

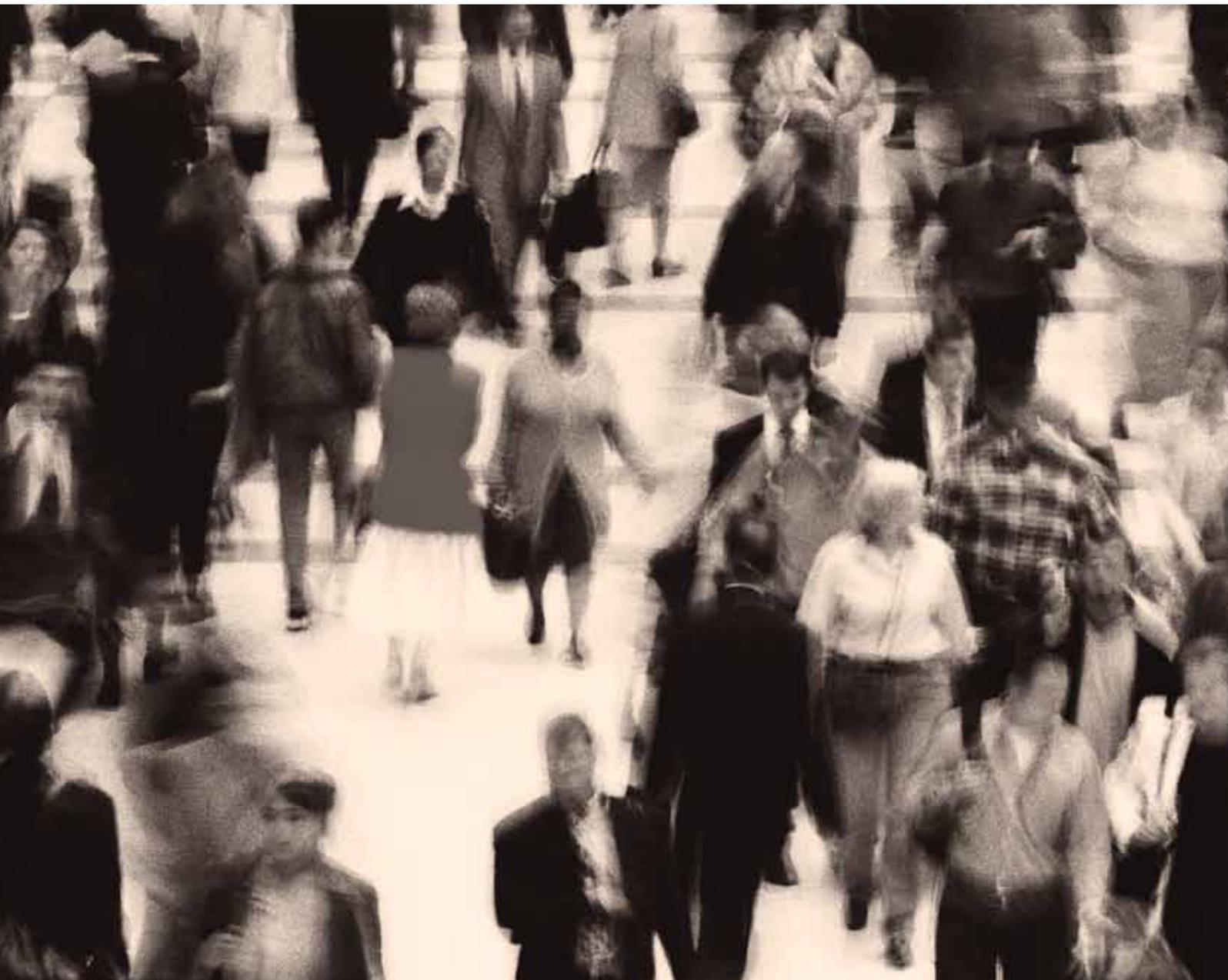


Equality and  
Anti-Discrimination Ombud

**CERD 2014**

**The Ombud's report to the UN Committee  
on the Elimination of Racial Discrimination**

**- a supplement to Norway's twenty-first/twenty-second periodic report**



Equality and Anti-Discrimination Ombud

CERD 2014

The Ombud's report to the UN Committee  
on the Elimination of Racial Discrimination

– a supplement to Norway's twenty-first/twenty-second periodic report

ISBN 978-82-92852-75-0

## Table of contents

<b>Preface</b>	page 5
<b>Introduction</b>	page 7
<b>1. Fundamental reasons for discrimination in Norway: Negative racial and ethnic stereotypes in the public domain (Art. 7)</b>	page 9
<b>2. Hate speech and hate crime (Art. 2 and Art. 4)</b>	page 10
<b>3. The right to work and the state's obligation to eliminate discrimination in the workplace (Article 5)</b>	page 14
<b>4. The right to equal access to public services (Article 2)</b>	page 19
4.1 The right to an interpreter as part of the right to equal public services (Article 2)	page 20
4.2 Public authorities' combating of gender-based violence in an ethnic equality perspective (Article 5 and Article 2)	page 22
4.2.1 Regulations for residence permits for family reunification	page 22
4.2.2 Victims of human trafficking	page 23
4.2.3 Health services for women in prostitution without permanent residence permits	page 24
4.2.4 Due process protection for foreign women in prostitution who are victims of violence	page 24
4.3 Mental health care at Trandum (Article 5, cf. Article 2)	page 25
4.4 Qualification through participation in the introduction programme (Article 5, cf. Article 2)	page 26
<b>5. The right to effective protection and remedies (Article 6)</b>	page 27
<b>6. The state's obligation to consult with civil society (Article 2)</b>	page 29
<b>Endnotes</b>	page 31



## Preface

When the Norwegian authorities are checking whether they comply with their obligations under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, they have to ask themselves one fundamental question: Does it matter?

Does it matter to your rights and possibilities that you have a different skin colour? That you or your parents were born in another country? That you speak another language than Norwegian?

This report shows that it does.

Ethnic minorities are pushed out of the public debate by hate speech and threats. In the labour market, Arshad's and Somaya's job applications are discarded long before the interview stage. We provide poorer public services if you do not speak Norwegian. Our residence permit rules make it risky to leave a violent husband if you were born abroad. And our services to prostitutes and people who are to be sent out of Norway are so poor that violation of human rights is often the rule rather than the exception.

Why is that? Why does Norway have a policy where people are at a disadvantage if they have a different skin colour or speak a different language than the majority? A policy whereby belonging to a group that is particularly at risk of discrimination means that you are offered less help and protection, not more?

This report shows that there are three closely related factors behind this:

- We do not listen to the people who experience discrimination.
- We do not ensure that discrimination has consequences.
- We have a policy that aims to change the minority rather than combat prejudice and discrimination in the majority.

An effective equality policy is a policy that ensures that human rights are equally available to everyone. It lets the voice of those who experience discrimination permeate policy. It makes the price to be paid for discriminating bigger than the cost of being discriminated against. And it is based on a combination of clear proactive obligations and effective deterrent sanctions. This way, it places the responsibility for promoting equality and avoiding discrimination where it belongs – with the Norwegian authorities and those who have the power to discriminate against others: employers, service providers and the rest of the majority society.

With the current policy, ethnic minorities carry almost all the costs of inequality. This is not in accordance with the human rights. If Norway is to live up to our commitments under the International Convention on the Elimination of All Forms of Racial Discrimination, we must be willing to change both our society and our policy so that we can be able to ensure that all the country's inhabitants have the same rights.



Sunniva Ørstavik

The Equality and Anti-Discrimination Ombud



## Introduction

This report is a supplement from the Ombud to the Norwegian state's twenty-first/twenty-second periodic report to the Committee on the Elimination of Racial Discrimination (hereinafter called 'the Committee') concerning the state's follow-up of the Committee's recommendations and the implementation of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination in Norway. The Equality and Anti-Discrimination Ombud (LDO) and many other parties were invited to provide input to the state's report during the process, but the state's final report does not reflect much of the input received. To some extent, this report therefore repeats the Ombud's concerns from previous reports.

The fundamental reasons for racial discrimination, hate speech and hate crime have a central place in the report. The extreme right-wing violence that Norway experienced on 22 July 2011 has highlighted the need for systematic work to prevent negative stereotypes and attitudes. Thus far, the authorities have not given much priority to this work. The Ombud calls for concrete measures to map, prevent and combat attitudes and stereotypes that can lead to discrimination, defamation and harassment of ethnic minorities.

The unemployment rate in the minority population is three times higher than in the majority population, and this situation has remained stable for the past twenty years. The Ombud receives more enquiries relating to ethnic discrimination in the labour market than in any other area of society. In this report, the Ombud assesses the authorities' work to ensure non-discriminatory access to the labour market, whether the measures are effective and whether they address the ethnic discrimination that research has found to take place in connection with recruitment to the labour market.

Linguistic communication barriers in the public sector are a serious discrimination problem for those affected by them and for public service providers, and research has uncovered that such discrimination also takes place in vital areas of society, such as the health sector and the courts. Intensified guidance and new guidelines for employees have proven not to be sufficiently effective in changing an unacceptable practice. At the same time, the Ombud receives few complaints about this type of discrimination, which could mean that individuals are unaware that they are entitled to public services in a language they understand. The Ombud therefore calls for legal remedies that can strengthen the individual right to an interpreter and provide more proactive obligations for public service providers.

The state's combating of gender-based violence is contingent on several public services from various government and municipal agencies. Research and evaluations of action plans and measures for women who are victims of violence have several times pointed out the serious negative consequences of the authorities choosing to solve serious gender equality challenges, such as violence and human trafficking, within the framework of its immigration and integration policy, without also integrating this work in the general gender equality work. In the report, the Ombud discusses several examples of how the relationship between gender, ethnicity, and sometimes residence status, creates problems and undermines the effect of measures to prevent violence. The Ombud therefore calls for more legal measures to strengthen the personal safety of women who are victims of violence.

The introduction scheme is deemed to be the most important policy instrument for qualifying newly arrived refugees and their families in Norway, but the results are consistently poorer for some groups of minority women. In the report, the Ombud refers to several examples of gender discrimination of female participants in the introduction scheme. The Ombud calls for a thorough legal review of the Introduction Act and the municipal services provided, and for the introduction scheme to be harmonised with the provisions of the Gender Equality Act.

Access to specialist health services is the topic of the section on persons without legal residence who are interned at the police immigration detention centre at Trandum. The Ombud is concerned that coercion is exercised without the involvement of medical personnel and fears that order and discipline considerations are given higher priority than the residents' access to mental and physical health care.

Discrimination has few or no consequences for those who discriminate. In the report, the Ombud points out some crucial weaknesses that still exist in the anti-discrimination legislation, despite the fact that the formal rights have mostly been established. Many are unaware of the right to protection against discrimination, few have the strength to complain against discrimination, and it is still both difficult and financially burdensome for the victims to ensure that violations of anti-discrimination legislation are punished. The Ombud calls for legal measures that can ensure that the Equality and Anti-Discrimination Tribunal can order damages for non-economic loss to be paid to victims of discrimination, and for the enforcement system to be authorised to recommend free legal aid in discrimination cases.

A transparent and systematic dialogue between the state and society is vital and necessary if civil society is to be able to provide input in relation to follow-up and implementation of the Committee's recommendations before, during and after examination of the state. The Ombud calls for new action plans and a strengthened dialogue with civil society to ensure an effective equality and anti-discrimination policy.

## 1. Fundamental reasons for discrimination in Norway: Negative racial and ethnic stereotypes in the public domain (Art. 7)

According to CERD Article 7, the States Parties undertake to combat prejudice which leads to racial discrimination and to promote understanding, tolerance and friendship among racial and ethnic groups. In its General Recommendation No 30 paragraph 12, the Committee urges Norway to *'take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large.'*

### Description of the situation

Public debate in Norway is characterised by several negative stereotypes based on race, religion and ethnicity. Myths that minorities constitute a threat to the modern Norwegian society are particularly widespread, both in the media and the political debate. A report from the Norwegian Directorate of Integration and Diversity (IMDi)<sup>1</sup> showed that newspaper articles about immigration and integration are far more often problem-focused than resource-focused. According to a media analysis carried out on assignment from the Ministry of Children, Equality and Social Inclusion, this trend has become clearer in editorials and comment articles after the terrorist attack in Norway in 2011.

Thorough media analyses from the past 25 years have also documented a clear tendency for ethnic minorities to be linked to crimes.<sup>2</sup> For example, the media paint a picture of the 'typical' rapist as a black man assaulting random women in the street, despite the fact that statistics show that other types of rape are far more common. This tendency is also clear in the discussion of Roma people staying temporarily in Norway, who are often described as organised criminals who beg, steal and litter. Despite the fact that Roma have reported extensive discrimination and harassment, the public debate has not focused much on the need for socio-political measures to enable them to have their fundamental human rights fulfilled.

Research shows that prejudice and negative stereotypes weaken social cohesion. A survey from IMDi shows that seven out of ten Norwegians believe that Norwegian values are in strong contrast to the values of immigrants from Africa, Asia and South and Central America. Moreover, more than 33 per cent believe that immigration poses a serious threat to common Norwegian values.<sup>3</sup> In the Yearbook for Human Rights in Norway 2012, published by the Norwegian Centre for Human Rights, ten per cent of respondents in one of the surveys state that they disliked Jews. Eight per cent state that they do not want Jews as neighbours or friends. The proportion that would dislike having Muslims, Somali or Roma people as neighbours is even higher, at 25, 40 and 50 per cent, respectively.

Despite these clear challenges, the Norwegian authorities' work to combat stereotypes and prejudice is characterised by few measures and an unsystematic approach. Some good individual measures have been implemented, such as the educational project DEMBRA and the government-subsidised campaign Tea Time<sup>4</sup>, but the work is generally of a temporary nature and lacks strategy and a big-picture perspective. In its report from 2011<sup>5</sup>, the Equality Commission pointed out that Norway's equality policy has clear shortcomings and weaknesses when it comes to implementing the

policy. The Commission proposed that the Gender Equality Act be amended to impose on the public authorities a concrete obligation to combat prejudice and stereotypes, but the proposal was not followed up.

### **The Ombud's concerns**

The Ombud is concerned that widespread negative stereotypes in the public debate can lead to the dehumanisation of minority groups and be used to legitimise defamation, harassment and discrimination. In a report from the Norwegian Centre against Racism, Roma people, one of the most vulnerable groups, state that they often experience racist comments and racially motivated harassment and discrimination.<sup>6</sup>

The Ombud is also concerned about how the authorities' policy is affected by the climate of public debate. The Government recently proposed to prohibit begging. The political arguments for the draft legislation largely concerned limiting visiting Roma people's possibility of asking for help in Norwegian streets. It has not been a priority to implement measures to help this very vulnerable minority group whose situation will deteriorate as a result of such a prohibition.

The Ombud also believes that it is a problem that the work to combat negative stereotypes and prejudice among the majority is fragmented and unsystematic. There is little willingness to introduce proactive measures to ensure that discriminatory attitudes do not lead to discriminatory acts. The Ombud is concerned because the authorities have not followed up to any great extent the measures proposed by the Equality Commission, which would have ensured that the state has a uniform, strategic tool in its work to combat harmful stereotypes and prejudice.

### **The Ombud's recommendations**

- *The Committee should request that the Government follow up the frequent references to racial and ethnic stereotypes in the public domain by developing a comprehensive strategy for combating these stereotypes.*
- *The Committee should request that the Government submit a proposal for legislative amendment that imposes on the public authorities an obligation to combat prejudice and stereotypes and to promote a good relationship between different groups in society.*

## **2. Hate speech and hate crime (Art. 2 and Art. 4)**

Article 4 of the Convention specifically requires the States Parties to adopt criminal provisions prohibiting the dissemination of ideas based on racial superiority or hatred. Pursuant to Article 2 (1) (d) and (e) and Article 2 (2), the States Parties have an obligation to also combat 'lawful' hate speech that is harmful to society. General recommendation No 35 describes this obligation in more detail.

In its concluding observations of March 2011 (Section 21), the CERD Committee expressed concern about both the negative effects of racist utterances in public discourse and the lack of documentation relating to hate crimes.

## **Description of the situation – hate speech**

On 22 July 2011, terrorist Anders Behring Breivik killed 77 people in Norway. Many of them were children and young people. He claimed that they, through their choice of occupation and political engagement for a multi-cultural and equal society, posed a threat to Norway. He spread the racism and hatred on which his actions were based via the internet in the form of a 1,500 pages long document and countless posts on racist and xenophobic websites.

Although there is little research on the scope of hate speech in Norway, it is not difficult to find examples of widespread use of the rhetoric that Breivik used to justify his actions. Online newspapers, social media and websites specifically designed to disseminate fear propaganda and hate rhetoric, all contain numerous examples of debaters who attack Muslims, Jews, immigrants, Roma, Sami people and other vulnerable ethnic and religious groups. Another example of hate rhetoric that is common in Norwegian public debate is the gender-specific (and often sexualized) harassment and intimidation of ethnic minority women (and women in general).<sup>7</sup>

There is little to indicate that extreme utterances have become less frequent in Norway after 22 July 2011. The Norwegian Police Security Service (PST) writes in its 'Annual Threat Assessment 2014' that utterances that are not criminal offences, but that contain clear elements of hate speech, harassment and threat, are a growing problem on the internet. They are particularly concerned that such utterances may cause people in authority to not make use of their freedom of expression.

In a report from the Institute for Social Research from 2014<sup>8</sup>, it was found that the proportion of people that reports negative experience is approximately the same among active debaters with majority backgrounds as among those with minority backgrounds, but that the unpleasant comments do not have the same focus. Among the majority, the focus is primarily on the case at hand, although 30 per cent of negative comments are also directed at personal qualities. Among the minorities, the content of the argument is also the most important basis for negative feedback, but among this group, aspects that are more closely related to a person's identity – religious beliefs, ethnic background, skin colour and nationality – are a more important basis for unpleasant and condescending comments in discussions that take place in the public domain.

International research<sup>9</sup> shows that hate speech causes great harm to society. Hate speech:

- contributes to social exclusion and increases polarisation, which breaks down social cohesion.
- deters people from participating in our democratic system. In other words, members of target groups avoid expressing their views when they can expect to be dehumanised and harassed.
- perpetuates prejudice. Hate speech is not merely a symptom of prejudice; it is also an infectious agent that leads to more hate speech.
- devalues the target groups (e.g., Muslims or Jews), also in the eyes of people who read or hear such hate speech by coincidence.
- creates anxiety and distress among members of target groups.
- strips people of their dignity by saying that they are not equal citizens in society.

There is no reason to believe that these effects are not the same in Norway. In addition to the above-mentioned negative effects of hate speech, the Ombud fears, based on its experience, that hate speech in Norway:

- triggers discrimination (exclusion, polarisation and devaluation are well-known triggers of discrimination)
- creates a culture of fear of outgroups without rational justification, putting at risk the social cohesion of society.<sup>10</sup>
- leads to violence.<sup>11</sup>

Norway does not currently have a comprehensive policy to prevent, combat and limit hate speech. The most serious utterances are prohibited by the General Civil Penal Code Section 135 letter a. However, one can question whether this Norwegian provision is enforced in accordance with the intention of the Convention. There have only been five criminal indictments under this provision over the past 10 years. In addition, both parties in the government coalition have stated in their political manifestos that they wish to repeal the prohibition.

The Government's other policies to combat hate speech are based on the Norwegian Governmental Commission on Freedom of Expression's standpoint from 1999. It assumes that hate speech will, when expressed, lead to points of view being aired, laundered and legitimised through discussion and criticism.<sup>12</sup> In order for this to happen, hateful utterances must be allowed.

There is no comprehensive strategy for preventing and limiting the social harm caused by hate speech.

### **The Ombud's concerns**

After the terrorist attack in 2011, the authorities emphasised the importance of mapping, countering and combating the hate speech that Breivik represented. This was not followed up in practical policy to any great extent. In the past year, hate speech has again been high on the media's and politicians' agendas. The Ombud is very concerned that this does not seem to be followed up by a comprehensive policy based on effective and holistic measures this time either.

The Ombud is also concerned that Norway chooses to base its anti-hate speech policy on the premise that the public will launder such hate speech and render it harmless. This point of view is not supported by any research in Norway or abroad. On the contrary, research indicates that hate speech often leads to more hate speech. The Ombud is concerned that the current policy is based on incorrect premises and calls for a knowledge-based policy of specific measures to protect ethnic minorities against the harm caused by lawful and unlawful hate speech.

### **The Ombud's recommendations**

- *The Committee should request that the Government ensure that information about hate speech and its harmful effects on society be included in school curricula and teaching material.*
- *The Committee should request that the Government ensure that research is carried out on the prevalence and social harms of hate speech in Norway and on the mechanisms that can reduce such harms.*

- *The Committee should request that the Government encourage media self-regulation, e.g. through the use of moderators, full-name policies etc.*
- *The Committee should request that the Government initiate awareness campaigns to counter hate speech.*

### **Description of the situation – Hate crime**

The CERD Committee has, pursuant to Article 4 and General Recommendation No 31, repeatedly asked Norway to present statistics regarding hate crimes, including the number of cases reported to the police, dismissals, prosecutions and convictions. Such statistics would give the Government insight into whether it adequately addresses hate crime in its criminal justice procedures and sanctions. Although the Government has never provided such statistics, the National Police Directorate has published on its website statistics showing the number of hate crimes based on race/ethnicity or religion:

Number of reports based on type of hate motive, 2010-2013				
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Race/Ethnicity</b>	235	183	162	141
<b>Religion</b>	44	35	39	41

The National Police Directorate warns of under-reporting and that there are particular challenges relating to the registration of hate crimes, making it difficult to get an accurate picture of the situation. According to the Directorate's own population survey for 2012, 1% of the population reported that they had been subjected to a hate crime (violence or threats motivated by religion, colour, ethnic origin, nationality or sexual orientation) during the past year. Only 38 % of those victims said that they reported it to the police. In the Ombud's opinion, it is also a problem that the police and the prosecuting authority have no clear definition of hate crime. Among other things, this lack of clarity has a negative influence on how well the registration procedures work in practice and the quality and content of training provided to police officers and prosecutors.

In 2013, Oslo Police District adopted a definition of hate crime which appears to be a significant improvement compared with the definition used by the National Police Directorate. For example, the former definition clarifies that the concept of hate crime also includes criminal acts that are 'in part' motivated by a person's ethnicity or religion.

In 2012, the Director General of Public Prosecutions held a seminar on hate crime. The Director requested each of the regional offices of the prosecuting authority to prepare statistics on the number of indictments and convictions in hate crime cases over the past three years. These statistics were never published. The response from the regional offices (and the underlying police districts) varied greatly in terms of both quality and completeness. However, there was some indication that there was inconsistency in the classification of hate crimes in the database. There is therefore a need for better training in how to register hate crimes.

### **The Ombud's concerns**

Hate crime is discrimination in its most brutal form and leads to enormous costs both at the individual, group and societal level. It is very worrying that the Government has no comprehensive and quality-assured documentation of the prevalence of, and criminal justice sanctions against, hate crimes motivated by ethnicity and religion. More knowledge will strengthen the police's work and contribute to a more effective policy to combat hate crime.

### **The Ombud's recommendations**

- *The Committee should request that the Government collect and publish statistics on hate crimes, including the number of registered reports, dismissals, prosecutions and convictions*
- *The Committee should request that the Government ensure that the criminal justice system (including the police and prosecutors) adopts a clear and uniform definition of hate crime at the national level.*
- *The Committee should request that the Government ensure that the police and prosecutors are given proper training and clear instructions so as to ensure a uniform practice in the registration of and protection against hate crimes.*

## **3. The right to work and the state's obligation to eliminate discrimination in the workplace (Article 5)**

Article 5 (e) (i) of the International Convention on the Elimination of All Forms of Racial Discrimination requires the States Parties:

*'to prohibit and to eliminate racial discrimination in all its forms and to guarantee (...) the enjoyment of (...) the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration'.*

In Section 9 of its concluding observations of 2011, the Committee recommended that the States Parties implement measures to address the discrimination of persons from ethnic minority backgrounds in the labour market. The Committee focused in particular on barriers related to access to the labour market.<sup>13</sup>

In its additional questions from August 2012 after the examination in 2011, the Committee also requested that Norway present statistics and other information about the effect of measures relating to recruitment and diversity in the public sector.<sup>14</sup>

### **Description of the situation**

The unemployment rate in the minority population is three times higher than in the majority population, and this situation has been stable for the past twenty years.

The cases dealt with by the Ombud show that discrimination in the workplace is a barrier to employment for the minority population. The Ombud receives more enquiries relating to discrimination in the labour market than in any other area of society. In 2013, the Ombud received approximately 325 enquiries concerning discrimination in connection with recruitment to the labour market. Of these

enquiries, 18% concerned possible discrimination on grounds of ethnicity and/or language. These cases illustrate two main problems in particular. The first problem is related to cases where persons from ethnic minority backgrounds have applied for many jobs they consider themselves qualified or over-qualified for, without even being invited to an interview. The other problem is related to cases where employers make unreasonable requirements for Norwegian language skills, for example through job advertisements that state that applicants must have Norwegian as their first language.

The Ombud also considered a case where a municipal employer had changed its practice relating to language requirements for nurses. The new requirements meant that in order to get a job as a nurse in the City of Oslo, candidates had to have passed the Bergen Test no more than three years earlier. This practice meant that applicants who did not have Norwegian as their first language were unable to get a job despite having very good Norwegian language skills. The Ombud concluded that this practice is in violation of the Norwegian Ethnicity Anti-Discrimination Act.

#### a) Discrimination in connection with recruitment is a serious problem

Recent research has, through testing in pairs etc., documented that discrimination in connection with recruitment is a clear barrier to access to the labour market for ethnic minorities. Rogstad and Midtbøen's report 'Diskrimineringens omfang og årsaker' ('The scope and causes of discrimination') from 2012 shows that the likelihood of being invited for an interview decreases by 25 per cent if an applicant has a name that indicates a non-Norwegian background. The report shows that negative stereotypes and prejudice against various ethnic minorities are one of the underlying causes of discrimination.

Midtbøen (2013) refers to clear differences between sectors, with discrimination being less prevalent in the public sector than in the private sector. The reason given is that in the public sector and major private companies, where the recruitment processes are more formalised and structured, there is less room for discretionary judgment and quick decisions based on stereotypical ideas.

Indirect discrimination has also been documented. In such cases, seemingly neutral recruitment practices and processes result in persons from minority backgrounds being at a disadvantage compared to others.<sup>15</sup>

A summary from the Fafo Institute for Labour and Social Research concludes that discriminatory recruitment practices have been documented, and that this fact must be deemed to constitute a considerable disadvantage to immigrants in the Norwegian labour market.<sup>16</sup>

#### b) Legal remedies and proactive obligations

Little systematic work has been done in the labour market to determine the extent to which labour market parties themselves have goals, plans and measures in place to promote ethnic equality. In Fafo's survey of 1,000 employers in the private sector, only one out of four enterprises carried out systematic work to promote ethnic equality.<sup>17</sup>

The activity and reporting duty set out in the Ethnicity Anti-Discrimination Act, which addresses discrimination on the basis of ethnicity, language and religion, imposes on all employers in the public sector and employers in the private sector with more than 50 employees a duty to make active, targeted and systematic efforts to

promote equality irrespective of ethnicity, religion and belief. Among other things, the activity duty covers matters such as recruitment, pay and working conditions, promotion opportunities, development opportunities and protection against harassment. The activity duty is supported by a reporting duty, but, as opposed to the Gender Equality Act, which only concerns gender discrimination, the Ethnicity Anti-Discrimination Act does not require or allow for reporting on the state of affairs in enterprises. However, employers shall report on equality measures that have been implemented or are to be implemented to promote the purpose of the Act.

LDO's review of the government reports on equality in 2010 and 2013 shows that there are great weaknesses in how the ministries and their subordinate agencies work in relation to employers' activity and reporting duty. Reporting on measures does not seem to be influenced much by the guidelines set out in the anti-discrimination legislation and in the state's own guidelines. The review of reported measures also shows that the state has carried out little systematic work to promote ethnic equality by means of proactive measures. For example, systematic procedures to ensure non-discriminatory recruitment processes are mostly non-existent.

#### c) Implementation system for equality

Responsibility for implementing the authorities' policy to promote ethnic equality in the workplace is shared between the Ministry of Local Government and Modernisation, the Ministry of Labour and Social Affairs, the Ministry of Children, Equality and Social Inclusion, and subordinate agencies such as the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) and the Directorate of Integration and Diversity (IMDi).

From 2014, Bufdir has been assigned the role of expert directorate in the ethnic discrimination field. Report No 44 to the Storting 'Equality does not occur by itself' from 2013 sets out a clear path for the development of the directorate's role as a driving force for equality. Among other things, Bufdir was assigned responsibility for developing a guide for municipalities and county authorities about equality in the workplace. The report was followed up by financial grants and measures for developing a nationwide regional system. Due to the change of government in autumn 2013, both the report and the budget proposition were withdrawn.

#### d) Action plans and other political measures

One of the main objectives of the Action Plan to Promote Equality and Prevent Ethnic Discrimination (2009–2013) was to promote knowledge and implement the activity and reporting duty in the workplace that was introduced in 2009. It was emphasised that the plan was a clear strengthening of the efforts to combat ethnic discrimination, as this was the first time the Government collaborated with social partners to achieve concrete results within the framework of an action plan. The evaluation of the plan in 2013 mainly focused on whether this collaboration had been good, and not on whether the plan's objectives had been achieved, despite the fact that ongoing research showed that employers followed up the new statutory provisions only to a limited extent.<sup>18</sup>

The action plan 'We need the competence of immigrants' (2013–2016) contains some important measures that, in the Ombud's opinion, are suitable for addressing discriminatory barriers in connection with recruitment. This concerns the development of an e-learning program and a guide for diverse recruitment, and the

measure to obtain a better knowledge basis in relation to suitability assessments in connection with recruitment.

### **The Ombud's concerns**

The current legal situation entails several challenges relating to the activity and reporting duty set out in the Ethnicity Anti-Discrimination Act:

- The activity and reporting duty is little known. There is a great need for guidance concerning this duty and how to comply with it.
- The activity duty is not specified. It is not clear to the employers what this duty entails. Several official committees have recommended that the activity duty be specified in greater detail. LDO has also supported this.
- There are no legal sanctions for failing to comply with the activity duty. LDO can initiate a dialogue with enterprises about how they can comply with their activity duty, but cannot issue statements about whether the duty is fulfilled.

Despite the challenges identified in relation to the substantive content of the activity and reporting duty, and the lack of enforcement in the workplace and of guidelines for employers, the Ombud believes that it is crucial that provisions exist that impose on employers a duty to carry out preventive and proactive work.

The Ombud is therefore concerned that the activity and reporting duty may now be under pressure. Both parties in the current government coalition, the Norwegian Conservative Party and the Progress Party, have previously indicated that they do not want the activity and reporting duty. In connection with its consideration of the anti-discrimination legislation in the Storting in 2013, the Standing Committee on Family and Cultural Affairs stated that any changes to the policy instrument system must be clarified before any changes to the activity and reporting duty can be considered. LDO is concerned that the ongoing work of drafting a comprehensive act on discrimination will lead to the activity and reporting duty lapsing.

As regards the implementation system for equality, LDO finds that, like in the gender equality field, ethnic discrimination in the workplace is a fragmented and unclear area of responsibility, characterised by a weak implementation structure and poor implementation capacity, as well as by inadequate budgets. For example, an evaluation of IMDi (2014) shows that the directorate has little focuses on the workplace:

*'IMDi has virtually no activities targeting business and industry and employers. (...) We are surprised that IMDi is governed by indicators for recruitment of immigrants to municipalities and companies wholly owned by the state, an area which IMDi has little or no influence on.'*<sup>19</sup>

LDO also finds that not much priority is given to ethnic discrimination in the workplace, and that the responsible administrative bodies allocate few resources and make few active efforts. For example, LDO finds that the provision of guidance, knowledge transfer and specific training of the social partners is a poorly developed area.

The Ombud is concerned that the state's structuring of the policy instrument system and the measures to promote increased recruitment from ethnic minorities largely focus on individuals, in that a strong administrative structure has been established and considerable financial resources are allocated to qualifying persons from immigrant backgrounds for participation in the labour market. Recent research (Rogstad 2012) has shown that this focus has clear weaknesses, and that prejudice and stereotypes are clear discrimination barriers in connection with recruitment.

There are clear shortcomings in the structural and employer-directed measures to combat discriminatory barriers. The measures implemented by the authorities are generally characterised by poor funding, and there are few guidelines and orders targeting employers and others with responsibility in the labour market.

The Ombud is concerned about fundamental weaknesses in relation to effective implementation of training of and guidance to employers on how they should work to promote equality. For example, LDO has been unable to identify any significant follow-up to disseminate knowledge about and increase the use of the e-learning program and guide that were two of the most important measures in the action plan 'We need the competence of immigrants'. We call for specific follow-up of recent research that documents discrimination in connection with recruitment.

The Ombud is especially concerned that one of the main measures in relation the labour market set out in the most recent action plan against ethnic discrimination – taking steps to make the activity and reporting duties better known – has not been implemented. We are also concerned that the collaboration with the social partners seems to have had few long-term effects beyond the collaboration on certain specific projects.

Following an overall assessment, LDO is of the opinion that the authorities have failed to implement the most suitable and expedient measures to guarantee ethnic minorities the right to work, and those weaknesses in the implementation of legislation and policy, plans and measures mean that ethnic minorities are insufficiently protected against discrimination in the workplace.

### **The Ombud's recommendations**

The state must ensure that employers are working proactively against structures and barriers that prevent equal access to work. The duty to carry out proactive work must be known and failure to comply with this duty must have consequences.

- *The Committee should request that the Government ensure good preventive duties in the workplace (activity and reporting duty).*

LDO recommends that the state ensure that its own orders to promote equal recruitment are complied with in practice in the central government administration through active follow-up and monitoring.

The state should establish procedures for active follow-up of public employers at the regional level and expand the scope of the order that at least one applicant from an immigrant background be invited to an interview (if he/she is qualified) to also apply to municipal and county enterprises.

- *The Committee should request that the Government implement measures to ensure equal recruitment processes in the public sector.*

The state should keep an overall overview of ongoing work and develop relevant indicators to monitor the effect of the Government's work to fulfil its obligations under the Convention. An example of a relevant indicator could be how many state employees responsible for recruitment have undergone systematic training in diverse recruitment.

- *The Committee should request that the Government implement measures to promote regular monitoring of the diverse recruitment work.*

In light of the weaknesses LDO has documented in the existing structure, the authorities must ensure that Bufdir is put in a position to function as an efficient implementation body for the authorities' policy.

- *The Committee should request that the Government implement measures to secure an efficient implementation structure for the work on ethnic equality in the workplace.*

In addition to legislation that imposes an activity duty on employers, the state must ensure that appropriate educational measures are used to promote equality. The state must establish a comprehensive initiative for systematic training and knowledge-transfer targeting the labour market.

- *The Committee should request that the Government implement measures to promote good practice.*

#### **4. The right to equal access to public services (Article 2)**

According to CERD Article 2 (1) (c), States Parties are obliged to pursue a policy that aims to eliminate racial discrimination, including taking effective measures *'to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists'*.

It is the state's responsibility to implement effective measures if individual circumstances such as language, gender, national origin etc. lead to people receiving poorer public services. Article 5 of CERD mentions specific areas of society that fall under this obligation. In 2011, the Committee encouraged the state to implement concrete measures against discrimination that results in immigrants in general, and non-citizens in particular, receiving poorer public services.

In this chapter, the Ombud describes four selected problem areas relating to equal public services. These problems are typically well documented through research and reports, and the authorities, the Ombud and other civil actors working on these problems largely agree on the description of the problems. The Ombud has also raised these problems with the authorities on several occasions, without this having changed the situation to any significant extent.

Although the Government raises several of the topics in its report to the Committee, it does not demonstrate that it has listened to affected groups and communities, nor to the Ombud's input, as the Committee recommended it to do in 2011.

#### **4.1 The right to an interpreter as part of the right to equal public services (Article 2)**

Equal public services depend on good communication between the service provider and the person receiving the services. In its recommendations from 2011, the Committee encouraged the state to implement concrete measures against discrimination, for example in relation to non-citizens' access to public services. The Committee also made a general recommendation to strengthen the availability, quality and funding of interpreting services, and was very concerned about the inadequate availability of qualified interpreters in the health sector and the courts for Sami and languages spoken by minority groups and non-citizens. The Committee was also concerned about the use of minors and, in its recommendation from 2011, requested that legislation on the right to an interpreter be strengthened.

In its report from 2013, the UN Committee on Economic, Social and Cultural Rights (CESCR), which follows up the International Covenant on Economic, Social and Cultural Rights, recommended that measures be implemented to ensure that only qualified interpreters are used in the health sector.<sup>20</sup>

#### **Description of the situation**

Protection against discrimination means that the government administration is responsible for ensuring that everyone has access to equally good public services and, if relevant, that interpreters and translators are used where necessary. The duty to use an interpreter is not specified in legislation, however.

Professionals, such as health personnel, depend on high-quality interpreters in order to provide professionally satisfactory services. A report from the Directorate of Integration and Diversity<sup>21</sup> shows that GPs are concerned that language barriers could lead to symptoms not being identified, misdiagnoses and incorrect treatment of patients. Surveys on experienced unequal treatment in the health services reveal that 20 per cent of the immigration population believe that they do not receive the same treatment as a Norwegian patient would.<sup>22</sup> Seven per cent believe that they have received poorer health care because of their immigrant background. Women and people with the poorest health report more unequal treatment than other groups. In addition, it is known that the development and facilitation of the interpreting services have taken little account of users not included in integration measures, such as Sami people and national minorities.

Despite the fact that several measures have been implemented, especially as regards written guides for the different sectors, the measures seem not be sufficiently effective in solving the communication problems. In autumn 2014, the publicly appointed Interpreting Services Review Committee concluded that the principles of due process protection and the equality of language minorities are threatened.<sup>23</sup> The Committee pointed out that inadequate and incorrect use of interpreters results in incorrect court judgments, incorrect medical treatment, case processing errors, low efficiency, longer waiting times and increased use of resources. According to the Committee, 60–90 per cent of interpreters used do not have documented interpreting qualifications, and the legislation that governs communication via an interpreter is fragmented and often not uniformly interpreted. The Committee found that interpreters are under-used, that there is a lack of qualification requirements for interpreters, and that the procedures for booking interpreters are inadequate.

The Committee therefore proposed that the public service providers' obligation to use qualified interpreters should be enshrined in a separate interpreting act. In principle, the obligation to use qualified interpreters should particularly apply in situations where the right to due process protection and equal treatment is concerned, but the need for general language adaptation should also be considered.

### **The Ombud's concerns**

The Ombud rarely receives discrimination complaints relating to insufficient language adaptation. This indicates that few people are aware of the right to protection against discrimination in this area. Both the right and the duty to use an interpreter have an unclear basis in law, and are currently clarified by means of guides and guidelines for different sectors. This has not proven effective in changing this unfortunate practice.

The Interpreting Services Review Committee's conclusions support the Ombud's concern. The government administration chooses poor solutions, for examples using people's next-of-kin or children to assist in communication instead of interpreters when they are uncertain about whether an interpreter is necessary. The Ombud believes that such use of children warrants strong criticism. Inadequate use of interpreters reduces the quality of the professional help and services provided to the individual. It is also in violation of the professional duty of confidentiality, especially in the health sector. The principle of due process protection and equal treatment is undermined by the lack of qualified interpreters and can lead to serious situations for minority language users.

Despite the fact that inadequate use of interpreters can have serious consequences for individuals, inadequate language adaptation has no real consequences for the government administration. It does not appear to emphasise the right to an interpreter as an issue of racial discrimination, but rather as an important integration issue. The Ombud fears that this will not change until the obligation to use qualified interpreters is clarified in law.

### **The Ombud's recommendations**

- *The Committee should request that the Government implement effective measures to follow up the Interpreting Services Review Committee's recommendations and start the work to strengthen legislation through a separate interpreting act as soon as possible.*
- *The Committee should request that the Government introduce a prohibition on using next-of-kin and unqualified individuals to assist in professionals' communication.*
- *The Committee should request that the Government revise sector legislation so that the use of interpreters and translators is specified in areas of particular importance to the safeguarding of individuals' due process protection and health.*

## **4.2 Public authorities' combating of gender-based violence in an ethnic equality perspective (Article 5 and Article 2)**

According to Section 5 (b) and 2 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties shall protect against violence or bodily harm, regardless of race, skin colour and national or ethnic origin.

On several occasions, the Committee on the Elimination of Racial Discrimination has issued recommendations to Norway to counter intersectional discrimination of women and girls who are victims of violence and who come from minority backgrounds or who are staying in Norway without residence permits etc.<sup>24</sup> To some extent, the Norwegian state has followed up these recommendations.<sup>25</sup> Among other things, the Government has stated that it will ensure that the need for crisis centre services is fully met if the ongoing evaluation shows that this is necessary.<sup>26</sup>

Despite some progress in this field, the Ombud is very concerned about a development in which immigration policy considerations are given more weight than women and girls' right to safety and freedom from violence. The government that came to power in autumn 2013 has promised a more stringent practice in several areas of the immigration field that will have a disproportionate effect on women without residence on independent grounds or permanent residence.<sup>27</sup> The Ombud therefore asks the Committee to be particularly aware of the following challenges relating to the immigration legislation and its administration.

### **4.2.1 Regulations for residence permits for family reunification**

#### **Description of the situation**

Before a person can be granted a permanent residence permit for family reunification in Norway, a general requirement for three years' residence applies.<sup>28</sup> There is one exception to this three-year rule. Persons who have been abused by their spouse can apply for a residence permit on independent grounds before they meet the residence period requirement.<sup>29</sup>

Despite this exception, women stay in marriages with violent men for fear of being sent out of the country if they divorce.<sup>30</sup> At the same time, the Government has stated that it will increase the required residence period from three to five years.<sup>31</sup>

#### **The Ombud's concerns**

The Ombud is concerned about the situation of women who are victims of violence who come to Norway through family reunification. The exception to the residence rule does not work in practice. The cases are difficult to prove, and many who are subjected to violence are unaware of the exception. This makes it more difficult for women to divorce violent husbands and weakens their due process protection. The Ombud therefore strongly warns against the Government's plan to increase the required residence period from three to five years.

## **The Ombud's recommendations**

- *The Committee should request that the Government ease the requirement for three years' residence for residence permits on independent grounds in connection with family reunification, and that it not increase the residence requirement to five years.*
- *The Committee should request that the Government implement a package of measures to ensure a real right to exception from the residence period requirement for victims of violence who do not hold a residence permit on independent grounds.*

### **4.2.2 Victims of human trafficking**

#### **Description of the situation**

Human trafficking is a criminal offence in Norway.<sup>32</sup> Victims of human trafficking are entitled to help and protection if they are identified as victims of such crimes.<sup>33</sup> All low-threshold services report that the follow-up of victims of human trafficking is not working well enough. Victims' different residence statuses – whether they have been granted a period of reflection<sup>34</sup>, are seeking asylum, returning voluntarily, or fall under the Dublin Regulation – mean that there is still variation in terms of the availability and quality of help and assistance for victims of human trafficking.<sup>35</sup> It is reported that some victims of human trafficking end up in a more challenging situation after the period of reflection expires.<sup>36</sup> In addition, the support services lose contact with a worryingly high proportion of women after the expiry of the period of reflection. The Coordination Unit for Victims of Human Trafficking (KOM) has recommended that a national assistance model be adopted that ensures equal treatment and that is predictable in relation to residence and the content of the assistance and protection offered to victims of human trafficking.<sup>37</sup>

#### **The Ombud's concerns**

In the Ombud's opinion, it is very serious that the assistance and protection offered to victims are not sufficiently accessible, or that the services that are available are perceived as insufficient or as not sufficiently long-term. Like the UN Committee on the Elimination of Discrimination against Women, the Ombud fears that assistance and protection for women who are victims of human trafficking is not offered unconditionally, but depends on the level of collaboration with the judicial system. These women are seen as instrumental to the prosecution of traffickers, and not primarily as people entitled to protection.<sup>38</sup>

#### **The Ombud's recommendations**

- *The Committee should recommend that the Government establish a national model for satisfactory assistance and protection for victims of human trafficking regardless of their residence status.*
- *The Committee should request that the Government consider granting permanent residence in Norway to people who are certainly or probably victims of human trafficking.*
- *The Committee should request that the Government intensify the work on identifying victims of human trafficking.*

- *The Committee should request that the Government establish better services for people granted a period of reflection. This would include meaningful activity adapted to each individual, work training or qualification measures, mental and physical health follow-up, and good living conditions.*

#### **4.2.3 Health services for women in prostitution without permanent residence permits**

##### **Description of the situation**

Women with experience of prostitution need specially adapted health services that address their specific needs.<sup>39</sup> Many find it difficult to contact the ordinary health services, both in connection with problems associated with prostitution and other stigmatising problems.<sup>40</sup> There are great challenges relating to the right to satisfactory services for women in prostitution, regardless of residence status. There is only one low-threshold health service for women in prostitution in Norway. It is not nationwide, nor does it have sufficient funding to meet local needs. The lack of necessary and satisfactory health services is especially pronounced in relation to mental health services.

##### **The Ombud's concerns**

Women without legal residence in Norway lose out because the general health services for women in prostitution are inadequate.

The Ombud is concerned about the lack of low-threshold health services for women in prostitution and the big regional differences. As far as the Ombud knows, there is no nationwide service similar to that currently offered under the auspices of the Pro Centre. The Ombud is particularly concerned about the availability of health services for victims of human trafficking.

##### **The Ombud's recommendations**

- *The Committee should request that the Government ensure full national health service coverage for all women in prostitution, regardless of their residence status.*
- *The Committee should request that the Government develop regulations or a guide that expand, specify and provide guidance relating to foreign women in prostitution's right to health services.*

#### **4.2.4 Due process protection for foreign women in prostitution who are victims of violence**

##### **Description of the situation**

The Norwegian General Civil Penal Code, although gender-neutral, covers all forms of gender-based violence that affects women and girls in particular. Rape is one such offence.<sup>41</sup> In practice, persons who commit rape are often not convicted.<sup>42</sup> Women in prostitution who do not have permanent residence in Norway are also raped.<sup>43</sup> Minister of Justice and Public Security Anders Anundsen has stated that the residence status of foreign prostitutes should be checked if they report a rape to the police.<sup>44</sup>

### **The Ombud's concerns**

LDO is concerned that women in prostitution without permanent residence in Norway do not have the same right to report offences to the police and have their case investigated and the perpetrator convicted if they are subjected to gender-based violence such as rape. The Ombud is particularly concerned about the political signals that residence status should be considered relevant information when the police receives reports of rape. Fear of having to leave the country will probably prevent these women from reporting their cases to the police. Due process protection will thereby be further reduced and the likelihood of perpetrators going free will increase.

### **The Ombud's recommendations**

- *The Committee should request that the Government put in place measures to ensure that all reports of violence and rape are investigated and prosecuted to safeguard the right to due process protection for victims of human trafficking who are subjected to violent acts, including non-identified victims.*
- *The Committee should request that the Government adopt measures to eliminate stereotypical notions about foreign women in prostitution from the police and the courts.*

## **4.3 Mental health care at Trandum (Article 5, cf. Article 2)**

### **Description of the situation**

At the police immigration detention centre at Trandum, security cells and other forms of solitary confinement are used to ensure order and safe deportation from Norway. The types of conduct that can lead to solitary confinement can be confused with symptoms of serious illness that require immediate medical attention and treatment. Nevertheless, decisions to place someone in solitary confinement are often made without involving medical personnel. There is insufficient documentation of the use of coercion and limited rights to complain against such use.<sup>45</sup> This means that residents at Trandum who need specialist mental health services are particularly at risk of discriminatory treatment.

### **The Ombud's concerns**

It is worrying that solitary confinement of residents at Trandum is not assessed, quality assured and documented by medical personnel. This means that the residents receive poorer health services, and increases the risk of discrimination and unlawful use of coercion.

### **The Ombud's recommendations**

- *The Committee should request that the Government review and strengthen the procedures and practice for the use of security cells and other forms of solitary confinement at Trandum.*

#### 4.4 Qualification through participation in the introduction programme (Article 5, cf. Article 2)

CERD Article 5 (1) (e) includes the right to training.

In its General Comment No 25, the Committee emphasises the need to take gender-specific factors into account:

*'Recognizing that some forms of racial discrimination have a unique and specific impact on women, the Committee will endeavour in its work to take into account gender factors or issues which may be interlinked with racial discrimination'.*

In its concluding observations in 2011 (Section 11) the Committee expressed concerns about:

- the dropout rate from the mandatory language tuition
- that the teaching is not of uniform quality and free of charge for all
- that the introduction programme ceases after three years.

The Committee also encouraged the state to monitor and ensure that the programme was adapted to all groups as regards gender and origin, and to ensure that it does not prevent a person from voluntarily and actively becoming a Norwegian citizen at a later time.

#### **Description of the situation**

The introduction programme aims to impart basic skills in the Norwegian language and basic insight into Norwegian society, and to prepare refugees for participation in the labour market. Research, and particularly Fafo's research,<sup>46</sup> shows that women to a lesser extent than men go into employment or education after finishing the programme. Women with extensive care duties and little education are particularly vulnerable.

Fafo's conclusion is that low goal attainment is due to a failure to implement the programme in a satisfactory manner at the municipal level. It is questioned whether the structure of the introduction programme and the services provided by the municipalities take sufficient account of individual and, to a certain extent, gender-typical variations and needs.

The authorities have not considered the Introduction Act in light of the Gender Equality Act's prohibition on unequal treatment of women and men. The Ombud has received several complaints about gender discrimination of participants in the introduction programme. Several people have experienced that the maximum limit of five years for finishing the programme is used as grounds for refusing to give them a place in the programme, despite the fact that the delay is due to the participant having given birth and cared for young children. The Ombud has concluded that this is in violation of the Gender Equality Act.

Immigrants between the ages of 18 and 55 must document Norwegian or Sami language skills in order to be granted citizenship. In light of the above, this requirement can make it more difficult for some women to be granted Norwegian citizenship.

## **The Ombud's concerns**

Certain groups of minority women's dropout rate from the introduction programme makes the Ombud concerned that the gender equality policy may not be working for minority women, who should be an important target group for this integration measure.

The Ombud is worried that efficient implementation of the introduction programme is given more weight than minority women's right not to be discriminated against.

Completed language tuition is one of the requirements that must be met in order to apply for Norwegian citizenship. The Ombud is concerned that this requirement makes it impossible for women who drop out of the introduction programme to become Norwegian citizens.

## **The Ombud's recommendations**

- *The Committee should request that the Government review the Introduction Act and ensure harmonisation of individual provisions with the Gender Equality Act and possible gender-skewed negative effects.*
- *The Committee should request that the Government ensure that an exception provision is introduced to the maximum deadline for finishing the introduction programme.*

## **5. The right to effective protection and remedies (Article 6)**

In accordance with CERD Article 6, the States Parties shall guarantee everyone effective protection and remedies, through competent national tribunals and other state institutions, as well as the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

### **Description of the situation**

The International Convention on the Elimination of All Forms of Racial Discrimination is incorporated in Norwegian legislation through the Ethnicity Anti-Discrimination Act. Protection against discrimination on the basis of ethnicity applies to all areas of society.

The formal rights are largely in place, but there are nevertheless weaknesses in the actual implementation of the law.

Surveys on discrimination experienced by immigrants and Sami people indicate that discrimination of ethnic minorities is widespread and takes place in most areas of society.<sup>47</sup> Nevertheless, LDO receives relatively few complaints and enquiries about such discrimination. This could indicate that many are unaware of the right to protection against discrimination or where they can get help.

The Ombud and the Tribunal enforce the anti-discrimination legislation and were established to function as a low-threshold service in discrimination cases and as an alternative to the courts. However, neither the Ombud nor the Tribunal can grant damages for non-economic loss or reparation. If the parties cannot arrive at a

voluntary solution after the case has been considered by the Ombud and/or the Tribunal, the complainant must bring the case before the courts.

The Ombud's own review of complaint cases shows that, in many cases, the parties resolve the matter after the Ombud has made a statement. Nevertheless, the result of such negotiations will often be coincidental and characterised by a skewed balance of power between the parties.

Very few discrimination cases are considered by the courts. One important reason for this is probably that bringing a case before the courts can be difficult and cumbersome and involve a significant financial burden. Discrimination cases are not a priority in the free legal aid scheme, and bringing a case before the courts can therefore involve a great financial risk.

In NOU 200:18 'Structure for Equality', the Equality Commission proposed that

- 1) the Tribunal be given the authority to grant damages for non-economic loss in discrimination cases
- 2) the free legal aid be granted without a requirement for means-testing in cases where the Tribunal agrees with the complainant's claim that discrimination has taken place and the Tribunal recommends free legal aid

The Committee also recommended free legal aid in its concluding observations to Norway's nineteenth/twentieth report.<sup>48</sup>

### **The Ombud's concerns**

The Ombud is concerned about the gap between experienced discrimination and the discrimination reported to the Ombud, Tribunal and the courts. This indicates that many are unaware of the right to protection against discrimination and shows that there is a need for more information about rights than LDO is capable of offering.

The Ombud is also concerned that the fact that the enforcement bodies do not have the authority to impose sanctions makes the protection against discrimination less real and effective. The rights of those who experience discrimination can be more easily fulfilled if the Tribunal is authorised to grant damages for non-economic loss and if free legal aid is granted in discrimination cases. This will also help to combat discrimination, as efficient enforcement of regulations will have a deterrent and preventive effect.

Finally, the Ombud is concerned that the state has not incorporated the International Convention on the Elimination of All Forms of Racial Discrimination into the Human Rights Act. Incorporation would ensure that the Convention takes precedence over other legislation, as is currently the case with the Convention on the Elimination of All Forms of Discrimination against Women.

### **The Ombud's recommendations**

- *The Committee should request that the Government incorporate CERD in the Human Rights Act.*
- *The Committee should request that the Government ensure that the Tribunal is authorised to grant damages for non-economic loss.*
- *The Committee should request that the Government authorise the Ombud and the Tribunal to recommend free legal aid in discrimination cases.*

- *The Committee should request that the Government strengthen the work to spread information about rights by allocating funds to voluntary organisations to provide guidance and help to self-help in discrimination cases.*

## 6. The state's obligation to consult with civil society (Article 2)

According to CERD article 2 (1) (e), Norway is obliged to '*...encourage where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

In its General Comment No 33, the Committee emphasised the importance of involving civil society in the reporting to the UN, both before, in the preparation and follow-up of Norway's reports.

Accordingly, the authorities are responsible for ensuring that the organisations have sufficient resources, that they are well-informed about human rights obligations and their follow-up, that they are thoroughly consulted, and that they are actually capable of such active participation.

In its concluding observations of 2011, the CERD Committee expressed concern about the state's discharge of this responsibility and encouraged the authorities to ensure regular consultations with civil society.

### Description of the situation

An effective policy depends on close collaboration with the people who experience discrimination. In the state's twenty-first/twenty-second report to CERD, the authorities state that they attach '*importance to maintaining contact with different groups and communities in the immigrant population*'. The report does not specify this collaboration, beyond mentioning the dialogue with Norway's Contact Committee for Immigrants and the Authorities (KIM), and referring to an evaluation of the work of voluntary organisations carried out in 2011.<sup>49</sup>

KIM no longer exists, and the framework for dialogue between civil society and the authorities is unclear. The authorities state that dialogue with the minority community is ensured through more people participating in ordinary, public debate, as well as a planned, annual dialogue conference with local immigrant organisations, immigrant councils and other relevant players. Such dialogue conferences have been tried before in the field of gender equality, but were discontinued after a short period of time because they did not work.<sup>50</sup>

Many minority organisations state that limited funds make it difficult for them to contribute to policy formation in the way that CERD intends. Other organisations with significantly larger budgets have thus taken on the position of spokespersons for ethnic minorities in public debate and in the dialogue with the authorities. Many of these organisations work on measures targeting ethnic minorities, but have few members and supporters from ethnic minority groups. KIM and several minority organisations have previously expressed concern about this development and fear

that it strips those who actually experience discrimination of the possibility to contribute to policy formation.<sup>51</sup>

The evaluation 'Frivillig sektor som integreringsarena' ('The voluntary sector as integration arena'), which the state refers to in Norway's report, emphasises that the minority organisations have become more active, but it is not documented whether this results in increased consultation and real influence as called for by the CERD Committee. This could indicate that the state's efforts to develop the minority organisations are seen more as an important integration measure than as a measure to ensure that civil society has a real voice in the development of general policies. This is especially apparent in the gender equality policy, where the gender equality challenges minority women face are often isolated as integration policy issues rather than being considered a gender equality issue.

Norway currently has no active action plan to promote equality and prevent discrimination. The Government has not yet considered whether a new action plan should be prepared after the last one expired in December 2013. The action plans for the systematic work to prevent discrimination and promote equality have previously been commended by the Committee as an effective measure and a measure that will also make it easier for civil society organisations to fill their roles as agenda setters.

### **The Ombud's concerns**

The Ombud is concerned that the state does not appear to take seriously the fact that consultation, collaboration and dialogue with ethnic minority organisations are crucial to the state's own work, and not just to secure the trust of this part of the population.

When KIM is discontinued, at the same time as minority organisations state that they have no way of getting their views across in public debate, it is difficult for the authorities to ensure the dialogue required to develop effective policies. The Ombud is particularly concerned that the minority perspective on the gender equality policy will disappear.

Finally, the Ombud is concerned that no new action plan to promote equality and prevent discrimination is in place almost a year after the last action plan expired.

### **The Ombud's recommendations**

- *The Committee should request that the Government propose a new structure and organisation of the systematic dialogue with relevant players in relation to policy in the equality and anti-discrimination field, including a concrete action plan for the systematic work.*
- *The Committee should request that the Government ensure a more systematic and continuous dialogue with ethnic minorities about the minority perspective, especially as regards gender equality, so that gender equality for minorities means the same as for the majority and is not redefined as part of integration policy.*

## Endnotes

- <sup>1</sup> The Norwegian Directorate of Integration and Diversity's annual report (IMDi 2009) 'Medieskapt islamfrykt og usynlig hverdagsliv', [http://www.imdi.no/Documents/Rapporter/IMDi\\_Aarsrapport\\_2009.pdf](http://www.imdi.no/Documents/Rapporter/IMDi_Aarsrapport_2009.pdf)
- <sup>2</sup> IMDi, Media analysis of newspaper articles about crime and immigrants and refugees in the period 1976–2002
- <sup>3</sup> IMDi, Integreringsbarometeret 2012, 'Holdninger til innvandring, integrering og mangfold', pp. 34–39 [http://www.imdi.no/Documents/Rapporter/Integreringsbarometeret\\_2012.pdf](http://www.imdi.no/Documents/Rapporter/Integreringsbarometeret_2012.pdf)
- <sup>4</sup> DEMBRA is a three-year pilot project whose goal is to develop a course to combat anti-Semitism, racism and undemocratic attitudes in lower secondary schools. Tea Time is an awareness campaign organised by the Norwegian Centre against Racism. During this campaign, Norwegian Muslims invited non-Muslims to their homes for tea so that they could get to know each other better.
- <sup>5</sup> Struktur for likestilling, Norwegian Official Report (NOU) 2011:18
- <sup>6</sup> Denne, Christianna K. (2012): 'Tilreisende rom i Oslo. En rapport om romfolkets hverdag.'
- <sup>7</sup> The documentary 'Kvinne, jeg hater deg' from 2013 provides a picture of the types of threats and harassment women are subjected to as a consequence of their participation in the public debate in Norway.
- <sup>8</sup> Results from the population survey 2014, p. 43, <http://samfunnsforskning.no/Publikasjoner/Andre-rapporter/2014/2014-003>
- <sup>9</sup> John Dovidio, ed., On the Nature of Prejudice (2005): Fifty Years After Allport (2005), chapters 9, 10 and 12.
- <sup>10</sup> The researcher Cora Døving has documented one example where an article series in a newspaper in northern Norway fostered a culture of fear of Islam without a rational basis. See Døving, Cora: 'Islam i Tromsø. En føljetong i regionsavisa Nordlys' in Døving and Kraft: Religion i pressen (Oslo: Universitetsforlaget, 2013 <http://www.hlsenteret.no/publikasjoner/religion-i-pressen.html>)
- <sup>11</sup> See for example the report from the Norwegian Centre against Racism: Haarr and Partapuoli (2012), 'Om trakassering av muslimer og innvandrere etter eksplosjonen i Regjeringskvartalet 22.7.2011' <http://www.antirasistisk-senter.no/wp-content/uploads/2014/06/22-juli.pdf>
- <sup>12</sup> NOU 1999: 27, 'Ytringsfrihed bør finde Sted' p. 203.
- <sup>13</sup> General comment No 30 (2004) specifically encourages states to consult regularly with relevant groups and communities and to implement measures that address the discrimination they experience in the workplace.
- <sup>14</sup> <http://www.regjeringen.no/upload/BLD/CERD2.pdf>
- <sup>15</sup> Gro Mjeldheim Sandal 'Kulturelt mangfold på arbeidsplassen', Fagbokforlaget 2009
- <sup>16</sup> Fafo report 2013:11, Lene Bore, Anne Britt Djuve and Kristian Rose Tronstad 'Etnisk mangfold og likestilling i arbeidslivet'
- <sup>17</sup> Fafo report 2010:39, Tronstad, Kristian Rose 'Mangfold og likestilling i arbeidslivet. Holdninger og erfaringer blant arbeidsgivere og tillitsvalgte'
- <sup>18</sup> Fafo report 2010:39, Tronstad, Kristian Rose 'Mangfold og likestilling i arbeidslivet. Holdninger og erfaringer blant arbeidsgivere og tillitsvalgte'
- <sup>19</sup> AGENDA KAUPANG 2014 Evaluering av Integrerings- og mangfoldsdirektoratet (IMDi) p. 65, <http://www.regjeringen.no/upload/BLD/IMA/Sluttrapport-imdi.pdf>

- <sup>20</sup> CESCR recommendations to Norway's fifth periodic report 2013  
[http://www.regjeringen.no/upload/UD/Vedlegg/Menneskerettigheter/13fn0939\\_NO-FN-komoeksoskult-rettigh\\_030314.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/Menneskerettigheter/13fn0939_NO-FN-komoeksoskult-rettigh_030314.pdf)
- <sup>21</sup> IMDi report 6 – 2007, Fastleger og tolketjenester,  
<http://www.imdi.no/Kunnskapsbasen/Innholdstyper/Rapporter/20051/IMDi-rapport-6-2007-Fastleger-og-tolketjenester/>
- <sup>22</sup> Statistics 2009:47 Kristian Rose Tronstad Opplevd diskriminering blant innvandrere med bakgrunn fra ti ulike land  
[http://www.ssb.no/a/publikasjoner/pdf/rapp\\_200947/rapp\\_200947.pdf](http://www.ssb.no/a/publikasjoner/pdf/rapp_200947/rapp_200947.pdf)
- <sup>23</sup> Norwegian Official Report (NOU) 2014:8 'Interpreting in the public sector', chapter 2
- <sup>24</sup> The Committee on the Elimination of Racial Discrimination's concluding observations Section 16.
- <sup>25</sup> Norway's twenty-first/twenty-second report to the Committee on the Elimination of Racial Discrimination.
- <sup>26</sup> On assignment from the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir), NOVA (Norwegian Social Research) will evaluate whether the Crisis Centre Act that entered into force in 2010 has contributed to ensuring comprehensive chains of measures and equality in services in general and in relation to different type of users in autumn 2014.
- <sup>27</sup> The Government Platform, Report, 16 Oct. 2013  
[http://www.regjeringen.no/nb/dep/smk/dok/rapporter\\_planer/rapporter/2013/politisk-plattform.html?id=743014](http://www.regjeringen.no/nb/dep/smk/dok/rapporter_planer/rapporter/2013/politisk-plattform.html?id=743014)
- <sup>28</sup> Spouses who come to Norway for family reunification are granted a residence permit that is conditional on the marriage lasting for three years. The Act concerning the entry of foreign nationals into the Kingdom and their presence in the realm (The Immigration Act)  
<http://lovdata.no/dokument/NL/lov/2008-05-15-35>
- <sup>29</sup> The Act concerning the entry of foreign nationals into the Kingdom and their presence in the realm (The Immigration Act) Section 53: [http://lovdata.no/dokument/NL/lov/2008-05-15-35/KAPITTEL\\_6#KAPITTEL\\_6](http://lovdata.no/dokument/NL/lov/2008-05-15-35/KAPITTEL_6#KAPITTEL_6)
- <sup>30</sup> Nadheim Centre for women and men with experience of prostitution (2013): Annual report for 2013, the Church City Mission in Norway, p. 18,  
<http://www.bymisjon.no/PageFiles/857/%C3%85rsmelding%20Nadheim%202013.pdf>
- <sup>31</sup> The Government Platform, Report, 16 Oct. 2013  
<http://www.regjeringen.no/pages/38500565/plattform.pdf>
- <sup>32</sup> The Norwegian General Civil Penal Code Section 224.
- <sup>33</sup> The Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Norway in 2008, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo protocol), ratified by Norway in 2003.
- <sup>34</sup> A period of reflection is a time-limited residence permit granted to people who are assumed to be victims of human trafficking.
- <sup>35</sup> ROSA annual report 2013  
[http://www.krisesenter.com/sekretariatet/aarsmelding/ROSA\\_AARSRAPPORT\\_2013.pdf](http://www.krisesenter.com/sekretariatet/aarsmelding/ROSA_AARSRAPPORT_2013.pdf)
- <sup>36</sup> Nadheim Centre for women and men with experience of prostitution (2013): Annual report for 2013, Oslo: the Church City Mission in Norway, p. 16, ROSA Annual report 2013
- <sup>37</sup> The Coordination Unit for Victims of Human Trafficking's status report for 2012, Oslo: the National Police Directorate, p. 8
- <sup>38</sup> 'Challenging the ad hoc Norwegian approach to eliminate trafficking in women'. The Crisis Centre Secretariat and Helse og rehabilitering, Oslo 2009. Cf. the concluding observations of the UN Committee on the Elimination of Discrimination against Women (CEDAW), March 2013, Section 26d.

- <sup>39</sup> Pro Centre (2005): Utenlandsk prostitusjon i Oslo, p. 55
- <sup>40</sup> Pro Centre (2009): En kartlegging av norske kvinner i prostitusjon, p. 43
- <sup>41</sup> The Norwegian General Civil Penal Code defines rape as engaging in sexual activity by means of violence or threats, or engaging in sexual activity with a person who is unconscious or incapable for any reason of resisting the act (cf. the General Civil Penal Code Section 192 a) and b)).
- <sup>42</sup> Report No 15 to the Storting (2012–2013) 'Forebygging og bekjempelse av vold i nære relasjoner', p. 25
- <sup>43</sup> Bjørndahl, U. and Norli, B. (2008). Fritt vilt. En rapport om voldserfaringene til kvinner i prostitusjon.
- <sup>44</sup> TV2  
[http://www.tv2.no/2014/04/27/nyheter/innenriks/5536858?utm\\_source=twitterfeed&utm\\_medium=twitter&utm\\_campaign=november](http://www.tv2.no/2014/04/27/nyheter/innenriks/5536858?utm_source=twitterfeed&utm_medium=twitter&utm_campaign=november)
- <sup>45</sup> Alternative report from the NGO Forum for Human Rights to the UN Committee Against Torture (CAT), 12 October 2012 p. 23  
<http://www.nhc.no/no/nyheter/Brev+til+FNs+Menneskerettighetskomit%C3%A9+UFRzU5Y.ips>
- <sup>46</sup> Fafo report 2011:2 p. 108 Kvinner i kvalifisering, <http://www.faf.no/pub/rapp/20193/>
- <sup>47</sup> NOU 2012:15 Policy for equality, p. 297
- <sup>48</sup> The CERD Committee 2011, Section 14.
- <sup>49</sup> Ideas2evidence report 8/2001 '17 Frivillig sektor som integreringsarena, [http://www.imdi.no/Documents/Rapporter/Frivillig\\_sektor\\_som\\_integreringsarena\\_3-11\\_\(2\).pdf](http://www.imdi.no/Documents/Rapporter/Frivillig_sektor_som_integreringsarena_3-11_(2).pdf)
- <sup>50</sup> NOU 2011:18 'Structure for Equality', p. 116
- <sup>51</sup> Report No 6 to the Storting (2012–2013) concerning equality.







Equality and  
Anti-Discrimination Ombud

Mariboës gate 13  
Postboks 8048 Dep  
N-0031 Oslo

Telephone: 23 15 73 00  
Fax: 23 15 73 01  
post@LDO.no

[www.LDO.no](http://www.LDO.no)