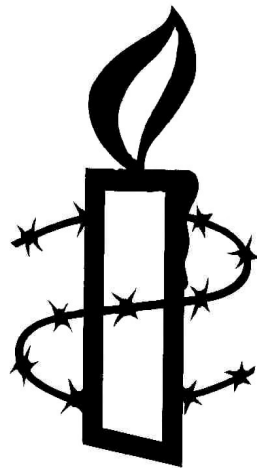

amnesty international

Norway

Submission to the UN Universal Periodic Review

**Sixth session of the UPR Working Group of the
Human Rights Council
November - December 2009**



Executive summary

In this submission, Amnesty International provides information under sections C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

- Section C highlights Amnesty International's concerns in the relation to violence against women, including rape, detention of mentally ill persons in prisons, and the rights of refugees and asylum-seekers.
- In section D, Amnesty International makes a number of recommendations for action by the government each area of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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C. Promotion and protection of human rights on the ground

1. Violence against women

As established under international law, violence against women is a form of discrimination against women and a violation of their human rights.² The obligations on states include the responsibility to protect women from violence, to prevent rape and other forms of sexual abuse, and to hold the perpetrators to account.

Although the authorities and justice system in Norway claim to give high priority to combating gender-based violence, including rape, the victims' right to justice is in practice often hampered. The cumulative failure to investigate and hold perpetrators to account can be observed as a process of attrition throughout the criminal justice system. This is not only a strong indication of the existence of pervasive gender-based discrimination against women in Norway, but also a systemic failure to ensure women's right to legal protection and equality with men before the law.

In January 2008, a government-appointed committee on rape estimated that between 8,000 and 16,000 women are raped in Norway each year.³ The actual annual figure is not known as there is no national incidence study and, as indicated below, only a minority of rapes are reported to the police. The absence of comprehensive statistical data relating to the incidence of rape and efforts to combat it indicates a lack of priority given to women's rights by the state.

Legal proceedings

International human rights law require that criminal law recognizes the absence of genuine consent, rather than the use of physical force, as the essential element of rape.⁴ However, the Norwegian penal system still links the question of guilt to the ability to prove that the sexual act was enforced through the use of violence or threats of violence.⁵

The number of reported rapes has steadily increased in recent years, from 731 in 2003 to 945 in 2007. In the same period, the number of reported attempted rapes increased slightly from 105 in 2003 to 115 in 2007.⁶ Around 84 percent of rape cases reported to the police are dismissed by the public prosecutor, and never reach court.⁷

² See for instance, *UN Secretary-General's in-depth study on all forms of violence against women* (A/61/122/Add.1), 17 November 2006.

³ Norway has 4.7 million inhabitants as of October 2007, according to the official Bureau of Statistics (SSB)

⁴ European Court of Human Rights, application 39272/98, *M.C. v. Bulgaria*, (judgment of 4 December 2003), paragraphs 154-166

⁵ Odelstingsproposisjon no. 28 (1999-2000), Preparatory Notes on Changes in the Penal Code, page 29

⁶ STRASAK figures with comments 2007 at www.politi.no

⁷ The Director of Public Prosecutions Rapport, no. 1/2007, page 4. The statistics are based on reported rape cases between 2003 and 2005. The Director of Public Prosecutions appointed an expert committee in October 2005 to analyse the reasons behind the high acquittal rate for rape cases in court. The committee processed the STRASAK statistics

Despite the fact that both the Minister of Justice and the Director of Public Prosecutions have instructed the police to prioritize the investigation of rape cases, the police still do not seem to be giving rape cases the necessary priority. The government-appointed committee on rape has pointed out that the lack of clear strategies and regulations within the police force seems to lead to a lack of prioritization of rape and sexual offences by the police.⁸

Compared to other crimes, few rape cases end with conviction in the courts. Between 2003 and 2005, the percentage of acquittals in rape cases was around 36 per cent.⁹ During the same period, the percentage of acquittals for all reported crimes was 7-8 per cent.

Societal attitudes

The assessment of the relative credibility of the victim and of the alleged perpetrator plays a critical role in determining the outcome of a rape case. It is inevitable that these assessments are influenced by the norms and values – including perceptions of what constitutes morally acceptable behaviour for men and women – held by the police investigator, the prosecutor and, ultimately, the court.

Stereotypical notions about female and male sexuality and about women's availability for sex have deep roots in societies around the world, including in Norwegian society. These notions can lead to the account of an alleged rape given by the female victim being viewed as less credible than a statement given by an alleged male perpetrator. Such notions and attitudes, which pave the way for gender-based violence against women, including rape, must be counteracted and transformed in order to fulfil the state's obligations under Article 5(a) of the Convention on the Elimination of All Forms of Discrimination against Women.

Until gender-based sexual violence against women is effectively prevented, investigated and punished in accordance with international obligations, women in Norway will be unable to exercise and enjoy their human rights and fundamental freedoms on the basis of full equality with men.

2. Treatment of mentally ill persons held in prisons

Amnesty International has received disturbing information concerning the situation of mentally ill prisoners at both Ila Prison and Oslo Prison. Despite repeated concerns expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and other international and national institutions, mentally ill persons continue to be detained in prisons without access to appropriate health care.

In 1993, the CPT first expressed its concern about a number of prisoners with mental health issues held at Ila Prison and strongly recommended that they be transferred to appropriate psychiatric hospitals. The CPT expressed similar concerns and recommendations following its latest visit to Norway in 2005. In its report, dated 11 April 2006, paragraph 76, the CPT states:

“As was the case during the 1993 visit, the delegation met a certain number of mentally ill prisoners at Ila Prison. The doctors were clearly trying to transfer them to a psychiatric establishment. However, such transfers were difficult, due to the apparent shortage of hospital beds. Further, their return to the prison was sometimes premature, taking place when the patients' mental state was not yet stabilised.”

(internal police statistics) and adjusted them according to later changes in the cases that are not reflected in the initial statistics. The committee released its report in March 2007. One of its main conclusions was that juries in the courts of appeal base their decisions on discriminatory attitudes towards women rather than on a clear understanding of the law.

⁸ White Paper 2008:4 page 58-59

⁹ Director of Public Prosecutions 1/2007 page 4

The CPT would like to recall that prisoners suffering from a mental illness should be cared for and treated in an adequately equipped and staffed hospital establishment. The rapid transfer of these prisoners to a psychiatric unit allowing them to receive appropriate care should be given a very high priority.

The CPT recommends that the Norwegian authorities take steps to ensure that prisoners suffering from a mental illness are transferred when necessary to an appropriate hospital establishment."

Recent coverage in the Norwegian media has highlighted a number of cases of individuals apparently suffering from serious mental illness who have spent years in prisons, in some cases including prolonged periods spent in 'isolation cells' for 23 hours a day.¹⁰

The director of Ila Prison, Mr. Knut Bjarkeid, in April this year publicly described the conditions for mentally ill prisoners as 'torture'. Mr. Bjarkeid described the case of a seriously mentally ill prisoner who had tried to commit suicide 30 times. All the prison could offer him was solitary confinement: "We have done all we can to prevent him from hurting himself, but he comes up with new methods and hurts himself seriously again and again. He should never have been sent to prison and gets sicker by being held in isolation and without proper treatment." According to Mr. Bjarkeid there are six to eight such prisoners in Ila Prison who are in need of psychiatric treatment, although he believes the total number of mentally ill persons in prison in Norway is much higher.¹¹

Amnesty International believes that all prisoners should be given access to appropriate health care, including the option of being transferred to specialized institutions when their condition so requires, in conformity with the UN Standard Minimum Rules for the Treatment of Prisoners.¹² The organization considers that the practice of placing mentally ill individuals in prisons and in 'isolation cells' and failing to provide them with adequate specialist care, is contrary to domestic law¹³ and international standards¹⁴ and may lead to further deterioration of their mental and physical condition.

3. Rights of refugees and asylum-seekers at risk

Norway is a signatory to the to the European Union's Dublin II Regulation. The Regulation enables Norway, like all other signatory states, to assess, against specific criteria, which of the states parties to the Dublin II regulation is responsible for examining asylum applications lodged in their territory. The Regulation aims at preventing so-called "asylum shopping" and at ensuring that each claim is fairly examined by only one Member State to the Regulation. However, the credibility of this system is contingent upon the existence of harmonized minimum standards of protection among the Member States that effectively recognize and provide protection for those who need it.

¹⁰ See, for instance, the television documentary programme, '*Brennpunkt*', produced by the Norwegian Broadcast Corporation (NRK) and broadcasted on 3 February 2009 (<http://www.nrk.no/programmer/tv/brennpunkt/1.6517814>); and a newspaper article by Kari Middelthon, a member of the board of *Foreningen for Fangers Pårørende*, an organization for relatives of prisoners: 'Tortur i norske fengsler', *Aftenposten*, 20 February 2009 (<http://www.aftenposten.no/meninger/debatt/article2939280.ece>).

¹¹ From the daily news program *Dagsrevyen* on the Norwegian Broadcast Corporation and the daily newspaper VG, 14 April 2009.

¹² Rule 22 (2) states: "Sick prisoners who require specialist treatment should be transferred to specialized institutions." Rule 82 states that "persons who are found to be insane shall not be detained in prison and arrangements shall be made to remove them to mental institutions as soon as possible".

¹³ Norwegian Patients' Rights Law, § 2-1 "The patient has the right to necessary health care from the specialized health services".

¹⁴ For example, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights

Under the Dublin II Regulation, the Norwegian government returned asylum-seekers to Greece, in cases where it determined that Greece had responsibility for examining the asylum applications in question. This practice has been severely criticized, in view of concerns that Greek asylum procedures were not in line with European and international standards. These concerns included the lack of essential safeguards in the asylum procedures, evidence that asylum-seekers whose claims were determined in Greece faced a significant risk of *refoulement*, and reports of ill-treatment by police against refugees and asylum-seekers.¹⁵

Following lobbying by Norwegian NGOs, and in response to recommendations from the United Nations High Commissioner for Refugees (UNHCR), the Norwegian government stopped returning asylum-seekers with children to Greece in December 2007 and all returns of asylum-seekers to Greece in February 2008.

There has been no credible evidence of substantial improvements in Greek asylum-determination procedures since the Norwegian government decided to halt all returns to Greece in February 2008. Rather, reports indicate continued serious violations of the rights of the refugees and asylum seekers in Greece.¹⁶ However, despite the lack of improvement in the Greek procedures, and despite UNHCR recommendations to the contrary, the Norwegian government on 2 December 2008 resumed the transfer of asylum-seekers without children to Greece.

In 2007, UNHCR presented a Return Advisory on the return to Greece of asylum-seekers with “interrupted” claims,¹⁷ and again on 15 April 2008.¹⁸ In both documents UNHCR criticized the procedural safeguards, access and quality of the asylum procedure and the conditions of reception in the country and “advise[d] Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation until further notice”.

On 6 January 2009, UNHCR forwarded its comments on proposed amendments of a provision in the Norwegian Immigration Act to the Norwegian government. The UNHCR made a number of substantial comments and recommendations, including on the Dublin II transfers:

“While respect for the principle of non-refoulement is essential, it should also be noted that by transferring an asylum-seeker to a country where access to and the quality of the asylum system is of serious concern, this also means that many of those in need of international protection are denied their fundamental rights.”

“UNHCR also recommends that no transfer should be effected to a State where there is a risk on non-compliance with international refugee law (including non-refoulment) or human rights law (including removal to a country where the person may face risk of an Article 3 [ECHR] violation, or removal there from to another state where that risk exists.”¹⁹

¹⁵ Reports by Amnesty International, UNHCR, the Norwegian Helsinki Committee, the Norwegian Organisation for Asylum Seekers, and the Greek Helsinki Monitor.

¹⁶ See the report “A gamble with the right to asylum in Europe – Greek asylum policy and the Dublin II Regulation” (9 April 2008), produced by the Norwegian Helsinki Committee, the Norwegian Organisation for Asylum Seekers and the Greek Helsinki Monitor, based on their fact-finding mission in Greece in March 2008.

¹⁷ *The Return to Greece of Asylum-Seekers With “Interrupted” Claims*, 9 July 2007.

¹⁸ *UNHCR Position on the Return of Asylum-Seekers to Greece under the “Dublin Regulation”*, 15 April 2008.

¹⁹ UNHCRs comments on the proposed amendments of *forskrift 21. desember 1990, nr. 1028 om utlendingers adgang til riket og deres opphold her* (200805607-/CEF, 18 November 2008), page 3.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

Violence against women

- To conduct regular national surveys on the incidence of sexual violence and rape in Norway to obtain reliable information on the most effective policies and practices to prevent and address sexual violence and rape.²⁰
- To adopt a legal definition of rape based on international human rights principles on sexual integrity and autonomy, including by linking the question of guilt in rape cases to the lack of genuine and freely-given consent, and to the exercise of sexual autonomy, rather than to the presence of violence, in line with international developments.²¹
- To establish sexual offences teams, with technical, tactical and legal expertise in relation to sexual offences, in every police district in Norway.
- To establish an autonomous central unit for sexual violence within the police. The establishment of such a unit could contribute to the necessary development and dissemination of competence and knowledge, and give a necessary boost to the status of police work on sexual offences on a national level. In order to fulfil its functions, the central unit for sexual violence should be open and accessible 24 hours per day, seven days per week.
- To provide and fund specialized training and guidelines for police, judges, prosecutors, defence lawyers, legal counsellors and others involved in dealing with women exposed to rape and other sexual crimes. Such training and guidelines should involve professional and other organisations with expertise on violence against women, and should cover the nature of violence against women, particularly in relation to these crimes, in order to eliminate prejudices and stereotypes about both victims and perpetrators.
- To reinforce and develop preventive work against rape and sexual violence in society at large, in accordance with the state's obligations under Article 5(a) of CEDAW, which requires taking measures to modify the social and cultural patterns of conduct of men and women and eliminate prejudices and customary and all other practices based on stereotyped roles for men and women. Preventive measures should include the education of children and young people about mutual respect in relationships, as well as the promotion of equality in public education messages, within the context of working towards substantive gender equality between men and women in all areas of life.

Treatment of mentally ill persons held in prisons

- To ensure that all detainees and prisoners, including those that are mentally ill, are given access to appropriate health care, including where necessary by being transferred to specialized institutions for the provision of psychiatric health care.

Rights of refugees and asylum-seekers

²⁰ Strengthening the knowledge base on all forms of violence against women to inform policy and strategy development is a central recommendation for action on national level in the report *In-depth study on all forms of violence against women* by the Secretary-General of the UN. UN General Assembly (2006) page 107.

²¹ Amnesty International (2005): *Stop Violence against women: How to use international criminal law to campaign for gender-sensitive law reform*. Under paragraph 3B, Evidence of consent, page 35. AI Index: IOR 40/007/2005. May 2005, and *Making Rights a Reality: the duty of states to address violence against women* AI Index: ACT 77/049/2004, June 2004.

- To act on UNHCR's recommendations to cease transfers of asylum-seekers to Greece in view of the lack of adequate procedural safeguards in the asylum process in Greece, the risk of *refoulement* of persons in need of international protection from Greece and poor reception conditions that fall short of European and international standards;
- To stop the transfer of asylum-seekers to any State where there are inadequate asylum procedures or otherwise a risk of non-compliance with international refugee law or human rights law, particularly the principle of *non-refoulement*.