



Equality and
Anti-Discrimination Ombud

Submission to the Universal Periodic Review of Norway from the Equality and Anti-discrimination Ombud

The Ombud handle and document discrimination cases, monitor and provide guidance on the legal duty to promote equality, participate in public policy hearings, interact with civil society organisations, and monitor that the authorities implement the provisions of the UN conventions the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CRPD). The Ombud submits its own report to the UPR, in addition to being a consultative party to the submission of the National Human Rights Institution.

It is important that stakeholders include in the body of the email used to send their submissions the relevant contact details (name of the contact person; postal and email addresses; telephone number, etc.) A paragraph describing the main activities of the submitting organization/coalition, as well as date of establishment, especially for those organizations which interrelate for the first time with the UN, would be also welcomed.

BACKGROUND AND FRAMEWORK

B. Constitutional and legislative framework

Recommendation 1:

Norway should consider incorporating ICERD and CRPD into the Human Rights Act.

In 2009 CEDAW was at last incorporated in the Human Rights Act (1999), following the recommendations by the CEDAW committee. In case of conflicting legislation CEDAW now takes precedence over ordinary national laws, including the Gender Equality Act. However, the ICERD is incorporated as ordinary legislation. And the newly ratified CRPD has not been incorporated into Norwegian legislation. The ICERD and the CRPD should be given the same status as CEDAW, in order to harmonize – and make more effective - the protection against discrimination in Norwegian law.

Recommendation 2:

Norway should guarantee or protect against discrimination and embody the principle of equality in accordance with CEDAW, ICERD and CRPD into the Norwegian Constitution.

The prohibition of discrimination on any grounds, including discrimination as defined in CEDAW, ICERD and CRPD, has not been incorporated in the Norwegian Constitution. This might lead to inadequate protection of inter alia, women, disabled persons and ethnic minorities against direct and indirect discrimination and hinder the achievement of substantive equality between groups in Norwegian society.¹

Recommendation 3:

Norway should specify in greater detail the public authorities' duty to promote equality in all the Acts related to equality and anti-discrimination, both as an employer and as an exerciser of authority, in order to realize the full potential of the duties.

Public authorities at all levels still fail to sufficiently mainstream gender equality as a matter of routine, in their work as employers, service providers, appropriators of funds, policy-makers and as enactors of rules, regulations and ordinance. The promotion of equality is often given low priority, and the efforts taken lack a systematic approach and continuity.² The

Government however, has not chosen to strengthen the obligation to positive duty as recommended by the Equality Commission.³

C. Institutional and human rights infrastructure and policy measures

Recommendation 4:

Norway should as soon as possible establish a new National Human Rights Institution with A-status.

In November 2012 the ICC downgraded Norway's NHRI to B-status. The Government has recently launched an official legal hearing process to make a final decision on how to re-establish an A-status NHRI in Norway. A well functioning NHRI is important in itself, but it is also important as a supplement to the equality bodies. The NHRI should provide adequate low threshold services, and it should be given sufficient funding to ensure a pluralistic, effective and independent monitoring of the implementation of human rights in Norway.

Recommendation 5:

Norway should give the Equality and Anti-Discrimination Tribunal power to order financial sanctions, including where the responsible party is an administrative body.

The Equality and Anti-Discrimination Ombud and its appeals board, the Equality and Anti-Discrimination Tribunal, uphold exclusively the anti-discrimination laws. The procedure is meant as giving an easy alternative to filing a court case. However, the bodies lack the power to order financial sanctions in terms of payment to the aggrieved party, or for damages, or redress for non-financial loss or compensation for financial loss, despite the fact that it is these bodies, rather than the judicial courts that administer the overwhelming majority of discrimination cases.⁴ This is a limitation in the system – a system that is supposed to ensure that claimants who have won their case ultimately obtain effective remedies. Accordingly, the enforcement of the available remedies against discrimination must be strengthened.⁵

Recommendation 6:

Norway should by law, give the Ombud/the Tribunal, the authority to recommend cases to court, free of charge.

The Equality and Anti-Discrimination Ombud is a free-of-charge alternative to trial, for cases of discrimination. We see however, that where the Ombud's decisions do not lead to change or specific results, or if the Ombud/the Tribunal for other reasons should recommend a case to the courts, these cases should be free of charge for the discriminated party. In cases which the Parliamentary Ombudsman has recommended legal proceedings, the person in question is entitled to free legal aid, regardless of income. This means that this type of case has first priority, while cases involving discrimination where legal proceedings are recommended by the Ombud and the Tribunal are non priority cases. A similar authority has been recommended for the Ombud/the Tribunal by the Equality Commission.⁶

II IMPLEMENTATION

1. Equality and non discrimination

Recommendation 7:

Norway should take more action to fully realize the potential of the Norwegian equality policy, by following up on the recommendations of the Equality Commission.

Norway has placed equality and non discrimination high up on the political agenda and many proactive measures have been taken in order to achieve these goals. Despite these considerable efforts, many inequality challenges still prevail. The persistent discrimination against groups in our society is being sustained, reproduced and sometimes augmented. This has been well documented by the Equality Commission, who was appointed by the Government in 2010.⁷ Few of the recommendations from the Commission were followed up in the White paper submitted by the Government to the Parliament in 2013.⁸ When at stake or in conflict, equality considerations often have to yield to other political interests. The Ombud is especially concerned that fundamental rights and freedoms of people or groups of people without Norwegian residence permits often have to yield when in conflict with immigration policies or other political considerations. Thus it is crucial to address the current weak

administrative structure for implementing equality policies, including taking steps for integrating equality more substantially into budgetary processes.⁹

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

Recommendation 8:

Norway should develop a strategic plan on how to end impunity in practice for perpetrators of violence related to inequality and discrimination.

Several steps have been taken by various Norwegian governments to implement the due diligence standards to prevent and investigate violence and crime rooted in discrimination and inequality, prosecute perpetrators and provide protection and redress to victims.¹⁰ However, even though such violence has been criminalized, a number of the perpetrators are not being held fully accountable for their crimes. For example, it is estimated that 150 000 persons are subjected to domestic violence each year in Norway¹¹, and many of these cases are not even reported.¹² The likeability for impunity in practice for a large numbers of crimes, the Ombud worries, not only intensifies the subordination and powerlessness of the targets of such violence, but it also sends a message to society that violence rooted in discrimination and inequality is both acceptable and inevitable.

Recommendation 9:

Norway should establish a national commission of experts from different fields of expertise to look into serious cases of gender related killings in order to identify intervention measures that would prevent such killings.

Impunity in cases of gender based domestic violence is very serious in itself. It can also lead to gender related killings. Such murders are often at the end of the continuum of gendered domestic violence: 71 persons were killed by their partners or ex-partners from 2003 to 2012 - 62 of the victims were women (87 percent) and 9 of them were men (13 percent).¹³ The Ombud is deeply concerned about the inadequate prevention of gender related killings in Norway which is still an extremely relevant problem in 2013.

Recommendation 10:

Norway should allocate more resources for investigation and the gathering of evidence in rape cases, including ensuring better reporting routines and procedures to protect sexually abused women with disabilities.¹⁴ Further, the Government should ensure awareness-raising, knowledge and competence at all levels of the criminal justice system and in the general public, on what rape actually and legally is.¹⁵

1075 cases of rape were registered reported in 2012.¹⁶ The number of complaints has increased in recent years.¹⁷ One can in any case assume that the dark numbers are still very high.¹⁸ During the period 1980-2010, the rate of prosecutions for rape in Norway declined from just under 30 percent to under 20 percent.¹⁹ Figures from Statistics Norway show that during the period 2001-2011, 7604 cases in all, of rape were investigated in Norway.²⁰ Only 1444 of these cases (19 percent) were prosecuted. If one should look at figures for each year during this period, the rate of prosecutions varied from between 14 and 22 percent. An average of about 10 percent of all reported cases of rape results in punitive sanctions.²¹ The Ombud strongly recommends that the measures in the national action plan against rape are fully implemented.²²

Recommendation 11:

Norway should take immediate and effective steps to address the excessive use of force in psychiatric wards – initially focusing in particular on the psychiatric wards with the most frequent use of force. Furthermore, Norway should make the necessary amendments to national legislation on the use of force – to make the Norwegian legislation in full compliance with the CRPD. In addition, Norway should withdraw the two interpretative declarations to the CRPD, to avoid limiting the scope of protection of the Convention for people diagnosed with “serious mental illness”.

In spite of a clearly expressed goal by both the Norwegian Government and the Parliament to reduce the use of force, the actual use of force has stabilized on a high level – without reduction – according to a number of authoritative reports and official statistics.²³ The Ombud is equally concerned about the lack of equal healthcare based on free and informed consent

for people diagnosed with “serious mental illness”. The Ombud is of the opinion that the upholding of special legislation, the Mental Health Care Act of 1999, which singles out a particular group of disabled people in need of forced treatment, to avoid danger or to promote health, is deeply worrying in light of the principle of non-discrimination.²⁴ In light of this, the Ombud is particularly concerned about the two interpretative declarations forwarded by the Norwegian Government when ratifying the CRPD, in June 2013– which can be interpreted as a lack of willingness to amend national legislation to make it in full compliance with CRPD.

Recommendation 12:

Norway should establish hate crimes against disabled people as an explicit category in the national system for registering such crimes.

The Norwegian Penal Code includes a penalty-enhancement provision for crimes motivated by bias against the victim's race or ethnicity, religion and sexual orientation. The new criminal code provision § 77 includes disability, but the new criminal code has not yet gone into effect.²⁵ Accordingly there is no systematic registration of crimes and no convictions of crimes motivated by bias against disabled people.²⁶ There are indications that hate crimes against disabled people is a reality in Norway. The Organization for Security and Cooperation in Europe encourage members to report on this.²⁷ The lack of a mapping of such crimes is a serious concern for the Ombud. This lack should be seen in relation to obligations following the CRPD, article 8 and 16.²⁸

Recommendation 13:

Norway should take steps to ensure that the penal code 135a in practice does provide real protection against hate speech. Further the government should develop a holistic strategy to counteract hate speech.

In certain cases related to hate speech (penal code 135a), the Norwegian courts have been criticized for providing too little protection in violation of ICERD.²⁹ The §135a is under utilized, despite clear objectives from among others the Director of Public Prosecutions.³⁰ The challenges of racism in public discourse go far beyond the criminal justice system’s sphere. A report shows very clearly the harmful effects (such as discrimination and exclusion) that are a consequence also of (hate) speech in the public discourse that can not be termed as

unlawful.³¹ The CERD Committee is concerned that the frequent occurrence of hate speech in the public sphere against minorities can result in hate crimes.³²

3. Right to social security and to an adequate standard of living

Recommendation 14:

Norway should ensure earmarked funds for the provision of adequate interpreting services in the public services, and ensure that the right to a professional interpreter be laid down by law, e.g. in the Public Administration Act, and a prohibition against using children and relatives as interpreters.

There is a trend towards fewer public interpretation services, while at the same time one finds several private interpretation agencies. Most interpreters are hired by the hour in order to carry out particular projects. The Ombud is especially concerned that this can lead to a worse outcome in the health sector and in the justice system, for people with ethnic minority backgrounds.³³ For example, inadequate interpretation and interpretation by unqualified persons can represent a significant health risk.³⁴

Recommendation 15:

Norway should establish holistic and coordinated programs for persons vulnerable for being recruited into prostitution and establish exit programs with viable options to prostitution. Further, Norway should take necessary steps to ensure that trafficked women and girls have access to the protection and services they need regardless of their availability or willingness to testify against their traffickers.

Norway criminalized the purchase of sexual activities in 2009, sending a strong message that the exploitation of women for prostitution and trafficking is not acceptable. In the Ombud's opinion, programs aimed at hindering entrance to prostitution, as well as promoting exit for persons in prostitution could be strengthened, in order to address prostitution in a more

holistic manner. The Government should consider developing a national plan of action combining social, legal and health measures. In addition, the Ombud is concerned that trafficked women and girls do not have access to quality medical care, counselling, financial support, adequate housing and programmes for reintegration in the education system and labour market, as well as access to free legal services, regardless of their availability or willingness to testify against their traffickers.³⁵

4. Right to work and to just and favourable conditions of work

Recommendation 16:

Norway should make a more binding three-party agreement for promoting equality in work life.

There are persistent inequality challenges with respect to the right to work without discrimination in Norway. The Equality Commission describes working life in Norway as unequal.³⁶ In light of these poor results, the Ombud is glad that the Government has established in 2013, a three-party cooperation agreement, including the social parties and the State.³⁷ However, the Ombud is concerned that the agreement is not binding enough in order to give the expected results. The Government should commit to provide the necessary resources in terms of guidance, knowledge transfer, and money for initiatives and coordination of the work, so that the objectives are achieved. The priority areas of agreement should be specific and measured regularly: a less gender segregated labour market, diversity in the workplace, promotion of a culture of full-time work, equal pay and family-friendly arrangements.

5. Migrants, refugees and asylum-seekers

Recommendation 17:

Norway should ensure that policies both at national and local levels do not discriminate Roma-people indirectly.

The Ombud is concerned about the situation of Roma-people staying temporarily in Norway. For example, the current tendency in political discussions focus on regulating or totally

banning begging and sleeping outdoors in big cities like Oslo. Despite the fact that these proposed measures are intended for all regardless of nationality, the Roma people would be disproportionately affected. Instead the Ombud would like to see initiatives that would in reality better their life situation.

Recommendation 18:

Norway should either modify the 3 year rule for a residence permit on an independent basis for foreign nationals, or establish measures to ensure the indented purpose of the Immigration Act section 53.

The purpose of the Immigration Act section 53 first paragraph letter b) is to ensure that foreign nationals who have residence permits for family immigration are not forced to remain in a marriage or cohabitation relationship in which he/she or any children are abused for fear of losing his/her residence permit in Norway. However, despite good intentions, this rule often does not work in practice - either leaving women in violent relationships or forcing them to leave Norway.³⁸

Recommendation 19:

Norway should ensure that the exemption clause in the Dublin 2 regulation can be used to a greater extent with respect to victims of trafficking, especially when the women have children with them.

If trafficked women have sought protection (asylum) or have a visa or residence permit in another Schengen country, the women will be sent back to that country when applying for asylum in Norway. This does not apply if the person has given evidence in criminal proceedings for human trafficking.³⁹ The Dublin Convention provides the opportunity to make an exception for the Dublin Procedure in other cases as well, but the Ombud have learned through our consultations with the relevant support services, that the exemption clause is very rarely used. This is the case even if the woman has children with her. The Ombud is



Equality and
Anti-Discrimination Ombud

concerned that the risk of reprisals and re-trafficking increases when victims are returned to the country they have been trafficked to earlier.

Endnotes

¹ Review of Norway, by the CEDAW committee, 51st session 2012.

² The Ombud's reviews and monitoring of 86 local authorities' compliance with their reporting obligations under the positive duty, the Mapping of local and regional Authorities by the Center for Equality 2011. NOU 2011:18.

³ Prop. 88 L (2012-2013), Proposition to the Parliament.

⁴ Nearly all claimants of discrimination submit their cases to the Ombud, which thus handles more than 90% of all discrimination cases on an annual basis Milieu- Comparative study on access to justice in gender equality and anti-discrimination law-.January 2010.

⁵ Official Norwegian Report NOU 2011: 18 Structure for Equality (Struktur for likestilling).

⁶ Official Norwegian Report NOU 2012: 15 Policy for Equality (Politikk for likestilling).

⁷ Official Norwegian Report NOU 2011: 18 Structure for Equality (Struktur for likestilling) and Official Norwegian Report NOU 2012: 15 Policy for Equality (Politikk for likestilling).The Commission assessed the status of equality in key areas that impact living conditions: representative government, freedom of choice, distribution of resources and vulnerability in areas such as political participation, education, employment, caregiving and protection against harassment and violence. In addition, the Commission did an assessment of the organizational structure to implement equality.

⁸ White paper on equality: Equality does not come without efforts 2012-2013 (Meld. St. 44 2012-2013 Likestilling kommer ikke av seg selv).

⁹ In addition to structural changes, it is especially important to (re)design equality measures to address commercial, religious, cultural, and social norms and beliefs that are largely the root causes for practices that result in discrimination, harassment and violence. Norway also needs to develop a more multi-dimensional approach to equality. And in addition the improvement of mechanisms for a real involvement of civil society in the development and evaluation of equality policies is also of utmost importance for achieving substantial equality. The Equality and Anti-discrimination Ombud's Report to the Pre-session of the CEDAW (2011) and the Supplementary Report to the 8th Norwegian Report to the CEDAW Committee from the the Equality and Anti-discrimination Ombud (2012).

¹⁰ As prescribed by the CEDAW, ICERD and CRPD.

¹¹ Vista analyse (2012): Socio-economic costs of violence in intimate relationships (Samfunnsøkonomiske kostnader av vold i nære relasjoner), Rapport 2012/4.

¹² The reporting frequency in Sweden is 25 %. Most likely the situation is similar in Norway. White paper on preventing and combatting violence in intimate relationships 2012-2013 (Meld. St. 15. 2012-2013 Forebygging og bekjempelse av vold i nære relasjoner), page 28.

¹³ Kripos. The national register on murders 2012, page 7.

https://www.politi.no/vedlegg/lokale_vedlegg/kripos/Vedlegg_2012.pdf

¹⁴ Concerning sexually abused women with disabilities, there are weaknesses in the current reporting routines. Service providers who suspect that persons with intellectual disabilities are being sexually abused often do not

report their suspicions. Local government authorities had failed to notify the police about sexual abuse in 7 out of 15 cases reviewed by the newspaper Dagbladet in autumn 2010, despite having been notified or otherwise having grounds for suspecting such abuse. We also know that reports of sexual abuse of persons with intellectual disabilities are sometimes given low priority and receive little attention from the police. Handegård and Olsen (2009): Difficult to talk about? Working environment and legal protection for persons with intellectual disabilities in enterprises for the vocationally disabled (Vanskelig å snakke om? Arbeidsmiljø og rettsikkerhet for utviklingshemmede i skjermede virksomheter).

¹⁵ The Equality and Anti-discrimination Ombud, public hearing, case 13/314-4, 04.06.2013.

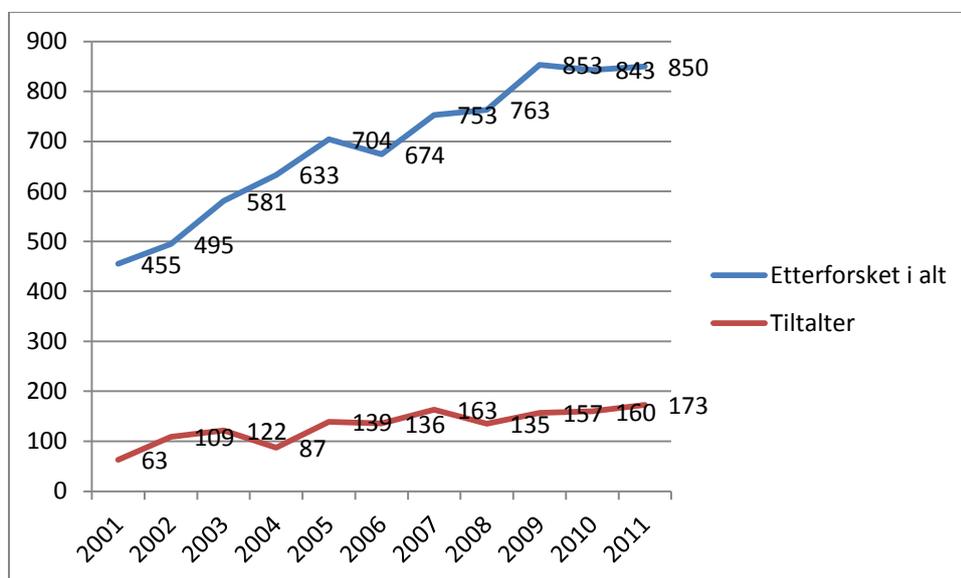
¹⁶ Statistics Norway (2013). http://www.ssb.no/a/kortnavn/a_krim_tab/

¹⁷ It is unclear whether this is due to the fact that rape as a problem has received increased attention in the public sphere and therefore more victims report the crime, or whether it is because there are in fact more rapes being committed than before.

¹⁸ The Committee on rape, appointed in 2006, estimate that between 8000 and 16000 rapes and attempted rapes take place in Norway each year (Official Norwegian Report NOU 2008:4 From words to action - Fra ord til handling) page 39.

¹⁹ Hennum, R. (2013): Voldtekt og seksuelle overgrep mot barn – spiller strafferetten en rolle?, i Kerstin Nordlöf (red.) ”Argumentation i nordisk straffrett”. Stockholm: Norstedts Juridik.

²⁰ Statistics Norway (2013): http://www.ssb.no/a/kortnavn/a_krim_tab/



²¹ In a former report of the Director of Public Prosecutions (rapport nr. 1/2007, Riksadvokatens utredningsgrupper) the percentage of convictions estimated to be 12 percent. Statistics Norway publish three separate yearly statistics (1999-) – the number of complaints, the numbers of cases investigated (those dropped and those ending in conviction) and the numbers of convictions. They do not publish any numbers that would make it possible to conclude with the numbers of complaints that result in convictions. However, if one looks at

these three sets of statistics in relation to each other one can see that the number of convictions seem to be about 10 percent. Statistics Norway (2013): http://www.ssb.no/a/kortnavn/a_krim_tab/

²² The Government's national action plan against rape (2012-2014):

http://www.regjeringen.no/upload/JD/Dokumenter/Planer/Handlingsplan_mot_voldtekt_2012-2014.pdf .

²³ The Directorate of Health IS-1861, Bruk av tvang i psykisk helsevern for voksne 2009, December 2010; Bjørkly et al (2011): Innsamling og analyse av data om bruk av tvangsmidler og vedtak om skjerming, Centre for forensic psychiatry; T. Husum et al (2010): A cross-sectional prospective study of seclusion, restraint and involuntary medication in acute psychiatric wards: patient, staff and ward characteristics, BMC Health Services Research, 10:89.

²⁴ In particular, the Ombud is worried that the Mental Health Care Act contributes to upholding a culture of excessive and disproportionate use of force in some psychiatric institutions.

²⁵ The new criminal code are supposed to enter into force sometimes between 2017 and 2022.

²⁶ Strategy Group in the Oslo Police District: Hate crimes. An analysis and study of complaints in Oslo 2012, Oslo April 2013 (Strategisk stab ved Oslo politidistrikt: Hatekriminalitet. En drøfting av temaet, og en gjennomgang av anmeldelser i Oslo 2012) https://www.politi.no/vedlegg/lokale_vedlegg/oslo/Vedlegg_2144.pdf

²⁷ <http://www.ldo.no/no/ombudet/Nyheter/Arkiv/Nyheter-i-2012/OSSE-rapport-om-hatkriminalitet-i-Norge/>

²⁸ CRPD article 8 and 16:

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#8>

²⁹ Yearbook on human rights in Norway (2012): page 37 <http://www.jus.uio.no/smr/om/nasjonal-institusjon/publikasjoner/arbok/2012/arbok-12.pdf>

³⁰ Yearbook on human rights in Norway (2012): page 38 <http://www.jus.uio.no/smr/om/nasjonal-institusjon/publikasjoner/arbok/2012/arbok-12.pdf>

³¹ IMDI-rapport 1-2010: Immigrants in the Norwegian media: islamophobia and an invisible everyday life in the media (Innvandrere i norske medier: Medieskapt islamfrykt og usynlig hverdagsliv) pages 18-19.

³² Review of Norway, by the CERD committee, 78st session 2011.

³³ LDO has been approached by women victims of violence who said that they had themselves to find and pay for interpreters for interviews with the Police in cases where they are applying for independent residence status based on being subject to domestic violence.

³⁴ A study from the Norwegian Institute of Public Health in 2007 showed that women from non-Western countries who give birth in Norway give birth to twice as many stillborn babies as others, and that this may have to do with communication problems due to the failure to book an interpreter.

³⁵ Consultation with Rosa Project.

³⁶ The gender segregation in the labor market is tied to processes that create inequalities in wages, status and opportunities for development (Official Norwegian Report NOU 2012: 15 Policy for Equality (Politikk for likestilling)). The extent of pregnancy discrimination has not been significantly reduced despite a number of measures - the statutory protection against discrimination, the positive duty to promote equality, considerable political attention, projects and various individual measures over several decades. Persons with ethnic minority

background and disabled persons are also subjected to discrimination, especially regarding access to the labor market. A survey conducted in 2012 reveals that the likelihood of being called for a job interview is reduced by 25 percent if the applicant has a foreign name (Midtbøen and Rogstad (2012): The frequency and consequences of discrimination. The access of ethnic minorities to the labor market/Diskrimineringens omfang og årsaker. Etniske minoriteters tilgang til det norske arbeidslivet, Institute for Social Research, Oslo).

³⁷ White paper on equality: Equality does not come without efforts (Meld. St. 44 2012-2013 Likestilling kommer ikke av seg selv).

³⁸ G. Tyldum (2013): Dependence and Human Trafficking in the Context of Transnational Marriage, FAFO. The Shelter Movement in Norway points to a case handled by Utenlendingsnemnda (UNE) where a woman subjected to marital rape and threats of violence, was not considered as a case of rape and domestic violence as it otherwise would according to the Norwegian Penal Code:

[.http://www.krisesenter.com/pressemeldinger/UNE_pressemelding.pdf](http://www.krisesenter.com/pressemeldinger/UNE_pressemelding.pdf)

³⁹ Instructions on granting residence permits to those who witness in cases of human trafficking GI-31/2010 (Instruks om oppholdstillatelse til vitner i sak om menneskehandel).