ROYAL NORWEGIAN
MINISTRY OF CULTURE AND EQUALITY

The CEDAW Committee

| Your ref | Our ref | Date |
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## Draft General Recommendation on EIRWDMS (Equal and Inclusive Representation of Women in Decision-Making Systems)

The Norwegian Government (Norway) presents its compliments to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) and has the honour to refer to the Committee's invitation of 18 March 2024 concerning Draft General Recommendation no. 40 on the equal and inclusive representation of women in decision-making systems. Norway is a longstanding party to the CEDAW convention and its Optional Protocol and is firmly committed to upholding its obligations under these instruments. The CEDAW convention and the Optional Protocol are incorporated into Norwegian law through the Human Rights Act and thus take precedence over conflicting provisions in other national legislation.

We thank the Committee for drafting this General Recommendation and bringing attention to the important issue of equal and inclusive representation of women in decision-making systems. Norway has the following comments:

A general comment is that the draft General Recommendation is very long and covers a variety of topics. In our opinion, it would be advantageous for the states' implementation if it were more concise and more focused on the topic.

**Gender parity**

In paragraph 16, the Committee *"observes that a minimum quota of 30% representantion of women is incompatible with gender equality and sends the wrong message that women's underrepresentation is acceptable"*.


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In paragraph 32, the committee committee inter alia recommends that States parties:

- *Amend their constitutions to guarantee parity between women and men in political, public, and economic decision-making, including but not limited to elections, parliaments, the government, judiciaries at both national and local levels, governmental delegations, international bodies, and in the private sector;*

- *Adopt and/or amend laws to mandate gender parity on electoral lists of political parties, as well as in the government, the public service and in economic decisionmaking, amending any laws that provide for less than 50:50 representation;*

- *Enforce the implementation of gender parity requirements, for example through rejecting electoral lists or refusing to confirm appointments that do not comply with such requirements;*

In paragraph 40, the committee inter alia recommends that States parties:

- *Adopt and/or strengthen parity laws by requiring alternation between women and men candidates, both in their ranks on electoral lists or across electoral constituencies offering prospects to win, and by rejecting lists that do not comply with these requirements;*

- *Establish financial incentives for political parties to meet parity requirements and impose penalties on parties that do not nominate equal numbers of women and men;*

In paragraph 42, the Committee i.a. recommends that States parties:

- *Adopt temporary special measures, such as statutory quotas, to guarantee gender parity in elections and appointments to executive posts, including positions as mayors and cabinet ministers;*

Full and equal participation of both women and men in decision-making is a fundamental goal in Norwegian policy making. For many years, Norway has implemented legislation to ensure gender balanced representation in decision making systems in many areas. While we wholeheartedly agree that ambitious goals are necessary, we experience that a 50:50 gender representation requirement in legislation is not practical.

In Norwegian law, we have a gender-neutral requirement for representation, aiming for a 40:60 balance in various contexts, including inter alia public committees, boards of state-owned companies and other companies with public ownership, boards of Private Limited companies, Public Limited Companies, business foundations and foundations which have distribution of grants as their purpose, and in municipal council and county council committees. Our experience is that demanding strict 50:50 representation is challenging. Often, the actual numbers make achieving perfect parity difficult. Additionally, some flexibility is essential. For instance, in the field of gender equality, it is often challenging to assemble a

sufficient number of men for delegations participating in dialogue meetings with the UN CEDAW Committee and at the UN Commission on the Status of Women (CSW).

Norway's new electoral law, which was passed in June 2023 and will come into effect on 1 May 2024, will apply for the first time in the 2025 parliamentary election. The Act contains rules on the preparation and conduct of elections, including requirements for political parties' lists for elections. The law contains requirements for the number of candidates on the lists, but does not require gender representation or other forms of representation among the candidates. The Election Act Commission, which investigated and proposed a new electoral law, assumed that the political parties themselves put a lot of effort into drawing up lists that balance different considerations, such as geography, age and gender. The Committee's recommendations to legislate requirements for 50 percent women on the lists will be problematic in light of Norwegian legislation and practice.

Furthermore, in Norway there are no specific regulations requiring gender balance in the workplace. It is a fundamental principle, enshrined in the Civil Service Act, that the best qualified applicant should be hired. Nevertheless, Norwegian legislation allows for positive action in hiring when qualifications are nearly equal. This can serve as a tool to promote gender balance in workplaces. It is worth noting that in 2003, the EFTA court concluded that the University of Oslo's earmarking of postdoctoral positions for women was contrary to the EU's regulations for equal treatment between men and women, and thus also contrary to the EEA regulations.

Paragraph 46 states: *«Further, it recommends that States parties ensure the equal representation of women and men on the boards and as chief executive officers of State-owned enterprises and private listed and unlisted companies through legislative and other measures».*

The reference to the chief executive in this section is problematic when it comes to Norwegian legislation and practice. In both state-owned and privately owned companies, it follows from company law that the chief executive is elected by the company's board of directors. For neither private nor state-owned companies, the state can ensure that there is equal representation between the sexes at the chief executive officer level. As owner, the state can promote this, but cannot ensure it. This should therefore be deleted ([..] *and as chief executive officers*).

**Voting by mail or using digital technologies**

In paragraph 38, the Committee recommends that States parties:

- *Expand opportunities for women to vote by mail or using digital technologies;*

Neither the Electoral Act of 2002 nor the new Electoral Act make it possible to vote by letter or vote electronically in parliamentary, county or municipal council elections.

It is only possible to mail vote for voters who are abroad and who are unable to visit a returning officer. It is not desirable to extend this narrow exception, as one should normally identify oneself when voting.

The Election Act Commission concluded that there is currently insufficient secure technology to introduce electronic voting. The Ministry of Local Government and Regional Development shares the committee's assessment, and presented a proposition for a new electoral act in line with this.

Against this background, the recommendation to vote by post or by using digital technology can be problematic in light of Norwegian law.

**Social media**
In paragraph 74 of the draft recommendation, the Committee recommends that State parties *“Hold social media companies liable for unlawful user-generated content constituting gender-based violence against women in decision-making*.”

Please note that both Norwegian and EU legislation (E-Commerce Directive and Digital Services Act) include liability exemption rules for online intermediaries and platforms. The reasoning behind such exemptions is that the threat of liability may give intermediaries and technical facilitators an incentive to refuse dissemination of controversial or 'risky' content. This could lead to self-protective and over-broad private censorship, often without transparency and due process of law.

Yours sincerely

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*This document is signed electronically and has therefore no handwritten signature*

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