NORWEGIAN NGO FORUM FOR HUMAN RIGHTS

SUBMISSION REGARDING THE 8TH PERIODIC REPORT OF NORWAY TO THE UN COMMITTEE AGAINST TORTURE

On behalf of

- The Human Rights Committee of the Norwegian Bar Association
- The Human Rights Committee of the Norwegian Psychologist Association
- Amnesty International Norway
- The Norwegian Helsinki Committee
- The Norwegian Organization for Asylum Seekers (NOAS)
- Jussbuss, legal aid service

The present report has been drafted collectively by the above listed organizations, which are members of the Norwegian NGO-Forum for Human Rights, and reflects the main concerns and priorities of the organizations. The organizations have drafted different parts of the report and may not have policies in sections which deal with issues that are beyond their mandates.

The report was endorsed by an additional member of the Forum: JURK – Legal aid for women.

The report has been prepared as an input to the UN Committee against Torture, which in April 2018 is considering the Norwegian state report during its 8th reporting cycle.

The themes of the report have been chosen in order to address issues raised in the Committee against Tortures Concluding Observations of the 7th reporting cycle. There are references to the list of issues under each section title.

This report does not intend to be a comprehensive and conclusive statement of problems in Norway under the Convention. The fact that an issue is not addressed does not necessarily mean that the issue is not a relevant human rights concern under the Convention.

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No incorporation of the Convention against torture into domestic law

See List of Issues para 2, concluding observations para 6

The Human Rights Act[1] incorporates a number of UN human rights treaties into domestic law. The incorporated conventions prevail over any other statutory provision. The Convention against Torture is not incorporated into domestic law at any level. This should be done, as a recent Supreme Court judgment clarifies that, the Constitution § 92[2] is not a clause that incorporates human rights conventions into Norwegian law, but obliges authorities to enforce human rights conventions at the level they are implemented in Norwegian law.[3]

- **Question to be raised**: Will the Convention against Torture be implemented in the Human Rights Act?
- **Recommendation**: Implement the Convention against Torture in the Human Rights Act.

Constitutional protection and definition of torture

See List of issues para 1, concluding observations para 7

A general prohibition against torture and ill-treatment was adopted into the Norwegian Constitution as part of a comprehensive constitutional revision in 2014, which introduced a separate chapter on human rights. § 93 (2) follows the wording of the European Convention on Human Rights (ECHR) article 3.[4]

The previous constitutional protection was limited to the protection against torture during interrogations.[5] The current scope of protection does not cover all serious violations of integrity. Although the protection against torture in ECHR article 3 is non-derogatory, interventions in private life in accordance with ECHR article 8(2) may be accepted, "if necessary in a democratic society". A recent Supreme Court judgment states that, "there must be a high threshold for characterizing a treatment as inhuman or degrading" when making an assessment of whether a situation within private life violates § 93(2).[6] This may be an indication that the constitutional protection is still not fully in line with the scope of protection afforded in CAT.

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[1] Act Relating to the Status of Human Rights in Norwegian Law of 21 May 1999 no 30 (*Menneskerettsloven*). Available at: http://bit.ly/2nMqF5w Unofficial English translation available at: http://bit.ly/2E3aPOO

[2] The Constitution article 92 proclaims that, '*The authorities of the State shall respect and ensure the human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway,*'

[3] See HR-2016-2554-P and HR-2016-2591-A of 20 December 2016, para 47. The latter case concerned the question, whether or not a woman with a psychosocial disability (diagnosed paranoid schizophrenia) should be deprived of her legal capacity relating to her economy if the conditions for this were fulfilled in accordance with the guardianship act § 22. The Supreme Court found that the conditions to deprive the woman of a capacity to handle her own economy were fulfilled, even though this might be contrary to the CRPD article 12. This was because of the Norwegian 'interpretative declaration' in relation to CRPD art 12 (judgment para 58), and also due to the fact that the CRPD is not incorporated into Norwegian law. An interesting observation is made in para 63, in which it is stated that as long as the declaration made by Norway in relation to art 12 is upheld by the legislator, the courts must abide by this even where it would amount to a breach of international law.

[4] See Dok nr 16(2011-2012) Report from the Human Rights Committee on Human Rights in the Constitution, chapter 20 for the *traveaux preparatories* to this amendment.

[5] Previous § 96, second sentence.

[6] See Supreme Court judgment of 16 June 2016 in case HR-2016-1286-A, in which a woman claimed that to be subject to compulsory medical treatment through depot injections, to improve her health status, was in violation of the Constitution article 93(2) and ECHR article 3. The court stated in premise 23, "It needs to be noted that there must be a high threshold for characterizing a treatment as inhuman or degrading. If the purpose of the treatment is therapeutic, it will be outside the scope of the protection, assuming that the

- **Question to be raised**: what is being done by the State Party to ensure that the current scope of protection against torture will cover all serious violations of integrity?
- **Recommendation**: Ensure that all serious violations of integrity be covered by the constitutional protection against torture.

Legal remedies for individual survivors of torture

See List of issues no 3, concluding observations para 8

The National Preventive Mechanism against Torture and ill-treatment, which is organized as a division of the Parliamentary Ombudsman, has produced a number of critical reports since 2014 that have received high media attention. These reports have highlighted human right issues of persons being deprived of their liberty in a variety of institutions such as, prisons, child welfare institutions, mental healthcare institutions and immigration detention centers.[7]

Neither the National Human Rights Institution nor the National Preventive Mechanism have within their mandates the ability to support individual survivors of torture. Individuals that claim to be survivors of torture only have a right to legal aid if they fulfill the general requirements of the legal aid act (see below). The publicly financed legal aid-scheme has limitations both linked to minimum income as well as areas of priority.

- **Question to be raised**: Which legal remedies are available to individual survivors of torture?
- **Recommendation**: Ensure that individual survivors of torture have access to legal remedies.

Police detention – solitary confinement in strip cells

See List of issues para 4, concluding observations para 9 regarding the system of preventive detention

No person should have to suffer solitary confinement unless it is, "absolutely necessary", "in exceptional circumstances" or is used, "as a last resort".[8] All persons arrested and detained by the police in Norway are as a matter of routine kept in solitary confinement. The police or the public prosecutor does not perform an assessment of the need for subjecting a detainee to solitary confinement while the prisoner is kept in police detention units.[9] In the majority of cases *there is no need* for solitary confinement, i.e. in cases where the prisoner is only detained in order to prevent new crimes or to prevent the prisoner from absconding. The use of solitary confinement in Norway is rather a matter of adherence to tradition, which has been addressed by Norwegian courts.

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treatment is proportionate and based on clear medical grounds, as the patient is saved the effects of the mental illness that clearly would have represented an even greater burden".

[7] Some of the report has been summarized in English, see: http://bit.ly/2s8yurn

[8] C.f. i.a. CAT Concluding observations: Denmark 2007 (CAT/C/DNK/CO/3 para 14) and 1997 (A/52/44 para 186), Sweden 2008 (CAT/C/SWE/CO/5 para 16) and 1997 (A/52/44 para 255), Iceland 2008 (CAT/C/ISL/CO/3) para 9 and 1999 (CAT/A/54/44 para 59), Norway 2012 (CAT/C/NOR/6-7 para 11) and 1998 (A/53/44 para 156). Further, cf. i.a. UNHRC CCPR/CO/70/DNK para 12, CCPR/C/NOR/CO/6 para 11, CCPR/C/DNK/CO/5 para 11. Cf also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) A/RES/70/175 para 45, as well as the CPT standards and relevant reports from CPT (i.a. CPT/Inf(2008)26 para 42).

[9] Recent reports of the National Supervisory Board for Police Detention Units (Det nasjonale politiarresttilsynet) confirm that such assessments are hardly ever made. Cf. also the reports of the National Preventive Mechanism ("Sivilombudsmannens forebyggingsenhet"), i.e the report concerning Bergen Police Detention Unit (25.01.16). http://bit.ly/2E3c3cS

Norwegian courts have declared that the indiscriminate and systematic use of solitary confinement is in breach of the ECHR article 8, stating that it is not "necessary in a democratic society".[10]

For non-convicted *pretrial* detainees – protected by the presumption of innocence – the threshold for using solitary confinement should be even higher.[11] It is generally accepted that solitary confinement puts a heavy burden on prisoners, and may have very damaging effects. It is also recognised that the damaging effects of solitary confinement can be, "immediate".[12] Prisoners in police cells are particularly vulnerable to the tolls of solitary confinement. Being recently arrested, police cell prisoners often experience a dramatic change in their whole life situation, often worrying about the future, their relationship with family and friends, work etc.[13] These detainees do not have any contact with other prisoners, nor do they have contact with their family or friends. There is also no substantial contact with police officers or wardens. Furthermore, the police detention cell is a bare concrete strip cell, often with no daylight and no possibilities for mental stimuli.[14]

The systematic use of strip cells and solitary confinement may represent a risk of misuse, as police may be tempted to intentionally use police cells in order to extract confessions from remand prisoners.[15] Necessary steps should be taken to minimize such risks, cf. CAT articles 11 and 16.

Currently, no procedural safeguards exist to ensure that the use of solitary confinement, in police cells, is restricted solely to cases where it is needed.[16] As mentioned, the police and the public prosecutor do not even perform an assessment of the need for imposing solitary confinement.[17] Police detention units do not allow for any other regime than solitary confinement. Additionally, it has been revealed that detainees are not always informed of their rights in a proper manner.[18]

The Director of Public Prosecutions and the National Police Directorate have issued *provisional guidelines* on the use of Police custody.[19] However, the inspections of the National Supervisory Board for Police Detention Units show that those guidelines *have not been implemented* by police

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[10] TOSLO-2013-103468.

[11] The UN Special Rapporteur on Torture has recommended that "all states should take necessary steps to put an end to the practice of solitary confinement in pretrial detention", A/66/268 para 85. See also CCPR article 14 and the special rights for pretrial detainees in CCPR article 10 section 2 litra a and UNHRC GC No 21 section 9.

[12] Cf. i.a. Babar Ahmad and others vs UK 2012 para 207. See the 21st General report of CPT (2011) page 39, also cited in jurisprudence by ECHR

[13] E.g., research from the Norwegian Prison Authorities Education Center ("KRUS) show that 75 % of all suicides among prisoners in Norway are committed by pretrial detainees, and mostly during the first three weeks of the incarceration. For a summary of research from Norway and Scandinavia and other countries, see Thomas Horn Complete solitary confinement on the basis of risk of tampering the evidence ("Fullstendig isolasjon ved risiko for bevisforspillelse"), Fagbokforlaget 2017.

[14] Cf. reports of the National Supervisory Board for Police Detention Units (Det nasjonale politiarresttilsynet). The strip cells consist of smooth concrete walls and floor, devoid of any furniture. A large percentage (approximately 40-50 %) does not have any daylight, and the rest does only have access to daylight through a non-transparent window high on the wall (under the ceiling). Cf. also the reports of the National Preventive Mechanism ("Sivilombudsmannens forebyggingsenhet"), i.a. the report concerning Bergen Police Detention Unit (25.01.16), at: http://bit.ly/2FK3DDt

[15] The use of strip cells and solitary confinement "*creates a de facto situation of psychological pressure which can influence detainees to make confessions or statements against others and undermines the integrity of the investigation,* cf. the report of the UN Special Rapporteur on Torture (A/66/268) para 73.

[16] Cf. the report of the UN Special Rapporteur on Torture (A/66/268) para 89: "He emphasizes that when solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed."

[17] Supra.

[18] Cf. i.a. the report of the National Supervisory Board for Police Detention Units (Det nasjonale politiarresttilsynet) concerning its inspection of Arendal police detention unit (05.12.16).

[19] CAT/C/NOR/8, Consideration of reports submitted by States Parties under article 19 of the Convention pursuant to the optional reporting procedure, para 16-19.

detention units.[20] E.g. the guidelines call for the police and public prosecutors to assess whether or not solitary confinement is necessary. However, such assessments are still not performed.

While in police detention, detainees are not allowed any visits and sharing cells in daytime does not happen. In most cases detainees do not spend any time outdoors. The predominant regime is that the detainee can be brought into the police garage for some minutes in order to smoke a cigarette.

One police detention unit have built a 1x1m "cage"/"box" in the police garage where the detainee is locked up in order to smoke. In other facilities, the "outdoor time" consists of the detainee being locked into another strip cell where he/she is allowed to smoke. No arrangements have been made for allowing detainees to spend time together.

In 2012, CAT recommended that Norway "should abolish the widespread use of police detention cells beyond the 48-hour term required by the law".[21] For a long time Norwegian authorities have made extensive use of police detention cells for pretrial detainees, in order to save ordinary prison places for convicted offenders. Because the 48-hour limit does not apply if prison authorities choose to prioritize prison cells for convicted offenders, the 48-hour limit remains illusory.

Due to a makeshift arrangement with the Netherlands – allowing Norway to lease prison places in a Dutch prison until 2018 (see below on Norgerhaven) – the need for keeping pretrial detainees in police strip cells have been *temporarily* reduced. However, this should not be an excuse for postponing the ban of using police detention units in excess of 48 hours. To the contrary, amendments to the legislation should make it clear that when the agreement with the Netherlands expires, the Government cannot choose to keep pretrial detainees in police strip cells in order to prioritize prison cells for convicted offenders.[22]

There is also a need for amending the code of penal procedure so that pre-trial detainees have the right to be brought before a judge within 48 hours.[23] Exceptions should be exceptional and justified under the circumstances. Also, prisoners should not be brought back into police detention units after being presented in court.

Norway's report informs that, "a new circular and guidelines have been issued and new procedures introduced" (paragraph 125), and that this is the reason for the reduction in the length and frequency of police custody. However, the report offers no further indication on the contents of the circular and the guidelines.

- **Question to be raised**: Is the need for solitary confinement in police detention cells always considered individually in each case, so that the use of such cells is limited to those cases where it is strictly necessary?
- **Recommendation**: Legislation should be amended to ensure that the police and public prosecutor always assess the need for solitary confinement when placing someone in police detention. There should also be an absolute time-limit for placement, of maximum 48 hours, in the code of penal procedure. This should be in line with the Covenant on Civil and Political Rights Article 9 and the UN Human Rights Committee General Comment No. 35 so that pre-

[20] Cf. i.a. the report of the National Supervisory Board for Police Detention Units ("Det nasjonale politiarresttilsynet") concerning the inspection of Arendal police detention unit (05.12.16). Cf. also the reports of the National Preventive Mechanism (Sivilombudsmannens forebyggingsenhet), i.a. the report concerning Bergen Police Detention Unit (25.01.16).

[21] CAT/C/NOR/CO/6-7, para 10.

[22] The Government announced on the 21st of February 2018, that the agreement on leasing prison places in Norgerhaven will not be renewed. The current agreement ends on 31 August 2018. The announcement is available at: http://bit.ly/2ofte0M

[23] In line with the Covenant on Civil and Political Rights article 9 and UN Human Rights Committee General Comment No. 35

trial detainees have the right to be brought before a judge within 48 hours. There should be a high threshold for exceptions, which have to be justified under the particular circumstances of the case.[24]

Pre-trial solitary confinement

See List of Issues para 6, concluding observations para 10 on police detention cells

Despite existing international standards that restrict the use of pre-trial solitary confinement, Norway has made extensive use of it under the pretext of protecting evidence.[25] Introduction of new legislation in 2002 was a step in the right direction, but little has happened since.[26] Annually, 11-16 % of all pretrial detainees are subject to solitary confinement ("Complete isolation", "fullstendig isolasjon").[27]

449 persons in Norway were subjected to pretrial solitary confinement in 2015. This is *14 times higher than the number in Denmark,* even if the population in Denmark is 10 % larger than in Norway.[28] There has been a drastic reduction of the use of solitary confinement in Denmark, without sparking any misgivings from the police or public prosecutors.

Studies indicate that police applications for restrictions, like solitary confinement, are often poorly reasoned and phrased in a stereotypical manner. This applies also to court decisions. As a result of inspections by the Council of Europe Committee for the Prevention of Torture (CPT) in Norway, the General Attorney's office conducted a survey that concluded that only 17% of police applications for pretrial restrictions (including solitary confinement) meet an acceptable standard of reasoning. Following a report of the UN Working Group of Arbitrary Detention (WGAD), the Police Academy Research Unit performed a new survey that confirmed the findings in the first survey performed by the General Attorney's office. Academic studies are in line with this.[29]

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[24] This is in line with the recommendations to the Norwegian Government by the Norwegian National Institution for Human Rights in its 2015 Annual report, which highlights the problematic character of Norway's use of solitary confinement and police strip cells.

[25] Human Right standards and monitoring bodies unanimously states that no person should have to suffer solitary confinement unless it is "absolutely necessary", "in exceptional circumstances" or "as a last resort", Cf. i.a. CAT Concluding observations: Denmark 2007 (CAT/C/DNK/CO/3 para 14) and 1997 (A/52/44 para 186), Sweden 2008 (CAT/C/SWE/CO/5 para 16) and 1997 (A/52/44 para 255), Iceland 2008 (CAT/C/ISL/CO/3) para 9 and 1999 (CAT/A/54/44 para 59), Norway 2012 (CAT/C/NOR/6-7 para 11) and 1998 (A/53/44 para 156). Further, cf. i.a. UNHRC CCPR/CO/70/DNK para 12, CCPR/C/NOR/CO/6 para 11, CCPR/C/DNK/CO/5 para 11. Cf also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) A/RES/70/175 para 45, as well as the CPT standards and relevant reports from CPT (i.a. CPT/Inf(2008)26 para 42).

[26] The introduction of section 186a in the Code of Penal Procedure.

[27] Official statistics from the Norwegian Prison Authorities ("Kriminalomsorgen") for the years 2003-2015. The most recent statistic from 2015 shows a figure of 11,8 %.

[28] In comparison, Denmark – a neighboring country previously using pretrial solitary confinement on the same level as Norway – has managed to almost eradicate the use of pretrial solitary confinement. In Denmark only 32 persons (0, 7 %) was subjected to pretrial solitary confinement in 2015 according to the Danish Department of Justice, the Research Unit ("Justisministeriets forskningskontor", "Statistikk om isolationsfængsling") June 2016.

[29] Cf. General Attorney's office, 2003 (Riksadvokatens publikasjoner 1/2003, "Restriksjoner ved varetekt – en undersøkelse av praksis første halvår 2002"), The Police Academy Research Unit, 2009 (Bakke/Myhrer, "Begjæring om varetektsfengsling med restriksjoner – en undersøkelse av praksis") and Anette Angelsen 2011, *Court reasonings when deciding pretrial solitary confinement* ("Rettens begrunnelser for varetektsfengsling i isolasjon"). Cf. also Thomas Horn, *Complete solitary confinement on the basis of risk of tampering the* evidence ("Fullstendig isolasjon ved risiko for bevisforspillelse"), Fagbokforlaget 2017.

- **Question to be raised**: Which steps have been taken to minimize the risks of using solitary confinement as a tool to extract confessions from remand prisoners?
- **Recommendation**: The Norwegian Government should amend the legal framework to give sufficiently detailed instructions to effectively regulate judges' discretion. The legislation should give clear and principled indications that solitary confinement should only be used when it is, "strictly necessary", and only "in exceptional circumstances" and when it is "absolutely essential for the administration of justice".[30]

The use of solitary confinement in prison

See List of Issues raised in paragraph 7 a) through d)

De facto isolation in Norwegian prisons continues to exist. Solitary confinement in prison should only be used when absolutely necessary. Prison authorities refer to vague and subjective legal foundation to isolate prisoners.[31] The act of execution of sentences § 37 (1) allows individuals to be put in isolation due to potential "order and security" concerns; therefore, it is often unclear to the prisoners why they have been isolated. Furthermore, the use of solitary confinement is imposed in an inconsistent manner, making it impossible for the prisoner to predict their legal standing in the matter of solitary confinement.[32]

The use of solitary confinement in Norwegian prisons varies from facility to facility,[33] with some prisons isolating their prisoners more than others. This makes it nearly impossible for prisoners to predict how issues during their incarceration will be handled. The decision-process regarding solitary confinement also varies, making it hard to gather statistical information on the issue.

In their case work, Jussbuss have experienced that prison authorities have given wrong legal reference in their decision, and that the decision itself is not adequately detailed. The legal foundation on which the decision is based on may thus be flawed or wrong, without the affected individual having any possibility to contest it. This puts the inmate in an insecure position where it is hard for him or her to comprehend his or her own rights. The deadline to formally appeal is set to a mere 48 hours after the decision is finalized.

Providing statistics on the use and duration of solitary confinement in prisons throughout the State is both a positive development and an important step towards gaining greater control over the use of solitary confinement, while ascertaining a better overview of the system. However, the statistics lack sufficient detail and might be unreliable. This is evident as the provided numbers from 2015 and 2016 do not seem to include the use of *de facto* solitary confinement which is not registered in the prison KOMPIS system. The isolation registered in the KOMPIS system is divided into partial and complete exclusion.[34]

A problem is that the definition of complete exclusion does not specify the minimum number of hours to be spent outside the cell. Thus, an exclusion that would be defined as complete exclusion in one prison is defined as partial exclusion in another prison, or might not be defined as exclusion at all

[30] This recommendation is in line with recommendations from several international human right bodies: CCPR/C/NOR/CO/5; CCPR/C/NOR/CO/6; CAT/C/SR.323; CAT/C/CR/28/3; CAT/C/NOR/CO/6-7; WGAD A/HRC/7/4Add.2; CPT/Inf(94); CPT/Inf(97)11; CPT/Inf(2000)15; and CPT/Inf(2006)14.

[31] Act of execution of sentences (Straffegjennomføringsloven) § 37, the Norwegian Law governing incarceration

[32] This is noted by JussBuss, a Norwegian NGO run by law students offering free legal aid, see: http://bit.ly/2nCxkzQ

[33] See an interview in the journal of the Bar Association in which statistics from the Norwegian Correctional Service for 2015 are cited, at: http://bit.ly/2E3JYlK Statistics for 2016 from the Norwegian Correctional Services are found here: http://bit.ly/2FMXRRJ

[34] http://bit.ly/2FMXRRJ

in another prison. This is because the number of hours spent outside the cell in a normal day varies from prison to prison.

Documented examples and experiences reveal that inmates in 2015 and 2016 were still held in *de facto* solitary confinement without being registered in the KOMPIS system.[35] According to the Directorate of Correctional services, the total number of inmates in solitary confinement in 2013 was 244 (average),[36] whilst the State report in para 29 suggest "approximately 100" in 2016. The count in 2013 was manual and with the defined criteria "inmates with less than two hours socializing" per day. [37]In contrast, the count in 2015 and 2016 seem to be based on KOMPIS and not defined to a minimum of hours outside the cell.[38] Lack of registering in KOMPIS will necessarily reduce the recent numbers.

Statistics should reflect *all* incidents of solitary confinement. It should also include local and regional practice and differentiate between groups of inmates such as, legal basis of incarceration, grounds for exclusion, percentage excluded of total population, gender, nationality and level of security of the prison.

Statistics, documentation and experience show that prisoners both in ordinary incarceration and remand prisoners suffer *de facto* isolation due to the lack of staff or buildings; on a regular basis and on a far too high scale.[39]

In 2016, employees' unions in the four largest prisons in Norway submitted a joint complaint on their working environment, addressing problems with the use of isolation because of lack of sufficient funding and shortage in staff.[40] Some concerns from the report included an increase in violent incidents due to inmates being locked up instead of given activities (all four prisons), an increase in mentally ill inmates (Bergen and Trondheim) and the increasing use of force and restraints such as gas and belts (Bergen).

New guidelines regulating the use of solitary confinement in prisons (the Act of Execution of Sentences § 37) are awaiting implementation.[41] It is regrettable that the proposed amendments are made by guidelines, not through law.

Due process rights in decisions regarding exclusion is a formal and theoretical right, and does not meet the criteria of the right to effective judicial control.[42] The April 2016 annual report of the Norwegian National Human Rights Institution, addresses this issue and recommends an "assessment

[35] As experienced by lawyers in the Norwegian Bar Association Human rights committee, in which four clients during 2016 were placed in isolation without being registered as such. Two of these had duration of three weeks. This has also been reported by the media, see: http://bit.ly/2nCMu88 and http://bit.ly/2E2bhN9

[36] Average based on manual counts on three occasions in 2013.

[37] In accordance with Mandela rules, Istanbul protocol (OHCHR manual) and internationally acknowledged standards. Socializing with staff, priest, healthcare is not included in the two hours.

[38] http://bit.ly/2FMXRRJ

[39] NPM report from Ila prison 2017, NPM report from Ringerike prison 2015 p. 13, NPM report from Bergen prison 2014 p. 18, NIMs annual report 2015 p. 16, statistics provided from the Correctional services and individual reports from lawyers.

[40] «Bekymringsmelding vedrørende situasjonen i norsk kriminalomsorg» («Concern regarding the situation in Norwegian penal system») dated 19 May 2016 from employee organisations at the prisons in Oslo, Bergen, Trondheim and Ullersmo to the Norwegian Directorate for Correctional Services. Employee organisations also made statements to media regarding another complaint in Bergen prison made by an employee, see: Bergensavisen 18 july 2017: «Fengselsforbundene bekymret for innsatte i isolasjon» (« Prison unions concerned about inmates in solitary confinement».) The report concludes that the current lack of staffing is in breach with the Act of execution of sentences § 2, which among others stipulates a duty to prevent the negative effects of isolation.

[41] See state report para 29.

[42] Cf. Article 13 of the Convention and ECHR article 13

on whether the inmates' rights should be strengthened in the proceedings" on solitary confinement.[43]

If solitary confinement is not based upon a formal and written decision, it cannot be challenged effectively, nor subjected to administrative and judiciary supervision. Neither can it give rise to remedy. There are reasons to believe that the prisoners in these cases are not informed of their rights.

- **Questions to be raised**: Why is de facto solitary confinement in prisons not included in the aggregate statistics?
- Which steps are taken to secure that all inmates held in solitary confinement should be given adequate information on legal remedies and procedural rights?
- **Recommendations**: Include the use of de facto solitary confinement in prisons in the aggregate prison statistics system KOMPIS.
- Abolish all solitary confinement due to circumstances out of the inmate's control.

Isolation of prisoners with psycho-social disabilities

See List of issues para 11, concluding observations para 13

Studies found that only 8% of Norwegian prison inmates had no form of psycho-social disabilities.[44] A 2016 report published by the trade union of prison staff reported an increase in mentally ill inmates.[45] For the past number of years, media has reported extensively on the situation of mentally ill prisoners,[46] which led to the Correctional Services issuing a report in 2016, aimed at improving the situation of mentally ill prisoners.[47] The National Preventive Mechanism found the situation at Ila prison alarming.[48] According to the National Institution for Human Rights annual report for 2016, it may be questioned if Norwegian regulations fulfill international human rights obligations.[49]

A recently published guideline from the Norwegian Health Directorate on health and care-services in prisons provides new knowledge on the number and scope of isolation of persons with psycho-social disabilities.[50] There are no official statistics correlating isolation/solitary confinement and psychosocial disabilities.[51]

- **Question to be raised**: What plans exist to map the number of prisoners with psycho-social disabilities subjected to solitary confinement?
- **Recommendation**: Map the number of prisoners with psycho-social disabilities subjected to solitary confinement.

[43] NIM annual report 2016 page 99. Available at: http://bit.ly/2FL27Bh
[44] See Victoria Cramer, *Forekomst av psykiske lidelser hos domfelte I norske fengsler* («Occurrences of mental illnesses in prison inmate population») (2015). Available at: http://bit.ly/2E59hUs
[45] See above, footnote 39.
[46] For example: http://bit.ly/2E4cfEu, http://bit.ly/2BW5O4C
[47] Correctional Services Directorate and the Health Directorate: "Oppfølgning av innsatte med psykiske lidelser og/eller rusmiddelproblemer» («Care of inmates with psychic diseases or drug addiction problems") (2016). Avilable at: http://bit.ly/2E4Oro3
[48] NPM report and follow-up concerning visit to Ila prison March 2017, available at: http://bit.ly/2E4cNKy
[49] National Institution for Human Rights annual report 2016, page 99, Available at: http://bit.ly/2FL27Bh
[50] Guideline IS-1971 *Veileder, Helse- og omsorgstjenester til innsatte i fengsel* (2017) from the Norwegian Health Directorate on health and care-services in prisons (in Norwegian) is a revision of the similar guideline of 2004, at: http://bit.ly/2Ectnvl
[51] http://bit.ly/2GOQRor

Norgerhaven prison

Norway's leasing of Norgerhaven prison in the Netherlands is problematic. Deprivation of an individual's freedom to move is one of the most serious sanctions a state can impose. It is not justifiable to send inmates abroad to serve their sentence. The convicts themselves perceive this as a severe infringement on their rights.

Compared to Norwegian prisons, the decision-processes in Norgerhaven prison take longer time and Dutch employees are not sufficiently familiar with Norwegian law. This makes the legal standing of the inmates in Norgerhaven prison weaker than for inmates serving in other Norwegian prisons.

Norwegian correctional care is based on the *rehabilitation principle*. The purpose behind the leasing agreement with Norgerhaven prison is to shorten the queue of convicts waiting to serve their sentence. This goal has been accomplished, but at the expense of the rehabilitation of the inmates.

While they are serving in the Netherlands the inmates are not permitted leave of absence from the prison. Travel to the prison from Norway is lengthy and constitutes a large expense for the families of the inmates, which results in them receiving very few visits. Educational programs and job-training programs are also not equal to what is offered in other Norwegian prisons.

The aforementioned programs, as well as the possibility to receive visits from friends and family, are essential components of rehabilitation efforts. Being placed in the Norgerhaven prison, the inmates' progression is adversely affected, complicating their reintegration into society after they have served their sentence.

The National Preventive Mechanism's findings, detailed in a report from March 2017, collaborates our perception of the situation.[52] The main finding of the report, however, was that inmates are not sufficiently protected against torture. According to the report, "the agreement on renting prison capacity, [does not entitle] … Norwegian authorities … to initiate a police investigation in the event of a violation of the prohibition against torture and ill-treatment in Norgerhaven Prison".

The Ombudsman further underlines that, "[t]his kind of arrangement is particularly problematic in light of ... [Norway's] obligations under the UN Convention against Torture. It is also problematic that, in an emergency situation, authorities from another state will be able to use weapons and coercive measures against inmates who have been transferred to the Netherlands to serve their sentences. From the point of view of prevention, such an arrangement, in which the Norwegian authorities are prevented from fulfilling their responsibility to protect inmates, entails a risk of torture and ill-treatment."[53]

The Government has decided not to prolong the leasing agreement, which will end on 31 August 2018.[54]

- **Questions to be raised**: How is the state securing the fulfillment of the Convention against Torture in a prison outside the state's jurisdiction?
- How is the rehabilitation principle adhered to in the Norgerhaven prison?
- **Recommendation**: Abolish the leasing of prison cells outside Norwegian jurisdiction.

[52] See report of the National Preventive Mechanism on the Norgerhaven prison, available (in Norwegian) at: http://bit.ly/2GOMqua
[53] Quotations are from the Parliamentary Ombudsman's website, which include an English version of his Norgerhaven Prison Report, available at: http://bit.ly/2BGLrly
[54] See footnote 22 above.

Violence against women (arts. 2, 12, 13 and 16)

See List of issues para 8, concluding observations para 12

Gender-based violence, including rape and other sexual violence, by non-state actors but with the state failing to adequately exercise its due diligence obligations thus constituting torture or other cruel, inhuman or degrading treatment or punishment, remains a prevalent and serious violation of women's rights in Norway. The Norwegian Centre for Violence and Traumatic Stress Studies (NKVTS) published in 2014 the first national prevalence study of rape in Norway. According to the report, 9.4% or almost every tenth woman and 1.1% of men have been subject to rape at least once in their lifetime.[55]

Nearly half of the female respondents (49%) had experienced rape before the age of 18. Approximately one third (29%) reported physical injury. Only one out of ten women reported the rape to the police. Nothing indicates that the prevalence of rape has decreased over time, as younger women do not report fewer incidents of rape compared to older women.[56]

The number of rape cases reported to the police has increased steadily over the years. The National Police Directorate statistics show that 1,619 rape cases where reported to the police in 2017, a decrease of 2,6% from 2016, but an increase of 31,3% since 2013.[57]

Rape is subject to public prosecution in Norway, but around 80% of the reported rape cases are dismissed by the police and never reach the courts.[58] Weaknesses in police investigations contribute to a low level of prosecution in rape cases.[59] An evaluation carried out by the National Criminal Investigation Service (KRIPOS) in 2014 showed that police investigations into 4 out of 10 reported sexual offences were of a poor or very poor quality and effectiveness. The most common investigatory deficiencies identified were low efficiency, failure to carry out necessary investigatory steps and poor quality of written materials. Over 70% of solved cases were found to have been investigated with very high or high quality and efficiency, compared to 49% of unsolved cases.[60]

According to KRIPOS, 30% or almost every third prosecuted rape case in Norway ends with acquittal in court.[61] In cases of other violent crimes, the acquittal rate is 6.7%.[62]

Despite several recommendations by UN treaty bodies to Norwegian authorities,[63] the definition of rape in the Penal Code is still not centred on the lack of consent but rather, as sexual intercourse obtained by means of violence or threats, or with a person who is unconscious or for other reasons unable to oppose the act.[64] Consequently, many cases of rape remain unpunished. According to the

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[55] Thoresen and Hjemdal: Vold og voldtekt i Norge (Violence and rape in Norway) NKVTS 2014. Available at: http://bit.ly/2E4HyiD

[56] Thoresen and Hjemdal: Vold og voldtekt i Norge (Violence and rape in Norway) NKVTS 2014. Available at: http://bit.ly/2E4HyiD

[57] Criminal Statistics 2017, available at: http://bit.ly/2G4XUty

[58] https://www.nrk.no/norge/_-vi-ma-leve-med-at-det-er-mange-henleggelser-1.12070456

[59] http://bit.ly/2FqAI7P

[60] KRIPOS: Evaluering av politiets arbeid med seksuelle overgrep/Evaluation of police investigation of sexual violence 2015. Available at: http://bit.ly/2nBOGga

[61] KRIPOS: Voldtektsituasjonen i Norge/Rape in Norway 2014. Available at: http://bit.ly/2EHrDrs

[62] http://bit.ly/2FkQKUU

[63] Concluding observations of the Committee on the Elimination of Discrimination against Women: Norway, UN Doc. CEDAW/C/NOR/CO/8, 9 March 2012, para. 24(b); UN Doc. CEDAW/C/NOR/CO/9, 22 November 2017, para. 25(f); Committee against Torture, Concluding observations on the combined sixth and seventh periodic reports of Norway, UN Doc. CAT/C/NOR/CO/6-7, 13 December 2012, para. 12(a).

[64] General Penal Code 2005, §291.
Available at: https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL_2-11#KAPITTEL_2-11.

National Criminal Investigation Service especially party-related rape cases involve situations falling outside the scope of the present legal definition of rape.[65]

- **Recommendations**: Put in place comprehensive measures to prevent and address violence against women and girls, including rape and sexual violence, and ensure that all complaints and other reports of gender-based violence are promptly, thoroughly and effectively investigated, prosecuted and punished commensurate with the gravity of their crimes through, inter alia:
  a) Urgently adopting a legal definition of rape in the Penal Code which places the absence of consent at its centre. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances;
  b) Train judges, prosecutors and lawyers about gender based violence, in particular against women, including rape and other sexual violence;
  c) Strengthen investigative capacity of police and prosecutors in all forms of gender based violence;
  d) Adopt an up-to-date National Plan of Action against Rape and Sexual Violence following meaningful consultations, including with survivors, experts and the civil society.

Use of coercive measures in psychiatric healthcare

See List of issues para 12, concluding observations para 14

In 2016 the National Preventive Mechanism visited several mental healthcare institutions in Norway. One of them was the psychiatric hospital at the University of the North of Norway. The report of the visit criticizes several conditions that were threats to patients' human rights.[66] One of the most serious issues the report dealt with were the applications for involuntary forms of treatment. These applications were not written down or registered in any formal way. Nor did the patients receive these decisions in writing. The report also showed that there was no documentation whatsoever that less intrusive forms of intervention had been tried before the use of force was applied.

The control commission had not conducted regular visits and serious shortcomings with regard to written information to patients and relatives were found. Legal criteria for involuntary admission were not always met and/or were not written down in the patient's journal or legal decision.

It was also found that patients had been in restraints for too long periods – up to six hours without medical oversight or follow-up. One patient had been in restraints for 25.5 hours. Some patients said they perceived treatment from staff as punishment for bad behaviour. One patient had lived in seclusion for three and a half years.

Some of the informants said the ward executed unnecessary use of force and misuse of power.

The report concluded that a development of a negative institutional culture was observed. This may have contributed to a serious risk for ill-treatment and inhumane treatment of patients.

The report supported what many patients have claimed after being treated in the mental healthcare in Norway.

A large variation with regard to use of all forms of coercive measures in mental healthcare throughout the country is documented and also reported in earlier submissions to the Committee against Torture. This gives rise to serious concerns in a human right perspective. Use of coercive practises should be evidence-based and subject to effective control to safeguard patients' rights. Variation in the use of coercion may imply randomness in the decision-making process and/or that

[65] Kripos Voldtektssituasjonen i Norge/Rape in Norway 2012, page 36. Available at: http://bit.ly/2FL5Y1d
[66] The report was published in April 2016 and is available at: http://bit.ly/2FlrYjf

individual and local preferences have too much influence. Service delivery variation is a threat to patients' rights and measures should be taken as a matter of urgency to look into varied practices and secure equal interpretation of the laws regulating mental healthcare.

- **Questions to be raised**: How will the National Preventive Mechanism's report be followed up?
- How is the situation at the University Hospital of North of Norway going to be dealt with?
- What interventions will be taken to improve quality of care and to prevent similar negative institutional cultures from evolving in other hospitals?
- What will be done to compensate possible acts of ill-treatment, such as prolonged restraints?
- What steps will be taken to ensure equal interpretation of the law and what can be done to learn from hospitals where the use of involuntary treatment or measures is practically non-existent compared to other hospitals and centres?
- **Recommendation**: Best-practices of hospitals with low use of coercion should be documented and disseminated to reduce the use of coercion in other hospitals.

ECT given without informed consent

A recurrent concern in the Norwegian mental health services is the use of electroconvulsive therapy (ECT) without informed consent. According to the Norwegian mental healthcare law, all use of ECT should be based on informed consent by patients. In spite of this, ECT is given by force and towards patients who lack the ability to give informed consent. These actions are justified as "need in emergency".

The practise raises serious issues. The mental healthcare law does not grant patients, who are given ECT without consent, the same legal safeguards as those who are being subject to other forms of coercion. There is no statistics regarding the practice and no transparency as to the use of ECT without informed consent.

- **Questions to be raised**: How is the Norwegian government going to ensure legal safeguards and guaranties to patients in risk of non-consensual administration of ECT?
- What will be done to ensure transparency regarding this practice?
- **Recommendation**: Ensure that ECT is never given without informed consent, and that this is fully reflected in the statistics.

Detention of foreign nationals and non-refoulement

See list of issues para 13, concluding comments para 15

Necessity of detention:[67] The Ministry of Justice and Public Security has, in preparatory works to a recent law amendment on immigration detention, stated that the Covenant on Civil and Political Rights (CCPR) articles 9(1) and 12(1) do not provide stronger protection than the European Convention on Human Rights' article 5(1)(f).[68] This is not in line with current case-law, as following

[67] The following sections were prepared both in the context of reporting to the Human Rights Committee (supplementing Norway's 7th periodic report) and to the Committee against Torture (supplementing Norway's 8th periodic report). This explains why there are several references also to provisions of the Covenant on Civil and Political Rights.

[68] Justis- og beredskapsdepartementet, *Høyringsnotat om ny heimel for pågriping og fengsling i samband med 48-timarprosedyren for openbert grunnlause asylsøknader*, 3 July 2015, p. 10, available at: http://bit.ly/2BFRux5

reasoning by the European Court of Human Rights' in *Saadi v. UK*, there is no requirement of necessity of detention under article 5(1)(f) of European Convention on Human Rights (ECHR).[69]

The Norwegian authorities fail to assess whether the CCPR or the Convention are fully complied with in this context, referring only to the European Convention on Human Rights and the European Court of Human Rights case-law. In the Human Rights Committee's case law, detention must be lawful as well as necessary and proportional.[70] The requirement of necessity further implies that detention must not be imposed on grounds of administrative expediency.[71]

The Norwegian Immigration Act has recently been amended several times, introducing new legal grounds for detention. The Act now contains provisions, that allow an applicant to be detained if an application for asylum is likely not to be assessed on the merits (Section 106(1)(g)) and if the application is considered manifestly unfounded (Section 106(1)(h)). The Government has not assessed whether the amendments are in compliance with the Convention or the CCPR.

The preparatory works to the provisions explicitly state that the purpose of the provisions is to ensure fast, efficient return procedures.[72] Such objectives of administrative expediency are not permissible under the CCPR.[73]

Furthermore, an individualised assessment of, the necessity of detention, becomes illusory as the provisions do not clearly define the purpose of detention, instead opening for detention entire categories of asylum seekers.

Migration detention of children: The Government has recently proposed new amendments to the Immigration Act's provisions, that govern the use of coercive measures, aiming to make the law more predictable and in line with the principle of legal certainty.[74] This is a long-known issue, which was pointed out already in a 2012 report commissioned by the Ministry of Justice[75] and again in a 2014 report of the Norwegian Organization for Asylum Seekers (NOAS).[76]

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[69] *Saadi v. United Kingdom [GC]*, ECtHR, App. No. 13229/03, paras. 72-74, available at: http://bit.ly/2FxySSa Cf. Joint Partly Dissenting Opinion of Judges Rozakis, Tulkens, Kovler, Haijyev, Spielmann og Hirvelä in the same case.

[70] See e.g.: A. v. Asutralia, CCPR/C/59/D/560/1993, UN Human Rights Committee (HRC), 3 April 1997, para. 9.2, available at: http://bit.ly/2nZIM86

[71] *Van Alphen v. the Netherlands* (Communication No. 305/1988), Covenant/C/39/D/305/1988, UN Human Rights Committee (HRC), 23 July 1990, para. 5.8., available at: http://bit.ly/2jjsy9b The Norwegian NGO-Forum has also reported these viewpoints to the UN Human Rights Committee, see chapter 16-17 of the Submission Regarding the 7th Periodic Review of Norway to the UN Human Rights Committee, available at: http://bit.ly/2BPt0oK

[72] For Government's justification of Section 106(1)(g) see: Prop.16 L (2015–2016), pp. 18-19, available at: http://bit.ly/2Gvar9b For Government's justification of Section 106(1)(h) see: *Justis- og beredskapsdepartementet, Høyringsnotat om ny heimel for pågriping og fengsling i samband med 48-timarprosedyren for openbert grunnlause asylsøknader,* op. cit. p. 11, available at: http://bit.ly/2BFRux5

[73] *Van Alphen v. the Netherlands* (see footnote 26), para 5.8.

[74] Justis- og beredskapsdepartementet, *Høring om forslag til endringer i utlendingslovens regler om tvangsmidler*, 19 December 2016, available at: http://bit.ly/2sk7vte

[75] Erling Johannes Husabø og Annika Elisabet Suominen, *Forholdet mellom straffeprosesslovens og utlendingslovens regler om fengsling og andre tvangsmidler: En utredning avgitt til Justisdepartementet*, 2 March 2012, available at: http://bit.ly/2DPxQVb

[76] Marek Linha and André Møkkelgjerd (NOAS), *Detention of Asylum Seekers: Analysis of Norway's international obligations, domestic law and practice* (2014), available at: http://bit.ly/OMSxDe

The organizations submitting this report are concerned about several aspects of the proposal. Disappointingly, the proposal does neither abolish detention of children nor clearly limit such practice. It does not foresee a separate, maximum time limit.[77]

The proposal will allow for initial detention of one day, which may thereafter be extended by the court for three days and, if necessary, for an additional three days. Thereafter, the court may extend detention for a further week at a time, provided there are, "special and strong reasons" to do so.

The proposal specifies that the term, "special and strong reasons" means "first and foremost, that the child's family or the child itself bears a significant share of responsibility for preventing deportation from being executed within six days of the arrest, or that the agreed time of deportation is close at hand". The proposal stresses that his specification is non-exhaustive, again raising issues of legal certainty.

The proposal thus provides the Government with wide discretion when prolonging detention beyond one week. Furthermore, non-permissible reasons of administrative expediency are provided as examples of when detention can be prolonged beyond one week.[78] Detention under the proposal can become punitive, in that it may punish people who "bear substantial responsibility for deportation not had been carried out"; it may also punish children for something that their family may have done – not even the children themselves. Finally, the fact that an "agreed time of deportation is close at hand" should not be seen as legitimate ground for keeping children detained beyond one week.

The law proposal foresees construction of a new detention centre with a, "more civilian character" for families with children. The Government believes that detention of children in such a specialised centre will allow for longer periods of detention, as suggested by the newly proposed 1+3+3+7+ model mentioned above.[79] The centre is to be managed by the same police unit that runs the detention centre at Trandum and it will allow for detention of up to three families at a time.

In May 2017, the Borgarting Appellate Court found the detention of a family with four children for 21 days at Trandum, to be a violation of the Norwegian Constitution, the UN Convention on the Rights of the Child and Articles 3, 5(1) and 8 of the European Convention on Human Rights, although the parents attempted to stop the deportation from being carried out.[80]

- **Recommendations**: Introduce legislation that repeal detention of children or limits it to only very short periods of time;
- Amend provisions allowing for the detention of children for more than seven days without assessing if it is, "necessary and proportional" and in compliance with the Covenant Articles 7 and 9;
- Amend provisions allowing for detention for reasons of administrative expediency, without an individual assessment of necessity and proportionality of detention;
- Amend the regulations concerning the use of security cells at Trandum Migration Detention Centre, to ensure that application of less restrictive measures is considered;
- Placement of detained minors in security cells at Trandum should only take place if it is assessed to be necessary and proportional, and in line with Covenant Articles 7 and 9.

[77] § 106 of the Immigration Act provides for a general time limit of 12 weeks, in exceptional cases of 18 months, with further exceptions allowing detention beyond 18 months if the detained person is expelled as the result of an imposed penalty or special sanction.

[78] See van Alphen v. the Netherlands (see footnote 26).

[79] Initial detention may be decided for one day, which may thereafter be extended by the court for three days and, if necessary, for an additional three days. Thereafter, the court may extend detention for a further week at a time, provided there are, "special and strong reasons" to do so.

[80] Judgment dated 31 May 2017, case number LB-2016-8370.

Amendments to the Immigration act regarding the safe third country concept and return of asylum seekers to Russia; safeguards against refoulement: On the 20th of November 2015 amendments to section 32 of the Immigration Act, indicating when the immigration authorities may decide not to examine the merits of an application for protection, entered into force. This provision allows Norwegian authorities to refuse to examine the merits of an application for asylum of persons who stayed in a safe third country before arriving in Norway. The amendment removed the condition that the person is given access to the asylum procedure in the return country.

The Ministry of Justice and Public Security instructed the Norwegian Directorate of Immigration (UDI) and the Immigration Appeals Board (UNE) on the 24th of November 2015 about the treatment of asylum applications from persons who have stayed in Russia, including the application of the Immigration Act, section 32 in these cases (Circular No. GI-13/2015). The circular stated that, Russia is a safe country for most third country nationals and that the principle is that the examination of the merits of an asylum application shall be refused if the foreign national has stayed in Russia.

Even though the circular stated that exceptions should be made if, there were specific reasons to believe that the asylum seeker would be in real danger of being subjected to acts that would violate ECHR art. 3, it was clearly stated that Russia in general was a safe country for return. Weight was put on the fact that Russia is a member of the Council of Europe and a Contracting Party to the ECHR, and that Russia has ratified the Refugee Convention.

A few days before the circular was made public, on the 16th of November 2015, the Norwegian Country of Origin Information Centre (Landinfo), published a report about the asylum system in Russia. The report stated that the ECtHR has issued several judgements against Russia for expelling or deporting persons to countries where they could face torture or inhuman treatment, e.g. Uzbekistan and Tadjikistan. Landinfo also referred to a report by UNHCR regarding Syrian refugees in Europe, which stated that 12 Syrian citizens had been deported from Russia to Syria.[81]

Landinfo also quoted sources claiming that the Russian procedure for determining refugee status was not fair, that the courts tended always to side with the Russian immigration authorities and that deportation of persons whose asylum case was still pending had occurred. The Norwegian Ministry of Justice and Public Security was therefore aware of the flaws of the Russian asylum system when they published the circular on the 24th of November 2015.

UNHCR presented its observations on the law amendments in a letter to then Norway's Minister of Immigration and Integration, Sylvi Listhaug on the 23rd of December 2015. UNHCR's understanding of the law proposal were that a hybrid between the concepts of a, "safe third country" and "safe country of origin" had been created and that this was done, "without applying all of the established criteria and procedural safeguards for the implementation of these concepts".[82]

In a letter dated 7th of January 2016 to the UNHCR Regional Representation for Northern Europe, Amnesty International Norway, the Norwegian Organisation for Asylum Seekers (NOAS) and the Norwegian Helsinki Committee, expressed "concerns that Norway now fails to uphold its international obligations to respect the rights of everyone to seek asylum".[83] The main problem was that Norway risks denying persons who need protection access to its asylum procedure. The organizations argued that asylum seekers coming to Norway from Russia, upon rejection, risked being returned from Russia, "to countries where the risk of torture or other inhuman treatment is imminent … Arguing that Russia is safe third country is contrary to experiences from a range of cases."

[81] http://bit.ly/1EVQsh5
[82] The letter is available at: http://bit.ly/2FJIdam The quotation is from the 11 paragraph.
[83] The letter is available in English language: http://bit.ly/2B3PnTo

UNHCR expressed similar concerns in a letter dated 15th of February 2016 to the Minister of Immigration and Integration.[84] In the letter, UNHCR refers to UNHCR EXcom Conclusion No.85 (XIIX) – 1998 which stresses that, "as regards the return to a third country of an asylum-seeker it should be established that the third country will treat the asylum-seeker(s) in accordance with accepted international standards, will ensure effective protection against refoulment, and will provide the asylum-seeker(s) with the possibility to seek and enjoy asylum".

In the same letter, UNHCR voices their concern over Russia as an asylum country, stating that "[i]n UNHCR's assessment, asylum-seekers in the Russian Federation are at risk of arrest, detention and expulsion at all stages of the asylum process, including while attempting to apply for refugee and/or TA [temporary asylum] status or after having applied for refugee and/or TA status in situations where the asylum-seeker has not been issued proper documentation."

On the 19th of January 2017 The Ministry of Justice and Public Security issued a consultation containing an evaluation of the temporary law amendments from November 2015 and a proposal to make the amendments permanent.[85] The Ministry stated that Norway was not obliged to make sure that an asylum application will be assessed before referring an asylum seeker to a safe third country. It was noted that such criteria were included in the EU Asylum Procedures Directive in Article 38, but that Norway was not bound by this directive. The concerns that had been raised by the UNHCR were not mentioned in the evaluation, nor were they mentioned in the law proposition that was later sent to the Parliament, except from a brief referral to NOAS' consultation response, which mentioned that UNHCR had criticised Norway of mixing the concepts of, "a safe third country" with "a safe country of origin".[86]

Rights of persons facing expulsion or return to a country where they face a substantial risk of torture or inhuman treatment: In a few cases it became known that persons that Norway had declined to provide protection had been tortured upon return to their country of origin. The cases presented below (and other similar cases) have led to a growing concern among human rights organisations and lawyers that Norway takes excessive risks in its rejections of asylum applications of persons coming from countries known to have a "*consistent pattern of gross, flagrant or mass violations of human rights*".

In line with these concerns, Lyon Administrative Tribunal decided in a Dublin case on the 3rd of April 2017 that an afghan asylum applicant from Nangarhar in Afghanistan could not be returned to Norway since his application had been rejected by Norwegian authorities. According to the decision, the security situation in Nangarhar is critical and if the person had to return there was a high risk of persecution. Sending the person back to Norway would therefore represent a breach of the European Convention on Human Rights Article 3 and the UN Convention against Torture.

One of the explanations of the refoulement cases might be the limited legal aid that is provided to asylum seekers. In an ordinary asylum case the attorney is compensated by the state for five hours, which in cases where there is a need for an interpreter, is not enough.

(a) According to Amnesty International, "Hadi"[87] had been severely tortured in Afghanistan before fleeing to Norway with his wife and three children. Norwegian authorities rejected his asylum application, and he and his family were deported to Afghanistan in mid-2016. He soon disappeared

[84] UNHCR comments on Norway is available at: http://bit.ly/2DS4y8u See also a letter of 15 February 2016 to Norway's Minister of Immigration and Integration, Sylvi Listhaug. http://bit.ly/2DqyAiG
[85] http://bit.ly/2E4hXJP
[86] http://bit.ly/2DSY5Kr
[87] We do not provide the real names of asylum applicants in this section.

and was later found dead. His wife is convinced that he was killed by those who had previously tortured him.[88]

(b) "Qane", an Iranian citizen, claimed that he had been tortured before fleeing to Norway.[89] Norwegian authorities rejected his asylum application and forcibly returned him to Iran in June 2014. Upon return he was severely tortured for 15 days. His father was asked to come to the prison to pick up his body and bury him secretly. He was told that Qane had died of a heart attack.

However, the father noticed that Qane was not dead and called for an ambulance. He was in a coma for two months at the hospital and remained there for four more months. Four months later intelligence officers took him back to prison, where he was kept in solitary confinement for one year and three months, beaten up and threatened frequently.

Qane's father died when Qane was taken back to prison. Qane was able to attend the commemoration ceremony one year after his death. A cousin had paid prison guards for him to be able to leave prison and then managed to get him out of Iran and into Turkey on the 14th of August 2017.

Qane has serious injuries from the torture. He has received refugee status by the UNHCR; staying at UNHCR's hotel in Ankara awaiting an answer from the Norwegian Immigration Appeal Board (UNE) on his application to revoke the previous rejection of his application for asylum.

(c) In a letter dated the 1st of July 2015 to Norway's then Minister of Foreign Affairs, Børge Brende, the Norwegian Helsinki Committee, described the fate of six Uzbek asylum seekers that had been returned from Norway to Uzbekistan in December 2014. Upon return, they had been arrested, tortured and found guilty of anti-constitutional activities. They were convicted to 12-13 years' imprisonment.

The six Uzbeks were returned from Norway to Uzbekistan despite strong warnings from their Norwegian lawyer.[90] In the letter to Norway's Foreign Minister, the Norwegian Helsinki Committee argued that since the Uzbeks may have been returned to Uzbekistan in breach of Norway's international obligations, Norway had a responsibility to follow-up on their situation.

In a response letter (of 30 September 2015), the Minister noted that competent Norwegian authorities had conducted their own investigations, which led to the conclusion that the Uzbeks indeed had been arrested and were given long prison sentences. In general terms, the Ministry letter outlined how Norway, together with other countries, "continues to put international pressure to try to achieve positive changes in the country [i.e. Uzbekistan]." There is, however, little detail in the letter on how similar cases of return to arrest and mistreatment will be avoided in the future, except for a general reference to each asylum case being subject to concrete and individual assessment.[91]

On the 19th of December 2014, the Immigration Appeals Board (UNE) suspended returns to Uzbekistan. However, this suspension was reversed on the 9th of July 2015.

(d) In similar cases, the Norwegian Helsinki Committee in December 2015 criticised Norway for returning two Chechens to the Russian Federation, Apti Nazujev and Umar Bilemkhanov. The Norwegian Helsinki Committee claimed that both men had been subjected to torture and killed upon return. In media debate about the cases, UNE maintained that it was not convinced about the

[88] See Amnesty International*, Forced back to danger: Asylum seekers returned from Europe to Afghanistan*, 2017, pages 12-13. Available at: http://bit.ly/2xjKeVs
[89] All information about the case is from Amnesty International Norway.
[90] http://bit.ly/2BKf4sj and http://bit.ly/2BLYmco
[91] Both the NHC letter and the Ministry of Foreign Affairs' response is available (in Norwegian only) at: http://bit.ly/2E4KcIk

connection between the return from Norway and the abuses the two persons eventually endured in Russia.[92]

(e) In a well-known case, an Iranian woman, Leyla Baylat, told Norwegian immigration authorities that she had been sentenced to 80 lashes in Iran. She presented the judgment which detailed the sentence to Norwegian authorities. She was, however, returned to Iran because the authorities did not believe her. Based on verification from sources in Iran, they held that the judgment was not authentic. Upon return in September 2017 she was lashed 80 times.[93]

- **Recommendations**: Uphold fully international obligations to respect the right to seek asylum;
- Put in place stronger safeguards to ensure that persons are not returned to torture;
- Establish a follow-up procedure for persons that have been returned to torture, to ensure that they are taken back to Norway;

Trandum Detention Centre

See List of issues para 17, concluding observations para 17

The Trandum detention centre for aliens to be deported out of Norway has improved its structural facilities during recent years.[94] Better training of employees seems to have increased the general satisfaction among the inmates. There is reduced use of unnecessary control measures, such as the use of mirrors. However, there are still some issues.

Trandum is intended for a short-term stay for immediate subsequent deportation. However, some inmates are kept for a long time, for example because their identity is not clarified. This is unacceptable as the institution is neither designed nor equipped with activities for longer stays.[95]

Trandum has no guidelines for treatment of minors. Guidelines have been introduced in police arrests a long time ago. There is an obvious need for such guidelines at Trandum, regulating the use of force, including the use of safety cells and the use of mechanical restraints during transport. Placement of minors in safety cells and the using of "handcuffs" during transportation should not happen.

A new Security Department at Trandum was established in 2016, with improved conditions. Statistics show, however, that detainees are frequently transferred to the Security Cell. In December 2016, it appears that all transfers – with two exceptions – implied stays with exclusion from the community (27 cases) or transfer to the security cell (8 cases), which means complete solitary confinement. Only one detainee was given access to a shared living area.[96]

The organisations submitting this brief are concerned that staff do not assess on a case by case basis whether less restrictive measures for detainees, transferred to the Security Department, could be sufficient. The lack of information about whether such assessment takes place is a concern, as well as

[92] Statements and media coverage are available (in Norwegian only): http://bit.ly/2nr5QNg
[93] Reported by the Norwegian Daily newspaper VG, available (in Norwegian only) at: http://bit.ly/2DQm7FQ
[94] The concerns in this chapter are based on an inspection by the Human Rights Committee of the Norwegian Bar Association (MRU) to Trandum in January 2017, and confirmed in a visit by the National Preventive Mechanism to the security department in Trandum in March 2017, see: http://bit.ly/2EgNGHS, and in May 2015 see: http://bit.ly/2E2daWa.
[95] The Borgarting Appellate Court found in its judgment dated 31. May 2017, case number LB-2016-8370 that the imprisonment of a family with four children between ages 7 and 14 for 20 days at Trandum was a violation of ECHR article 8, as well as article 3 and 5.
[96] Figures for December 2016 received from the Police Directorate Immigration Unit to The Human Rights Committee of the Bar Association (unpublished).

the lack of possibility for detainees to complain about the use of isolation and other security measures. Minors are also placed in these cells for either their own or other detainees' safety.

Security cells are not a reasonable or adequate solution and should not be used to protect vulnerable persons from themselves, e.g. where the person is suicidal. Under no circumstance should vulnerable minors be placed in isolation in security cells.

The administrative practice of locking the inmates in their rooms is an area of concern. All inmates are locked in at 21:00 and remain locked in until the next morning. In addition, there is a lock-in twice during the day, each of about 45 minutes, during the changing of the guard force. Such lock-in is regarded as solitary confinement, requiring a special legal authority – but such authority was not detected during inspection.

The healthcare at Trandum is not satisfactory as found by the National Preventive Mechanism in December 2015.[97] Its report proposed conducting a mandatory health interview for each inmate upon arrival. This should be considered. If this is impractical due to time constraints or otherwise impossible, the inmates should, be offered such an interview at a later stage.

The medical service was not sufficiently independent in relation to the institution. They also found issues relating to the processing of health information. The "fit for flight" evaluation made in connection with deportation involves specific requirements of independence of health professionals.

- **Questions to be raised**: What is the legal basis for accepting isolation of inmates, including children at Trandum?
- What is done to secure the independence of the medical service?
- What is done to ensure that the "fit for flight" assessment is conducted by an independent medical advisor?
- What kind of alternatives and/or more lenient measures for inmates are assessed before the inmate is transferred to the Security Department?
- **Recommendation**: Provide clear regulations regarding use of the Security Department, complete isolation of mentally ill and regarding locking the inmates in their rooms.

Training on the prohibition against torture and on the documentation and investigation of torture

An important part of state obligations under the Convention article 10 is training of health personnel and other relevant professionals on the documentation and investigation of torture. Norway has frequently stated that *The Istanbul Protocol* is implemented as a tool to document torture and ill-treatment both in training programmes for caseworkers at the Norwegian Directorate of Immigration (UDI) and into procedures for interviewing asylum-seekers.[98] Two working groups have been established by the Health Directorate and the UDI with the aim of establishing procedures and interventions with regard to vulnerable asylum seekers, in particular to survivors of torture, including rape and other forms of sexual abuse.

Among the main recommendations of the working groups, was a recommendation to strengthen the implementation of the Istanbul protocol.

However, a main concern remains that Norwegian authorities have not yet implemented a systematic application of the Istanbul protocol in the sense that forensic evidence is gathered and required or commissioned, nor are medico-legal reports required or commissioned in cases where

[97] The full report from the visit in May 2015, published in December 2015 (in English) at http://bit.ly/2EjAySa
[98] The full title of the protocol is *The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

there are claims or indications of torture and/or ill-treatment. In the absence of systematic documentation of physical and psychological sequelae of torture, Norway runs the risk of violating the principle of non-refoulement. The lack of a systematic approach also makes it more difficult to identify the full medical and psychological rehabilitation needs of an individual and of torture victims who at a later stage may seek redress.

In order to fulfil the intention of investigating and documenting torture, systematic training of health personnel in the Istanbul protocol, needs to be strengthened. Funding must be allocated for the work of professionals in these fields.

- **Questions to be raised**: What will Norwegian authorities do to ensure that upon arrival, all asylum seekers undergo a health check by health personnel trained in the Istanbul Protocol, and that all signs of torture will be examined and be subject to forensic reports in accordance with the Istanbul protocol?
- What will be done in order to provide a systematic, thorough and practical training in the application of the Istanbul Protocol to all relevant health personnel, including to professionals monitoring deprivation of liberty under the Optional Protocol to the Convention against Torture?
- **Recommendations**: Ensure that upon arrival, all asylum seekers undergo a health check by health personnel trained in the Istanbul Protocol, and that all signs of torture are examined and subject to forensic reports in accordance with the Istanbul protocol.
- Provide systematic, thorough and practical training in the application of the Istanbul Protocol to all relevant health personnel, including to professionals monitoring deprivation of liberty under the Optional Protocol to the Convention against Torture.

Rehabilitation of survivors of torture

After the discontinuation of the Psychosocial Centre and Teams for Refugees, the situation regarding mental health services for refugees, in particular to torture survivors and victims of other serious human rights violations has been difficult. No steps to strengthen these services have been taken. A Norwegian Centre for Violence and Traumatic Stress Studies (NKVTS) and regional resource centres (RVTSs) have been established to strengthen professional capacity. However, these institutions do not provide clinical services or clinical supervision of the healthcare system.

We argue that the failure to provide sufficient capacity to service refugees in a way that allows for rehabilitation for survivors of torture results from mainstreaming all services into the regular mental healthcare system without providing the necessary training and extra resources. The availability both for short and long-term rehabilitation is limited and no specialized centre for refugees, who are torture survivors, exists. Today there is one regional trauma clinic that treats trauma patients in general, including torture survivors. Other than this, there are some private practitioners who receive clients traumatized after severe human rights violations, but these are few, costly and there are always long waiting-lists.

Even when psychological care is provided by such practitioners, a more holistic and multidisciplinary assistance is not available. Given the provisions defined by the Convention article 14 and the CAT General Comment No. 3 to this article, the existing system of care and rehabilitation is very far from complying with the Convention and recommendations given on this issue.

- **Questions to be raised**: What measures will be taken to establish specialized healthcare for survivors of torture as well as to strengthen services provided to this group within the public healthcare system, in particular with regards to a program of rehabilitation?
- Are there plans of developing a national plan to ensure that both mental and somatic healthcare is accessible to survivors of torture?

- **Recommendation**: Establish a national plan to strengthen capacity and competence to provide mental and somatic healthcare to survivors of torture. This should include the provision of specialised healthcare and the strengthening of capacity within the public healthcare system so as to ensure that competence in providing such care exist.