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Universal Periodic Review of Norway 4th Cycle

Written Submission of Civil Society:

Issues: Right to education

Topic: Inclusive education for all

Concern: New veto-right and projects to reduce public funding for independent schools

I. Human Rights Instruments and Previous UPR Recommendations

1. Having ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR), Norway has recognized everyone's right to education. The covenant grants parents the right *"to choose for their children schools, other than those established by the public authorities"* (art.13.3, ICESCR) and non-governmental bodies the right *"to establish and direct educational institutions"* (art. 13.4, ICESCR). In General Comment 13, the content of this right is further explained. The CESCR highlights that for the right to quality education to be granted, education has to be, among other things, adaptable and acceptable. **Adaptability** requires that education *"can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings (par.6.a)"* Quality education is understood in various ways by students from different cultural and social backgrounds. Those students, especially those belonging to non-mainstream groups, should be granted quality education on their cultural and social terms. **Acceptability** refers to the right of students and parents to education that is *"acceptable (eg. relevant, culturally appropriate and of good quality)" (par.6.b)*. Similar to the adaptability of education, the acceptability of education gives students (and their responsible) the option of choosing an education that is aligned with their cultural context. States should be

grantors of adaptable and acceptable education. In the same line, the international community has introduced the term “**inclusive education**” which refers to an education that takes each student needs into account.ⁱⁱ Yet, inclusive education for all is almost impossible if the State is the sole provider of education. Therefore, non-governmental schools are a crucial instrument for making education adaptable and acceptable for all, just as provided by CESCR General Comment No. 13. Depriving non-governmental actors of the opportunity to establish independent schools could potentially constitute a violation of these principles.

2. In Norway, non-governmental schools offer a variety of educational options and thus respond to the cultural and societal differences in the population. For instance, Christian schools offer culturally and religiously appropriate education to Christian communities or Waldorf Steiner schools provide an alternative pedagogy to those of public schools. It is because of these schools that students and parents in Norway have the option to choose an education that is adaptable and acceptable. Independent schools offer education that is culturally appropriate and that adapts to the diverse social and cultural needs of a diverse population in a way that public schools cannot. Non-governmental schools are thus crucial for granting the right to education in Norway. If they disappear or if they lack public support, inclusive education will not be granted to all.
3. Inclusive education was a concern in the previous UPR Norway. The Permanent Mission of Bahamasⁱⁱⁱ asked to ensure **equal access to education for all**, including upper secondary education, without discrimination on any grounds. In addition, many Permanent Missions showed concerns about regarding the current situation of the right to education of minorities and foreign children in Norway. The Permanent Mission of India^{iv} asked to ensure **inclusive education targeting those belonging to vulnerable groups, such as children from ethnic minorities and children with disabilities**. The Permanent Mission of Algeria^v asked to reduce the school drop-out rate for children of parents with a migrant background and children of parents with a low level of education.
4. The delegation of Norway^{vi} stated that all children were entitled to free primary and lower secondary education, regardless of nationality or residency status. Unfortunately, this is only partially true, and the right to education has further deteriorated since the last UPR Norway in 2019.

II. Insufficient Availability and the new veto-right

5. Christian primary/lower secondary schools exist only in 59 out of 356 municipalities in Norway. More or less the same applies to independent schools with alternative pedagogy. This means that most parents do not have the opportunity to choose a school other than those provided by the State. Consequently, some parents have to send their children to schools that are not socially or culturally appropriate for them. But the situation is getting worse.

6. Section 2-1 in the Independent Schools Act regards the approval of new independent schools. It states: *“A school will not be granted approval if its establishment would have a negative impact on the government schools on offer, or there are other specific reasons why the school should not be approved. The host municipality or host county must have the opportunity to make a statement before the Ministry makes a decision in the case.”* In the spring of 2023, the government added a sentence to Section 2-1: *“The Ministry shall place considerable emphasis on the statement of the host municipality or host county.”* The law was adopted by parliament in early 2023. Since then, several applications for the establishment of independent schools and applications for changes in offerings at existing independent schools have been rejected by the Norwegian Directorate for Education. The grounds for rejection are typically complaints from the county or municipality about reduced income and unpredictability related to student enrollment in public schools. These reasons are perplexing, given that they refer to what is a natural consequence of any independent school establishment anywhere. It is simply unavoidable. When the amendment granting increased influence to municipalities and counties was introduced, the Education and Research Committee of the Norwegian parliament highlighted its risk. Members from different government parties, namely SP and AP, stated that: *“it is inherent in the nature of the matter that the establishment of private schools often will have certain consequences for host municipalities, without every effect being decisive for the approval process.”*^{vii} Rejecting the establishment of or modification of independent schools based solely on these factors effectively gives counties and municipalities a de facto veto power over the establishment of independent schools. In that way, the right of non-governmental actors to establish schools is not granted, and consequently, parents can be deprived of the right to choose schools other than public ones.
7. The risk posed by municipalities’ veto power is also evident in the parliamentary proposition (Prop. 80 L 2022-2023): *“Section 2-1, second paragraph of the Independent Schools Act implies that a school should not be approved if it will have negative consequences for the public school offering. In many cases, there will be several factors influencing the assessment of the consequences of establishing a private school or making operational changes to an existing private school for the public school offering. Multiple factors will be uncertain and can affect each other in various ways. In the preparatory works of the Private School Act and through administrative practices, it is therefore accepted that not every consequence of approval under the Private School Act will be negative in the sense that the application for approval must be rejected. The need for structural changes in the public school offering occurs continuously, including due to migration patterns.”*^{viii}
8. In addition, the government proposed an empowerment of counties/municipalities to reduce the approved number of pupils in existing independent schools if they find it necessary to strengthen public schools. This will make it almost impossible to plan, budget, and run independent schools in a proper manner and thus puts their existence at risk, to the detriment of the right to education of children in the country.

9. The proposals constraining the rights of non-governmental actors to establish independent schools are often found on the potential side effect that educational pluralism has on social cohesion. A good example of that is the statement of Tonje Brenna, former Minister of Education, when she reflected on educational pluralism before introducing the legislative change in Section 2-1 of the Independent Schools Act. She said, *"A prerequisite for Norway to be a country with small differences and high trust is a robust public community school, where children and young people from diverse backgrounds meet and learn together. It has an impact on Norwegian society, which is meant to be open and tolerant, when people with different social and cultural backgrounds interact to a lesser extent in the same classrooms. Therefore, we cannot continue to privatize and fragment our school system."*^{ix} Such a statement is rooted in the belief that only public schools can contribute to small differences and high trust. However, it cannot be affirmed that there is a causal relationship between empowering parents to choose the education for their children and social fragmentation. Moreover, where the non-governmental schools chosen by the parents are supported by public funding, societies show greater cohesion. Public funding of independent schools is the best way to ensure equality of educational opportunities, social mobility, and a greater equitable distribution of income.^x In Norway, only a low number of pupils attend independent schools (5 %) compared to other European countries such as Belgium (56,8 %), the Netherlands (76,3 %), Great Britain (37,2 %), and France (20 %).^{xi} Following the logic of Brenna, these European countries should be struggling with low tolerance and low social cohesion. The opposite is true. Both Belgium and the Netherlands score better than Norway on the Gini Index, (World Bank, Poverty and Inequality Platform).^{xii} It can thus be affirmed that educational pluralism is no cause for social disintegration. Rather, it can have positive effects on diversity and academic outcomes.
10. Independent schools are a gathering point for pupils and families from diverse backgrounds. In independent schools, students meet regardless of whether they live in affluent or impoverished neighborhoods. The Independent Schools Act requires independent schools in Norway to be open to all applicants, regardless of the pupil's residence, and the purpose clause in the law stipulates that they must promote human rights. In comparison, children in public schools all come from the same neighborhood. This means that there is a difference in the student composition between public schools in expensive neighborhoods and cheaper areas. Moreover, a report from the European Commission on good governance of educational systems points out that; *"With regard to inclusiveness, education systems with publicly funded private schools have smaller differences in pupils' outcomes between public and private schools than systems in which only public schools can receive public funding."*^{xiii} These experiences show that funding independent schools can increase diversity in the classroom and reduce inequalities between mainstream and non-mainstream groups.

III. Insufficient funding

11. In Norway, independent schools (primary and lower/upper secondary) are guaranteed public funds for 85 % of their expenses, as stated in the Independent Schools Act (privatskoleloven) § 6-1.^{xiv} However, since, among other things, the expenses for

constructing school facilities are not included in the subsidy calculation, the actual subsidy per student is approximately 70% of all costs per student in public schools. There are strict requirements in the law that prohibit the distribution of profits and stipulate that all funds should benefit the students. Therefore, all schools approved under the Independent Schools Act are non-profit schools (mainly Christian schools, Montessori schools, Steiner schools, some Elite sports schools, International schools, and other schools). Independent schools can charge tuition fees to parents for admitted students, with a maximum limit of 15% of the grant basis per student. Although parents do not have to cover 100% of the education of their children, they still have to contribute a considerable amount that not every family can afford. With only the wealthier families in Norway being able to afford non-governmental education, the right of parents to choose the education of their children is not a right but a privilege. In other words, non-mainstream families' right to acceptable and adaptable education is not granted and not all students in Norway have access to inclusive education. Increased public funding would make inclusive education more accessible.

12. In October 2023, Brenna acknowledged Norway's obligation to grant parental rights as required by ICESCR art. 13, yet negated the State's obligation to fund non-governmental schools. She stated, *"The fact that the state has this obligation does not mean that Norway is obliged to contribute financially, or otherwise, to the operation of such schools. ... Norway's international legal obligations regarding primary schools are fulfilled through the approval system for private primary schools without the right to state subsidies under the Education Act and the possibility of private homeschooling. For private secondary schools, there is freedom of establishment. Norway is not obligated to pay for schools other than public primary schools"*.^{xv} This approach is in line with the European Court of Human Rights' view that Article 2 of Protocol No. 1 for the Protection of Human Rights places no positive obligation on the State to subsidize educational establishments. However, the question of States' positive obligations toward parents and children does not end there.

13. As shown previously, not all families can carry the financial burden of sending their children to independent, culturally appropriate schools. Insufficient funding for independent schools consequently negates many children's right to inclusive education. The Committee on the Rights of the Child has recognized this human rights issue and clarified that *"In relation to budgets, this means that the State shall refrain from interfering with the enjoyment of the rights of the child by, for example, discriminating against certain groups of children in budget decisions, or withdrawing funding or diverting resources away from existing programs providing for children's enjoyment of economic, social or cultural rights"*.^{xvi} Additionally, the special rapporteur on the right to education of the UN recently stated that: *"While there is no State obligation to fund private schools, the protection and promotion of cultural diversity, and particularly the protections due to minorities, strongly support such measures. Free, community-run schools merit consideration too."*^{xvii} For the economic, social and cultural rights of children, public funding for independent schools is highly recommended by the international community. Unfortunately, Norway is going in the opposite direction

14. In the national budget of 2023, the government proposed cutting funding for combined independent schools (primary and lower secondary) by over 50 million USD. In 2022, the government changed Section 6A in the Independent Schools Act and reduced the funding of some independent vocationally oriented schools (mainly Christian schools) from 75% to 65%. This is a new trend. For many years, the majority of the parliament was of the view that public funding of independent schools contributes to fulfilling parental rights. Furthermore, several proposals from the (former) Minister of Education and current deputy leader of the largest government party create uncertainty about the future of independent schools.

IV. Summary

The upcoming regulation on the conditions to establish non-governmental schools is a step backward in fulfilling the ICESCR, specifically in reference to Articles 13.3 and 13.4. The conditions for establishing minimum standards should not be construed as interfering with liberty, particularly in the context of ensuring religious and moral education. As stated by the Human Rights Committee (HRC), "*the liberty of parents and guardians to ensure religious and moral education cannot be restricted*" (par. 8).^{xviii} For families who perceive that public schools fail to provide an adaptable and acceptable education for their children, restricting access to funding for non-government schools may result in discrimination against children from non-mainstream cultural groups.

In this context, human rights in Norway appear to have weakened since the Universal Periodic Review (UPR) - third cycle.

V. Recommendations

We would like to make the following suggestions to Norway:

- Define standards under which non-governmental schools can be established. These standards should not be based on aleatory measures but transparent human rights conditions that are not construed as interfering with parents' liberty.
- To ensure that education is accessible, acceptable, and adaptable for all, ensure that independent schools are accessible to all families, irrespective of their income.
- Grant non-governmental actors the right to establish schools and limit the veto powers of local authorities.

These measures will contribute to Norway more fully complying with human rights provisions, including, among others, the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.

Annexe I: Submitting NGOs

ⁱ General Comment No. 13: The Right to Education (Art. 13 of the Covenant)

ⁱⁱ Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4

ⁱⁱⁱ Recommendations 140.154

^{iv} Recommendations 140.155

^v Recommendations 140.157

^{vi} Paragraph 103

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- vii Recommendation from the Education and Research Committee on Amendments to the Private School Act (increased elected influence, etc.). <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2022-2023/inns-202223-3421/?all=true>
- viii <https://www.regjeringen.no/no/dokumenter/prop.-1-s-20232024/id2997598/>
- ix <https://www.regjeringen.no/no/aktuelt/kunnskapsministeren-sier-nei-til-nye-private-profilskoler-og-yrkesfagskoler/id2908267/>
- x https://cefasc.eu.es/wp-content/uploads/Informe_01_LIBERTAD_EDUCATIVA_MUNDO_EDUCACION_FAMILIA.pdf
- xi <https://timbro.se/integration/konfessionella-friskolor-samhallsproblem-eller-mansklig-rattighet/>
- xii [https://data.worldbank.org/indicator/SI.POV.GINI?end=2022&most recent value desc=false&start=2022&type=shaded&view=bar](https://data.worldbank.org/indicator/SI.POV.GINI?end=2022&most%20recent%20value%20desc=false&start=2022&type=shaded&view=bar)
- xiii EUROPEAN COMMISSION. (2017). Study on governance and management policies in school education systems. Brussels: ICF.
- xiv https://lovdata.no/dokument/NL/lov/2003-07-04-84/KAPITTEL_2#KAPITTEL_2
- xv <https://www.vl.no/religion/2023/10/06/derfor-kutter-brenna-i-friskoler-nodvendig-opprydning/>
- xvi COMMITTEE ON THE RIGHTS OF THE CHILD. (2016). General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4). Geneva. CRC/C/GC/19, par 27.a
- xvii Farida Shaheed (2023) Securing the right to education: advances and critical challenges, Report of the Special Rapporteur on the right to education, [G2310365.pdf \(un.org\)](https://www.un.org/development/desa/secretariat/education/2023/09/securing-the-right-to-education-advances-and-critical-challenges)
- xviii HUMAN RIGHTS COMMITTEE. (1993). General Comment No. 22: The right to freedom of thought, conscience and religion (art. 18).