



**SIVILOMBUDET**

Norwegian Parliamentary Ombud

# The Norwegian National Preventive Mechanism (NPM)

**Submission to the Committee on the Rights of the Child in Advance of the Committee's Development of the List of Issues Prior to Reporting for Norway's 7<sup>th</sup> Periodic Review.**

**Thematic report regarding CRC articles 37 and 40**

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***Public Submission***

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### I. The Mandate and Work of the National Preventive Mechanism

The National Preventive Mechanism (NPM) is to examine the treatment of persons deprived of their liberty, with the goal of preventing ill-treatment in accordance with the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

In 2013, following Norway's ratification of the OPCAT, the Norwegian Parliamentary Ombud was awarded the task of exercising the NPM mandate. In 2014, the NPM was established as a department within the Ombud's office.

The NPM conducts regular visits to places where people are deprived of their liberty, such as prisons, police custody facilities, mental healthcare institutions and child welfare institutions.

The visits can be both announced and unannounced. The NPM publishes a report following each visit, with a description of findings and recommendations with the aim of improving the treatment and conditions of persons deprived of their liberty and reduce the risk of ill-treatment.<sup>1</sup> Most of the reports are available in English, either in full or as a summary, on our website at [www.sivilombudet.no/en/visit-reports/](http://www.sivilombudet.no/en/visit-reports/)

### II. Issue proposed - thematic report

We propose that the following is included in the list of issues by the Committee under the cluster Special protection measures. Please note that for comprehensiveness and correspondence with the OPCAT mandate we cover article 37 in full, as well as article 40, under this cluster.

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<sup>1</sup> OPCAT Article 19 b.

## Special Protection Measures

### Use of force, isolation and restraints against children deprived of liberty

#### Police use of force against children

During our visits to child welfare institutions and mental health institutions we have found several examples where police in their interaction with a child during transport to these places, have used invasive mechanical restraints such as hand cuffs, plastic strips, body-cuffs and spit-hoods.<sup>2</sup>

Our review of available documentation has revealed that the police do not always provide sufficient records or reasons for their use of such invasive methods. We have recommended that child welfare institutions and mental health institutions document the force and coercion used by police when the child is admitted to the facility, when the child returns from an attempted escape or when police are asked to assist in situations within the institution. Injuries that appear on the child after police interaction must be documented by health personnel and should be reported to relevant authorities if suspected that these are a result of excessive force by police.

During a visit to Oslo Police District in 2021 we made similar findings, indicating that the use of force and mechanical restraints such as hand cuffs during apprehension and transport to custody by the police were rarely documented in police records. It was therefore not possible for the NPM to investigate the scale of use of force against children during apprehension and transport (the available documentation indicated that the use of restrictive measures appeared to be limited when the child was in custody and rarely used while the child was placed in the cell). It is noteworthy that there is a lack of knowledge about the various restrictive measures used against children by police and the NPM has emphasized the need for internal guidelines to ensure relevant expertise and practice.<sup>3</sup>

The Norwegian Health Directorate and the Police Directorate have jointly developed guidelines on the responsibility and division of tasks between the healthcare service and police regarding transport and handling patients with mental health issues. However, these guidelines lack specific guidance on how the police may interact with children.<sup>4</sup>

#### Child welfare institutions

Following visits to child welfare institutions we have found that coercion on some occasions has been used as punishment or as a standard procedure incorporated into a treatment plan or integrated into house rules.<sup>5</sup> This is not in accordance with legislation and constitutes disproportionate use of force against children.

We have also found examples of excessive use of force against children, such as physical restraint and immobilising techniques to restrict movement, lacking the necessary documentation in records after the incidents, and a failure to report the child's injuries sustained in the deviation record system.<sup>6</sup> We have recommended that child welfare institutions implement systematic efforts to prevent all use of physical force and that staff receive training to avoid injuries to children. We have

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<sup>2</sup> Article entitled "The Interaction between Police and Children" by Head of NPM Unit Helga Fastrup Ervik and Senior Advisor Mette Jansen Wannerstedt in the Annual Report for the Norwegian Bureau for Investigation of Police Affairs, page 4-7 (2019).

<sup>3</sup> Children in Custody, Oslo Police District (2021).

<sup>4</sup> The Police Directorate and Health Directorate, *Helsetjenestens og politiets ansvar for psykisk syke*, 2012/7, IS-5/2012.

<sup>5</sup> Visit reports: Skjerfheimkollektivet (2018), Jong (2019).

<sup>6</sup> Barkåker (2018), Stendi, (2019).

also emphasized the importance of increasing staff competence on de-escalation techniques and working methods to prevent the need to use force.

In some cases, children have been restricted to a specific room/smaller part of the institution or to a cabin or other facilities located away from the institution for a certain amount of time. There is a high risk that such restrictive measures will amount to isolation of the child.<sup>7</sup> The NPM has been concerned about such measures restricting the legal safeguards of children as contact with control mechanisms may be hampered.

We have also raised concern about the risks involved for children living alone with adult staff in child welfare institutions, sometimes located in remote areas. Our findings are further detailed in an article titled "*When Children Live Alone with Adults in a Child Welfare Institution*" featured in our Annual Report for 2020.<sup>8</sup> These children are at risk of having their contact with peers or other adults limited and may have limited opportunities to attend school or other activities. Residing in a secluded environment with limited oversight also raises concern of the potential risk of abuse. These types of facilities may be contrary to the fundamental rights in the CRC while also involving a risk of inhuman and degrading treatment.<sup>9</sup>

Finally, the municipal as well as specialist health services in Norway have a statutory duty to take steps to prevent and follow-up on violence and sexual abuse in places where patients are receiving healthcare services.<sup>10</sup> There is no comparable statutory or regulatory duty in the *Child Welfare Services Act* which clearly sets out how Article 19 and 34 of the Convention should be implemented in the child welfare institutions to adequately protect juvenile residents against all forms of physical or mental violence, including sexual exploitation or abuse.

#### Mental health care institutions

The Committee against Torture (CPT) and The UN Special Rapporteur on Torture has stated that the use of restraints on a child, even for a short period of time, may constitute torture or ill-treatment and should be abolished.<sup>11</sup>

Even so, section 4-8 of the Norwegian *Mental Health Act* allows four types of restraint to be used on children above the age of 16 admitted to hospitals for serious mental health challenges/conditions: a) mechanical restraints such as a restraint bed, or belts for transport, b) confinement behind a locked door (isolation), c) short-term medication, such as sedative injections, and d) short term physical restraints. The Act prohibit the use of mechanical restraint and isolation against children below the age of 16 but permits the use of short-term medication and physical restraints. The NPM has questioned whether this is in line with children's fundamental rights under the Convention on the Rights of the Child.

While the *Mental Health Care Act* does not permit the use of isolation against children below the age of 16, it does permit so-called 'shielding' (or segregation). Shielding entails that the child is separated

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<sup>7</sup> Visit reports: Klokkegården (2017), Kvammen (2018), Barkåker (2019),

<sup>8</sup> The article is available in English in the NPM Annual Report (2020), page 32:

[https://www.sivilombudet.no/wp-content/uploads/2021/03/ARSMELDING\\_2020\\_Sivilombudsmannen\\_Forebyggingsenheten\\_Engelsk\\_Nett.pdf](https://www.sivilombudet.no/wp-content/uploads/2021/03/ARSMELDING_2020_Sivilombudsmannen_Forebyggingsenheten_Engelsk_Nett.pdf)

<sup>9</sup> Stendi Nymogården (2019) and *When Children Live Alone with Adults in a Child Welfare Institution* (NPM Annual Report 2020).

<sup>10</sup> See e.g. the Health and Care Services Act of 24 June 2011 no.30 section 3-3a.

<sup>11</sup> A/HRC/22/53, page 14 - 15.

from other children in the psychiatric ward, due to treatment reasons or the need to protect other children.

In 2019 we visited a mental health institution focusing on two children's wards. Following this visit we raised particular concern with the so called "reinforced shielding rooms", stating the following in the visit report:

*"[The NPM is] ...critical of the reinforced shielding rooms, which resembled isolation cells, and were entirely empty apart from a built-in bed with a plastic mattress (... ) A review of the documentation indicated that several adolescents had experienced this room as highly unpleasant, and even frightening. (...) A few adolescents experienced a particularly lengthy shielding period (...) they were there for several weeks at a time. This is completely unacceptable and poses a risk of inhumane and demeaning treatment."*<sup>12</sup>

The NPM considers that the use of segregation constitutes a risk of inhuman and degrading treatment, especially if it is used for an extended period of time, and in a manner that restricts freedom of movement and prevents human interaction and self-determination. This risk is further increased if applied to children.<sup>13</sup>

### Children in police custody

Statistics has indicated a significant increase of children placed in police custody in Norway since 2018, following a period where the numbers were clearly reduced. The NPM decided in the spring of 2021 to investigate how children's rights were adhered to when arrested and placed in custody by police. The investigation involved a visit to Oslo Police District, Norway's largest police district with the highest number of children in custody, and key information from all the police districts in Norway. The NPM issued the report "*Children in Custody*" in November 2021 with findings and recommendations from the visit. The report prompted a follow up dialogue with Oslo Police District as well as with the Ministry of Justice.<sup>14</sup>

The NPM concluded that Oslo Police District lacked appropriate alternatives for cells for children in custody and recommended that Oslo Police District should ensure that stays in police custody can be implemented in appropriate, alternative rooms when it is not "absolutely necessary" to place minors in cells.

Secondly, the NPM underlined the stripped cells in police detention facilities were originally made to house drunken people who disturbed law and order. These cells only have a brisket that is built out from the wall and a built-in toilet corner, the vast majority lack the opportunity to look out. This design makes detention cells in Norway particularly unsuitable for minors. The design contributes to creating insecurity, fear, and a strong experience of being abandoned. Situations may arise where it is absolutely necessary to place a minor for a shorter period in a cell or in another locked room. However, this must be under conditions that simultaneously ensures children's right to child-friendly environments and that do not expose them to unnecessary stress. That was not the case in Oslo Central Arrest. Nor any of the other police districts described alternatives that were more suitable in situations where it was considered imperative to place children in a cell.

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<sup>12</sup> Stavanger (2019), page 5 - 6.

<sup>13</sup> A/HRC/22/53 (2013), paras. 63 and 89; A/HRC/28/68 (2015), para 84 d).

<sup>14</sup> English translation of this report will soon be available. See link for report in Norwegian: [https://www.sivilombudet.no/wp-content/uploads/2021/12/Besoksrapport-2021\\_Sivilombudets-besok-til-Oslo-politidistrikt.pdf](https://www.sivilombudet.no/wp-content/uploads/2021/12/Besoksrapport-2021_Sivilombudets-besok-til-Oslo-politidistrikt.pdf)

Thirdly, it is the responsibility of the police to ensure that children are not isolated while in custody. A review of documentation revealed that none of the children who were placed in a cell in the period January 1, 2021 - May 12, 2021, had continuous access to an adult as required.

### Legal safeguards when children are deprived of liberty

The Norwegian *Mental Health Act* offers limited protection against health care decisions that may violate the fundamental rights and integrity of the child. As such, it does not adequately address the vulnerability of children who receive treatment in accordance with the Act.<sup>15</sup>

This specifically applies to situations where children under the age of 16 are involuntary admitted to mental health care. Regardless of the lack of consent, they are not legally considered to be placed “*against their will*” when parents or legal guardians give consent to the placement.<sup>16</sup>

Because of this, legal provisions that apply to involuntary placement for adults do not apply to children.<sup>17</sup> The criteria that the patient has a serious mental disorder, and that the establishment of compulsory mental healthcare is necessary to prevent further deterioration or to avoid imminent and serious harm to the patient or others, does not apply to children under the age of 16.<sup>18</sup>

Furthermore, for adults there is a requirement that *voluntary* placement is initially attempted prior to considering involuntary placement. As consent is irrelevant to the placement of children below 16, this legal requirement does not apply to them.

As involuntary admissions and treatment against the will of a child are not recorded as such, it is unknown how much coercion and restrictions children experience in hospital settings.

The failure of the current legislation to adequately safeguard the rights of children admitted to mental healthcare establishments increases the risk of ill-treatment. The NPM has raised this as a major concern.<sup>19</sup>

### Child friendly information when children are deprived of liberty

After visiting various facilities where children may be held against their will, we have made explicit recommendations regarding the quality of information provided to children deprived of their liberty. We have pointed out that information offered to children must be tailored to their age, maturity, language, gender, and culture.<sup>20</sup>

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<sup>15</sup> Act No. 62 of 2 July 1999 relating to the provision and implementation of mental health care (*Mental Health Care Act* - in Norwegian *Psykisk helsevernloven*).

<sup>16</sup> The fundamental rights of the child concerning the best interest of the child, the right to be heard and the right to development are not incorporated into the legislation of the Norwegian Mental Health Act. The Ombudsperson for Children raised this issue in a report in 2015 stating that the legislation did not address the special protection needed and vulnerability of children.

<sup>17</sup> *Mental Health Act* (*Psykisk helsevernloven*) chapter 3, sections 3–2 og 3–3.

<sup>18</sup> *Mental Health Act* section 3-3(3).

<sup>19</sup> See NPM Annual report 2020 “Children’s rights in Mental Health Care should be better safeguarded, see [https://www.sivilombudet.no/wp-content/uploads/2021/04/Childrens\\_Rights\\_Mental\\_Healthcare.pdf](https://www.sivilombudet.no/wp-content/uploads/2021/04/Childrens_Rights_Mental_Healthcare.pdf) Visit Report: Stavanger Health Trust Division of Child and Adolescent Mental Health Care Services (2019).

<sup>20</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has emphasized that information must be tailored to the age and development of the child at the earliest convenient time and provided both orally and in writing.

Information is key for the child to participate in the decision-making process and voice their opinion in all matters affecting them.<sup>21</sup> Timely and appropriate information also contributes to due process and will raise awareness for children of the possibility to file a complaint and to appeal.<sup>22</sup>

We have found examples of administrative decisions made against children that prevent access to information by either limiting or denying the use of cell phones and the internet - and confiscating cell phones.<sup>23</sup> We have pointed out that there are legal limits for supervising and restricting a child's electronic communication and emphasized the importance of ensuring children's right to socialize with peers without restrictions.<sup>24</sup>

We have also raised concern of incidents where children have not been offered confidential communication with lawyers and appeal bodies.<sup>25</sup>

### Recommended Questions: Special Protection Measures

- **Please provide details of steps being taken to ensure that children deprived of their liberty are provided with information tailored to their age, maturity, language, gender and culture concerning their fundamental rights and other issues that affects them.**

#### Police:

- **Please provide details of steps taken to ensure child friendly locations for children placed in police custody and procedures that will ensure that children are not isolated but ensured access to an adult for the duration of arrest.**
- **Please provide details of steps being taken to secure that children are treated in a manner consistent with their rights and inherent dignity, when handled by police during transport or in other interactions.**

#### Mental health institutions:

- **Please provide an update on steps taken to ensure that the mental health legislation fully comply with the Convention on the rights of the child, including steps to abolish the use of mechanical restraints and isolation on children, as recommended by the Special Rapporteur on Torture. Please also provide details on measures, including legislative, to ensure that the use of segregation ('shielding') on children is only used exceptionally, in line with the child's best interest, and in a way which never entail or resemble isolation.**

#### Child welfare institutions:

- **Please provide details on general measures, including legislative measures, that will be taken to ensure that children in child welfare institutions are protected against physical or mental violence and sexual abuse during their stay there, including by staff.**

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<sup>21</sup> Kvammen (2018).

<sup>22</sup> Children in Custody, Oslo Police District (2021).

<sup>23</sup> NPM visit reports: Kvammen (2018), Agder (2018), Jong (2019).

<sup>24</sup> NPM visit report: Jong (2019).

<sup>25</sup> Stendi (2019).