extending the residence requirement to five years for obtaining a residence permit;**
- (c) **Provide adequate assistance and protection to victims of trafficking regardless of their residence status and grant them residence permits where necessary and increase its efforts to combat trafficking including by identifying, prosecuting and punishing those responsible;**
- (d) **Develop full national health service coverage for women in prostitution regardless of their residence status and accept reports and complaints from them, investigate such complaints and prosecute those responsible.**

Refugees and asylum seekers, including unaccompanied minors

35. While noting the explanations provided by the State party, the Committee remains concerned about the use of solitary confinement to ensure safe deportation in the Trandum Immigration Centre, reportedly without a proper assessment and appropriate health services. The Committee is also concerned by reports of detention of children in immigration centres in the State party. It is further concerned about the reported

disappearance of unaccompanied minors, who may become victims of human trafficking (art. 5).

36. The Committee recommends that the State party: a) review the procedures and restrict the practice of solitary confinement of migrants and asylum seekers awaiting deportation ; b) put in place adequate health services, including for mental illness for such persons; c) avoid the detention of children and; d) ensure an effective protection of unaccompanied minors including against trafficking.

Interpretation services

37. While noting measures taken by the State party, the Committee remains concerned about reports on the continued practice of using children, next of kin and unqualified persons in providing interpretation services, in particular in the areas of health care and law enforcement, thus risking the impairment of equal access to public services for persons with immigrant background and Roma (art. 5).

38. The Committee recommends that the State party ensure that interpretation services is provided by qualified professionals and avoid using children or next of skin. The Committee also recommends that the State party follow-up on the report of the Interpreting Services Review Committee and adopt legislation on interpretation services to guarantee equal access to public services for all.

Right to education

39. The Committee is concerned that children living in asylum centres do not always enjoy access to kindergarten. It is also concerned about reports that Section 3-1 of the Education Act has the effect of excluding from the upper secondary school, children above the age of 15 and without a legal residence status. (art 2, 5).

40. The Committee recommends that the State party review Section 3-1 of the Education Act in order to guarantee the right to education, including at the upper secondary school, to all children within its jurisdiction, irrespective of their residence status.

D. Other recommendations

Ratification of other treaties

41. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Convention No. 189 on the Protection of Domestic Workers.

Follow-up to the Durban Declaration and Programme of Action

42. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference held in Geneva in April 2009, the Committee recommends that, the State party give effect to the Durban Declaration and Programme of Action (A/CONF.189/12 and Corr.1, chap. I), adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference (A/CONF.211/8, chap. I) held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report

specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

43. In the light of General Assembly resolution 68/237 proclaiming the International Decade for People of African Descent for 2015-2024 and resolution 69/16 on the program of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable program of measures and policies. The Committee requests as well that the State party includes in its next report precise information on the concrete measures adopted in this framework, taking into account its General Recommendation N°34 (2011) on racial discrimination against people of African descent.

Consultations with organizations of civil society

44. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

Dissemination

45. The Committee recommends that the State party increase its efforts to raise public awareness and knowledge of the Convention throughout its territory; make the State party's reports readily available and accessible to the public at the time of their submission, and widely publicize the concluding observations of the Committee in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

46. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 14, 30 and 38.

Paragraphs of particular importance

47. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 16, 22, 26 and 43, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

48. The Committee recommends that the State party submit its combined twenty-third and twenty-fourth periodic reports, in a single document, by 19 September 2017, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. In the light of the General Assembly resolution 68/268, the Committee urges the State party to observe the word limit of 21,200 for periodic reports.
