

CASE CLOSED

RAPE AND HUMAN RIGHTS IN THE NORDIC COUNTRIES

AMNESTY
INTERNATIONAL



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**THE DANISH, SWEDISH, FINNISH AND
NORWEGIAN SECTIONS OF AMNESTY INTERNATIONAL**

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1. INTRODUCTION

“Eliminating violence against women remains one of the most serious challenges of our time. The knowledge base and tools to prevent and eliminate violence against women developed over the past decade must be utilized more systematically and effectively to stop all violence against women. This requires clear political will, outspoken, visible and unwavering commitment at the highest levels of leadership of the State and the resolve, advocacy and practical action of individuals and communities.”

UN Secretary General, In-depth study on all forms of violence against women.¹

In 2004, Amnesty International launched its global campaign *Stop Violence Against Women*. The campaign has addressed several forms of gender-based violence against girls and women in various contexts and countries in all regions of the world. This report, which deals with deficiencies in law and practice in relation to rape crimes in the Nordic countries (Denmark, Sweden, Finland and Norway), is part of the *Stop Violence Against Women* campaign.

In all societies worldwide the unequal power balance between men and women generates, and contributes to, attitudes of acceptance towards crimes such as domestic violence, rape and other forms of sexual abuse. Frequently governments and states take only inadequate action, or none at all, to combat and prevent violence against women, failing to protect women from such violence and to provide victims with remedies – both legal and practical – for the crimes perpetrated against them.

Additionally, men’s violence in intimate relationships is often considered a “private” matter, which means that rape within marriage is not a criminal offence in many countries. In the majority of cases, such crimes are not properly investigated and the perpetrators are rarely punished. Often governments fail even to acknowledge that violence against women is both a societal problem and a human rights violation. Even in states where laws have been adopted to safeguard the right of women to live a life free of such violence, the laws are not effectively implemented. As a result, many states fail to ensure gender equality in general and to deal effectively with gender-based violence in particular.

International human rights law, however, requires states as part of their efforts to eradicate discrimination to take action to prevent acts of violence against women, to investigate and punish the perpetrators and to provide survivors with full remedies.

Throughout its campaign *Stop Violence Against Women*, Amnesty International has drawn attention to the situation in numerous countries around the world and addressed issues such as the lack of legal protection and reparation for women subjected to domestic violence, rape and other forms of sexual violence, as well as so-called honour killings, gender-based violence in armed conflict, trafficking, and the multiple forms of discrimination involved in gender-based violence against women from minority and indigenous groups.

Since 2004, the national sections of Amnesty International in Denmark, Sweden, Finland and Norway have highlighted several issues relating to gender-based violence in their national contexts. For example, in Sweden, Norway and Finland Amnesty International has campaigned for intensified efforts to prevent men’s violence against women and to improve protection and support services in the municipalities. In Norway a web-based

survey on men's attitudes to violence against women was conducted in 2007 by Amnesty International Norway and Reform – Resource Centre for Men. In Sweden, Amnesty International members interviewed 2 600 persons of all ages about their attitudes to rape. Amnesty International Finland has repeatedly called on its government to adopt a national action plan to combat men's violence against women. In Denmark, Amnesty International has shown how the policies of family reunification affects migrant women who suffer domestic violence. Throughout the *Stop Violence Against Women campaign*, the national sections of Amnesty International have cooperated with women's organisations, academic researchers and other relevant centers and institutions.²

1.1 INTERNATIONAL HUMAN RIGHTS LAW

The right not to be discriminated against – including on the grounds of gender – is one of the most fundamental rights, which must be respected in order for other rights to become meaningful. The principle that all human beings are equal in dignity and value, and thereby the ban on discrimination, is the basis for all other human rights.

In 1979, the UN General Assembly adopted the legally binding Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Convention legally obliges the State parties to ensure that women are effectively protected against discrimination in their national courts as well as in other public institutions. According to the CEDAW Committee, gender-based violence, including rape, is a form of discrimination. Consequently, states are obligated to protect women from such violence and to prevent, investigate and punish all such acts.³

States are called upon to take necessary and effective measures to combat all forms of gender-based violence, irrespective of whether such violence takes place in public or in the privacy of the home, and irrespective of who the perpetrator is. States shall ensure that laws penalising men's violence against women within intimate relationships, together with laws

² Amnesty International reports from **Denmark**: *Choosing between violence and expulsion. The dilemma of family reunified migrant women who suffer domestic violence*, June 2006, Danish section of Amnesty International. Reports from **Sweden**: *Men's violence against women in intimate relationships – an outline of the situation in Sweden*, April 2004; *"Not a priority issue" – a review of the work of Swedish Municipalities to Combat Men's Violence Against Women* March 2005; *Tillfälle att prioritera frågan: Uppföljning av svenska kommuners arbete för kvinnofrid*. November 2005 ("Opportunity to prioritise the issue – an update on the work by Swedish municipalities to combat men's violence against women" – only available in Swedish); and *Var går gränsen? En attitydundersökning om våldtäkt*. April 2008 ("Where should we draw the line? – a survey on attitudes to rape" (only available in Swedish) April 2008, Swedish section of Amnesty International. Reports from **Norway**: *"Glansbildet slår sprekker. En rapport om norske kommuners arbeid mot vold mot kvinner"* ("Cracks in the facade. A report on work by Norwegian municipalities to combat violence against women"), 2005 (only available in Norwegian), Norwegian section of Amnesty International; and *"Hvem bryr seg? En rapport om menns holdninger til vold mot kvinner."* (Who cares? A report about men's attitudes to violence against women) 2007 (only available in Norwegian), Norwegian section of Amnesty International and Reform – Resource Centre for Men. Reports from **Finland**: *"...mutta veturi puuttuu" Amnestyn Suomen osaston valtakunnallinen kyselytutkimus naisiin kohdistuvan väkivallan vastaisesta työstä Suomen kunnissa vuonna 2005–2006* ("...but we need an engine" Amnesty International Finnish section's national survey on work to counter violence against women in the Finnish municipalities during 2005–2006 (only available in Finnish)).

³ General Recommendation No. 19 of the CEDAW Committee: Violence against Women (1992)

penalising rape and sexual assault and other forms of gender-based violence, provide sufficient protection for all women and that women's integrity and dignity are respected.⁴

The four countries covered by this report have all ratified CEDAW, without reservations: Sweden in 1980, Norway in 1981, Denmark in 1983 and Finland in 1986.⁵

In addition, the UN General Assembly emphasised in its Declaration on the Elimination of Violence against Women (DEVAW) of 1993 that violence against women is a human rights violation regardless of whether it takes place in public or in private. According to the Declaration, it is the responsibility of the state to prevent, investigate and punish acts of violence against women, regardless of whether the crime was committed by the state or by private individuals. The state is obligated to "pursue by all appropriate means and without delay a policy of eliminating violence". Failure to do so is a breach of the state's obligations under human rights law.

A key requirement made on states under international human rights law and standards concerns the duty to identify the prevalence, causes and effects of gender-based violence. States should gather data and statistics and research results should be made public. Measures of all types that are adopted to prevent and counteract gender-based violence should be evaluated in order to ensure their effectiveness and relevance.

Since the mid-1990s, there has been growing recognition that rape and sexual violence are some of the most serious crimes under international law. Indeed, in the ad hoc international criminal tribunal cases, some acts of rape and serious sexual assault have been charged as both rape and torture, and rape has been identified as a constituent act of genocide. In 1998, the Rome Statute of the International Criminal Court was adopted. Under this Statute, acts of rape and serious sexual assault can constitute an element of crimes against humanity and the war crimes in themselves, as well as constituting a number of other crimes, including "inhumane treatment" and "willfully causing great suffering to body or health".

The definition of rape in the Rome Statute was agreed by the majority of the world's states during their participation in negotiations concerning the International Criminal Court. Amnesty International believes that the definition, which reflects the principles of non-discrimination in international human rights law, can provide a useful model for national legislation on rape, since it applies to victims of rape regardless of gender and uses terms that reflect the various ways rape may be perpetrated (the use of objects, or parts of the body other than the penis, to carry out the assault and the inclusion within the definition of forced oral sex, as well as vaginal and anal penetration).

⁴ General Recommendation No. 19 of the CEDAW Committee: Violence against Women (1992) and the UN Declaration on the Elimination of All Forms of Violence Against Women (1993)

⁵ In addition, all four countries have ratified the Optional Protocol of the CEDAW, allowing individuals to bring complaints before the Committee.

DEFINITIONS OF RAPE IN INTERNATIONAL LAW: AN EXAMPLE FOR STATES TO FOLLOW

Amnesty International notes that the definition of rape used by the International Criminal Court in its Elements of Crimes is as follows:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”*

This physical definition reflects the many ways in which this crime may be perpetrated: through the penetration of the mouth or anus, as well of as the vagina, with a penis or through the penetration of the anus or vagina with any other part of the body or object. The definition of the conditions under which this penetration may take place reflects the fact that rape may be perpetrated through the use of many kinds of coercion, not simply violence or the threat of violence. Sexual violence is also deemed to take place under these circumstances where the sexual autonomy of the victim is violated through the carrying out of an act that is defined widely as “an act of a sexual nature.”

In the case of *M.C. v Bulgaria*, the European Court of Human Rights, reflecting on the definitions of rape in many jurisdictions, including international criminal law, noted that:

“[T]he development of law and practice in that area reflects the evolution of societies toward effective equality and respect for each individual’s sexual autonomy.”**

Amnesty International calls on states to incorporate these developments into their own domestic criminal laws.

* Article 8 (2) (e) (vi)-1: International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000).

** *M.C. v Bulgaria*, European Court of Human Rights, Application number 39272/98, judgment, 4 December 2003.

1.1.1 RULE OF LAW

Several fundamental civil and political human rights come into play in rape cases. The right to a fair trial and equality before the law is well-established and the human rights safeguard whereby innocence is presumed until guilt is proven must also be upheld. While these rules are primarily intended to protect the accused, the victims are also entitled to have their human rights respected.

The UN International Covenant on Civil and Political Rights declares that States are obligated to ensure that everyone enjoys equal protection under the law. Article 14 states that “*all persons shall be equal before the courts and tribunals*”. Similarly, the European Convention on Human Rights, article 13, states that “*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*”.⁶

⁶ The European Convention on Human Rights was ratified by Norway and Sweden in 1952, by Denmark in 1953 and by Finland in 1990.

Hence the rule of law rests on two fundamental and equally important principles: firstly, an obligation to ensure that no person is sentenced without a full and fair trial and that equal cases are treated equally and in accordance with applicable law (legal certainty and equality before the law); and secondly, the obligation of the state to protect its citizens from crime and to prosecute and punish those who commit crimes (legal security and protection of legal rights). In this context, a prerequisite for legal security is that the state's citizens are confident that society is willing and able to process reports of rape and other sexual violations in an effective and efficient manner. Legal security is strongly associated with the right of crime victims to justice and redress.

In 1986, the UN General Assembly acknowledged the need to recognise the rights of victims of crime by adopting The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁷ According to this declaration, victims of crime should be treated with compassion and respect for their dignity and *“are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.”*

Accordingly, women who have been subjected to rape are entitled to the same legal protection as victims of other types of crime. If a state fails to ensure that women who are victims of rape have adequate legal protection, such discriminatory treatment on the basis of gender violates the right to equal protection before the law.

1.1.2 SUPPORT AND ASSISTANCE

International human rights obligations require the state to set up or to support other bodies that provide, systems of protection, support and assistance for victims of domestic violence, rape, sexual assault and other forms of gender-based violence. Specially trained healthcare staff should be available and rehabilitation and counselling provided. Women in rural areas should also have access to support services. Protection, support and assistance should also be provided to refugees escaping gender-based violence.

The right to an effective remedy is a basic element of states' obligation to fulfil their treaty obligations. All victims of crime have the right to necessary material, medical, psychological and social assistance through governmental or voluntary, community-based means. These rights should be guaranteed regardless of whether the perpetrator is identified, apprehended, prosecuted and convicted and regardless of the relationship between the perpetrator and the victim.

1.1.3 CHANGE OF ATTITUDES

International human rights law recognises that the elimination of gender-based violence requires change in society and in the normative (heterosexual) culture that nurtures such violence. According to Article 5 of CEDAW, states are required to take all appropriate measures to change social attitudes and cultural patterns that underpin prejudices and discrimination against women, as well as stereotyped roles for men and women. Preventive work at all levels of society is therefore a prerequisite for bringing about a profound and sustainable change to ensure women's right to a life free from gender-based violence, including rape and other kinds of sexual abuse.

⁷ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power A/RES/40/34, 1985

The UN Special Rapporteur on Violence Against Women, Yakin Ertürk, has identified and detailed a number of indicators that can provide guidance on policy, enable the measurement and monitoring of progress and stimulate regular, systematic data collection.⁸ If violence against women is to be eliminated, it is crucial to address the factors that promote or constrain it.

The Special Rapporteur suggests that social tolerance indicators should be surveyed either within prevalence surveys that include male respondents or through modules developed for inclusion in recurrent surveys of social attitudes. These should include questions that probe understanding, awareness, levels of tolerance, whether respondents know someone who has been victimised and respondents' willingness to report/intervene.

1.2 RAPE IN THE NORDIC COUNTRIES

The Nordic countries – Denmark, Sweden, Finland and Norway – are often singled out for praise when it comes to achievements of gender equality. Indeed, the demands of the women's movement have paved the way for women's participation in all sectors of society. The governments in the Nordic countries have long focused attention on gender equality and equal opportunities for women and men in public life, work, education, political participation, representation and leadership. Even so, continuing violence against women evidences the unequal power relations between men and women that still prevail in all the Nordic countries. These insights have, to various extents, influenced the political agenda in the four Nordic countries during the past two or three decades, and measures to combat men's violence against women form part of the governments' policies to bring about gender equality.

In the case of Sweden, for example, the UN Special Rapporteur on Violence Against Women has pointed out that, while an impressive level of gender equality has been achieved in the so-called public spheres of work, education and political participation, this achievement seems to have halted at the doorsteps of private homes. The unequal power relations between men and women continue to be fuelled by deeply rooted patriarchal gender norms that are reproduced within the so-called private spheres of family life and sexual relationships.⁹ Accordingly, the equal opportunities agenda is a necessary but

"Tolerance of such violence creates cultural contexts in which it can continue unabated and States fail to act with due diligence. From a human rights perspective, this is a situation where the violations of rights can continue unchallenged. We need a deeper understanding of the ways in which violence is structured and sustains current gender hierarchies: while women are increasingly willing to name and challenge violence against them, men's perceptions and actions appear more resistant to change."⁸

UN Special Rapporteur on Violence against women, Yakin Ertürk

⁸ Promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. *Indicators on violence against women and state response*. A/HCR/7/6. January 2008.

An indicator is defined as "an item of data that summarises a large amount of information in a single figure, in such a way as to give an indication of change over time". Indicators differ from statistics in that they usually correlate to a norm or benchmark (in this case, eliminating gender-based violence against women). The SRVAW mentions three levels of indicators:

- 1) **Structural** indicators reflect the ratification/adoption of legal instruments and the existence of basic institutional mechanisms necessary for the realisation of human rights
- 2) **Process** indicators refer to policy instruments, programmes and specific interventions; actions taken by states and individuals to protect and fulfil rights
- 3) **Outcome** indicators, directly or by proxy measures, document the realisation of rights. These are often the slowest to move, due to the interdependence of human rights

⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. *Mission to Sweden*. A/HCR/4/34/Add.3. February 2007.

insufficient strategy for achieving full gender equality and ensuring women's right to a life free from violence.

Despite the adoption of extensive legal and institutional measures in Western countries, levels of gender-based violence, including rape, remain high. According to the Special Rapporteur, gender-based violence against women can in this context be perceived as harmful social traditions, rather than simply as the crimes of individual perpetrators.¹⁰

Amnesty International's conclusions reflect the findings of the Special Rapporteur across the four countries surveyed in this report. The prevalence of sexual assaults and the failures in response by the state and by society as a whole are matters that require urgent action.

Sexual violence is a serious societal problem, both in terms of its scope and its negative consequences for the individual victim¹¹ and society at large. It constitutes a grave attack on the integrity and sexual autonomy of a person and constitutes a violation of the victim's human rights. At the same time, it impairs the enjoyment of a range of fundamental human rights such as the rights to physical and mental health, personal security, equality within the family and equal protection for men and women under the law.

Children, women, and sometimes also men, are subjected to rape and other sexual violence. Such violence occurs within heterosexual and homosexual relationships, as well as outside intimate relationships. While acknowledging that *all* sexual violence, regardless of the identity of the victim, is equally important as a human rights issue, this report is limited to one form of sexual violence, namely the rape of women. While national legislation in the Nordic countries concerning rape is gender neutral, this report is not because in almost all reported rapes of persons aged 15 years or older the victim of the crime is a woman and the perpetrator is a man.¹² Women are raped by men they are close to or acquainted with as well as by men completely unknown to them.¹³

10 Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. *Intersections between culture and violence against women*. A/HCR/4/34. January 2007

11 Amnesty International in no way intends to reduce any person subjected to rape to the status of a mere "victim". Women who survive rape and other forms of sexual violence are in fact agents who seek the means and strategies to cope and deal with their experiences. At the same time, a woman subjected to rape is clearly the victim of a serious crime. In this report, the term victim is used as defined by the UN: "*Victims*" means persons who [...] have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of [national] criminal laws [...]. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power A/RES/40/34, 1985.

12 For example, of all rapes reported to the Swedish police where the victim is aged 15 or older, 97–98 per cent of the victims are women and as good as 100 per cent of the perpetrators are men. However, in the case of reported rapes where the victims are children, a considerably larger proportion of the victims are boys. While Amnesty International acknowledges that the rape of children is an equally important human rights issue, it lies outside the scope of this report.

13 As stated, this does not mean that men are never raped or that rape never occurs in same-sex partnerships. Although this report does not address rape and sexual violence against men (whether gay, bisexual or transgendered or heterosexual), or men or women in same-sex relationships or homophobic attacks where the victims are LGBT-persons, these are all significant issues that requires attention, not least so that victims of such assaults will feel more able to report them.

1.3 A PRIORITY ISSUE – BUT STILL AN ALARMING REALITY

In all four Nordic countries, gender-based violence has been publicly debated and discussed for decades, making the subject less taboo than is often the case elsewhere. The countries' governments, politicians and justice systems alike all claim that combating gender-based violence, including rape and other forms of sexual crime, is a high priority. Various legislative and other measures have been adopted, or are currently being introduced, to improve legal protection and procedures in rape cases. Their effectiveness remains to be seen.

1.3.1 ATTRITION

This report deals with *attrition* in relation to cases of rape or, in other words, the filtering process whereby alleged offences either never come to the attention of the criminal justice system, either because they are never reported or because cases are dropped at various stages of the legal process.¹⁴

Several European countries have seen a continuous and strong increase in the number of reported rapes in recent decades, whereas the number of prosecutions and convictions has remained fairly static.¹⁵ Researchers who have looked into the reasons for this have used the concept of attrition to illustrate and analyse what happens to the reports of rape in the legal process. The purpose of research of this kind is to identify shortcomings, in order to reduce the justice gap between the number of reported and the number of tried rape crimes.

Researchers have identified three crucial stages at which attrition occurs:

- the police investigation
- decisions by prosecutors
- the trial

Cases are discontinued during each of these stages for a variety of reasons. The ability of the legal system to prosecute rape will also influence victims' inclination to report such crimes. For this reason, some researchers argue that an initial stage should be added: the victim's decision whether or not to report the crime. This issue is significant for the state, as victims' decisions will be affected by their confidence in the authorities' ability to deal with their cases effectively and in a manner that will not cause them further harm.¹⁶ Meanwhile, attrition in itself will affect the public's confidence in the willingness and ability of the justice system to deal with, and effectively investigate and punish, rape, as well as undermine the general message that violence against women, including sexual violence, is an unacceptable and discriminatory violation of women's human rights.

While acknowledging that rape is a crime associated with particular problems regarding evidence, most notably because there are usually no witnesses other than the victim and the

¹⁴ Rebecca Bradley, *Rape and Pre-Trial Attrition: What should be done?* (1999) <http://survive.org.uk/justice1.html>

¹⁵ Linda Regan and Liz Kelly, *Rape: The Forgotten Issue? A European Attrition and Networking Study*. 2001 samt *Rape: Still a forgotten issue*, 2003 (briefing document).

¹⁶ Liz Kelly, Jo Lovett and Linda Regan, *A gap or a chasm? Attrition in reported rape cases*, Home Office Research Study 293, 2005.

accused, Amnesty International is concerned about the alarming attrition rates that remain a reality in Denmark, Sweden, Finland and Norway. Amnesty International is concerned that the fact that only a small number of the crime victims who report a rape have their case tried in a court of law, amounts to a situation of impunity for many perpetrators in the Nordic countries.

Serious legislative obstacles to increasing prosecution rates can be found as in the case of Finland. In all four Nordic countries, only a small number of reported rapes lead to a prosecution, with an even smaller number resulting in a conviction. Most cases are closed at an early stage of the investigation, usually with the explanation that it cannot be proved that a crime has been committed. While this will be true in some cases, in others the lack of proof boils down to a failure to gather evidence thoroughly or professionally. The crime victim's access to justice and redress is largely dependent on the quality of the preliminary investigation. Attrition is partly the result of the different assessments made, which, in turn, are dependent on the competence, motivation, attitudes and values of the investigating officers – factors that are reflected in the investigation work. Research in Denmark, Sweden and Finland indicates that police investigators sometimes assume that women who report rape are lying or mistaken. As this report shows, the legal process – and ultimately women's rights to justice and equality before the law – may be hampered by discriminatory attitudes about female and male sexuality, expectations about how women should behave and react before, during and after a rape, and notions of “real rape” and the “ideal victim”. These considerations apply to all four countries, but are addressed in greater depth in the chapter on Denmark.

Rape is a crime that is chiefly committed against women and the fact that investigations into rape cases are sometimes substandard in quality and therefore inadequate as a basis for prosecution indicates the existence of gender discrimination against women by the state, which they should investigate thoroughly and take urgent steps to address.

This joint report aims to cover all stages of the attrition process in the different national contexts of the four Nordic countries. The national sections of Amnesty International in Denmark, Sweden, Finland and Norway have researched and compiled the chapters that cover their own countries. However, it should be noted that Amnesty International as a world-wide organisation shares the principles held on these issues by the individual Amnesty International sections.

This report's point of departure is that rape is one of the most extreme manifestations of gender-based discrimination. Amnesty International believes that the failure to prevent rape, and other forms of sexual violence, to protect women and girls from such crimes, and to ensure justice for all rape victims – including the effective investigation as a solid basis for prosecution and trial and ultimately to afford redress to girls and women who have been raped – is one of the most serious challenges to the human rights of women in the Nordic countries. This is a challenge that must be dealt with as a matter of urgency through the adoption of intensified, positive and creative initiatives and firm action by the Nordic governments.

2. RAPE AND HUMAN RIGHTS IN DENMARK

2.1 SUMMARY

In Denmark, approximately 500 rapes are reported to the police each year. The number of rapes actually committed is unknown, but studies estimate that only a minority of rapes are reported.

Women who have been subjected to sexual violence will find that there is only a slim chance that reporting the assault to the police will result in criminal proceedings and the perpetrator's conviction. Very few reports of rape lead to a formal prosecution. The great majority of cases are closed – discontinued – by the police or public prosecutor before they reach the courts.

- Only one in five reported rapes result in a conviction in court
- Only a minority of cases where the police identify and charge a suspect come before the courts. In 2006, 60 per cent of such cases were closed without a court hearing because of 'the state of the evidence'.

Surveys of prosecution practices suggest that it is virtually impossible for a woman successfully to accuse a man of rape if her testimony contradicts that of her alleged attacker and the parties' evidence is the main decisive factor.¹⁷ This is especially true where the parties knew each other before the rape. In practice this means that an entire category of rape cases is virtually exempt from prosecution, since these cases nearly always end with a decision not to prosecute and take the case to court, as the public prosecutor views a conviction as unlikely. This situation is all the more worrying since women had suffered physical injury in over half the reported (alleged) incidents of rape committed by an ex-partner, current partner or acquaintance. Women who have been subjected to rape have the same right to legal protection as the victims of other crimes. Failure by the state to ensure protection in respect to this particular crime amounts to discriminatory treatment on the basis of gender and consequently violates the right to equal protection under the law. Amnesty International Denmark believes that the low prosecution rate for rape cases in Denmark is a human rights issue that has serious consequences for rape victims' access to legal protection and redress.

Two crucial aspects of rape cases are to a large extent non-transparent in Denmark: the assessment of the relative credibility of the victim and the accused; and the reasons for deciding whether to prosecute or whether to close the case because of the state of the evidence. Amnesty International Denmark's position is that all decisions on whether or not to prosecute should be subjected to a formal assessment and objectified to the greatest

"... when you go out and talk to the witnesses you find she was dancing on the tables and throwing her clothes around the pub. That doesn't justify the fact that she was raped, absolutely not. But her behaviour went a long way towards giving those guys certain hopes or expectations."

Interviewed police officer

"You stated yourself that two days before the reported rape was supposed to have taken place you voluntarily had intercourse with XX."

Prosecutor's closing statement giving grounds for not pressing charges.

"In addition, the two friends who accompanied you to town state that you were the one playing up to XX and they understood the situation to indicate that something was bound to happen between you when you got home."

Prosecutor's closing statement giving grounds for not pressing charges.¹⁸

¹⁷ Though, formally, the woman is not considered a party to the case, but a witness for the prosecution.

¹⁸ All quotes from Laudrup & Rahbæk 2006

possible extent to ensure that the decision is not influenced by subjective views, attitudes and norms about male and female sexual behaviour.

The Danish Penal Code's provisions on rape come under the chapter on vice crimes and a number of the provisions on sexual offences include references to marital status. The legislation even provides for a possible reduction in the penalty for rape if the victim and the perpetrator marry or enter into a registered partnership. Non-consensual sexual acts with a victim who is in a helpless state are not defined as rape unless the perpetrator is directly responsible for the woman's state. This makes the Danish legal definition of rape narrower than the definitions used in Sweden and Norway. Amnesty International Denmark concludes that Danish legislation on rape and sexual violence conflicts with human rights principles concerning the need to protect an individual's sexual and physical integrity and right to self-determination.

2.2 LEGAL FRAMEWORK

This sub-chapter examines Danish legislation on rape, the level of sanctions and Amnesty International Denmark's concerns about the legal situation in Denmark.

2.2.1 HISTORY

Although rape as a criminal offence can be traced back to Denmark's very first laws dating from the thirteenth century, the understanding of rape has changed a great deal over time. Rape was originally perceived as a violation of the property rights of the woman's husband and also, during the seventeenth century, as a religious offence. In the first Danish Penal Code dating from 1866, rape was for the first time seen as a violation of the woman – but in terms of a violation of her honour because she had been forced into extra-marital intercourse. As a result, rape was mainly punishable when committed against married women by strangers. The new Penal Code adopted in 1930 reflected changes in the understanding of rape, which was now viewed to a greater extent as a violation of a woman's right to sexual self-determination. The Penal Code from 1930 includes a possibility to punish marital rape, albeit with a less severe punishment.¹⁹

Amendments to the provisions on rape were enacted in 1967 and 1981. In 1967, differences in maximum penalties were abolished in respect to marital rape, acquaintance rape and blitz rape (assault by a complete stranger) were abolished. The ensuing years saw criticism from the women's movement, because many rape cases were prosecuted pursuant to section 217 of the penal code (forbidding 'enforced sexual intercourse'), with only very violent rapes being prosecuted as 'rape' pursuant to section 216. In 1981 the law was amended and section 216 was changed to include the threat of violence. This meant that a man who forced a woman to have sex with him by threatening violence could be prosecuted for rape rather than for enforced sexual intercourse. The law was also made gender neutral and same-sex relations were included. The provision on 'enforced sexual intercourse' is now rarely used, with most rape cases being prosecuted pursuant to section

¹⁹ Rasmussen 1981, Dübeck, Inger i Dansk Forening for Kvinderet 2003

216. In 2002 the maximum penalty for sexual assault was raised to eight years' imprisonment, or 12 years in the case of aggravating circumstances.²⁰

2.2.2 CURRENT LAW

Chapter 24 of the Danish Penal Code contains provisions covering a range of sexual offences under the title 'vice crimes'.²¹

THE MAIN PROVISIONS OF THE PENAL CODE CONCERNING RAPE READ AS FOLLOWS:

§216

1) Any person, who enforces sexual intercourse by violence or under threat of violence, shall be guilty of rape and liable to imprisonment for any term not exceeding eight (8) years. The placing of a person in such a position so that the person is unable to resist the act shall be equivalent to violence.

2) If the rape has been of a particularly dangerous nature, or in particularly aggravating circumstances, the penalty may be increased to imprisonment for any term not exceeding twelve (12) years.

§224

The provisions in Sections 216–223a of this Act shall apply similarly in connection with sexual relations other than sexual intercourse.

Rape is a criminal offence pursuant to the Penal Code. The concept encompasses blitz rape as well as acquaintance rape and rape within intimate relationships/partner rape. It also covers attempted rape and various kinds of coerced sexual acts in addition to intercourse.

Rape is equally punishable regardless of whether it is committed by a complete stranger, who assaults a woman in a dark and isolated public place (blitz rape), by a man the victim has met in a bar, by an acquaintance (acquaintance rape), or by a former or present partner (rape within intimate relationships/partner rapes). Nevertheless, in cases where the woman and the man already knew each other prior to the alleged rape – acquaintance rape – this fact will be crucial to the passage of the case through the legal system, especially when compared to the handling of cases involving blitz rape.²²

Pursuant to sections 216 and 224, sexual intercourse and other sexual acts are punishable as rape where the perpetrator carries out the sexual act by means of physical violence or by threatening to use violence against the victim if she refuses to cooperate. Carrying out a sexual act by means violence includes situations where the perpetrator has put the woman into a state where she cannot defend herself, for example through drugging her. If for some reason the perpetrator fails to penetrate the women (or to perform other sexual acts that he originally intended to carry out), his actions are still punishable as attempted rape and the same maximum sentences apply.

²⁰ Act No. 380 of 6 June 2002 raised the maximum penalties for rape to eight years and 12 years (the latter in cases where there are aggravating circumstances).

²¹ In Danish: Forbrydelser mod kønssædeligheden

²² Laudrup & Rahbæk 2006

If the woman cannot defend herself because of her own actions, for example because she has consumed alcohol, drugs etc., the crime is not punished as rape, but as a sexual offence. This also applies if the woman is ill or otherwise unable to defend herself unless the perpetrator is directly responsible for her situation. Section 218 is used to cover sexual acts accomplished through taking advantage of a woman who is mentally disabled or mentally ill or in a helpless state where she cannot defend herself (intoxicated, sick, asleep etc.). The maximum punishment is four years' imprisonment. Figures concerning prosecutions, convictions etc. under section 218 are not included in the statistics on rape. Danish legislation differs from both Norwegian and Swedish legislation in this respect. In both the latter countries, sexual acts performed where the victim is in a helpless state are punished as rape regardless of the reason for the woman's condition.

Amnesty International Denmark is very concerned that enforced sexual relations with a woman who is unable to defend herself are not understood as constituting rape in Danish law (except for cases where the perpetrator is directly responsible for the woman's helpless state). Amnesty International Denmark is concerned that this might result in a situation where certain groups in society are less protected against rape than others. The mentally disabled, or people taking drugs, alcohol etc., who at the time of the rape are unable to defend themselves, or choose whether or not to engage in sexual acts, can in fact be raped without the perpetrator being punished for rape – but only for a minor sexual offence.²³ Intercourse or sexual acts with a victim in a helpless state should be included within the rape provisions in the Danish Penal Code.

2.2.3 VICE CRIMES AS OPPOSED TO SEXUAL CRIMES

The rape provisions in the Danish Penal Code are contained in the chapter on vice crimes. The categorisation of rape and other sexual offences as 'vice crimes' (Forbrydelser mod kønssædeligheden) conveys a message that rape violates public morals, rather than the rights of an individual. Thus the current rape provisions continue to reflect the original intention of Danish legislation on rape, namely, the protection not of the individual, but of the moral standards of society as a whole. In Norway, Sweden and Finland the term 'vice crimes' is no longer used precisely in order to emphasise that rape is a violation of an individual's sexual self-determination and bodily integrity rather than of public morals. Amnesty International Denmark recommends that the term 'vice crimes' should be replaced with the term 'sexual offences' in Danish law or that the provisions concerning rape should be moved to Chapter 25 of the Penal Code on 'Crimes against life and the person' (Forbrydelser mod liv og legeme).

There are other examples in the Danish legislation of wording that indicates that the focus of the law is the protection of morality, rather than of individual sexual self-determination. In

²³ The approach adopted by the International Criminal Court (ICC) and The European Court of Human Rights (M.C. vs. Bulgaria (application no. 39272/98). 4 December 2003) does not make the use of force an essential criteria, but defines rape as being committed whenever there are coercive circumstances present that undermine the victim's ability to give her genuine consent. See ICC, Rules of Evidence and Procedure, Rule 70:

- a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent,
- b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent.
- c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence

the provisions dealing with sexual offences, various sections refer to ‘extra-marital intercourse’ (sections 218 (helpless state of the victim) and 220 (abuse of subordinate position of victim)), giving rise to an assumption that such forms of enforced intercourse are legal within marriage. Section 221 criminalises the situation where the victim consents to sexual intercourse because she mistakes the perpetrator for someone else or because she believes herself to be married to him. One could ask whether such situations are really likely to arise in reality, or if the provision is in fact intended to protect the woman’s virtue while punishing a man who has sex with another man’s wife or deceives the woman into believing they are married? According to section 227, the penalty for rape committed pursuant to section 216 and for other sexual offences (sections 217–226) “can be reduced or remitted if the persons, between whom the sexual intercourse has taken place, have since married each other or registered their partnership.” Amnesty International Denmark is aware that the question of guilt is not at issue here. This provision refers to cases where the man has been found guilty of rape, but receives a lighter punishment because he has subsequently married the victim. Amnesty International Denmark believes that this law facilitates impunity, as it perpetuates the view that rape is a crime that violates the family or the concept of “honour”, rather than a woman’s physical and mental integrity and, accordingly, allows discriminatory views concerning women’s appropriate position in society to persist. Section 227 would seem to imply that an act of rape could somehow form an appropriate foundation for the commitment of marriage. Given that marriage (both generally and under human rights law) is supposed to be undertaken freely as a commitment between adults, this provision would seem to conflict with any international human rights standards on gender equality.

Amnesty International Denmark is concerned about the reference to marriage in the Danish legislation. Rape and sexual abuse are serious violations of a woman’s right to sexual self-determination and bodily integrity and have nothing to do with whether she is married to the perpetrator or not. If a husband takes advantage of the fact that his wife is in a helpless state and forces her to engage in sexual activities against her will, the woman will have been violated regardless of the existence of the marriage. Wording that links marital status to the question of whether a sexual offence has been committed should be deleted in order to ensure that such offences are assessed objectively and on their own terms. Amnesty International Denmark recommends amendment of the legislation to remove references to marriage and marital status.

A requirement on states to remove exemptions applicable to marital rape has been recognised in the UN Declaration on the Elimination of Violence against Women, which defines marital rape as a form of violence against women.²⁴

2.2.4 LEVEL OF SANCTIONS

The maximum penalty for rape was increased in 2002 and the offence is now punishable with a maximum of eight years’ imprisonment. If the nature of the rape was particularly abhorrent, the penalty may be further increased to a maximum of 12 years’ imprisonment. Statistics show that the penalties actually imposed are generally much lower than the statutory maximum, but have become more severe since the law was amended in 2002.

²⁴ A/RES/48/104 20 December 1993

2.2.5 CRIMINAL INTENTION

The occurrence of sexual intercourse, or other sexual acts, and the use of violence or the threat of the immediate use of violence are known as the objective criteria for establishing that a rape has taken place pursuant to sections 216 and 224.

In addition to the objective criteria, sections 216 and 224 require the satisfaction of a subjective criterion concerning “intention” – or “criminal intention” (forsæt). This means that the perpetrator must not only know or be aware of – or recognise – the fact that he is having sexual intercourse/performing sexual acts with a woman. He must also know or be aware of – or recognise – the fact that the woman does not want to have sexual intercourse/perform sexual acts with him. He must be aware of the forced or coercive nature of the sexual act. He must recognise that the woman is engaging in sexual acts with him either because he is literally physically forcing her to do so, or because she is trying to escape further violence or, lastly – in the event of threats to use violence – because she wishes to escape the violence or abuse threatened by the perpetrator if she resists his demands. Threats to use violence may be verbal, in that the perpetrator specifically states that he will use violence of whatever nature (or simply that he will kill her) if the woman does not submit to his demands, or the perpetrator may indicate what he will do by means of threatening gestures. A clear example of a non-verbal threat could be showing the woman a knife.

The requirement of “criminal intention” means that, in practice, the prosecution of an alleged perpetrator will depend on whether the public prosecutor finds that there is a reasonable probability that the prosecution will be able to prove that the man actually knew – or ought to have known or recognised – that the woman did not wish to have sex. The act must be proved to have been intentional. If the prosecution is not able to prove this, there can be no conviction.

It is precisely the establishment in practical terms of the boundary (or interface) between a voluntary and a coercive act that is crucial for determining whether criminal charges (prosecution in court) will be brought in a rape case.

However, according to several prosecutors and investigators, the boundary is difficult to establish and assess objectively and rationally. According to these sources, the dilemma is especially well illustrated by cases – the majority – where the parties were already known to each other. The credibility of the evidence of the victim and of the accused – or even more precisely, the credibility of the parties as such – may be crucial, because this forms the primary or sole basis on which the police and the prosecution can proceed. Consequently, the case officer’s assessment of what constitutes “probable sexual assault” and “credible evidence” is crucial for the progress of the case through the system.²⁵

2.2.6 AMNESTY INTERNATIONAL DENMARK’S MAIN CONCERNS

– Non-consensual sexual acts where the victim is in a helpless state not directly caused by the perpetrator are not defined as rape in the Danish Penal Code, which makes the definition of rape much narrower than in Sweden and Norway

- The categorisation of rape as a vice crime, rather than as a sexual crime, fails to put the protection of the victim's sexual self-determination and bodily integrity at the core of the legislation on rape
- The references to marriage and marital status in the legislation suggest that rape and sexual abuse within marriage are less serious and should be less severely punished.

2.3 THE SCALE OF THE PROBLEM

This sub-chapter looks at statistics and estimates concerning rape, as well as discussing some of the reasons behind the picture that emerges.

2.3.1 ESTIMATES OF PREVALENCE

There are various estimates of the occurrence of unreported rapes in Denmark. The Danish report from the UN-initiated International Violence Against Women Survey (IVAWS) estimates that the number of incidents where women have been forced or coerced into having sexual intercourse with men is close to 2,000 cases annually.²⁶ But some prevalence studies estimate the number to be as high as 5,000–10,000.²⁷ A new incidence study estimates that 26,000 women under 60 years of age experience enforced sexual activity every year. This study is based on responses from women in a national health survey. Two out of three women who reported that they had been subjected to enforced sexual activity during the previous year said they had been subjected to unwanted sexual caresses, “flashing” (the exposure of naked genitals) or the like. One out of three women had experienced more serious abuse. Approximately two out of ten women who responded that they had been subjected to enforced sexual activity reported that they had been forced to have sexual intercourse against their will or an attempt had been made to force them to do so.²⁸

The number of women who contact the Centres for Victims of Sexual Assault is rising. 330 women contacted the centre in Copenhagen in 2006, compared to 234 women in 2001, a rise of 30 per cent. The number of women contacting the centre in Århus has risen by 25 per cent in the same period. This could be interpreted as indicating that more women are being raped, but it is also likely that the centres are becoming more widely known and/or more women are seeking professional help after being raped.²⁹ According to the IVAWS, the number of women being raped seems to have declined over the years. This is explained by changes in social norms that have led people to view rape as a more serious crime.³⁰

2.3.2 ACQUAINTANCE RAPE MOST COMMON

In the vast majority of rape cases, the woman and the man already know each other (as opposed to the situation where a woman is sexually assaulted by a complete stranger). Statistics from the Centre for Victims of Sexual Assault at Rigshospitalet in Copenhagen show that 23.3 per cent of victims who contacted the centre in 2006 had been raped by a stranger

²⁶ Balvig & Kyvsgaard 2006: IVAWS²⁶

²⁷ Hallmann 1997

²⁸ Helweg-Larsen & Frederiksen 2007

²⁹ Helweg-Larsen & Frederiksen 2007

³⁰ Balvig & Kyvsgaard 2006

(blitz rape). 27.7 per cent had been raped by someone they had met just before the rape (acquaintance rape) and 43.1 per cent had been raped by someone close to them, e.g., an ex-/current partner or a family member (rape within intimate relationships/partner rape). Hence rape cases where the woman and the man knew each other previously account for 70.8 per cent of cases and acquaintance rapes constitute a rising proportion of the total number of cases handled by the centre.³¹

Other studies also show that, in the majority of cases, the victim and the perpetrator of the rape are already acquainted in some way. The IVAWS shows that the majority of sexual assaults are committed by ex- or current partners, who are responsible for more than three out of four cases of enforced sexual intercourse experienced by women after the age of 16. The study shows that partner rape also has the most serious consequences for the victim in terms of physical injuries and negative social consequences. This type of rape is rarely discussed with others and is even less likely to be reported to the police. Rapes within intimate relationships tend to form part of a pattern of violence and abusive behaviour within the relationship.³²

2.3.3 RAPE VICTIMS ARE YOUNG WOMEN

The vast majority of rape victims are women. In 2006, 95 per cent of victims of rapes reported to the police were women and all male victims were between five and 14 years old.³³ Of rape victims seeking help at the Centre for Victims of Sexual Assault in Copenhagen, 98.5 per cent were women. Most rapes are committed against girls and young women. One in 10 girls and young women aged between 16 and 19 had experienced coerced sexual activity during the previous year, compared with only one in 100 women aged over 40. The majority of the reported rapes were also committed against girls and young women, with women aged 15–19 being affected three times more often than women aged 20–39.³⁴ The majority of victims who contacted the centre in Copenhagen in 2006 were young women. 26.1 per cent of the victims were girls aged under 18, while overall 64.6 per cent of the victims were under 25.³⁵ In 2007, almost two-thirds of the victims who contacted the centre at Århus hospital were girls and women under 20.³⁶

In 2006, all reported rapes that were the subject of a decision by the prosecuting authorities or the courts were committed by men. The average age of the perpetrators was 30.

2.3.4 REPORTED RAPES

Over the years, the number of rape allegations reported to the police has remained relatively steady, i.e., approximately 500 each year. There is no sign of a rise in the number of reports. In 2006, 527 rapes were reported to the police. In 2007, the number of reports were 566. The statistics on reported rapes cover crimes under sections 216 (rape/sexual intercourse), 224 (rape/other sexual acts), 217 (other unlawful compulsion than violence), and 221 (sexual intercourse by deception).

31 Centre for victims of sexual assault 2007, Rigshospitalet, Copenhagen

32 Balvig & Kyvsgaard 2006

33 Dansk Statistik 2007

34 From 2002 – 2006, Helweg-Larsen & Frederiksen 2007

35 Centre for victims of sexual assault 2007, Rigshospitalet, Copenhagen

36 Centre for victims of sexual assault 2008, Århus sygehus, Århus

The IVAWS shows that 18 per cent of women who have been subjected to actual or attempted enforced sexual intercourse during their lifetime have reported the matter to the police. The survey estimates that in 2003, 2,000 women were raped, with 550 reporting the rape to the police, i.e., approximately 27.5 per cent. The survey concludes that the number of women who choose to report rape to the police is gradually rising. During the past 10 years, 24 per cent of rapes have been reported to the police.

The IVAWS shows that only around half of the women forced into having sexual intercourse during their lifetimes viewed the act as criminal. Among women who had been forced to have sexual intercourse and also considered this to be a criminal act, 35 per cent had reported the rape to the police. About 70 per cent of the women who contacted the Centre for Victims of Sexual Assault in Copenhagen in 2006 reported the rape to the police, which is a slight increase compared to 2005.

In general, a woman is less likely to report a rape if she knows the perpetrator well. The IVAWS shows that 31 per cent of women who responded that they had been raped during their lifetime by a partner or an acquaintance and considered the act to be criminal had reported the rape to the police, while 50 per cent of the women who had been raped by a stranger had chosen to report the rape. As mentioned above, the reporting of rapes to the police has become more frequent over time and 75 per cent of women who had been subjected to blitz rape during the last 10 years had reported the crime to the police. This trend towards an increased rate of reporting is general and is also seen in cases of acquaintance rape.

Research covering all reported rapes in 1990, 1991 and 1992 shows that 50 per cent of the reported rapes were blitz rapes where the man and woman did not know each other prior to the assault. 16 per cent were acquaintance rapes where the victim and the perpetrator had met shortly before the crime took place. 21 per cent were acquaintance rapes where the victim and the perpetrator had known each other relatively well before the rape, while 13 per cent were partner rapes where the perpetrator was a current or former partner of the victim. The figures show that around half of all rapes reported to the police, at least in the early 1990s, were blitz rapes.³⁷ Since all surveys indicate that the majority of rapes are either acquaintance rapes or partner rapes, these types of rape must be under-represented in the reported rape statistics.

2.3.4.1 REASONS FOR (NOT) REPORTING

The reasons why a victim chooses not to report a rape are complex, with victims citing multiple reasons. Numerous reasons were given by victims who contacted the Centre for Victims of Sexual Assault in Copenhagen in 2006. The most common explanations were that the woman blamed herself for the rape, or was, perhaps due to the influence of alcohol etc., uncertain about what happened and did not feel she could explain it to the police. Many victims also mentioned fear of the social consequences and fear of reproach or reprisals by the perpetrator. A few women cited lack of trust in the police or the justice system as a reason for not reporting.³⁸ The IVAWS shows that more than one in four women choose

³⁷ National Police Commissioner 1998

³⁸ Centre for Victims of Sexual Assault 2007, Rigshospitalet, Copenhagen

not to report because they feel ashamed, while one in 10 women do not do so because they do not think the police can help them.³⁹

Where women decide to report a rape to the police, their reasons for doing so have been examined in a recent qualitative study about rape victims' experience of reporting rape to the police. The report highlights three reasons for reporting. Firstly, the women express a desire for justice – the perpetrator should not get away with what he has done. Secondly, the women want to protect others from being raped by the perpetrator while, thirdly, reporting the rape may make it more 'real' for the victim and constitute a way of trying to deal with the traumatic experience.⁴⁰

Unfortunately, only a minority of the women who choose to report a rape will have the opportunity of seeing the case decided in court, since the majority of rape cases are closed by the police or the prosecution before they get to court. This is the subject of the next chapter.

2.3.5 AMNESTY INTERNATIONAL DENMARK'S MAIN CONCERNS

- Many rapes remain unreported, which makes it difficult to establish the true scale of the problem and allows perpetrators to remain unpunished
- Acquaintance rapes and partner rapes are less likely to be reported to the police, giving rise to concern about the possibly high level of impunity for rape in cases where the woman and the man are known to each other previously.

2.4 THE LEGAL JOURNEY

In recent years there have been political demands in Denmark for an increase in the maximum penalties for sexual assault⁴¹ and the police and the prosecuting authorities' report that they generally call on their most senior staff when a woman reports a rape. This suggests that rape as such is taken seriously by all parties. Even so, the attrition rate remains very high. Only approximately one in five rape cases ends with a conviction. As is explained in more detail below, in comparison with other types of violent crime, a significantly higher percentage of rape cases where charges have been pressed by the police are dropped before reaching court. This situation necessitates an examination of the factors that halt the progress of rape cases through the system. This sub-chapter focuses on cases where the police have pressed charges against an alleged perpetrator. It discusses some of the obstacles that prevent rape cases from coming to trial and explores ways these obstacles can be removed in order to improve the handling of rape cases and the treatment of rape victims in Denmark.

2.4.1 A RAPE CASE'S JUDICIAL PATH

According to Odense Police (Afdelingen for personfarlig kriminalitet, Henrik Jøstesen) a rape case can follow two paths depending on whether an alleged perpetrator has been identified or not. The figures below illustrate the journey of rape cases through the judicial system and the role of the police and the prosecution in the different stages:

³⁹ Balvig & Kyvsgaard 2006

⁴⁰ Guldborg 2006

⁴¹ Act No. 380 of 6 June 2002 raised the maximum penalty for rape to eight years' imprisonment (or 12 years in the case of aggravating circumstances).

FIGURE 1. THE PERPETRATOR IS NOT IDENTIFIED

The victim reports the rape to the police. The police take a series of investigative measures: The victims is interviewed as well as taken to a medical examination to determine if there is medical/technical evidence that she was raped. Witnesses are interviewed. DNA-register is checked, crime scene investigations etc. When at some point the police find that all reasonable means of investigations have been exhausted, the case is presented to the public prosecution.

The public prosecution can make two decisions; it can demand that the police **take further investigative** steps to identify and apprehend the alleged perpetrator, or it can decide to **discontinue** the case on grounds that the police have not been able to identify the alleged perpetrator.

FIGURE 2. THE PERPETRATOR IS IDENTIFIED

The victim reports the rape to the police. The police take a series of investigative measures: The victim is interviewed as well as taken to a medical examination to determine if there is medical/technical evidence that she was raped. Any witnesses are interviewed. If the alleged perpetrator is identified, he is charged with rape and interrogated. The **decision to charge the alleged perpetrator lies with the police.**

If the police find it necessary to remand the suspect in **pre-trial detention**, the case is presented to the **public prosecution** at this stage, in order to decide whether or not the suspect should be taken to court with a view to get a court decision that the legal requirements for remanding him are met.

After the court decision to remand the suspect in pre-trial detention, the **police continue their investigations.**

If during the investigative phase the police wish to conduct a **house search, DNA tests etc.**, such measures require a court decision. The case is presented to the **public prosecution** anew with a view to the public prosecution's decision on whether or not the case should be taken to court to obtain such a court decision

THE POLICE CONTINUE THEIR INVESTIGATIONS.

If the police find it necessary to have the **pre-trial detention prolonged**, because they have not yet terminated their investigations, the case must be presented to the **public prosecution**, which then decides if the case should be taken to court to obtain a court decision on prolongation of the pre-trial detention. Prolongation can take place for 4 weeks at a time; every prolongation requires a new court decision.

When the police find that the investigations have reached a stage at which a decision on whether to press formal charges or discontinue the case can be made, the case is presented to the **public prosecution for a final decision**

At this stage the **public prosecution can decide to prosecute** (indict/take criminal action and the case go to court) **discontinue the case** (close the case), or instruct the police to carry out **further investigations** before making the final decision on indictment/discontinuation

Odense Police further stated to Amnesty International that the above table depicts the formal procedure for case handling, and that the system allows for consultations between the police and the public prosecution at any stage during the investigations.

OUT OF EVERY FIVE RAPE CASES APPROXIMATELY:

– two are closed without the police finding and/or charging an alleged perpetrator

– two are closed by the prosecutor after the police have investigated the case and charged an alleged perpetrator or the perpetrator is not convicted in court

– one ends in court with the conviction of the perpetrator.

2.4.2 HIGH ATTRITION RATE

The IVAWS shows that in approximately 200 out of 500 reported cases of rape, the cases are closed without any charges being pressed by the police, for example because the perpetrators cannot be identified or found. In the remaining 300 cases, a suspect is identified, but approximately 200 of these cases are either closed (discontinued) on the grounds of “insufficient evidence” and never brought to trial or are heard by a court but the defendant is acquitted. The majority of these 200 cases are closed before they reach court. Defendants are only convicted in approximately 100 cases.⁴² As table 1 shows, the same pattern is evident in all years from 2003 to 2006.

TABLE 1.

Year	Reported rapes to the police	Total number of cases decided by the prosecution or in court	Cases closed by the prosecution without trial	Cases decided in court	Acquittals in court
2003	472	271	134	137	24
2004	562	350	227	123	29
2005	475	332	198	134	31
2006	527	311	183	125	31
Average	509	316	186	130	29

Source: Danmarks statistik, Balvig & Kyvsgaard 2006, Laudrup & Rahbæk 2006⁴³

Table 1 shows that, on average, out of 316 cases in a year in which a suspect was charged (sigtelse), only 130 led to a formal indictment (tiltale) and trial. This means that only approximately 40 per cent of cases where a suspect has been identified and charged by the police actually end in court. 60 per cent of these cases are closed by the prosecution and are never brought to trial.

2.4.3 IN MANY CASES CHARGES ARE NOT PRESSED

In 2006, 527 rapes were reported to the police, with the police pressing charges (sigtelse) in 367 cases (69.6 per cent). If rape is compared with other types of violent crime committed during 2006, the police appear to identify and press charges against a suspect in a far lower percentage of cases. In non-rape cases involving grievous violence, charges (sigtelse) were pressed in 81.3 per cent of cases.⁴⁴

In the early 1990s, the police most often failed to find and charge the perpetrators of blitz rapes. The police charged 29 per cent of suspected perpetrators of blitz rapes during 1990–1992, while the suspected perpetrators in 84 per cent of acquaintance rapes and 100 per cent of partner rapes were found and charged by the police. For obvious reasons the situation is probably similar today. Since in an acquaintance or partner rape the woman and the man know each other, it is obvious that the victim will be familiar with the identity of the perpetrator or possess personal information that will make it easier for the police to find him.⁴⁵

⁴² Balvig & Kyvsgaard 2006: IVAWS

⁴³ The figures for reported rapes do not correspond directly with cases decided by the prosecution or the court because some of these cases may have been reported the previous year. But the figures remain more or less consistent throughout the period

⁴⁴ Danmarks Statistik 2007

⁴⁵ National Police Commissioner 1998

The IVAWS shows that in 2003, 50 cases reported to the police never led to an official police report and were consequently not registered as rape cases by the police. 50 cases equates to approximately 10 per cent of the total number of women trying to report a rape to the police. No satisfactory explanation for the disappearance of these 50 cases is given. Amnesty International Denmark views this as a cause for concern. Amnesty International Denmark fears there is a risk that in some instances women are somehow wrongly discouraged from proceeding with their reports and this increases the level of impunity for perpetrators of rape while it exacerbates the lack of legal protection for their victims.

2.4.3.1 THE POLICE INVESTIGATION

The police and the prosecuting authorities state that they take rape cases very seriously. Such cases are often investigated by the most experienced police and the assessment of whether a case should proceed to trial is made, to a certain extent, by experienced prosecutors. Experts on rape in Denmark are also of the opinion that the police, in general, take rape cases very seriously.⁴⁶ The nature of the crime may make it difficult to find the perpetrator, as unlike other types of violent crime (e.g. assault), there are frequently no witnesses. There has been no proper investigation of the reasons for the police's failure in many rape cases to find and charge the suspected perpetrator and no in-depth academic research on the subject is available.

A qualitative study from 2006 focused on victims' experiences of their contact with the police and the judicial system. The study was based on interviews with women who had been raped and chosen to report the rape to the police. All the women found reporting the rape and their subsequent interrogation by the police to be an unpleasant experience, because they were forced to confront and talk about the sexual violence they had suffered. The women feared the police would not believe their stories. Many of the women felt that the police were questioning whether they were telling the truth. The study cites as an example one woman who was asked directly if she had made her story up because she was embarrassed about having had sex with the alleged perpetrator. Other women were asked about their sexual preferences, infidelity, clothing and behaviour. In some cases policemen commented on the woman's conduct, telling her that she should have known that if she went home with a man he would expect to have sex with her. The study concludes that many women felt they had suspicion cast on them by the police. The study also underlines the importance of the physical environment where the interrogation takes place. For example, one woman reports that she was interrogated in an office with the door standing wide open and she felt very embarrassed and ashamed that so many people could hear her story. On the other hand, the study also gives examples of women who felt that they were treated respectfully by the police. The study concludes that the police officer's attitude towards the woman is very important for her ability to explain what has happened, but that many women do not feel that they have been treated with respect by the police.⁴⁷

“The worst thing was that they (the police) indicated that they didn't believe me... The way they presented my story, as if I was in doubt about what happened. It was as if they tried to pressurise me several times and questioned whether I was sure that I reported what I really wanted to report. If it really was the truth that it happened the way I told. I had that feeling all the time and I felt very uncomfortable. I think it is fair enough that they inform me that they have to look objectively on things, but I think it is unfair that I had to be subjected to such mistrust and scepticism.”

Interview with a woman about her experience with reporting rape to the police. Source: Guldberg, A (2006)

⁴⁶ Telephone conversation with Karin Sten Madsen from the Centre for Victims of Sexual Assault at Rigshospitalet and researcher Camilla Laudrup

⁴⁷ Guldberg 2006

2.4.3.2 BLITZ RAPE SEEN AS “REAL” RAPE

Academic research from 2004 investigates the impact on the work of the police of whether a woman reports a blitz rape or an acquaintance rape. The police refer to blitz rapes as “real”, “easy”, “classic” or “uncomplicated”. These cases involve an assault by an unknown man on a woman that leaves visible marks, scratches, blood and other signs of physical violence. Several investigators and prosecutors state that this kind of rape, which makes the front page of tabloid newspapers, is comparatively easy to tackle for investigative purposes, because the credibility of the victim is not questioned in the same way as it is in acquaintance rapes. However, the reference to certain types of rape as “real rape” is not unproblematic, because the underlying assumption is that other types of rape are not real.⁴⁸ The problem is aggravated by the fact that only a minority of rapes committed are blitz rapes. As stated above, the majority of cases involve partner and acquaintance rapes where the parties already know each other. These cases are referred to by all informants as “the difficult ones”. There are rarely eyewitnesses. The man often admits that sexual intercourse took place, but claims it was voluntary, whereas the woman claims she was coerced. These conflicting statements are typical of such rapes, even though the victims sustain physical injury in more than half of the cases in which the perpetrator and the victim already know each other.⁴⁹

2.4.3.3 MEDICAL EVIDENCE

There are Centres for Victims of Sexual Assault in eight major towns in Denmark. The centres are located at hospitals and are open 24 hours a day. The centres provide medical and psychological aid to victims. If the woman has reported – or wishes to report – the rape to the police, forensic medical examinations will be performed. This ensures that medical evidence is collected by experienced personnel, enhancing the chances of finding the perpetrator and/or securing evidence of the crime that has been committed. DNA material is kept for three months in case the woman subsequently decides to report the rape.

The majority of rape victims sustain physical injuries. A study from 1998 showed that physical injuries were reported in 68 per cent of blitz rapes, 61 per cent of acquaintance rapes and 80 per cent of partner rapes.⁵⁰ This indicates that medical evidence of violence is present in more than half of rape cases. The fact that the majority (60 per cent in 2006) of rape cases where the alleged perpetrator has been identified never reach court because they are closed due to the state of the evidence raises questions as to whether the medical evidence is used appropriately.

2.4.3.4 FALSE REPORTS?

Studies show that police officers often draw attention to false reports when asked about rape. Police officers frequently tend to believe that women reporting (acquaintance) rape have simply had a ‘bad sexual experience’ or regret having had sex with a particular man.⁵¹

⁴⁸ Maskell & Toepstorff Poulsen 2004, Laudrup & Rahbæk 2006

⁴⁹ National Police Commissioner 1998, table B.2.3: registered physical injury: Blitz rape: attempted rape 44 per cent, rape 68 per cent; Acquaintance rape: attempted rape 50 per cent, rape 61 per cent; Partner rape: attempted rape 83 per cent, rape 80 per cent.

⁵⁰ National Police Commissioner 1998

⁵¹ Maskell & Toepstorff Poulsen 2004, Laudrup & Rahbæk 2006

In a study from 2006, women who had received psychological help following a rape also said they had felt mistrusted by the police when reporting the rape.⁵²

Recently three police districts published a study about false reports of rape based on the 58 rapes reported in the districts in 2005 and 2006. The study shows that the police found 21 per cent of the reports to be false in the sense either that this was admitted by the woman who had made the report or that the police pressed charges against the woman for making a false report. The study also showed that in 54 per cent of the cases included in the study, the police did not find that a rape had taken place, but also did not press charges for false reporting. According to police inspector Bent Isager-Nielsen, this 54 per cent often represents cases where a rape or a sexual offence might have taken place, but the facts do not come within the definition of rape in the Penal Code. Such rapes are typically committed by a person whom the victim has met prior to the rape.⁵³

Amnesty International Denmark is concerned about this high percentage of cases where the police believe the report to be 'false'. A 'false' report may actually hide a case where the woman is not willing to participate in the case any further for a variety of reasons that do not necessarily mean that the report was false in the sense that no rape took place or that the victim was lying. A victim might decide to try to pull out because she is afraid, does not want to hurt the perpetrator, becomes aware of the social or legal consequences of her report to the police or simply wants to forget all about it. Another reason could be the attitudes or behaviour of the police when the woman is reporting the rape. If the victim feels mistrusted or mistreated by the police, this could scare her from going through the whole reporting process. 'False' reports may also conceal cases where the police do not believe the woman because her recollection of the rape is poor, because she was very intoxicated, etc., or cases where the woman and the man already knew each other and the rape is not considered proven because it is 'word against word' and the police find the man more credible than the woman. The study from the three police districts shows that the police believed that 75 per cent of all women reporting rape were either lying or wrongly believed they had been raped. In the view of Amnesty International Denmark, if this is representative of the police view of rape, it suggests the existence of serious bias within the police and raises serious doubts as to the integrity and effectiveness of rape investigations. If the expectation among the police is that the majority of rape victims are either lying or mistaken about being raped, this will have a negative effect on the handling of rape cases. Under the Danish Penal Code, acquaintance rape, partner rape and blitz rape are all equally punishable and should all be investigated and perceived as rapes.

2.4.4 THE MAJORITY OF CHARGES IN RAPE CASES ARE DROPPED

In 2006, 311 rape cases in which charges had been pressed by the police (sigtelser) were decided by the courts or the public prosecutor. Of the 311 cases in which the police had pressed charges against an alleged perpetrator, approximately 40 per cent were decided in court while 60 per cent were closed by the public prosecutor on the grounds of "insufficient evidence" and never brought to trial. The police or the public prosecutor decided not to indict the alleged perpetrator formally in 183 cases, charges were withdrawn in three cases

⁵² Guldberg 2006

⁵³ Politiforbundet 2007 (<http://www.politiforbund.dk/show.php?sec=1&area=4&show=4957>)

and 125 cases were brought to trial. Thus the statistics for 2006 show the same pattern as that presented in other research papers on rape: in the majority of cases where the police have found and pressed charges against an alleged perpetrator, the case is closed before it reaches court.

2.4.4.1 INSUFFICIENT EVIDENCE OR THE STATE OF THE EVIDENCE

Most of the approximately 200 cases each year where reported rapes do not result in a trial (out of the approximately 300 rapes reported each year where the alleged perpetrators are identified) are closed due to the “state of the evidence”, cf. Section 721, 1(2) of the Act on Administration of Justice, “...when it is not anticipated that pressing further charges will result in the accused being found guilty”. Compared to other violations of the Danish Penal Code, e.g., criminal assault and other sexual crimes, the proportion of rape cases that are closed is very high.⁵⁴ A comparison shows that in 2000, the proportion of rape cases discontinued due to the state of the evidence was over 60 per cent, while the figures for all sexual offences and all violent crimes discontinued on such grounds were approximately 40 per cent and 25 per cent respectively. Consequently, rape cases are discontinued on the basis of the “state of the evidence” significantly more frequently than cases involving other crimes.⁵⁵

According to a recent study, acquaintance and partner rape cases are particularly likely to be closed on these grounds.⁵⁶ This is all the more remarkable in that a vast majority of the women raped by an ex-partner or an acquaintance are recorded as sustaining physical injuries. This means that, also if blitz rapes are included, there will be physical evidence in the vast majority of rape cases.⁵⁷ This fact is obviously not reflected in the current practices where the majority of cases are closed before they go to court mainly because of the ‘state of the evidence’.

2.4.4.2 INFORMAL CONSIDERATIONS

There is an established legal framework according to which the police and the prosecution should proceed when handling rape cases. The police should investigate the case objectively from all angles, with aspects to be considered including past history, scientific evidence, how soon the victim reported the rape to the police and the significance of the evidence. Subsequently the prosecutor decides whether or not to formally prosecute and bring the case to court.

However, surveys indicate that, in practice, it is the way in which the police officer in charge applies this framework to the situation at hand that decides the future of the case. When determining whether the sexual encounter was entered into voluntarily or as a result of coercion, the credibility of both the accused and the victim, the likeliness of the explanations given by the parties etc., the police officer in charge, as well as the prosecutor assigned to the case, exercise a series of subjective analyses and assessments that decide the outcome

⁵⁴ Peter Kruize 2004.

⁵⁵ Peter Kruize 2004. In 2000 the acquittal rate for violent crimes and rape was almost the same.

⁵⁶ Laudrup & Rahbæk 2006

⁵⁷ National Police Commissioner 1998, Physical injuries reported: Blitz rapes: rape 68 per cent, attempted rape 44 per cent; Acquaintance rape: rape 61 per cent, attempted rape 50 per cent; Partner rape: rape 80 per cent, attempted rape 83 per cent

of the case. Such analyses and assessments of the evidence are, of course, inevitable.⁵⁸ In Amnesty International Denmark's opinion, the problem lies with the informal nature of such deliberations, as this introduces an element of arbitrariness and uncertainty into how and on what grounds a decision is reached.

In Denmark there is no watertight separation between the police and the prosecuting authorities.⁵⁹ Amnesty International Denmark finds the informal, non-transparent dialogue between the police and the prosecution regarding the assessment of evidence, including the assessment of "appropriate behaviour" in respect of the victim and the accused, a cause for concern. Informal discussions between the police and the prosecution "over a cup of coffee"⁶⁰ concerning the credibility of the victim and the alleged perpetrator, and whether the case will hold up in court or should be closed, do not uphold the principle of due process of law. Amnesty International Denmark is concerned that this gives rise to the possibility that the assessment of the individual police officer who took down the statements may prove decisive in determining whether the prosecution institutes proceedings or closes the case. These informal considerations make it very difficult to achieve transparency in relation to decisions in rape cases.

2.4.4.3 SUBJECTIVITY, STEREOTYPES AND PREJUDICES

The assessment of credibility plays a critical role in determining the outcome of reported rapes. Although such assessments are based on experience, they are inevitably subjective and are influenced by the police officer's and the public prosecutor's pre-existing norms and values pertaining to men's and women's sexual behaviour.

It is considered relatively easy to prove that someone who hits another person in the face realises he is committing a violent act or a person who breaks into someone else's car and drives away knows he is committing theft. But the question of assessing whether a man actually knew, or should have known or recognised, that a given sexual act was not consensual on the part of the woman, has traditionally involved a number of non-statutory, informal considerations regarding men's and women's sexual behaviour. This problem particularly affects cases where the parties are already known to each other.

In cases of blitz rape, the conditions for punishment are fulfilled once the perpetrator has assaulted the victim, whom he did not know beforehand, and has obtained sexual intercourse or other sexual acts through the use or threat of violence etc. The act itself demonstrates that the perpetrator's intention was violence and rape – he was aware that he was about to obtain sexual intercourse unlawfully. Without further proof it is reasonable to conclude that the perpetrator must have realised that, by beating or threatening the victim, he was acting contrary to the woman's wishes and thereby unlawfully obtaining sexual acts.

In cases of acquaintance rape, there is often agreement between the victim and the accused as to whether or not sexual acts took place. Disagreement arises when the accused

⁵⁸ Laudrup & Rahbæk 2006, Maskell & Toepstorff Poulsen 2004

⁵⁹ The lack of separation between the police and the prosecuting authorities is a general cause for concern. See Amnesty's report on Police Accountability in Denmark, AI Index 18/001/2008

⁶⁰ As described by public prosecutor Michael Jørgensen at a hearing in the Danish Parliament, March 14, 2007.

claims that the sexual acts were consensual, while the woman claims that the activity was non-consensual and that she only submitted to intercourse because she was more afraid of other forms of violence than for the sexual violence itself.

All representatives of the police and the public prosecutor who participated in a study from 2006 about attrition rates in Denmark supported the principle that a woman has the right to say no at any given time on any given occasion. However, when the police and the prosecuting authority have to prove that a criminal act has been committed, this principle does not go unchallenged. When assessing whether a man ought to have known that sex was not consensual on the part of the woman, a number of different views, attitudes and assumptions come into play.⁶¹

Certain circumstances are not perceived as supporting the notion that the man ought to have known or recognised that this was coercive sex. Examples mentioned by police officers included situations where, prior to the alleged rape, the woman had been flirtatious, played up to the man, voluntarily gone home with him, or had previously engaged with him in consensual sex. Cases involving these types of circumstances are often closed because it is found that the man was under (could be perceived as being under) an excusable misconception – or was honestly mistaken – about the woman’s attitude to having sexual intercourse with him. In a manner of speaking, the man is perceived as a victim of the woman’s “negligence” (because of her “provocative” clothing or conduct, she fails to make it absolutely clear to the man that she does not anticipate having any sort of sexual contact with him and so neither should he).

As one police officer in the study from 2006 puts it, “... when you go out and talk to the witnesses you find she was dancing on the tables and throwing her clothes around the pub. That doesn’t justify the fact that she was raped, absolutely not. But her behaviour went a long way towards giving those guys certain hopes or expectations.”⁶²

The same study points out that it is the individual police officer’s report in the case file that largely determines the relative credibility of the victim and the accused and it is up to the individual police lawyer at the prosecutor’s office to assess whether the man may indeed be assumed to have been honestly mistaken. In most cases the result is a decision to close the case.

2.4.5 EXAMPLES OF RESTRICTIVE PROSECUTION PRACTICES

A study from 2006 showed that, in the rape cases examined, the police and public prosecutor, in their efforts to take into account all circumstances that could possibly excuse the alleged perpetrator and exempt him of any criminal intent to rape the woman, seemed to fail to strike a balance between the protection of the woman’s rights (to redress and reparation and to be protected against rape) and the protection of the man’s rights to be presumed innocent until proven guilty and to fair treatment by the police and the prosecution which will lead to a fair trial.⁶³

⁶¹ Laudrup & Rahbæk 2006

⁶² Laudrup & Rahbæk 2006

⁶³ Laudrup & Rahbæk 2006

2.4.5.1 ESTABLISHING WHETHER “IT WAS VOLUNTARY OR NOT”

The study found that if the parties already knew each other, and perhaps had even had a sexual relationship previously, this was taken to mean that there was a certain likelihood either that the sexual contact was voluntary or that the man believed it to be so. The man’s intention is defined in relation to the woman’s behaviour and the credibility of the man’s account is made dependent on, or directly inferred from, the behaviour ascribed to the woman.⁶⁴

Such considerations may also apply where the reported assault did not cause the woman to run screaming from the man in order to reach safety as quickly as possible. Women who are victims of acquaintance and partner rapes typically do not behave in this way and their ‘failure’ to do so is a common ground for not pressing formal charges in court. The circumstances surrounding acquaintance rape and partner rape lack credibility almost by definition and consequently cause problems in terms of the grounds for pressing charges in court. Such considerations recur in prosecutors’ closing statements when explaining the grounds for not pressing charges:

“... I have also attached importance to your long-standing familiarity with XX...”

“... you stated yourself that, two days before the reported rape was supposed to have taken place, you voluntarily had intercourse with XX...”

“In addition, the two friends who accompanied you to town state that you were the one who was playing up to XX and they understood the situation to mean that something was bound to happen between you when you got home.”

(Excerpts from closing statement to the aggrieved party, 2004.)⁶⁵

2.4.5.2 STEREOTYPES ABOUT MALE SEXUALITY

Case studies imply that women’s and men’s behaviour and sexuality are still the object of prejudice. The notion still exists of a man as a testosterone-driven machine whose uncontrollable sexual urges, once released, cannot be reined in.⁶⁶ Amnesty International Denmark views this prejudice as dangerous as, quite apart from implying that men do not have the mental or physical ability to control their desires, it puts (part of) the responsibility for rape on the victim, which undermines the legal protection of women’s right to reparation and compensation (and ultimately, women’ right not to suffer violation of their physical and mental integrity).

Experts from the Joan Sisters⁶⁷ and the Centres for Victims of Sexual Assault still encounter women who have been made to feel responsible for rape because the men found them so irresistible that being subjected to a sexual act against their will was implied to be justifiable. A psychologist tells of a case where the perpetrator’s explanation was: “What she says cor-

⁶⁴ Laudrup & Rahbæk 2006

⁶⁵ Laudrup & Rahbæk 2006

⁶⁶ Laudrup & Rahbæk 2006

⁶⁷ The Joan Sisters provide voluntary counselling for women who have been subjected to violence, rape, incest or sexual harassment.

responds to what I experienced, but she was just so gorgeous I couldn't control myself, although I did hear her say no." This case was closed because the woman's resistance could not be proved. The Joan Sisters have similar experiences with male arguments such as: "She was just so exciting and she came across so strong that I couldn't control myself."⁶⁸ Amnesty International Denmark finds that, in addition to justifying men's apparent lack of reasonableness and self-control, such explanations are also based on another stereotype, i.e., the woman as a basically sexualised being. In other words, the woman's actions and behaviour are interpreted within a sexual frame of reference in relation to which any contact with a man can be understood. It is this perspective that gives high heels, short skirts and plunging necklines the sexual connotations that come into play when the police and the prosecution examine the alleged perpetrator's criminal intent or, on the contrary, his misconception that the woman was receptive to his advances.

2.4.5.3 CRYING DOES NOT ALWAYS MEAN NO

The question of resistance on the part of the woman is another example of the way in which circumstances and events provide room for interpretation when determining whether it was probable that the man knew, or ought to have known, that the sexual act was coercive rather than consensual. One prosecutor in his closing statement, in which he gave the grounds for closing a case of partner rape, wrote to the woman, "You further stated that you neither resisted nor said anything, although you did cry." In this case the prosecutor apparently did not consider crying to be an unambiguous indication that the woman did not consent to the sexual act, whereas another prosecutor emphasised that, in general, he would press charges on the basis of crying: "... if she cried that should clinch it in terms of evidence."⁶⁹

In the view of Amnesty International Denmark, these examples show such variation in prosecution practices that they raise questions concerning the due process of law.

2.4.5.4 AT THE RIGHT PACE AND IN THE APPROPRIATE STATE OF MIND

Another factor that is difficult to pin down is the way the woman behaves when she files the complaint. Does she appear upset? Does she cry? Does she seem afraid? The police have certain expectations concerning the delivery of a truthful account: i.e., the information should be supplied at an appropriate pace and the victim should appear to be in an appropriate state of mind.

The case file contains a record of the police officer's first impression of the victim and this record remains on file as the case progresses. Consequently, these observations contribute to the prosecutor's assessment of the case. The following is an example of such impressions and observations:

"During a brief inspection of the aggrieved party she appeared sober – extremely upset and emotionally out of balance due to the incident since she was trembling violently all over – her teeth were chattering loudly – and at times she had difficulty expressing herself in words."

⁶⁸ Laudrup & Rahbæk 2006

⁶⁹ Laudrup & Rahbæk 2006

“She was deemed sober, lucid and aware of what was going on, but very tired and clearly affected by the course of events: when she had to state the details of the rape she felt sick and had to vomit” (police report, 2004).⁷⁰

Studies show that there are clear expectations as to what constitutes normal behaviour and a normal reaction to being subjected to – or committing – a sexual assault. Such expectations establish a template for appropriate or likely behaviour. As one prosecutor explains concerning when the testimony of the victim seems credible:

“... if the testimony comes at a reasonable pace, it can come too slowly and hesitantly, which raises doubts as to whether the account is actually true. It can also come too quickly and can appear rehearsed. But if there is a reasonable balance, and, I was just about to say, if you’re a victim – please don’t take this wrong – you cry in the right places.”⁷¹

2.4.5.5 LACK OF FORMALISED ASSESSMENT OF NON-STATUTORY AND INFORMAL CONSIDERATIONS

Amnesty International Denmark is concerned about the lack of formalised assessment of non-statutory and informal considerations in the handling of rape cases. The way the law currently operates in practice, particularly in relation to the discontinuation of cases, implies an acceptance that a situation may exist where an averagely perceptive and reasonable man may honestly be mistaken in believing that a woman genuinely wants to have sex with him – in some cases even though he has demonstrably used violence against her.

In Amnesty International Denmark’s opinion such an assumption is profoundly questionable. Its practical effect is to make the victim bear responsibility for a crime committed against her, unlike victims of other offences, who are not usually blamed for crimes perpetrated against them. As a first step towards addressing and eradicating such attitudes, it is absolutely necessary that the assessment of whether a perpetrator acted in ‘good faith’ should be formalised and transparent, so that a professional attitude is taken to the evidence when investigating and prosecuting crimes committed in all circumstances. Amnesty International Denmark calls for formal assessments that are objectified to the greatest possible extent in respect to all such decisions on whether or not to proceed with a prosecution. Amnesty International Denmark views this as necessary for ensuring that decisions are not based on an individual police officer’s or prosecutor’s personal view as to whether the woman should bear responsibility for the man’s mistaken belief that the woman was receptive to his sexual advances.

2.4.5.6 ASSESSMENT OF THE PARTIES’ CREDIBILITY – CONFLICTING TESTIMONIES IN THE LIGHT OF PHYSICAL EVIDENCE

Amnesty International Denmark views the need for formalised assessments of non-statutory and informal considerations as all the more pressing when taking into account the fact that, where the rape has been committed by an ex-partner or an acquaintance, around 80 per cent and 60 per cent respectively, of the victims have physical injuries.⁷² It is important

⁷⁰ Laudrup & Rahbæk 2006

⁷¹ Laudrup & Rahbæk 2006

⁷² National Police Commissioner 1998, Physical injuries reported: Blitz rapes: rape 68 per cent, attempted rape 44 per cent; Acquaintance rape: rape 61 per cent, attempted rape 50 per cent; Partner rape: rape 80 per cent, attempted rape 83 per cent

to underline that lack of physical injuries does not mean that rape has not taken place or that the sexual act was not coerced through other coercive means than violence. But still the existence of this type of objective evidence clearly suggests that it is wrong that such a large proportion of such cases are closed before they come to trial on the grounds that they involve allegations and counter-allegations unsupported by technical evidence. The only possible explanations for closing a reported case of acquaintance or partner rape on the grounds of insufficient evidence, where the woman displays physical injuries, are either an overall reluctance to prosecute men for these types of rape or an unspoken assumption that the woman's physical injuries are not a sign of assault or abuse, but rather evidence that the woman derived sado-masochistic pleasure from violence – “she likes it rough”. In Amnesty International Denmark's view this raises questions concerning the way in which medical evidence of physical abuse is applied in the handling of rape cases. If more than half of the victims bear physical marks of violence, it is worrying that the majority of cases where the alleged perpetrator is identified are closed because of the state of the evidence. If such physical evidence does not lead to the prosecution of the alleged perpetrator, it would seem that the police and prosecution, when assessing the woman's credibility, rely too much on an unspoken assessment of her perceived “moral character”. Amnesty International Denmark is concerned that reported attitudes and prejudices within the police and prosecuting authorities might allow prejudices against women who deviate from socially accepted behaviour (too flirtatious, too intoxicated, too many sexual partners etc.) to outweigh the medical evidence of violence.

2.4.6 THE RAPE CASE IN COURT

In 2006 the courts decided 125 cases of rape. 73 cases resulted in prison sentences, 19 were recorded as ending in ‘other decisions’, including 11 sentences of psychiatric treatment, and 31 ended in acquittals.⁷³ Approximately 75 per cent of rape cases decided by the courts ended with a guilty verdict and the defendant was sent to prison or suffered other sanctions. The defendant was acquitted in 25 per cent of cases.⁷⁴ In 2006, the acquittal rate for rape was higher than for other types of violent crimes, e.g. the rate for crimes of violence was 12 per cent.⁷⁵

The director of public prosecutions has tracked the levels of sanctions applied in rape cases since the law was amended in 2002 to increase penalties for rape. Reports dating from 2005, 2006 and 2007 conclude that these increases have led the courts to impose more severe sentences. The public prosecutor's reports track sentences in cases involving rape pursuant to section 216, with the cases being sub-divided into blitz rapes, acquaintance rapes and partner rapes. The reports show that the courts take account of the relationship between the perpetrator and the victim when determining the sentence. If the woman and the man are or were partners or already knew each other, this fact is often viewed as a mitigating circumstance. The most severe sentences are imposed in cases of blitz rape,

⁷³ One case was recorded as concluding with a fine. According to the Ministry of Justice this is an error, since rape is not punishable with a fine in Denmark. Presumably the defendant was either acquitted of the rape charge or the charge was withdrawn and the fine was imposed for another crime being tried at the same time.

⁷⁴ Danmarks Statistik 2007, Statistics on rape cover sections 216 (rape/sexual intercourse), 224 (rape/other sexual acts), 217 (other unlawful compulsion than violence) and 221 (sexual intercourse obtained by deception).

⁷⁵ Danmarks Statistik 2007

where the woman and the man were not already acquainted. The most important issue for determining the severity of the sentence is the level of violence used during the rape.⁷⁶

In 2006, convictions for blitz rape typically resulted in prison sentences of between two-and-a-half and three years, while one aggravated rape that included attempted murder resulted in a nine-year prison sentence. Sentences for attempted blitz rape varied from eight months' to three years' imprisonment (including a suspended prison sentence of nearly one year from a previous conviction). Acquaintance rapes were punished with prison sentences that varied from one year to three years and nine months, while attempted acquaintance rapes were punished with prison sentences that varied from nine months to one-and-a-half years.⁷⁷ Sentences for partner rapes varied from one years' imprisonment to two years and nine months. There were no convictions for attempted partner rape during the time covered by the report. It is difficult to compare the cases as the circumstances and levels of sexual violence are very varied. Acquaintance rapes and partner rapes generally result in milder sentences than blitz rape and more frequently involve suspended sentences and sentences (although only in combination with a prison sentence) to community service.⁷⁸

Amnesty International Denmark is concerned that the relationship between the victim and the perpetrator affects the severity of the sentence. Where the perpetrator is found guilty of rape, his relationship with the woman – including any previous consensual sexual relationship – should have no impact on the sentence imposed by the court. The woman's right to sexual self-determination has been violated regardless of her relationship with the man who forced her to have sex with him. In Amnesty International Denmark's view, the reduced sentences given to perpetrators who already knew their victims may indicate that the law's historic preoccupation with the protection of morality and marital status is still reflected somehow in court practice. The severity of the sentence should be determined by the violation that took place, not the relationship between the perpetrator and the victim.

Amnesty International Denmark recommends that the director of public prosecutions continues producing annual reports on the level of sentencing in cases of rape and that importance should be attached to differences in the levels of sentencing between blitz rapes and other forms of rape.

2.4.7 AMNESTY INTERNATIONAL DENMARK'S MAIN CONCERNS

- Attrition rates are high in Denmark with only one in five rape cases ending with a conviction in court, resulting in a corresponding lack of legal protection and redress for Danish rape victims.
- Up to 10 per cent of reported rapes never become the subject of a formal police report but are closed before a formal police investigation has even started.
- Studies of police attitudes suggest the existence of suspicion and bias towards girls and women who report rape and a lack of knowledge about the appropriate handling of victims.

⁷⁶ Director of public prosecutions, June 2007

⁷⁷ There was also one sentence of six years' imprisonment imposed on a father who had raped his daughter during a seven-year period from when she was eight years old until she was 15. This sentence is excluded, since the offence is not typical of the crimes that form the focus of this report.

⁷⁸ Director of public prosecutions, June 2007

- 60 per cent of rape cases where an alleged perpetrator has been charged by the police are closed before they reach court due to the 'state of the evidence'.
- Blitz rapes are perceived as 'real rapes', while a rape committed by a person known to the woman is treated with more suspicion. This makes it more difficult for the woman to 'prove' she has been raped and have her case decided in court.
- Statistics concerning physical evidence suggest that cases are closed because of the 'state of the evidence' (because the parties' accounts of the incident are contradictory) even where there is objective medical evidence as the victims bear the physical marks of violence.
- There is a lack of formal assessment in respect of the relative credibility of the victim and the accused, as well as a lack of transparency because of informal communications between police and prosecution.
- Gender-based attitudes, stereotypes and prejudices contribute to the assessment of the relative credibility of the victim and the perpetrator. The lack of transparency allows these subjective assessments to remain unchallenged.
- The relationship between the victim and the perpetrator prior to the rape is taken into account when the courts decide the severity of the sentence (punishment). The seriousness of the violation that has been carried out should be the only determining factor.
- Many of those who reported rape are girls under 18, their complaints should be treated with special care and attention due to their age.

2.5 SUPPORT FOR VICTIMS OF RAPE

This subchapter examines the legal status of the victim as a witness and her rights to legal counselling and medical and psychological assistance.

2.5.1 LEGAL STATUS AND COUNSELLING

Denmark led the way in 1987 when rape victims were given the right of access to a court-appointed lawyer.⁷⁹ The victim is entitled to speak to the lawyer before the first police interrogation and to have the lawyer present during the interrogation. The lawyer is permitted to see the victim's statement to the police etc., but not evidence relating to the alleged perpetrator. The court-appointed lawyer is also present in court where his or her role is to support the victim and ensure adherence to the procedural rule pursuant to Act on the Administration of Justice (section 185, paragraph 2) that limits the presentation of evidence regarding the woman's previous sexual conduct. This procedural rule came into force about 20 years ago and introduced a code of conduct in rape cases whereby the woman's behaviour and past sexual conduct are not permitted to be used as evidence against her. In Denmark, the rape victim's status is that of a witness – she is not a party to the case against the accused. The state is responsible for the investigation and judicial handling of the case. The woman's status as a witness means that she must participate in the investigation as necessary and that she can be punished for perjury. It also means that the woman's lawyer cannot make statements on behalf of the woman, put questions to the accused or in any other way take part in the proceedings. The lawyer can request the prosecutor to present additional evidence, but the prosecutor alone decides which evidence is to be presented to the court.

The victim is not permitted to be present in court while the accused is testifying, but will normally be allowed to remain in court after giving her own testimony. Where the case is heard by the court in private due to the age etc. of the accused or for reasons of public order, the victim is normally allowed to remain in court during the proceedings. The identity of the rape victim is protected in the sense that her name, address etc. is not made public. If the victim so requests, her testimony may take place in private. The victim is also entitled to request that the accused is not present in court while she is testifying.

The police and the prosecuting authorities are obliged to inform the victim of her rights, of the course the case is expected to take and of developments in the case. The victim has the right to be informed if the charges are withdrawn (tiltalefråald), if the charges are dropped (påtaleopgivelse), if the date for the court ruling is set (berammet) and about the court's decision in the case. The victim has the right to be informed about the possibility of appealing decisions taken in the case by the prosecution or the court.⁸⁰ The Ministry of Justice has produced a leaflet informing rape victims about these rights.

2.5.2 HELP AND SUPPORT FOR SURVIVORS OF RAPE AND SEXUAL VIOLENCE

There are Centres for Victims of Sexual Assault in eight major towns in Denmark. The centres are located at hospitals and are open 24 hours a day. The centres provide medical and psychological help for victims. If the woman has reported – or wishes to report – the rape to the police, a forensic medical examination will be performed. This ensures that medical evidence is collected by experienced personnel, improving the chances of finding the perpetrator and/or securing evidence of the crime. DNA material is kept for three months in case the woman subsequently decides to report the rape.

The medical examination and any necessary treatment will be carried out by female physicians. The victim will be offered consultations with psychologists and social workers affiliated to the centre and may rest or spend the night there. All examinations and treatments are free of charge and confidential. Relatives also have the opportunity to receive counselling at the centre.⁸¹

2.6 POLITICAL LEADERSHIP IN RELATION TO SEXUAL CRIMES AGAINST WOMAN

The Ministry for Gender Equality's "Action Plan to Stop Men's Violence against Women and Children 2005–2008" contains sections on sexual violence. There is, however, no separate action plan concerning sexual assault.

A number of initiatives aimed at providing information about and raising awareness of sexual violence have been launched in Denmark in recent years. The Danish Crime Prevention Council has launched a project that targets young people and aims, through raising

⁸⁰ Act No. 517 of 6 June 2007. (Lov om ændring af retsplejeloven og retsafgiftsloven. (Forbedring af retsstillingen for ofre for forbrydelser), fremsat ved lovforslag L 128, 31 January 2007)

⁸¹ The Victim Counselling Service, which is independent of the authorities, operates in all police districts. All personnel work on a voluntary basis. There are also a number of private organisations, smaller centres and self-help groups that provide help and support for victims of rape. Victims also have a right to publicly funded psychological help.

awareness and education, to teach young people how to avoid situations that might lead to rape or other forms of sexual assault (www.sikkerflirt.dk). Educational material for young people about rape can be found at www.sandhedogkonsekvens.dk. In addition, a project has been launched to inform women from ethnic minorities about sexual violence and their rights (www.loftsloret.dk).

The Centres for Victims of Sexual Assault in Copenhagen and Århus are national resource centres that conduct research and develop standards, procedures and guidelines. Personnel at the centres provide information and training to professionals and others on the medical, psychosocial and judicial/legal aspects of rape. The centre in Copenhagen also instructs trainees from the police academy.

In Amnesty International Denmark's view, the continuing lack of legal protection for rape victims in Denmark suggests a need for a comprehensive action plan that directly addresses sexual violence. Such a plan needs to target the entire attrition process, addressing issues such as: prevention, lack of reporting, the reporting process, police handling of victims, police investigations, prosecution practices and court practices. As this report demonstrates, the lack of legal protection for rape victims is a very complex problem. Rather than adding sections on sexual violence to the existing Action plan to stop men's violence against women, Amnesty International Denmark argues that a specific action plan to prevent and combat rape and other forms of sexual violence is needed. As demonstrated in this report rapes are committed in intimate relationships, but also occur in other areas of women's private and public life. A specific action plan will ensure that sexual violence is prevented in all areas of women's lives.

Amnesty International Denmark urges the Danish government to take effective measures to eliminate the gender-based prejudices and practices that constitute a barrier to the prevention, as well as the reporting and judicial processing, of cases of sexual violence against women and girls. Measures aimed at the prevention of sexual violence should be included in an action plan to prevent and combat rape and other forms of sexual violence and should cover the education of children and young people about the importance of mutual respect in relationships, as well as the promotion of equality in relationships through public education, all within the context of working towards substantive equality between men and women in all areas of life.⁸²

2.7 AMNESTY INTERNATIONAL DENMARK'S RECOMMENDATIONS

Amnesty International Denmark recognises the difficulty of assessing the evidence in many rape cases. Especially in cases where the woman and the man already knew each

⁸² Article 5a CEDAW: States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

other, there is a risk that the police and prosecuting authorities' case handlers may resort to basing their decisions on non-statutory, informal (even biased) considerations regarding perceived norms in respect of men's and women's sexual behaviour.

The effect of current practices in Denmark is to prevent the majority of rape cases being tried in a court of law. Crucial decisions are made in a very large number of cases without the transparency that would be provided by a trial. Case handlers' assessments and estimates as to what constitutes "likely sexual assault" and "credible evidence" are decisive for cases' passage through the system. Consequently, far too few rape cases are currently brought to trial – including cases where the woman has sustained injuries and there is medical evidence of violence. As a result, Denmark is failing to live up to its human rights obligations to protect women against rape, investigate rape crimes, prosecute those responsible and provide compensation to victims.

Amnesty International Denmark therefore believes that greater transparency is needed in the handling of rape cases by the police and in the legal system if Denmark is to effect genuine improvement in the legal position of rape victims and their opportunity for legal redress. Amnesty International Denmark makes the following recommendations to improve the legal status of women who have been subjected to sexual assault in Denmark:

GENERAL

AMNESTY INTERNATIONAL DENMARK RECOMMENDS THE GOVERNMENT TO DEVELOP AND ADOPT A COMPREHENSIVE ACTION PLAN TO PREVENT AND COMBAT RAPE AND OTHER FORMS OF SEXUAL VIOLENCE.

Only a small proportion of rapes committed in Denmark are reported to the police and only a minority of these result in a court ruling, despite various measures taken to enhance the legal protection of rape victims. This situation indicates a need for a holistic integrated action plan to tackle the complexity of the problem. Such a plan should include both preventive measures, including training and education to change discriminatory attitudes towards women in society, and concrete measures targeted at the legal system to reduce the attrition rate in rape crimes.

LEGAL FRAMEWORK

AMNESTY INTERNATIONAL DENMARK RECOMMENDS THAT NON-CONSENSUAL INTERCOURSE WITH A VICTIM IN A HELPLESS STATE SHOULD BE CONSIDERED RAPE PURSUANT TO THE PENAL CODE

Section 218, part 2 should be included within section 216. Abuse of a woman who is in a helpless state should be defined as rape regardless of the reason for the victim's state and regardless of any (marital) relationship between the victim and the perpetrator. This will enhance legal protection against rape, broaden the scope of the legislation and bring it into line with Swedish and Norwegian law. The approach adopted by the International Criminal Court (ICC) does not require the victim to have been subjected to force, but defines rape as being committed whenever there are coercive circumstances present that undermine

the victim's ability to give her genuine consent.⁸³ This approach is also evident in the ruling by the European Court of Human Rights (ECHR) in the case of *MC vs. State of Bulgaria*.⁸⁴ According to the court's judgement, states are obliged to punish and prosecute all non-consensual sexual acts, including cases where the victim did not put up physical resistance.⁸⁵

AMNESTY INTERNATIONAL DENMARK RECOMMENDS THAT DANISH RAPE LEGISLATION SHOULD BE AMENDED TO MAKE IT CLEAR THAT ITS STARTING POINT IS THE PROTECTION OF THE VICTIM'S RIGHT OF SEXUAL SELF-DETERMINATION AND BODILY INTEGRITY

The Danish legislation on rape and other sexual offences should be thoroughly revised and amended to ensure that its core is the protection of the individual's right to sexual self-determination and bodily integrity. More concretely, Amnesty International Denmark recommends:

- provisions on rape and other sexual crimes should be moved from the chapter entitled 'Vice Crimes' (Forbrydelser mod kønssædeligheden) in the Penal Code to the chapter entitled 'Crimes Against Life and the Person' (Forbrydelser mod liv og legeme). Alternatively, the term 'vice crime' should be replaced by 'sexual offences' or 'sexual crimes';
- the references to marital status should be deleted in sections 218 and 220;
- section 227 should be deleted. Marriage should not reduce sentences for rape or other sexual offences.
- section 221 on obtaining sexual intercourse by deception should be deleted both because of its reference to marriage and because it suggests that the law is aimed at protecting the woman's virtue.

LEGAL JOURNEY

AMNESTY INTERNATIONAL DENMARK RECOMMENDS THAT MORE RAPE CASES SHOULD BE BROUGHT TO TRIAL IN ORDER TO SUBMIT THE EVIDENCE OF THE VICTIM AND OF THE ACCUSED TO A COURT OF LAW

The fact that so many cases of reported rape never come before the courts in Denmark is a breach of human rights. Where a particular crime that is chiefly committed against women rarely results in a charge or a conviction, this constitutes discrimination against women and a limitation on their right to a fair trial (effective remedy). Acquaintance and partner rapes are particularly unlikely to come before the courts.

⁸³ ICC, Rules of Evidence and Procedure, Rule 70:

d) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or by taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent,

e) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent.

f) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence

⁸⁴ *M.C. vs. Bulgaria* (application no. 39272/98). 4 December 2003

⁸⁵ For more information: 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

The special nature of the crime of rape means that the assessment of the relative credibility of the testimonies of the victim and the accused is crucial to the outcome. It is absolutely necessary for the assessment of whether a perpetrator acted in 'good faith' to be formalised and transparent, so that crimes committed in all circumstances may be investigated and prosecuted with a professional attitude to the evidence. The specially nuanced, sexual nature of the crime of rape requires the non-statutory and informal assessments of the woman's and the man's credibility etc. to be scrutinised by a court of law. This is also necessary to ensure that such assessments are not based on subjective views concerning the woman's responsibility for the man's mistaken belief that the sexual activity was consensual.

This is not to say, of course, that all cases should automatically be brought to trial. The right of the accused to a fair trial should remain a cornerstone of Danish law. However, both the victim and the accused are entitled to a fair trial and these two interests are not necessarily mutually exclusive. When a case is brought to trial, the basis for the court's decision is clarified, which is evidently in the interests of both the accused and the victim. Both the woman and the man are given the opportunity to testify. It is then up to the court to judge, for instance, whether the woman's testimony provides sufficient basis for a conviction. However this assessment should take place with the transparency provided by the careful scrutiny of a court hearing. Amnesty International Denmark therefore recommends that rape cases should be assessed in court to the greatest extent possible.

AMNESTY INTERNATIONAL DENMARK RECOMMENDS GREATER TRANSPARENCY IN THE AUTHORITIES' ASSESSMENT OF THE MAN'S AND THE WOMAN'S TESTIMONIES, PRECISELY BECAUSE SUCH INFORMAL, NON-STATUTORY ASSESSMENTS ARE OFTEN DECISIVE IN RAPE CASES. THE GROUNDS FOR CLOSING THE CASE SHOULD BE STATED IN DETAIL.

The mere possibility that the police and prosecuting authorities may undertake an informal assessment of the relative credibility of the testimonies or of the victim and the alleged perpetrator is problematic for the right to due process of law. One way of addressing this issue would be to implement an absolute separation between the police and the prosecuting authorities. Considering the high rate of rejection of complaints concerning rape cases that are not brought to trial, this would also boost confidence in the public prosecutor's impartiality in supervising the lawfulness of the police. Recent reforms to the police and the prosecuting authorities did not, however, bring about any change to the particular structure of the Danish legal system and did not result in any separation between the police and the prosecuting authorities at a local level.

Amnesty International Denmark therefore recommends that steps should be taken to ensure greater transparency, particularly in assessing the man's and the woman's evidence and their relative credibility, since it is precisely these informal and non-statutory assessments that are decisive to the future progress of rape cases. When the public prosecutor chooses not to prosecute in so many cases, it should, as a minimum, make available a clear basis for its decision with the arguments presented in a degree of detail commensurate with a court decision. Where there is medical evidence of violence, the public prosecutor should offer a thorough explanation as to why this did not result in a decision to prosecute the alleged perpetrator.

AMNESTY INTERNATIONAL DENMARK RECOMMENDS THE ESTABLISHMENT OF REPORTING PROCEDURES IN RESPECT OF ALL CLOSED CASES TO EXPLAIN THE GROUNDS FOR NOT PRESSING FORMAL CHARGES IN COURT

Amnesty International Denmark recommends the establishment of a reporting procedure or body to report on all closed cases and the grounds for not pressing formal charges in court. This would enable the gathering of knowledge to serve as a basis for future improvements to the criminal justice system's handling of rape cases. In particular, cases should be monitored for medical evidence concerning physical signs of violence and, if this is present, the reasons why such evidence did not result in the case going to court.

AMNESTY INTERNATIONAL DENMARK RECOMMENDS TRAINING FOR POLICE AND PROSECUTORS TO INCREASE THEIR EXPERTISE AND KNOWLEDGE IN THE AREA OF SEXUAL ASSAULT

Amnesty International Denmark recommends special training for police and prosecutors to increase their expertise and knowledge in the area of sexual assault. Targeted education would help ensure the optimal use of professional experience, expertise and competence. Such training could help resolve some of the problems described in this report and ensure awareness among all police officers and prosecutors involved in handling rape victims of, e.g., the importance of the physical environment where the victim is interviewed and of the attitude of the police officer.

AMNESTY INTERNATIONAL DENMARK RECOMMENDS THAT RESEARCH SHOULD BE CARRIED OUT INTO THE QUALITY OF POLICE INVESTIGATIONS, AS HAS BEEN DONE IN SWEDEN AND NORWAY

In Norway and Sweden research has been carried out into the quality of police investigations. This should also be done in Denmark. The quality of the police investigation is decisive for the outcome of a rape case, both in terms of identifying and finding the alleged perpetrator and in determining whether the case is brought to court or closed because of the state of the evidence. Research would identify flaws as well as best practices. The IVAWS shows that around 10 per cent of reported rapes never lead to an official police report. Amnesty International Denmark recommends that the reasons for this should be investigated.

AMNESTY INTERNATIONAL DENMARK RECOMMENDS THAT THE EXISTENCE OF ANY RELATIONSHIP BETWEEN THE PERPETRATOR AND THE VICTIM SHOULD NOT INFLUENCE THE SEVERITY OF SENTENCING

The current practice whereby the court takes into account any relationship between the victim and the perpetrator when deciding the severity of the sentence (punishment) should be abolished. The severity of the punishment for rape should be determined by the nature of the violation as such. Current practices mean that acquaintance and partner rapes are punished more lenient than blitz rape, although the violation of the women's right of sexual self-determination and bodily integrity and the levels of physical and psychological injuries are the same in all kinds of rape.

3. RAPE AND HUMAN RIGHTS IN SWEDEN

3.1 SUMMARY

In 2007, more than 3,500 cases of rape against persons over the age of 15 were reported to the Swedish police. This means that, on average, 10 rapes or attempted rapes are reported each day.⁸⁶ In addition, a very large number of cases go unreported, meaning that in fact far more women and children – and in some cases, also men – are subjected to rape. Most of these crimes remain hidden, as the majority of victims never report the assault to the police, for a variety of reasons.

Although legislative provisions covering rape were broadened with the adoption of the Sexual Offences Act in 2005, Amnesty International Sweden is concerned that many problems remain unresolved regarding the legal rights of women who are subjected to rape and sexual violence. The legal definition of rape may be part of the problem, together with the way the criminal courts examine and try rape cases. A particular concern is the fact that most rape cases never come to trial at all. Only a small number of reported rapes result in a prosecution, with an even smaller number resulting in a conviction. Instead, most rape investigations are closed at an early stage, usually with the explanation that “it cannot be proven that a crime has been committed.” Amnesty is concerned that the fact that only 12% of crime victims who report rape get their case tried in a court of law⁸⁷ means that, in practice, many perpetrators enjoy impunity. We therefore propose that a special monitoring commission be appointed to systematically analyse all closed rape investigations and identify shortcomings in preliminary investigations into rape.

In Amnesty International Sweden’s view, the preventive work to combat and eradicate rape and sexual violence have been neglected and must be reinforced and developed. Stereotypical notions about female and male sexuality, about what is – and what is not – normal, and about women’s availability for sex are deeply rooted in society. Such notions and attitudes, which pave the way for gender-based violence against women, including rape, must be countered and changed.

Amnesty International Sweden urges the government to develop and adopt a specific action plan against rape and other sexual violence. This plan should include preventive work to change attitudes, concrete measures to reinforce and improve the handling of rape cases within the legal system.

“Sexual crimes are an aspect of the violence to which women are exposed and the government is prioritising the issue of men’s violence against women [...] The way in which the police, the prosecution authorities and the courts handle women who have been subjected to violence is not only an issue to do with victims of crimes – it is also an issue of gender equality.”

Nyamko Sabuni, Minister for Integration and Gender Equality

Press release on the improved handling of victims of sexual offences; 2007-05-10

⁸⁶ Crime statistics 2007. Rape against children is not included in this figure. In 2007 more than 1 200 rapes against children below the age of 15 was reported to the police.

⁸⁷ Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm county*, 2008 (in Swedish).

Amnesty International Sweden also believes that insufficient care and support is offered to victims. Accordingly, Amnesty International Sweden recommends that the above-mentioned action plan should include concrete measures to improve psychosocial support for victims of rape and other forms of sexual violence. For example, long-term support and rehabilitation, in the form of professional psychological counselling, must be made available to girls and women who have been raped or suffered other kinds of sexual assault.

Amnesty International Sweden demands justice, redress, compensation and help and support for victims of rape and other forms of sexual violence, to ensure women their basic human rights, in accordance with international human rights law and standards. Amnesty International call on the Swedish government, as ultimately responsible for the country's police- and prosecution authorities, the health care system, social services and educational system as well as other important institutions, to take action and earnestly address and the fact that girls and women who are subjected to rape in Sweden only have limited access to these rights in practice. Increased and intensified efforts are needed to ensure that Sweden lives up to its international commitments to prevent gender-based violence against women, to protect them from such violence, to investigate the crimes efficiently and to bring the perpetrators to justice.

3.2 INTERNATIONAL CRITICISM

The UN Special Rapporteur on violence against women, Yakin Ertürk, who made a study visit to Sweden in 2006, expressed concern in her follow-up report that sexual violence against girls and women in Sweden appears to continue to increase. Her report also emphasises a discrepancy between the legislative provisions and the way the law is applied in practice, which results in the majority of perpetrators managing to escape punishment.⁸⁸

The CEDAW committee, which studied the Swedish government's intermediate report in January 2008, welcomed the adoption of new sexual offences legislation. However, the committee also expressed concern about the small proportion of reported violent crimes against women that result in prosecution and conviction.⁸⁹

3.3 LEGAL FRAMEWORK

3.3.1 HISTORY

As early as the mid-thirteenth century, King Birger Jarl adopted the so-called "Act on the Protection of Women," which made it illegal to abduct or rape women. The law protected women as the property of men, as well as public morality.

In 1962, the Penal Code was adopted, replacing the Criminal Code of 1864. Sweden became one of the first countries in the world explicitly to declare rape within marriage to be

⁸⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. *Mission to Sweden*. A/HRC/4/34/Add.3, 6 February 2007.

⁸⁹ CEDAW/C/SWE/CO/7, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Sweden*.

a crime. Such a criminal act was then classified as a “violation” and was viewed as a less serious form of rape.

The elimination of myths and stereotypes from the law is crucial for securing justice, impartiality and equality and thereby fulfilling the human rights of all individuals in practice. Demands from the women’s movement and from participants in the public debate about changes to the legislation on sexual offences developed as a reaction to obsolete notions in the law about male and female sexuality and to opinions about what girls and women should – and should not – do to avoid being raped.

Swedish legislation covering sexual offences has been amended and its scope broadened on several occasions since the Penal Code came into force.⁹⁰ In 1984, substantial reforms were enacted. The provision concerning “violations” was repealed and rape legislation was made gender-neutral. Sexual offences were no longer categorised as vice crimes, which was important for the understanding of rape as a crime against an individual’s sexual and bodily integrity and right to self-determination, rather than as a crime against society’s ethics and public morals. Further changes to the legislation were made in 1998.

The most recent amendment to the law was initiated by the Swedish parliament, which decided in 1998 to establish a parliamentary committee tasked with making a complete review of legislative provisions relating to sexual offences.⁹¹ The new Sexual Crimes Act was not, however, finally adopted by parliament for another seven years, in 2005.

3.3.2 CURRENT LAW

The Sexual Crimes Act of 2005 aimed to “*improve protection against sexual violations and further enhance sexual integrity and the right of self-determination*”. Current legislation on sexual offences covers a range of other crimes other than rape, such as sexual coercion, sexual exploitation of a dependent person, child rape, sexual exploitation of children, sexual violation of children, intercourse with a descendant, intercourse with a sibling, “exploitation of children for sexual posing”, the purchasing of sexual acts from children, sexual harassment, buying sexual services and procuring. For certain types of sexual offences, including rape, an attempted crime is also punishable by law.

3.3.3 RAPE PROVISIONS

The legislative changes broadened the provisions dealing with rape, partly by including more offences within the definition of rape and partly by redefining the requirements for coercion.

The rape provisions cover acts other than vaginal, oral and anal intercourse. If the perpetrator uses violence or coercion to perpetrate or force the victim to perform sexual acts that are comparable to intercourse, with respect to “the nature of the violation or the prevailing conditions,” the act is to be considered as constituting rape. Examples of such acts are

⁹⁰ The Penal Code was adopted in 1962 and came into force in 1965. Amendments to sexual offences legislation have been enacted, for example, in 1984, 1998 and 2005.

⁹¹ The 1998 Sexual Crimes Committee submitted its report, *Improved protection of sexual integrity and related questions* (Swedish Official Government Reports Series, 2001:14), in March 2001. Just over three-and-a-half years later, a new bill concerning sexual crimes (Government bill 2004/05:45) was presented by then government. The bill stated that protection of personal and sexual integrity was a priority of the legislation.

the introduction of fingers or objects into the victim's anus or vagina, forcing the victim to masturbate (herself or the perpetrator), or physical contact between the victim's and the perpetrator's genitals.

According to the travaux préparatoire, only minor violence is required for an act to be considered rape. It may be sufficient for the perpetrator to "impede the victim's movements", for example by holding the victim's arms to pin her/him down, by applying body weight or by forcing the victim's legs apart. The law does not require the presence of resistance on the part of the victim.

Cases where sexual intercourse or comparable sexual acts have been carried out by the perpetrator through the exploitation of the "helpless state" of the victim are also to be considered as constituting rape. The legislation gives examples of circumstances that might render the victim helpless, such as unconsciousness, sleep, intoxication by alcohol or other drugs, illness, bodily injury or mental disturbance. Other circumstances may also be applicable. A person in a helpless state is unable to safeguard her or his sexual integrity, and consent does not relieve the perpetrator in a situation of this kind.

Special provisions concerning the rape of children were also introduced. The law stipulates that sexual intercourse, or other sexual acts that are comparable to sexual intercourse because of the nature of the violation and the circumstances, with a child below the age of 15 constitutes rape. The requirement for coercion to be present, in the form of violence or threats, has been abolished in respect of the rape of children under the age of 15.

RAPE PROVISIONS (CHAPTER 6 OF THE SWEDISH PENAL CODE)

Section 1

A person who by assault or otherwise by violence or by threat of a criminal act forces another person to have sexual intercourse or to undertake or endure another sexual act that, having regard to the nature of the violation and the circumstances in general, is comparable to sexual intercourse, shall be sentenced for rape to imprisonment for at least two and at most six years.

This shall also apply if a person engages with another person in sexual intercourse or in a sexual act which under the first paragraph is comparable to sexual intercourse by improperly exploiting that the person, due to unconsciousness, sleep, intoxication or other drug influence, illness, physical injury or mental disturbance, or otherwise in view of the circumstances in general, is in a helpless state.

If, in view of the circumstances associated with the crime, a crime provided for in the first or second paragraph is considered less aggravated, a sentence to imprisonment for at most four years shall be imposed for rape.

If a crime provided for in the first or second paragraph is considered gross, a sentence to imprisonment for at least four and at most ten years shall be imposed for gross rape. In assessing whether the crime is gross, special consideration shall be given to whether the violence or threat was of a particularly serious nature or whether more than one person assaulted the victim or in any other way took part in the assault or whether the perpetrator having regard to the method used or otherwise exhibited particular ruthlessness or brutality.

3.3.4 SEXUAL COERCION

In cases where the violence or force used or the sexual act is not deemed so serious to qualify as rape, the act can instead be classified as sexual coercion. This also applies to a sexual act that a person has been forced to perform through the threat of blackmail.

3.3.5 LEVELS OF SANCTIONS

With regard to sanctions, a distinction is made in respect of most sexual offences between serious crimes and crimes of a less serious nature (“common crimes”). However, rapes of persons over the age of 15 are divided into three categories:

less aggravated rape – up to four years’ imprisonment

rape – two to six years’ imprisonment

aggravated rape – four to ten years’ imprisonment.

The minimum sentence for sexual coercion is imprisonment for up to two years. Aggravated sexual coercion is punishable by imprisonment for at least six months, with a maximum sentence of six years. Attempted rape/sexual coercion is also punishable.

3.3.6 FOLLOW-UP OF THE RAPE LEGISLATION

At the time the new bill was presented, it was stated that its implementation should be reviewed within the next few years. According to the bill, such a review was to focus particularly on rape: whether the law was being applied in a way that was consistent with the law’s intentions and whether the legislation was efficient and effective, or whether it had become apparent that the protection it provided was insufficient.

Demands for such a review were put forward in 2007 by members of Parliament, participants in the public debate and non-governmental organisations. This resulted in a decision to include a review of the sexual offences legislation in the national action plan to combat men’s violence against women that was adopted by the government in November 2007.⁹² In July 2008, the government decided on directives for the review and appointed a special commissioner for the task. The Commission involves analysing and deciding whether the present requirement of coercion or force as a ground for accountability in cases of rape should be replaced by a requirement of consent. Furthermore, the application of the concept of “helpless state” should be reviewed. The Commission should present its findings no later than October 2010.⁹³

The demands for a review were made against a background of criticism of the new rape provisions that started even before the legislation was enacted. Critics argue that, because the law stipulates that the intercourse or other sexual act must be perpetrated through the use of violence or under the threat of a criminal act, there is a risk that many situations, where intercourse or other sexual acts are performed without violence, but in violation of the victim’s wishes, will not be considered as constituting rape.

⁹² *Action plan to combat men’s violence against women, honour-related violence and oppression and violence in same-sex relationships*. Skr. 2007/08:39

⁹³ Kommitteredirektiv: *Utvärdering av 2005 års sexualbrottsreform*, m.m. Dir. 2008:94.

It is a well-known fact that people who are subjected to sexual violence react in different ways.⁹⁴ If, for example, a victim experiences the situation as being very threatening or she has a traumatic reaction, rendering her completely unable to act or giving her a feeling of unreality, powerlessness or shame - and thereby making it possible for the perpetrator to carry out the rape without the use of violence or threats - the act falls outside the legal definition of rape.⁹⁵

This is also linked to some of the criticism of the concept of “helpless state”. Critics argue that this concept has been too narrowly defined and that a person can also be rendered helpless and thereby unable to defend her/himself because of the particularly vulnerable situation she finds herself in. Several critics argue that “helpless state” in the rape provision should be replaced by the phrase “particularly exposed situation”, taking into account coercive circumstances that undermine the victim’s ability to oppose the sexual act.

The implementation of the concept of a “helpless state” is sometimes described as a Catch 22 situation: a woman who was very drunk at the time she was raped may have difficulty remembering what happened and giving an account of the event. In such a situation, the police and the prosecution will make their assessment on the basis of the alleged perpetrator’s version of events. The coming review will look at the outcome of the implementation of the concept of “helpless state.”

Critics of the legislation argue that the current provisions’ point of departure is an assumption that a woman is available for – and wants to have – sex as long as she does not express the opposite. The law does not require the victim to resist the perpetrator but, in practice, resistance on the part of the woman is taken as evidence that coercion, in the form of violence or threats, has actually been applied and the victim did not participate voluntarily in the intercourse or sexual act. A woman’s right to sexual self-determination is, in practice, rendered invalid if, for various reasons, she is unable to actively assert this right. Critics accordingly argue that the rape provisions should instead be based on a requirement of consent.⁹⁶ This, it is argued, would also ensure the compliance of Swedish

⁹⁴ See, e.g., Josefin Grände, “*I never called it rape*”, 2005 (in Swedish), and Josefin Grände, “*Rape victim?*”, 2007 and Lotta Nilsson, & Anette Wallqvist, “*After rape: Breaking the silence*,” 2007 and “*Reactions of victims of sexual offences*” at the Crime Victims’ Portal, and “*Reactions to violence*”, at the website of the Protection of Women’s Integrity call centre, and “*Common reactions after rape or attempted rape*”, emergency ward for raped women at Södersjukhuset, and the website of Team for raped women.

⁹⁵ See, e.g., Parliamentary Motion 2005/06:Ju306 Maria Larsson et al., and Motion 2007/08:Ju326, Yvonne Andersson (Christian Democrats), and Motion 2007/08:Ju432, Andreas Norlén (Conservative Party).

⁹⁶ See “*The EU demands consent before intercourse*,” Madeleine Leijonhufvud, SvD Brännpunkt 2007-09-09; and “*Rape law deficiencies blamed on victims*,” Christian Diesen & Eva Simonson, SvD Brännpunkt 2007-09-22; and the Green Party Action Programme: “*She did go along with it*” – *An Action Programme for Legal Security for Rape Victims*, and Parliamentary Motion 2007/08:Ju410 submitted by Lena Olsson et al. (Left Party).

legislation with the requirements of the European Convention, interpreted by the European Court of Human Rights.⁹⁷

Others have advocated the adoption of a new law on “rape by gross negligence,” in line with the Norwegian model, according to which the question of the perpetrator’s intent, i.e., his intention and understanding of the act, is not the decisive factor for assessing whether a crime has been committed.⁹⁸

In connection with the debate on the rape provisions in 2007, the then Prosecutor-General Fredrik Wersäll, voiced objections to further amending the law to make an absence of consent sufficient grounds for a rape conviction. The Prosecutor-General argued that such an amendment would not remedy the problems concerning evidence.⁹⁹ Lisbeth Johansson, Director of the Public Prosecution Authority, believes that such a change to the legislation would have no practical effect in terms of the prosecution’s ability to prove that a crime has been committed, but that it might be justified as it would clearly demonstrate to society the standards that should apply.¹⁰⁰ District Public Prosecutor Eva Bloch argues that for legislation to be normative, it must deliver as promised, i.e., it must fulfil expectations – it must be possible for the prosecution to prove that a crime has been committed. Others argue that the current legislation could be applied more effectively and that any action taken should focus on this, rather than on further amendments to the law.¹⁰¹

3.3.7 AMNESTY INTERNATIONAL SWEDEN’S MAIN CONCERNS

- Almost three-and-a-half years have elapsed since the adoption of the Sexual Offences Act in 2005 and Amnesty International Sweden welcomes the review of the implementation of the law. It is extremely important to review and follow up the effectiveness of the practical

⁹⁷ European Court of Human Rights, *Case of M.C. vs. Bulgaria* (application no 39272/98), Judgment 04/03/2004. In *M.C. vs. Bulgaria*, the European Court of Human Rights emphasised that states have a positive obligation to adopt legislation that punishes rape effectively and efficiently. The Court pointed to developments in European countries to the effect that evidentiary requirements concerning violence are being replaced by lack of consent as the criterion for rape. According to the Court, states are obliged to punish and prosecute all sexual acts perpetrated in violation of the victim’s sexual autonomy, including those carried out in the absence of physical resistance on the part of the victim.

Both the Sexual Offences Committee and the Swedish government at the time argued that one of the primary arguments against a rape provision based on lack of consent is the risk that the focus will shift to the victim, rather than the acts of the perpetrator. In clarifying whether consent has been given or not, the actions and behaviour of the victim, any current or past relationship between the parties, and the way in which the victim has indicated absence of consent, will assume particular significance. The Council on Legislation argued that the concept of a “helpless state” could be extended and that the penal stipulation might also include situations where the victim had been particularly vulnerable. The Council on Legislation also argued that the requirements that followed from the ruling of the European Court of Human Rights could be considered as being fulfilled by making punishable a “non-consensual sexual act”, although such an act is not necessarily referred to as rape. (See Government bill 2004/05:45, *New Sex Crimes Legislation*).

⁹⁸ “Introduce ‘careless rape’ as a newly designated crime,” *Crime Victim Journal*, no. 5, 2005 (The Swedish Association for Victim Support, BOJ); “Proposal for new rape legislation,” Hans Klette, SvD Brännpunkt 2007-09-13; “Social Democrats demand law on negligence,” *Aktuellt i politiken* 2007-09-10, and Parliamentary Motion 2007/08:Ju284, Eva-Lena Jansson and Luciano Astudillo (Social Democrats) (all in Swedish).

⁹⁹ “Do not expect an increase in rape convictions,” *DN Debatt* 2007-10-19, Fredrik Wersäll, Prosecutor-General, and Lisbeth Johansson, Director of the Public Prosecution Authority (in Swedish).

¹⁰⁰ Information from Lisbeth Johansson, Director of the Public Prosecution Authority and Eva Bloch, District Public Prosecutor, The Public Prosecution Authority’s Development Centre in Gothenburg, during a meeting on 2008-06-16.

¹⁰¹ Börje Tulldahl, Prosecutor at Södertörn Public Prosecution division; speech made on February 2, 2008.

ACCORDING TO ICC, RULES OF EVIDENCE AND PROCEDURE, RULE 70:

- Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or by taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent.
- Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent.
- Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence.

See also Making rights a reality. The duty of states to address violence against women.

Amnesty International Document ACT 77/049/2004. March 2004.

application of laws and other measures and to establish whether such laws and measures are sufficient to bring about the desired result, i.e., increased protection against sexual abuse and the strengthening of the sexual integrity and autonomy of individuals. Considerable demands are placed on the legislator to find a solution that guarantees the sexual autonomy and legal security of the individual before the law as well as the legal rights of the suspect.

- Against this background, Amnesty International Sweden welcomes a legislation that further emphasise the rights of all individuals to sexual self-determination and integrity, which should be clearly reflected in the legal definition of rape. The definition of the conditions under which penetration and other sexual acts takes place should reflect the fact that rape occurs through the use of many kinds of coercion, not merely violence or the threat of violence. Linking the question of guilt in cases of rape to a lack of genuine and freely-given consent, rather than to the presence of violence, would bring Swedish legislation into line with international developments. The approach adopted by the International Criminal Court (ICC) does not require the use of violence and force, but defines rape as being committed where there are coercive circumstances that undermine the victim's ability to give free and genuine consent. Similarly, the European Court of Human Rights has stated that States are obliged to punish and prosecute all sexual acts perpetrated in violation of the victim's sexual autonomy. Coercion is the main principle underlying abuse of sexual autonomy and violence is one of the ways in which coercion is exercised.

3.4 THE SCALE OF THE PROBLEM

The crime statistics include only a fraction of the rapes actually committed. The true number of unreported cases is unknown.

3.4.1 UNREPORTED CASES

According to various studies among victims, only between 5 and 10 per cent of all sexual offences are reported, including less serious crimes than rape.¹⁰²

The annual population-based National Safety and Security Survey, initiated in 2006, which includes questions about exposure to sexual violence, may contribute to increasing knowledge about changes over time in the prevalence of such violence and developments in criminality in relation to rape. In 2006, a sample of 10,000 persons (aged 16–79) were interviewed about their exposure to crime during the previous year. 0.9 per cent of respondents reported that they had been subjected to some kind of sexual offence.¹⁰³ The proportion of victims was higher among women (1.6 per cent) than among men (0.3 per cent). The rate of exposure among young women (aged 16–24) was particularly high (4.9 per cent). In the 2007 survey, a sample of 20,000 persons were interviewed. 0.8 per cent reported that they had been subjected to some form of sexual crime. Again there were more victims among women (1.3 per cent) than among men (0.3 per cent) and the rate of exposure among young women was particularly high (3.7 per cent). 15 per cent of those

¹⁰² Christan Diesen, Claes Lernestedt, Torun Lindholm, Tove Petterson, *Equality before the law*, 2005, (in Swedish) and "Sexual assault of one in fourteen", *Dagens Nyheter* 2004-12-15,

¹⁰³ *The National Safety and Security Survey 2006*. BRÅ Report 2007:14

reporting exposure to a sexual crime described it as rape. On this basis, the actual number of rapes in Sweden during 2006 has been estimated as close to 30,000.¹⁰⁴ If these estimates are correct it implies that as few as 10 percent of rapes against persons above the age of 15 were reported to the police during 2006, when in all 3 000 cases were reported.

According to The National Council for Crime Prevention, BRÅ, has stated that it is not possible to draw any clear conclusions regarding willingness to report, but it is likely that only around 20 per cent of all rapes are being reported.¹⁰⁵ In 2001, *Captured Queen*, the largest prevalence study of violence against women ever carried out in Sweden, identified approximately 70 cases of rape, with fewer than 20 per cent of the victims having reported the incident to the police.¹⁰⁶ Regardless of the exact figure, it is clear that the majority of rapes are never reported.

In general, a woman is less likely to report a rape if she knows the perpetrator well and, even more so, if they have, or have had, an intimate relationship. BRÅ believes that there is an interaction between the victim's relationship to the perpetrator and the degree of violence: grievous violence increases the tendency to report in all rape crimes, but may be of decisive importance if the perpetrator is the woman's partner.¹⁰⁷

The reasons why victims choose not to report rape and other sexual crimes are complex and involve many different factors.¹⁰⁸ By analysing the underlying factors it becomes possible to identify measures that could reduce the obstacles and deficiencies preventing so many girls and women from reporting these crimes. In the memorandum *Reporting and investigation of sexual offences – proposals for improvement from a crime victim's perspective*, several reasons are given, including the following:

- the victim does not define her experience as rape/sexual violation
- the victim feels guilt and/or shame
- the victim has little knowledge about the judicial system and other institutions in society
- the attitudes of the victim and her/his environment
- fear of potential negative consequences of reporting
- insufficient social and psychological support
- the way in which the media report sexual offences
- lengthy processing times
- distrust of the authorities.

The memorandum states that many young people lack knowledge and have misconceptions about issues concerning sexuality, gender and equality. Such a lack of knowledge is thought to contribute to the under-reporting of many sexual offences, as the victims are not

“I should have written this earlier. But it's not until today that I dare say the word. Rape. I'm not yet sure if I dare to define it as such. But it did happen, the night between Friday and Saturday. [...] Since then nothing have worked. Chock. Stress and tears. Doubt, self-hatred, contempt and fear. Doubt above all. In myself. It was my fault, I should have done this or that. Phone calls and sweaty nightmares. [...] An empty gaze and aching head. Fear of what the others might think.”

A woman telling her story at “Kick back now!”, a web-based campaign against sexual violence.

¹⁰⁴ *The National Safety and Security Survey 2007*. BRÅ Report 2008:3.

The numbers could be higher as questions about exposure to rape and sexual violence are very sensitive, especially if the crime has taken place recently, which would be the case with these annual surveys.

¹⁰⁵ *Rape – A survey of rapes reported to the police*. BRÅ Report 2005:7

¹⁰⁶ Eva Lundgren, Gun Heimer, Jenny Westerstrand, Anne-Marie Kalliokoski: *Captured Queen*, 2001.

¹⁰⁷ *Rape of individuals aged 15 or over – developments during 1995–2006*. BRÅ Report, 2008:13

¹⁰⁸ *Reporting and investigation of sexual offences. Proposals for improvement from a crime victim's perspective*, Ju 2004:1 (in Swedish).

“I’ve had so many comments afterwards that made me feel so bad. Sometimes just a sentence and the one who said it probably didn’t mean anything with it, but it stays there, gnawing. Comments such as that I should be more careful in the future, not drink so much. Or questions about why I didn’t scream or put up a fight. [...] It’s especially hard when someone close, like a friend or mum has said something like that.”

A woman telling her story, in “*Subjected to rape?*” by Josefin Grände.

aware that they have been subjected to a crime. Likewise, many offences may be committed without the young perpetrator realising that the sexual act is a criminal offence.¹⁰⁹

According to the memorandum mentioned above, Many sexual offences go undiscovered simply because no one within the police, social or healthcare services asks whether sexual violence or rape occurred in connection with domestic violence.

A study of violence in same-sex relationships shows that only a few of the respondents who had been subjected to such violence, including sexual violence, had reported it to the police. Rapes of LGBT persons, including rape in same-sex relationships, account for a large number of the unrecorded cases.¹¹⁰ Reporting a rape or other sexual offence that has taken place within an intimate relationship may be even more problematic for someone who, for various reasons, has not publicly declared his or her sexual orientation or identity. Lack of knowledge, trivialisation and society’s unwillingness to acknowledge violence within same sex-relationships means that LGBT persons who have been subjected to sexual offences may experience an even worse situation when encountering the legal and healthcare systems etc.¹¹¹

In 2006, there were only six convictions for the rape of men (over the age of 15) in the whole country. All the perpetrators were male and the cases involved both intra-relationship and stranger rapes.¹¹²

3.4.2 REPORTED RAPES

Over the past 20 years, the number of rapes reported to the police has quadrupled in Sweden. In 1987, just over 1,100 cases of rape, including aggravated rape, were reported to the police, while in 2007 this figure had increased to over 4,750, of which more than 3,500 reports concerned rape, aggravated rape or attempted rape against persons aged over 15. There was also an increase in the proportion of consummated rapes, while the proportion of attempted rapes decreased.¹¹³

The rate at which reporting has increased has been strong and consistent. It is not possible to determine the extent to which this increase is due to an increased inclination to report, successive changes to the law and/or an actual increase in the number of rape crimes. The increased tendency to report and the fact that considerably more sexual offences are now considered to constitute rape are both positive factors. However, according to the National Council for Crime Prevention (BRÅ) there may also be an increase in the number of actual

¹⁰⁹ [As a result of these conclusions, the government commissioned the BRÅ to develop a manual for schools on sexual offences. In 2007, the education manual “Where to draw the line?”, for theme work on integrity, sexual harassment and sex crimes was published. According to Josefin Grände, one of the authors, the material has not been widely disseminated as there has been no plan for its implementation. Information in e-mail, 2008-08-25.]

¹¹⁰ Carin Holmberg & Ulrica Stjernqvist, *Violently similar and different – on violence in same-sex relationships*, Report no. 36, Centre for Gender Research, Stockholm University, 2005 (in Swedish).

¹¹¹ *Women beating women, men beating men*. The National Council for the Protection of Women’s Integrity, 2003. (in Swedish)

¹¹² Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm county*. Interim report, 2008. (in Swedish)

¹¹³ Information from Åsa Lennerö, Brå, by e-mail dated 2008-01-18. About 90 percent of the reports were consummated rapes.

rapes, at least in respect of some forms of the crime.¹¹⁴

Swedish crime statistics differ from those of neighbouring countries, in that the Swedish statistics include the number of rape crimes, whereas the Norwegian and Danish statistics mainly record the number of victims of rape (in reported cases). This means that, if a woman is subjected to repeated rape by the same perpetrator during one night, each individual rape will be recorded in the Swedish statistics, provided that each incident can be specified. This also applies to rapes involving several perpetrators, where each rape of the victim is recorded.

Swedish rape legislation is broader and includes more sexual acts than, for example, the Finnish and the Danish legislation. The same offence may be classified differently in Sweden and Finland and this is reflected in the crime statistics. For this and several other reasons it is not possible to compare crime statistics for the Nordic countries with regard to the number of rapes reported to the police.

3.4.3 DIFFERENT TYPES OF RAPE

Rape is always rape, regardless of the relationship between the victim and the perpetrator. It is not possible to compare one rape with another. Nevertheless, it is appropriate to look at different types of rape, not least in order to formulate preventive strategies and measures, increase prosecution rates and offer treatment and support to the crime victims.

In two special studies, BRÅ has surveyed reported rapes against persons over the age of 15. The studies show that the victims are almost always girls or women and that they are often very young. In more than 60 per cent of rapes (against persons over 15), the victim is aged between 15 and 30. Correspondingly, the perpetrators are almost without exception boys and men.¹¹⁵

RAPE OF WOMEN WITHIN INTIMATE RELATIONSHIPS

Rape within intimate relationships, like any other form of gender-based violence, is an abuse of trust. In the experience of women's shelters, rape and sexual violence are commonly associated with physical violence committed by men against women within intimate relationships. Many women experience sexual violation as being the most difficult form of assault to talk about. Feelings of degradation and shame may make the woman reluctant to talk about all the violations to which she has been subjected.¹¹⁶ Other studies show that women may also interpret their experience of sexual violence differently, depending on their relationship with the perpetrator, and that sexual violence within intimate, sexual relationships is often reinterpreted or diminished.¹¹⁷

¹¹⁴ *Rape of individuals aged 15 or over – developments during 1995-2006*. BRÅ Report, 2008:13

¹¹⁵ *Rape – A survey of rapes reported to the police*. BRÅ Report 2005:7 and *Rape of individuals aged 15 or over – developments during 1995-2006*. BRÅ Report, 2008:13. These studies are based on case reports and thus reflect the victims' stories. The 2005 survey was based on approximately 90 per cent of all cases of consummated rape against persons over 15 reported to the police between 1995 and 2000. The number of cases increased dramatically in 2004 and 2006, making it necessary to base the 2008 follow-up study on a random selection of reports. Attempted rapes were also included.

¹¹⁶ Angela Beausang: "Living in an abusive relationship – the experience of the women's shelter movement," in *Violence against women – society's responsibility*, Heimer and Posse (ed.), 2003 (in Swedish).

¹¹⁷ Eva Lundgren, Gun Heimer, Jenny Westerstrand, Anne-Marie Kalliokoski: *Captured Queen*, 2001 (in Swedish).

In spite of this, the 2005 BRÅ survey showed that so-called “intra-relationship” rape, where the perpetrator has or has had an intimate relationship with the victim, accounted for the largest part – almost one third – of all reported cases of rape during the years covered in the survey.¹¹⁸ In the follow-up study, which also included attempted crimes, the proportion of “intra-relationship” rapes had fallen and accounted for 21 per cent of rapes reported to the police in 2004, and 17 per cent in 2006. At the same time as the proportion of “intra-relationship” rapes has decreased, the total number of this type of rape has increased by 24 % between 1995 and 2006. One difference, compared with the previous study, is that the use of violence and gross violence has decreased in this type of rape. This may indicate that victims’ preparedness to report has increased somewhat in cases of rape within intimate relationships. Notwithstanding this change, violence is still more common and also more severe in “intra-relationship” rapes than in cases where the perpetrator is closely or superficially acquainted with the victim.

The 2005 study showed that, in just over 60 per cent of these cases, other offences were reported in conjunction with the rape. In most cases these constituted physical assault and/or unlawful threats or gross violations of the woman’s integrity. This clearly shows that rape is an integral part of a broader pattern of exposure to violence. The 2008 study did not investigate whether other crimes, in addition to rape, were reported. However, the study found that one in ten cases of reported rape also contained information on repeated rape, usually within intimate relationships.

Compared with other forms of rape, women’s reports of the crime are significantly less often directly connected with the perpetration of the act. During the period of the first study, the number of women seeking immediate medical care and for whom a legal certificate was issued was also smaller compared with other types of rape. Up-to-date information is lacking in the later survey, but a general increase is apparent in the number of victims seeking medical care.

According to the 2005 study, rapes within intimate relationships more often lead to a prosecution than rapes where the perpetrator is superficially acquainted with the woman or completely unknown, even though prosecution rates for rape within intimate relationships are still considered “low” by BRÅ. There are no corresponding data in the 2008 study.

BRÅ believes that “intra-relationship” rape is under-represented in the crime statistics, but that victims’ preparedness to report may have increased somewhat in recent years.

CLOSE ACQUAINTANCES

In another 7 to 9 per cent of rape cases reported to the police during 1995/2000, the perpetrator was a family member, relative, colleague or fellow student or other close acquaintance of the victim. The corresponding number during 2004/2006 was 5 to 8 per cent. This means that, during 1995/2000, more than 40 per cent of reported cases of consummated rape involved a perpetrator who was very well known to the woman. In 2004/2006, this number had fallen considerably and accounted for a total of 25 per cent.

¹¹⁸ *Rape - a survey of rapes reported to the police*, BRÅ Report 2005:7 (in Swedish). Note: The survey was based on approx. 90 per cent of all consummated rapes reported to the police of persons over the age of 15 during 1995–2000.

SUPERFICIAL ACQUAINTANCES – A KNOWN PERPETRATOR, BUT UNCLEAR HOW CLOSELY ACQUAINTED/UNCLEAR RELATIONSHIP

Rape committed by a superficial acquaintance is defined as rape by a perpetrator whom the woman has met a few times and who is known to her by name and appearance. This type of rape accounts for approximately 40 per cent of all reported cases, and also includes cases where the relationship between the victim and the perpetrator is unclear. There has only been a marginal increase in this type of rape.

UNKNOWN PERPETRATORS

There has been a marked increase in the number of rapes where the perpetrator and the victim are unknown to each other. The proportion of rapes committed by unknown perpetrators increased from 26 to 33 per cent between 1995 and 2006. This percentage includes cases where the victim and the perpetrator have known each other for a few hours before the rape took place, having met, for example, at a restaurant or club. According to BRÅ, a probable explanation for the increase is the changed “structure of opportunity”, that is, there are more opportunities for people to “make very superficial contacts” through more extensive nightlife and through the Internet.¹¹⁹

Rapes by an unknown perpetrator also include so-called “blitz rapes”. The proportion of such rapes decreased during the period 1995–2006 from 19 to 12 per cent. Most such rapes take place outdoors. Preparedness to report is considered to be high for this type of rape.

All in all, this means that rapes committed by unknown perpetrators (other than stranger rapes) are responsible for the greatest increase in the reporting statistics.

MULTIPLE PERPETRATORS

The number of rapes involving more than one perpetrator has quadrupled since 1995 and, in 2006, rapes with multiple perpetrators accounted for 18 per cent of all reported cases. “Gang rapes”, which have been extensively covered by the media, are included in this percentage, but a more common scenario, according to BRÅ, involves repeated rape/attempted rape of one victim by different perpetrators acting separately during the course of one night, for example, at a party. The victims are often young and, in close to 20 per cent of the cases, very serious violence has been inflicted on the victim, while less serious violence has been present in close to 70 per cent of cases. In 2006, 18 per cent of rapes involving multiple perpetrators were stranger rapes.

A general trend that has been observed is the increasing number of rapes that are reported by someone other than the victim, for example by relatives, friends, school personnel, the social services, medical personnel and the police. According to BRÅ, this indicates a decreased level of tolerance for rape in society. The fact that an increasing number of rapes that do not involve gross violence are being reported today is another indication of this change in attitudes.

¹¹⁹ Rape of individuals aged 15 or over – developments during 1995–2006. BRÅ Report, 2008:13.

The legislative changes enacted in 2005 have resulted in an increase in the number of reported crimes classified as rape. Some acts were previously classified as sexual abuse, that is, they were reported before the law was changed but not classified as rape. However, almost no increase has been seen following the changes in the law in the number of cases where the victim has been strongly intoxicated by alcohol or drugs. The expected increase in reports of cases where victims were abused while in a “state of helplessness” has not come about. According to BRÅ, a particularly large number of unreported cases involve the rape of victims who were heavily intoxicated.

3.4.4 AMNESTY INTERNATIONAL SWEDEN’S MAIN CONCERNS

- Amnesty International Sweden believes there is a need for a thorough analysis of the underlying causes of developments in rape and other sexual crimes. It welcomes the National Safety and Security Surveys that have been carried out annually since 2006 and which include questions about respondents’ exposure to sexual violence. Amnesty International Sweden encourages the further development of this survey, including the addition of specific questions probing the respondents’ understanding, awareness and tolerance of rape and other sexual offences, their willingness to intervene/report, and whether they know someone who has been subjected to such crimes, as recommended by the Special Rapporteur on violence against women.¹²⁰ Together with other more specialised studies, such an expanded survey could provide increased knowledge about vulnerability and exposure to, and tolerance of, sexual violence and rape in society, as well as improving the ability to monitor developments in sexual offences over time.

3.5 THE LEGAL JOURNEY

Rape is subject to public prosecution, which means that the prosecution is proceeded by the public prosecutor on behalf of “the public,” i.e. on behalf of society. Other persons than the victim may file a report on a rape crime. The police is obliged to investigate all crimes that are subject to public prosecution, even if the complainant objects such an investigation. The prosecutor has an absolute duty to prosecute; i.e., an obligation to institute legal proceedings if she/he makes the assessment that the evidence in the case is sufficient. This also means that a complainant cannot withdraw a report. In practice, however, it is often difficult to proceed with an investigation if the complainant is reluctant to participate, although, in some cases, sufficient evidence to institute a prosecution may be available.

It is crucial that victims receive sufficient support to enable them to cope with the extreme stress that an investigation and a trial will often involve. Police and prosecutors have an obligation to inform complainants about help and support services available, and to keep complainants informed about the progress of proceedings and developments in their case, during the ongoing investigation.

¹²⁰ Promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. *Indicators on violence against women and state response.* A/HCR/7/6. January 2008.

Once the police have received information that rape may have been committed, a formal report is registered. The next step is to decide whether a preliminary investigation should be carried out. The threshold for deciding whether to open an investigation is low and it is sufficient that there is reason to believe that a crime subject to public prosecution has been committed. A decision to open a preliminary investigation can be made either by the police or the public prosecutor.

According to the Criminal Procedure Code, the preliminary investigation of serious crimes should be led by a prosecutor. The prosecutor shall step in as soon as there are reasonable grounds for suspecting that a person has committed a crime. Until then, the investigation will usually be handled by the police. According to general guidelines concerning preliminary investigations issued by the Public Prosecutor Authority and the National Police Board, a prosecutor shall be appointed promptly to lead the preliminary investigation in rape cases.¹²¹

In cases where no suspect has been identified, the police may decide to close the case. The police may also close an investigation if the limitation period for the crime in question has expired or if there is no longer reason to believe that a crime that is subject to public prosecution has been committed. However, most preliminary investigations into rape cases are led by a public prosecutor.

The decision whether to prosecute is made by the prosecutor. Regardless of whether the prosecutor drops the investigation at an early stage or decides not to institute legal proceedings, the investigation may be resumed if new information becomes available.

In Sweden, unlike in many other countries, crime statistics and data on the number of reported rape cases, decisions to prosecute, etc., are available to the public. Unfortunately, however, it is not possible to compare statistics from different judicial authorities as their subject-matter is different. The statistics provided by BRÅ concerning reported rapes cover the *number of crimes*, whereas the statistics on prosecuted cases record the *number of persons* prosecuted and sentenced. It is also possible for the offence to be reclassified during the investigation. This makes it extremely difficult to obtain a clear picture of what happens to rape cases that are reported to the police or the number of reported rapes that eventually lead to a prosecution and conviction in a court of law.

However, it is clear that most rapes are never reported at all and, of those that are, the overwhelming majority of cases do not lead to prosecution. According to the former Director of Public Prosecutions, it is likely that a large number of real rapes are hidden behind the investigations that are closed.¹²²

¹²¹ RÅFS 1997:12 och FAP 403-5.

¹²² "Do not expect an increase in rape convictions," DN Debatt 2007-10-19, Fredrik Wersäll, Prosecutor-General, and Lisbeth Johansson, Director of the Public Prosecution Authority (in Swedish).

3.5.1 THE DECISION TO PROSECUTE

Between 1965 and 2004, approximately 100–200 persons were prosecuted for rape each year.¹²³ This means that, while the number of reported rapes multiplied over several decades, the proportion of cases leading to prosecution has fell during this period.¹²⁴

Since the adoption of the Sexual Offences Act in 2005 and the broadening of the provisions dealing with rape, the number of reported rapes has increased dramatically: between 2004 and 2006, the number of reported rapes increased by 54 per cent in Stockholm county. However, there appears to have been no appreciable increase in the number of cases going to trial.¹²⁵ It is worth noting, though, that information about prosecution rates differs from one authority to another.¹²⁶

In 2006, a total of 3,074 rapes against persons over 15 years of age were reported to the police. The same year, 2,260 cases of suspected consummated rapes of persons over 15 were processed by a prosecutor.¹²⁷ Amnesty International Sweden has not received any comprehensive information concerning the large discrepancy between the number of reported rapes and the number of suspected rapes that were handed to a prosecutor. As stated earlier, the general principle is that preliminary investigations in rape cases shall be headed by a prosecutor, since rape is a serious crime. Preliminary investigations into rape cases where the complainant is aged under 18 should always be headed by a prosecutor. The public prosecution authorities believe this discrepancy can be explained, in part, by the fact that the police tend to go for a more serious charge in doubtful cases, and that the prosecution may subsequently find, during the investigation, that a lesser charge is more appropriate.¹²⁸ Another explanation, according to the Office of the Public Prosecutor, is that cases without a known perpetrator, where the police have been unable to find a suspect, are dismissed by the police without being forwarded to a prosecutor.¹²⁹

In 2006, close to 78 per cent of the 2,260 cases of suspected rape against persons aged over 15 that were processed by a prosecutor were closed. The most common reason for

¹²³ The Victimological Research Network in Stockholm.

¹²⁴ Linda Regan & Liz Kelly: *Rape – Still a forgotten issue*, September 2003. During 1977–1997, legal proceedings were initiated in 22 per cent of rapes reported to the police, on average, compared with 13 per cent, on average, during 1998–2001. Correspondingly, the conviction rate for rape fell during the same time period from 10 to 7 per cent, on average.

¹²⁵ Eva L Diesen: *Family violence and sexual abuse – A comparison of investigative quality between police commissioner districts in Stockholm country*, 2008.

¹²⁶ The definition of legal proceedings includes the decision to prosecute, summary sanctions (fines) and a waiver of prosecution. As fines (summary sanctions) are not included in the range of punishments available for rape, prosecution and waiver of prosecution are the only possible decisions in practice. The latter is extremely rare in rape cases. During 2006, for example, a decision to waive prosecution was made in only one case. Waiver may be adopted if, for example, the perpetrator is below the age of criminal responsibility. The concepts of rape and rape crime also include aggravated rape and attempted rape, unless otherwise stated.

¹²⁷ Information from Sara Billström, the Public Prosecution Office, e-mail dated 2007-09-05, and Robert Rajnak, Public Prosecution Office, e-mail dated 2008-05-15. A suspected crime involves one crime and one person. The statistics from the public prosecuting authority report both on the number of suspected cases of attempted rape and consummated rape (including aggravated rape) that have been handled by a prosecutor, and the number of suspected cases that have led to trial.

¹²⁸ Information from Sara Billström, the Public Prosecution Office, via e-mail dated 2007-09-28. In Sweden, a crime is classified when a report is first made to the police, but may then be reclassified or classified as “no crime”. The information in the reporting statistics is not, however, updated when this occurs.

¹²⁹ Information from Elisabeth Sandström of the analysis unit at the Public Prosecution Office, e-mail 2007-10-22.

closing a case was given as “crime not proven”.¹³⁰ A decision to prosecute was taken in only 509 suspected rapes (distributed over 310 cases),¹³¹ resulting in a prosecution rate of 22 per cent. In 2007, the number of suspected rapes processed by a prosecutor had increased to 2,615, but the proportion that went to trial had decreased somewhat, to 20 per cent.¹³²

If, instead, we look at the statistics for 2006 from the National Council for Crime Prevention (BRÅ) on instituted and completed legal proceedings, we find that a decision to prosecute was taken in the case of just over 15 per cent of *all* rapes reported to the police against persons over 15.¹³³ According to BRÅ’s 2007 statistics, 3,535 rape crimes were reported to the police, of which less than 13 per cent (449) resulted in a decision to initiate legal proceedings.¹³⁴

Yet another way of measuring the prosecution rate is to look at the number of trials per victim, that is, how many crime victims have their case tried in a court of law. Within the ongoing research project *The legal handling of violations of women and children*, a group of researchers has made in-depth studies of all preliminary investigations in Stockholm county into the rape of adults (persons over the age of 15) and all sentences passed in such cases. According to the research group, the average national rate of prosecution was 11 to 12 per cent in 2006.¹³⁵ The research group’s preliminary reports also show that the rate of prosecution differs considerably between different police districts/divisions of the public prosecution authority.

TABLE 2. ATTRITION

	Reported rapes (against person 15 years or older)	Number of prosecutions	Prosecutions in % of all rapes reported to police	No. of persons sentenced (in district courts)
Year 2006	3,074	456	15%	227
Year 2007	3,535	449	< 13%	216

Source: BRÅ

Comments to the table:

Prosecutions instituted and sentences passed in one year do not refer exclusively – or include all – rape crimes reported in that same year. A report that is filed late in the year, for example, may appear in the prosecution statistics for the following year. Since a person may be prosecuted for several reported crimes, it is impossible to establish an immediate relationship between the number of reported crimes and the number of sentences passed. In cases where a person is convicted at the same time of an even more serious crime than rape, the case will only be reported according to the primary crime principle, i.e., according to the most serious crime to be tried in the case. Also, some reported cases of rape are reclassified as, for example, sexual coercion and are thus not included in the prosecution and conviction statistics for rape. Nevertheless, the table illustrate the problem of attrition.

¹³⁰ *Joint inspection: Follow-up study of crime investigations in cases of rape and aggravated rape with crime victims above the age of 15*, RPS/ÅM 1/07.

¹³¹ Robert Rajnak of the Statistics and Analysis Unit, the Office of the Prosecutor-General, e-mail 2008-05-15.

¹³² *Ibid.*

¹³³ Crime statistics, 2006, BRÅ.

¹³⁴ Information from Jessica Svedlund, BRÅ, e-mail 2008-06-16.

¹³⁵ Eva L. Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. 2008.

3.5.2 REVIEW OF THE PROSECUTOR'S DECISION

A complainant has the right to a review of the prosecutor's decision to not open a preliminary investigation, to close a preliminary investigation or not to institute a prosecution. Reviews in cases involving sexual offences are carried out by the Public Prosecution Authority's development centre in Gothenburg, where the Director of the Public Prosecution Authority reviews the case and decides whether a closed preliminary investigation should be reopened or other investigative measures should be taken. The case is then referred back to the same division of the public prosecutor but is allocated to another investigator. The decision of the Director of the Public Prosecution Authority can also be reviewed and the case is then processed by the office of the Prosecutor-General. In most cases, however, this does not lead to a review of the case.¹³⁶

In about 14 per cent of all reviewed cases of violent crime, the preliminary investigation has been reopened. The number of changed decisions is somewhat higher for rape and other sexual offences.¹³⁷ In 2006, 75 rape investigations (including cases of rape of children) were reviewed and in eight of these, the preliminary investigation was reopened. In 2007, 69 reviews were requested in rape cases and 11 decisions were overturned.¹³⁸

3.5.3 CONVICTIONS

The findings of this report so far make it obvious that only a small proportion of rapes reported to the police result in prosecution and trial in a court of law. Once cases have been taken to court, a large number of rape prosecutions are dismissed.

In 2006, 227 persons were convicted in district courts of the rape or aggravated rape of a person aged over 15. The corresponding figure for 2007 was 216. However, a person may be brought to trial on several occasions in the course of one year and all occasions will then be included in the statistics on convictions. Likewise, several different crimes may be included in the same trial, for example, repeated rapes within an intimate relationship.¹³⁹ According to the former Prosecutor-General, the courts tend to dismiss prosecutions for sexual offences more often than other crimes.¹⁴⁰ A special study carried out by the Public Prosecution Authority's Development Centre in Gothenburg, and published in 2007, showed that more than 27% of rape charges were dismissed in court, whereas close to 73% were wholly or partially approved. Over a third of charges of aggravated rape were dismissed.¹⁴¹

¹³⁶ The review process is not regulated by law but follows a hierarchical service structure in the Swedish Prosecution Authorities. Information from Lisbeth Johansson, Director of the Public Prosecution Authority, in meeting 2008-06-16.

¹³⁷ Information from Lisbeth Johansson, Director of the Public Prosecution Authority, the Public Prosecution Authority's Development Centre, Gothenburg, in a meeting on 2008-06-16.

¹³⁸ Information from Lisbeth Johansson, Director of the Public Prosecution Authority, via e-mail dated 2008-03-03.

¹³⁹ Information from Åsa Lennerö, BRÅ, via e-mail dated 2008-06-10.

¹⁴⁰ "Do not expect an increase in rape convictions," DN Debatt 2007-10-19, Fredrik Wersäll, Prosecutor-General, and Lisbeth Johansson, Director of the Public Prosecution Authority (in Swedish). According to researchers, the general conviction rate for all prosecuted crimes is 93-94 percent, see Christian Diesen et al, *Equality before the law*, 2003.

¹⁴¹ *Evaluation of evidence by the law courts in cases involving sexual offences – a survey*, Memorandum 2007:13. The Public Prosecution Authority's Development Centre, Gothenburg (in Swedish). NOTE: The study includes 289 final court judgments passed between April 1, 2005 and September 30, 2006 covering 372 charges. It should be added that the proportion of acquittals for rape of children was smaller (16.5 per cent), but that the courts changed the classification of the charge to sexual exploitation in close to 25 per cent of the counts referring to rape of children.

In addition, a large number of convictions are the subject of appeals to a higher court. According to the Public Prosecution Authority's special study, the same conclusion was reached by all instances in the vast majority (83 per cent) of appeals cases. In 17 per cent of cases (one in six), the higher court wholly or partly changed the lower court's ruling on responsibility or the designation of the crime. The study does not show whether such changes resulted in acquittals or convictions, as changes to sanctions were not included in the survey.¹⁴²

Unfortunately, no authority appears to have information on the proportion of reported rapes that eventually lead to a conviction in a district court, a court of appeal or in rare cases in the Supreme Court. Amnesty International Sweden considers this to be a serious shortcoming that makes it impossible to follow the progress of a rape case through the entire legal process. Efforts to harmonise the statistics from the different authorities to allow for comparisons are underway, but this work will take years to complete.¹⁴³

3.5.4 THE LEGAL PROCESS IN RAPE CASES

According to the so-called "presumption of innocence," a suspect shall be considered innocent until proven guilty. The police and prosecutor must conduct an impartial investigation. The prosecutor is not allowed to institute a prosecution unless there is sufficient evidence for a conviction. The evidence requirements in rape cases are the same as in other types of crime and a prerequisite for a prosecution and to obtain a conviction, the court must find it to be beyond reasonable doubt that the accused committed a crime that fits the prosecutor's description of the criminal act. This means that the burden of proof is on the prosecutor and the accused does not have to prove his innocence, but has the right to withhold information and even to lie. To convict a person of a crime it has to be proven that the person was acting with intent; i.e., that he intended to commit a crime or realised that the act actually constituted a crime.

The judiciary sometimes points out that "*the administration of justice is not the same thing as justice, but rather the result of what can be proven in each individual case.*"¹⁴⁴ However, different judicial authorities sometimes make different assessments arriving at completely different conclusions in the same cases and on the basis of more or less the same material of evidence.

It goes without saying that different evaluations and interpretations of circumstances, statements, supporting evidence and, not least, of the credibility and reliability of the complainant and accused, are made during the course of the legal process.

¹⁴² The Public Prosecution Authority's Development Centre, Gothenburg intends to carry out a follow-up study in 2008 to its previous survey of the evaluation of evidence by the courts in cases involving sexual offences. This follow-up study will focus on cases dismissed in court and will consider the supporting evidence that was available and the reasons why the charges were dismissed.

¹⁴³ Information from Birgitta Fernqvist, Vice Director of the Public Prosecution Authority at the Public Prosecution Authority's Development Centre in Gothenburg, in a meeting held 2007-09-13.

¹⁴⁴ *The Stureplan rule – an outcome of the rape case*. Dagens Juridik: Commentary by Johanna Björkman, Prosecutor and DNA evidence expert (in Swedish).

The following chapters deal with the legal process in rape cases, with the emphasis on the preliminary investigation. A prerequisite for a case going to trial at all is a sufficiently thorough preliminary investigation. It is in the interest, both of the crime victim, the suspect and ultimately of society, that serious crimes such as rape and sexual assault are investigated as thoroughly, efficiently and comprehensively as possible.

Surprisingly little has been done to systematically analyse and identify shortcomings - thereby securing a basis for concrete improvements - in the legal handling of rape in Sweden. The authorities did not introduce comprehensive and detailed inspections of the quality of investigations of this type of crime until 2005, when The National Police Board and the Public Prosecution Authority carried out a joint authority inspection of crime investigations into rape and aggravated rape of victims over the age of 15. This was followed up by a renewed inspection in 2007. The purpose of the inspections was "to analyse whether the quality and handling routines of the investigations met justified requirements and to discover any systematic shortcomings, etc."¹⁴⁵ A limited number of investigations of consummated rape, including aggravated rape, was scrutinised in four police authorities and divisions of the Public Prosecution Office on each occasion. The inspection was said to be occasioned by "opinions presented in contributions to the debate."

There is limited up-to-date research in this field at present. A monography entitled *Evidence assessments in cases of sexual offences* by Helena Sutorius (thesis completed by Anna Kaldal, in Swedish only) was published in 2003. The monography deals in part with preliminary investigations in suspected sexual offences against adults. It also includes a review of preliminary investigation practices, based on a number of reported cases from the latter half of the 1990s.

The book *Equality before the law*, was published in 2005 (in Swedish only). The book deals with the issue of whether individuals are treated equally as perpetrators and victims of a crime. The book is written by Claes Lernestedt, LL.D. and Senior Lecturer of criminal law, Tove Pettersson, Ph.D. and Senior Lecturer of criminology, Torun Lindholm, Ph.D. and Senior Lecturer of psychology and Christian Diesen, Professor of legal procedure. Parts of the book deal with sexual offences.

The Swedish Criminal Victim Compensation and Support Authority has financed the research project *The legal handling of assault of women and children*, aiming at investigating how the legal system handles so-called "family violence" and sexual offences. The project will run between 2005-2008 and is carried out at Stockholm University under the leadership of Professor Christian Diesen (Faculty of Law) and Associate Professor Frank Lindblad (Stress Research Institute). The research team includes some 15 researchers with different competences in law, criminology, political science, sociology, child psychiatry, child psychology and public health studies. The aim of the project is to promote

¹⁴⁵ *Joint inspection of criminal investigations into rape and aggravated rape of victims over the age of 15*. RPS/ÅM 1/05, 2005 and *Joint inspection: Follow-up study of crime investigations in cases of rape and aggravated rape of crime victims over the age of 15*, RPS/ÅM 1/07, 2007. The National Police Board and the Public Prosecution Authorities (only available in Swedish).

research in this field. The team will also carry out a study to review and analyse evidence problems in family violence cases and investigate how the quality of crime investigations into assault of women and children is influenced by the setting and design of the investigation and the competence of the investigators. Within the framework of the project, a report and a preliminary analysis was presented in 2008, of the differences between investigations into so-called family violence and sexual assault between different police commissioner districts in Stockholm. All judgements in cases of rape of adults (and sexual assault of children) have been studied, as well as all preliminary investigations into these crimes and cases of assault within the family of women and children in the Stockholm police commissioner districts during the years 2004 and 2006 (some 10,000 cases in total). The report was written by Eva L Diesen, research assistant at Stockholm University.

It is mainly these sources that have been used by Amnesty and form the basis for the following chapters, as well as information obtained through interview with legal professionals.

3.5.5 RAPE INVESTIGATIONS AND INVESTIGATIVE QUALITY

The police and the prosecution authorities play extremely important roles in ensuring that reported cases of rape are actively investigated, as comprehensively and as extensively as possible, during the preliminary investigation and in the securing of evidence. The crime victim's possibilities of obtaining justice and redress are largely dependent on the quality of the preliminary investigation, as the material gathered will form the basis for the public prosecutor's decision on whether to prosecute or whether to close the case. It will also serve as evidence in the main court hearing.

Different types of rape give rise to different problems in terms of the investigation and evidence. If the rape has been committed by an unknown perpetrator, the police work will include a search for a perpetrator. If, however, the woman has been raped by a previous or current partner, the focus of the investigation will be on the criminal act itself. In this context, assessments concerning the reliability of the complainant, whether or not coercion was applied and the intention of the suspect are vitally important.

The special nature of the crime of rape means that assessments of the credibility and reliability of the statements of the complainant and the suspect are crucial for the outcome of the case. In many cases, the conflicting versions of the two parties constitute the main evidence. Research has shown that the evaluation and analysis of the two versions are largely dependent on the motivation, knowledge and attitude of the investigators.¹⁴⁶

Within the ongoing research project *The legal handling of violations of women and children* (hereinafter referred to "the research project"), an interim report and a preliminary

“When you tell about a rape you don’t want to explain yourself or be questioned, you don’t want to receive prejudice or valuations. [...] I want to be accepted and respected and listened to.”

A woman telling her story, in “Subjected to rape?” by Josefin Grände.

¹⁴⁶ Helena Sutorius & Anna Kaldal: *Evidence assessments in cases of sexual offences*, 2003. (in Swedish only)

analysis of how investigations into family violence and sexual abuse differ between police commissioner districts in Stockholm county were presented in 2008.¹⁴⁷

The researchers conclusions were, among other things, that the quality of investigations in Stockholm county is, in general, inadequate in cases of rape and so called family violence. It was also found that the quality of the investigations differs considerably, both between different police commissioner districts and between different investigators in the same district even if it is argued that the differences had somewhat levelled out during the two years investigated (2004 and 2006). This is also said to apply to the different districts of the Prosecution Offices and to different prosecutors within one and the same district. According to the researchers, the proportion of solved cases is “*inadequate in relation to what ought to be possible, given the resources available and the possibilities of proving that a crime has been committed.*”¹⁴⁸

Differences in investigation quality affect the prosecution rate. Other studies have also shown that the number of prosecutions differs between different divisions of the Public Prosecution Authority. [Relationship violence specialists – follow-up and evaluation. The Prosecution Authority Development Centre, Gothenburg, April 2008.]

Researchers argue that the results of investigations are influenced by the skills and commitment of the prosecutor, but also by the preceding police work. If the results of the police investigation are poor and inconclusive, it is difficult for the prosecutor to proceed with the case. Procedures for securing evidence vary. This applies both to evidence from the scene of the crime and to evidence from the victim. Conversely, the researchers argue that the outcome may be influenced by the prosecutor dropping investigations prematurely and the tendency of some prosecutors to envisage problems concerning evidence before they have even arisen. If the prosecutor considers the evidence in relation to proving the rape in court too early in the investigation, the case may be dropped, even though further action could have improved the state of the evidence.¹⁴⁹

Similar reasoning is found in previous research by Helena Sutorius. Following a review of applied practices she concluded that preliminary investigations are often closed at too early a stage, despite no real deficiencies in the statement by the complainant.

¹⁴⁷ Eva L Diesen: *Family violence and sexual abuse – comparison between police commissioner districts in Stockholm county of the relationship between the organisation and the quality of investigations*, 2008.

Within the ongoing research project entitled *The judicial process in violations of women and children*, researchers have, inter alia, studied the following issues:

- the speed with which investigations are initiated and pursued;
- whether measures taken in the investigations were adequate;
- the quality of interrogations, especially those involving children;
- whether requirements concerning evidence of coercion were fulfilled;
- whether cases were adequately investigated before preliminary investigations were closed;
- whether the correct reasons for closing an investigation was cited;
- whether the rights of the victim and the suspect were satisfied, and
- the quality of cooperation between the prosecution and the police.

¹⁴⁸ Eva L Diesen: *Family violence and sexual abuse – comparison between police commissioner districts in Stockholm county of the relationship between the organisation and the quality of investigations*. 2008 (in Swedish).

¹⁴⁹ *Ibid.*

The joint authority inspections of crime investigations into rape and aggravated rape from 2005 and 2007, urged the police and prosecution authorities “to leave no stone unturned”, that is, to take all preliminary investigations as far as necessary to obtain a fully adequate basis for a decision. The inspection concluded in 2005 that several very high-quality preliminary investigations had been carried out, but that cases were found where they questioned whether “other or additional investigation measures might have contributed to taking the case further.”¹⁵⁰ In the subsequent follow-up inspection it was stated that there had been an improvement in quality between the two inspections.

The Swedish Prosecution Authority’s action plan for 2008 state that divisions that fails to attain the national average rate of prosecution for violent and sexual offences against women and children or that fails to increase their prosecution rate by 3 per cent or more must give an account of measures taken to attain the national average rate and the reasons why this had not been achieved so far.¹⁵¹

All in all, there appears to be a consensus that improvements in the quality of rape investigations are both necessary and possible. Not least the fact that the number of prosecutions still differs between different divisions of the Public Prosecution Authority is an indication that there is scope for improvement of the quality of rape investigations. It is also worth noting that the quality of investigations may be influenced by the fact that, while the number of reported rapes has increased during recent years, there has been no corresponding increase in staff or other resources available to the police or the prosecution authorities.¹⁵²

The following section presents some important aspects of the preliminary investigation.

3.5.6 INTERVIEWING THE COMPLAINANT

Some victims describe their treatment by the judicial system as respectful, while others describe their dealings with the system as insulting, and as being characterised by a feeling of not being believed or as a “legal lottery”.¹⁵³ Good and professional treatment of the victim may be of decisive importance for the continuation and outcome of the investigation, as it will affect her ability to describe what has happened in the greatest possible detail and her willingness to continue to participate in the investigation.

The attrition process includes a number of different assessments. Several studies show that assessment of the credibility of the complainant’s version of events is often influenced by clichés and stereotypes.¹⁵⁴ In the research project mentioned above, researchers came to

¹⁵⁰ *Joint inspection of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/the Swedish Prosecution Authority 1/05.

¹⁵¹ Swedish Prosecution Authority’s Action Plan 2008,

¹⁵² Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008, and *Rape of individuals aged 15 or over – developments during 1995–2006*. BRÅ Report, 2008:13.

¹⁵³ *Reporting and investigation of sexual offences: Proposals for improvement from a crime victim’s perspective*, Memorandum from the Commission of inquiry into victims of sexual offences Ju 2004:1, and Josefin Grände: *“I never called it rape” – meeting raped women*, 2005.

¹⁵⁴ Helena Sutorius & Anna Kaldal: *Evidence assessment in sexual offences*, 2003, *Equality before the law*, Christan Diesen, Claes Lernestedt, Torun Lindholm, Tove Petterson, 2005.

the conclusion that the victim's verbal skills and social status were of decisive importance in this context. Young (drunk) women, in particular, have problems fulfilling the stereotypical role of the "ideal victim", with the consequence that neither rapes within intimate relationships nor "date rapes" involving teenage girls result in legal action. The researchers also identify other groups of women who seems to have problems asserting their claims in rape investigations, such as, for example, women from Asia or Eastern Europe who have relationships with Swedish men, sex workers, homeless women and women suffering from substance abuse or mental illness, or women who have previously reported rape.¹⁵⁵

Similar conclusions have been drawn previously by another researcher on the basis of a review of applied practices. According to Helena Sutourius, more detailed and unbiased investigations are carried out in cases where the woman is considered to have "high victim status." Sutourius also claims that attrition appears to come into play at a very early stage of the investigation, in particular if the woman no longer wants to participate or if it is claimed that she has behaved in a "sexually provocative" manner or has low social status. "*The focus appears to be on the woman's behaviour, rather than on the act that is the object of the investigation,*" she concludes. If considerable negative evidence value is attached to such factors prematurely in the investigation, there is a risk that other circumstances remain uninvestigated.¹⁵⁶

According to the research project, police investigators often suspect allegations of rape to be false. This is obvious from notes taken by the police and from communications between the prosecutor and the police investigators. The researchers believe that a number of factors will make investigators sceptical about the complainant:

- she delays reporting the crime
- she has no injuries
- her version of events is considered unreasonable;
- she suffers from mental disease or disturbance;
- she has previously reported rape;
- she wishes to "withdraw" her report;
- she no longer wants to contribute to the continued investigation after the first interview.

According to the researchers, such suspicions have been proven in only 1.5 per cent of cases where false reporting was suspected. Instead, investigations are closed. The researchers believe that this practice has serious consequences, as the uncertainty it gives rise to – because the reports are never fully investigated – appears to confirm the notion that false reports are common. Researchers argue that this in turn, leads to prejudice on the part of the police and the prosecutors, who feel they are acting appropriately if they disregard vague or "weak" reports. If the woman belongs to a certain "category" (if, for example, she is a substance abuser, homeless or mentally ill), or if she fails to pursue her case, her report will often be considered unfounded. The practical effect of this, according

¹⁵⁵ *Family violence and sexual abuse – comparison between police commissioner districts in Stockholm county of the relationship between the organisation and the quality of investigations*. Interim report, 2006 and Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008.

¹⁵⁶ Helena Sutourius & Anna Kaldal: *Evidence assessments in cases of sexual offences*, 2003.

to the research group, is that particularly vulnerable victims lack any legal protection.¹⁵⁷

If this is the case, Amnesty believes that the situation is very serious and immediately needs to be investigated and addressed.

According to Leif Johansson, a detective inspector (DI) at the Stockholm police authority, who has worked for many years on developing police strategies and methods for tackling male violence against women, investigations into sexual offences and crimes against the integrity of women are very wide-ranging, as investigators often find that the woman has been subjected to various types of violent crime on a large number of occasions before she finally reports an assault to the police.¹⁵⁸ Good treatment by the police is very important for establishing a climate of trust, where the complainant can, and dares to, talk about what has happened. The complainant may be shocked or panic-stricken, and, in many cases, repeated interviews are required, both with the complainant and others, to gather sufficient information. DI Johansson argues that investigations are sometimes closed prematurely, and in his experience, so-called “false reporting” is extremely rare. He believes that claims of “false reporting” should not be made, as these only serve to throw suspicion on women. In some cases, the conditions for rape are not fulfilled for technical legal reasons, but this does not mean that the report is false or unfounded.

One of BRÅ's specialised studies on rape, based on a scrutiny of narratives in police reports and the first reports from interviews with complainants, points to considerable differences in the quality of these texts. They are sometimes very detailed, but in many other cases are sporadic and contain little information.¹⁵⁹ Amnesty International Sweden finds it particularly remarkable that information on the use (or absence) of violence or threats, i.e., clear evidence that the victim was unwilling to have sex and was coerced, is often missing. At the same time as stated by BRÅ, the circumstances may be unclear in some cases, perhaps because the woman has been drunk, asleep or shocked during the interview. As the purpose of the survey carried out by BRÅ was not to investigate the quality of the police work, no further analysis has been made as to whether these cases led to additional interviews with the complainant.¹⁶⁰

According to DI Johansson, an investigation into a rape is very different if the woman has first turned to the Emergency Clinic for Raped Women (AVK) and has received help and treatment and examination there. The urgent, initial measures will then have already been taken and the woman's contact with the police will be less stressful, allowing the police to pursue a calm and methodical investigation.

The cooperation between the AVK and the police is a success story, according to DI Johansson, and works because the right people with the right competence are carrying out the right procedures.

¹⁵⁷ Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008.

¹⁵⁸ Information from Leif Johansson, detective inspector, Stockholm police authority, in a telephone interview 2008-05-19.

¹⁵⁹ *Rape of individuals aged 15 or over – developments during 1995–2006*. BRÅ Report, 2008:13.

¹⁶⁰ Information from Klara Hradilova-Selin, research analyst, BRÅ, by telephone 2008-06-17.

In cases where the investigation is dropped, it is important for the complainant to be informed personally about the decision and to have a chance to understand why it has been made. According to DI Johansson, good support and treatment may have a profound impact on the woman's entire life situation. She needs to be told that the decision to close the investigation does not mean that the police do not believe her.

The previously mentioned joint authority inspections have also pointed out that it might be preferable to inform the plaintiff personally about a decision to close an investigation. They also noted in 2005 that a detailed reason for the decision to close a case was offered in only a few cases. In the 2007 inspection it was stated that the number of decision templates for closing investigations had increased and if these are used, the decisions ought to be easier to understand. The inspections further proposed more extensive use of video recordings as a way of improving investigations. The importance of appointing a complainant's counsel more frequently and at an earlier stage was underlined and the number of appointed counsels had indeed increased considerably between the two inspections.¹⁶¹

3.5.7 INTERROGATION OF THE SUSPECT

The social status of the suspect is also of considerable importance to the outcome of the investigation. Suspects with a previous conviction (regardless of the crime), as well as the socially excluded, alcoholics, drug abusers and immigrants from countries outside Western Europe run a greater risk of being prosecuted than "ordinary" Swedes who deny having committed a crime.¹⁶²

According to the joint authority inspections, most interrogations of suspects are documented using so-called "concept interviews" (taking notes). The inspections argue that these interviews should more often be documented using "at least" tape recordings (dialogue interview) to improve the quality. In some cases, interrogation of the suspect is delayed, although it is imperative for such interrogations to be carried out immediately.¹⁶³ Furthermore, investigations are closed without an identified perpetrator being interrogated at all, although this situation has improved, according to the inspection findings. However, both inspections point out that interrogations with a person who is suspected for good reason should confront and challenge the suspect to a greater extent.

According to the review in the research project mentioned above. In about one-third of all reported rapes of persons over the age of 15 in Stockholm county during 2004, named

¹⁶¹ *Joint inspection of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/05 and *Joint inspection follow-up of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/07.

¹⁶² Helena Sutorius & Anna Kaldal: *Evidence assessment in sexual offences*, 2003, *Equality before the law*, Christan Diesen, Claes Lernestedt, Torun Lindholm, Tove Petterson, 2005, and Eva L Diesen: *Family violence and sexual abuse – comparison between police commissioner districts in Stockholm county of the relationship between the organisation and the quality of investigations*. 2008.

¹⁶³ *Joint inspection of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/05 and *Joint inspection follow-up of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/07.

and identified perpetrators were not interrogated during the investigation.¹⁶⁴ According to the research project *The legal handling of violations of women and children* mentioned earlier, the police appear to assume that the alleged perpetrator will invoke consent and this sometimes results in the investigation being closed without the man being interrogated.¹⁶⁵ The researchers in the project go as far as arguing that, a special practice in relation to legal security has developed in rape cases, to the effect that prosecutors generally refrain from interrogating an alleged perpetrator until the person in question is considered to be “suspected [of rape] for good reason.” There appears to be disagreement among prosecutors and police as to whether an alleged perpetrator can be interviewed to obtain information, which is common practice in other types of suspected crime.¹⁶⁶

Lisbeth Johansson, Director of the Public Prosecution Authority at the Development Centre in Gothenburg, argues that a person who is suspected for good reason of having committed a crime should be interrogated during the preliminary investigation. Johansson argues, however, that it is more doubtful whether a person who has been identified as a perpetrator by the complainant, but who is not even suspected for good reason, which is a relatively low degree of suspicion, should be interrogated. Nevertheless, as stated also in the above-mentioned joint authority inspections, Lisbeth Johansson believes that there is room for improvement regarding the way in which the interrogation of suspects is carried out. The suspect’s version of events is not always adequately challenged, few follow-up questions are asked and the suspect is not confronted with information provided by the complainant. It may also be necessary to interrogate the suspect several times, which is usually not done. Lisbeth Johansson believes that the available technology is poorly used, despite the fact that video-recordings of interrogations with the suspect and interviews with the complainant and witnesses, should they exist, improve the quality of the evidence considerably.¹⁶⁷

The joint authority inspections have emphasised that suspects should be interrogated more often than is the case today. They also argue that coercive measures (detention of the suspect) should be used more frequently in crimes as severe as rape.¹⁶⁸

In its review of all reports of rape in Stockholm county, the research project has identified several cases that did not go to trial, even though the accused had admitted the crime or the evidence situation had been favourable.¹⁶⁹

¹⁶⁴ Information from Eva L Diesen, research associate, Stockholm University, at a meeting held 2007-11-14.

¹⁶⁵ Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008.

¹⁶⁶ A defence counsel is only assigned if a person is suspected for good reason of a crime. According to the research group, many prosecutors believe that a person should not be accused of a sexual offence unless he/she has the possibility to defend him/herself against this accusation legally; i.e., after a defence counsel has been assigned.

¹⁶⁷ Information from Lisbeth Johansson, Director of the Public Prosecution Authority, in meeting 2008-06-16.

¹⁶⁸ *Joint inspection of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/05 and *Joint inspection follow-up of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/07.

¹⁶⁹ Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008.

3.5.8 SECURING OF EVIDENCE AND LEGAL CERTIFICATES

Women who are victims of sexual offences are seen in emergency wards as well as at gynaecological clinics and, in small towns, community health centres. Women may seek emergency medical attention immediately after the violation has taken place or much later. In most cases, the crime victim has not (yet) reported the violation to the police. This means that the medical services often perform the first, important examination, secure evidence and carry out medical tests.

In most rape victims, no definite injuries to the genitals can be demonstrated. Injuries to, or around, the genitals or the anal region can be found in only about 20 per cent of victims. However, approximately 50 per cent of victims have other forms of physical injury, such as bruises or scratch marks, usually on the arms and thighs.¹⁷⁰

As supporting evidence is often of decisive importance in rape cases, it is imperative to gather and secure evidence that can be used in court. Documentation of injuries and other findings such as sperm or other traces of the perpetrator on the victim's body are presented in legal certificates, that is written, medical statements by a physician, issued upon request by the police or by a prosecutor. There are major differences between the different types of legal certificate. The police may request a certificate based on an opinion of the medical record obtained from the healthcare services. However, such records are intended to document the healthcare services' treatment of the patient and do not contain information as to the possible cause of the injuries or their severity. An opinion based on the victim's medical record is therefore often very brief and scanty. Legal certificates based on physical examinations where samples were taken and injuries were photographed and described are significantly more valuable as evidence. The legal certificates are free of charge for the victim and are paid for by the police. The cost of the different types of legal certificate is the same, but lack of knowledge about the difference in content and the additional work involved for the police appears to result in very few requests for the latter form of legal certificate. Sometimes, legal certificates are not used at all, but instead the police request copies of the victim's medical records.

A follow-up study in 2007 of the legal certificate reform enacted in 2005, showed that the number of legal certificates issued in cases of rape and sexual crimes was very small, with certificates issued in only 11 per cent of these crimes. Since the documentation and interpretation of injuries are of crucial importance to the gathering of evidence, the small number of legal certificates issued is a serious obstacle to the preliminary investigation and any subsequent prosecution.¹⁷¹ The fact that so few legal certificates are requested by the police seems peculiar, especially since an increasing number of rape victims seek medical care. According to BRÅ at least 39 per cent of victims of rape who reported the crime to police in 2006, had sought medical assistance.¹⁷²

Following the legal certificate reform, legal certificates are normally issued by legal medical officers at the six departments of forensic medicine in Sweden or by legal certificate physicians contracted by the National Board of Forensic Medicine. However, in cases of rape and

¹⁷⁰ *Manual. National Programme for the Health and Medical Services' Handling of Victims of Sexual Abuse*, 2008.

¹⁷¹ *Follow-up to the reform of legal certificates*. The National Board of Forensic Medicine, 2007.

¹⁷² *Rape of individuals aged 15 or over developments 1995–2006*. BRÅ Report 2008:13

sexual offences, legal certificates are often issued by gynaecologists as special competence or emergency measures, in the form of gynaecological examinations with the securing of evidence, are required. Physical examinations are also important to document any injuries to other parts of the body. According to the National Board of Forensic Medicine, gynaecologists do not always have the necessary training to carry out a full body examination.

In February 2008, the National Centre for the Protection of Women's Integrity (NCK) launched a national programme aimed at the healthcare services concerning procedures in cases of sexual abuse.¹⁷³ The programme aims to ensure the adoption of uniform and legally secure procedures for sampling and documentation. Its point of departure is that the healthcare services should be seen as a significant link in the legal chain, thus placing considerable demands on the staff involved. The objective is that all doctors who come into contact with victims of sexual offences should be able to carry out a full examination and secure evidence.

The police also have access to kits for securing evidence, but they are often used wrongly or not at all. Both the 2007 follow-up study of the legal certificate reform and the programme for handling victims of sexual offences underline the importance of police and prosecutors developing knowledge and competence regarding procedures for when and how legal certificates should be requested and the differences between different types of certificates.

Procedures for handling and preserving samples and other forms of evidence must also be improved. Improved cooperation between the healthcare services and the legal system is important for resolving some of the problems with legal certificates encountered today.

According to the above-mentioned joint authority inspection, preliminary investigations are sometimes closed before the results of requested analyses have been returned by the National Laboratory of Forensic Science.¹⁷⁴ It is also important to secure evidence on the suspected perpetrator and at the crime scene.

3.5.9 COURT PROCEEDINGS

Only a small proportion of reported rapes reach a court of law. Suspected perpetrators very rarely admit to having committed rape.¹⁷⁵ In most cases, there are no eyewitnesses to the crime. The court's evaluation of the relative credibility and reliability of the complainant and the defendant then becomes crucial. Several surveys of the courts' evaluation of evidence in cases involving sexual offences show that, when the evidence mainly consists of conflicting versions of events, the information provided by the complainant will be insufficient on its own to secure a conviction.¹⁷⁶

¹⁷³ *Manual. National Programme for the Health and Medical Services' Handling of Victims of Sexual Abuse*. NCK, 2008.

¹⁷⁴ *Joint inspection of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/05 and *Joint inspection follow-up of criminal investigations into rape and aggravated rape of victims over the age of 15*. The National Police Board/Office of the Public Prosecutor 1/07.

¹⁷⁵ According to the survey *Evaluation of evidence by the law courts in cases involving sexual offences*, defendants wholly or partially admit the rape of children far more frequently than the rape of persons over the age of 15.

¹⁷⁶ Helena Sutorius & Anna Kaldal: *Evidence assessment in sexual offences*, 2003, and Ulrika Andersson: *His (word) or hers? A gender theory analysis of the protection offered by criminal law against sexual violation*, 2004, and *Evaluation of evidence by the law courts in cases involving sexual offences – A survey*, Memorandum 2007:13, The Public Prosecution Office's Development Centre, Gothenburg (all in Swedish).

The survey *Evidence evaluation in courts of law in cases involving sexual offences* carried out by the Office of the Public Prosecutor, shows that supporting evidence was referred to in 94 per cent of the rape/aggravated rape charges that were studied. In more than one third of the charges, written evidence was produced documenting injuries.¹⁷⁷

The evidence requirements in rape cases and all other criminal cases are high and to obtain a conviction it must be shown beyond reasonable doubt that the defendant is guilty of the crime. A crucial problem in rape cases is the assessment of intent, that is, the perpetrator's intention and understanding of what he/she was doing at the time of the offence. In about half of all cases the defendant admits that intercourse or some other sexual act has taken place, but insists that the girl or woman consented – the so-called “consent objection.”¹⁷⁸

Lisbeth Johansson, Director of the Public Prosecution Authority, believes that DNA evidence has changed the focus in rape cases: a few decades ago it was up to the prosecutor to prove that the defendant was the person who had committed the crime and that intercourse had even taken place, while today the focus is on proving that a crime has been committed, as defendants very frequently cite the “consent objection”.

3.5.10 ATTITUDES

The obsolete attitudes that characterise society's and the judicial system's view of rape have been discussed in Sweden for decades.¹⁷⁹ Notions about female and male sexuality, normality and the sexual availability of women are deeply rooted in society. Linked to these are also more or less explicit expectations about how girls and women ought to behave before, during and after a rape – and how they should behave to avoid being raped. Examples of such attitudes surfaced in the study on attitudes to rape carried out by Amnesty International Sweden in the spring of 2008, in which 2,600 persons were interviewed.¹⁸⁰ These notions and attitudes are reflected in most countries' rape legislation and judicial handling of rape cases. Furthermore, the problems concerning rape also involve heteronormative assumptions that may lead to the continued concealment of rapes within in same-sex relationships.

Eva L Diesen, one of the researchers in the project *The judicial process in violations of women and children*, claims that the outcome of a reported rape may depend on the police

¹⁷⁷ *Evaluation of evidence by the law courts in cases involving sexual offences* – A survey, Memorandum 2007:13, The Public Prosecution Office's Development Centre, Gothenburg.

¹⁷⁸ A survey of all sentences passed for rape of persons over the age of 15 in Sweden during 2006, covering 297 charges, found that the defendant admitted to having committed rape in only 2 per cent of cases. In 50 per cent of cases, the defendant cited the consent objection, and in 43 per cent of the cases the defendant denied having committed a crime. In 5 per cent of cases the defendant neither confessed nor denied the crime. See Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008.

¹⁷⁹ See, e.g., Maria-Pia Boëthius, *You have only yourself to blame*, 1976, and Katarina Wennstam, *The girl's fault*, 2002 (both in Swedish).

¹⁸⁰ While most respondents rejected the notion that rape victims themselves had any responsibility for the rape, the results also showed that such attitudes still prevail. For example, if a woman dresses and behaves “provocatively”, voluntarily goes home with a man, is intoxicated or does not physically resist or scream during the rape, she is seen as being at least partly responsible.

district in which the crime was committed and the police officers and prosecutors assigned to the investigation. She argues that there are considerable differences in attitudes and competence both within the police force and within the public prosecution authorities.¹⁸¹

The joint authority inspections mentioned above also underline the importance of the knowledge, experience and commitment of the investigating officers, which is of "decisive importance" for the rape investigation.

3.5.11 EDUCATION, SPECIALISATION AND COOPERATION: THE POLICE AND THE PROSECUTION AUTHORITIES

Some crime victims experience their treatment by the judicial system as respectful, while others describe their dealings with the system as insulting or a "legal lottery." It is crucial to the outcome of a case that the victim is treated professionally and with respect. The ongoing training of police officers and prosecutors on issues concerning sexual offences from a victim's perspective is therefore imperative. Training should cover issues such as the treatment of victims, but should also address the development of methods and procedures, as well as changes in attitudes at all stages of the legal process. At the same time, the importance of individual investigators' and prosecutors' creativity, aptitude and suitability for the job should not be underestimated.

The Crime Victims' Compensation and Support Authority has been commissioned by the government to develop and implement a training programme in consultation with the National Police Board, the National Courts Administration and the Office of the Public Prosecutor, for personnel in the police force, the public prosecution authority and the law courts. The purpose of the programme is to enhance knowledge about victims of sexual offences and to improve the treatment of such crime victims in connection with the reporting of the crime, the preliminary investigation and the subsequent court proceedings.¹⁸²

Specialisation among police officers, prosecutors and judges may be a way of ensuring the acquisition of the necessary knowledge and experience and should also reduce the scope for subjective interpretation. The need for specialisation within the different authorities and the importance of close cooperation between the police, the prosecution, healthcare services and non-governmental organisations has been discussed for many years, but work on establishing such cooperation appears to be proceeding very slowly.

Police investigations of rape crimes are handled either by so-called family violence units or violent crime/serious crime units. The Swedish police have family violence units in 15 of Sweden's 21 police authorities. In some of these, there are more than one family violence unit, adding up to about 20 such units. In addition, some police districts have also established special units for crimes against women and children.¹⁸³ The National Police Board, in consultation with the Office of the Public Prosecutor, has the task of ensuring that all police authorities have access to qualified expertise to prevent and investigate men's violence

¹⁸¹ Information from Eva L Diesen, research associate, Stockholm University, at meeting 2007-11-14.

¹⁸² Action plan to combat men's violence against women, honour-related violence and oppression and violence in same-sex relationships. Skr. 2007/08:39.

¹⁸³ Information from Abigail Choate, the National Police Board, by e-mail 2007-09-20.

against women, for example, in the form of special family violence units.¹⁸⁴

The objective of the ongoing National Police Board project, *Crime in intimate relationships*, is to create a uniform, national capability to prevent and investigate crimes, including sexual violence, within intimate relationships. The project includes the development of a national strategy and common, nationwide procedures. The goal is to change attitudes and improve methods of crime prevention and investigation, from the very first measures taken to the investigation's final report. The project should also result in better training and education and improved cooperation with other actors. In autumn 2008, a handbook will be launched, covering best practices regarding investigational methods in cases of violence in intimate relationships, honour related crimes and sexual offences. A special reoccurrent training will also start during the autumn.¹⁸⁵

Work is ongoing within the public prosecution authorities to appoint specialist prosecutors in all divisions of the Office of the Public Prosecutor. "Relationship violence specialists" will contribute to the development of methods for investigating this type of crime, including rape, and will receive special training.¹⁸⁶ The purpose of appointing specialist prosecutors is to improve the conduct of investigations and achieve higher prosecution rates and more convictions.

During 2006, 14 specialist prosecutors were appointed in 13 public prosecution offices. Before the end of 2007, the Office of the Public Prosecutor was supposed to appoint "specialised relationship violence prosecutors" in all the public prosecution offices in Sweden.¹⁸⁷ These goals were not met due to lack of economic resources.¹⁸⁸ However, by June 2008 there were 30 relationship violence specialists employed in 29 divisions of the public prosecution authority.¹⁸⁹

The Public Prosecution Authority's development centre in Gothenburg has followed up this project and noted that the number of sexual offences that went to trial was lower in 2007 than in 2006. Geographical differences also remain. The divisions that have appointed relationship violence specialists do not deviate from this pattern. So far, the relationship violence specialists do not seem to have had any general impact on the trial statistics. However, some of the divisions with specialist prosecutors have improved their trial rate for some or all types of "relationship crime".¹⁹⁰

¹⁸⁴ Action plan to combat men's violence against women, honour-related violence and oppression and violence in same-sex relationships. Skr. 2007/08:39.

¹⁸⁵ Information from Abigale Choate, project leader at the National Police Board, at a seminar in the Swedish Parliament, 2007-05-30. And Helen Gustavsson, National Police Board, by e-mail dated 2008-08-19.

¹⁸⁶ "Do not expect an increase in rape convictions," *Dagens Nyheter* (DN Debatt) 2007-10-19, Fredrik Wersäll, Prosecutor-General, and Lisbeth Johansson, Director of the Public Prosecution Authority (in Swedish).

¹⁸⁷ Information from Birgitta Fernqvist, the Public Prosecution Office's Development Centre in Gothenburg, in a meeting held 2007-09-13.

¹⁸⁸ Information from Lisbeth Johansson, Director of the Public Prosecution Authority, via e-mail dated 2008-05-16.

¹⁸⁹ Information from Eva Bloch, District Public Prosecutor, in a meeting held 2008-06-16

¹⁹⁰ *Relationship violence specialists – follow-up and evaluation*. Report by the Development Centre of the Public Prosecution Authority in Gothenburg, April 2008. Relationship crimes are defined as intra-relationship violent crimes, intra-relationship sexual offences, violence against children and sexual offences against children.

The Director of the Public Prosecution Authority, Lisbeth Johansson, believes it would be possible further to improve the quality of investigations and increase the rate of prosecution by assigning rape cases randomly to specialised prosecutors with the necessary knowledge and experience of measures needed to build a case. According to Lisbeth Johansson, there are prosecutors who are not suited to handling cases involving sexual offences.¹⁹¹

The research project *The legal handling of violation of women and children* argues that it is a basic requirement that prosecutors who handle these types of cases should have special training and be available “on the shop floor” and participate during the interrogation of crime victims and suspected perpetrators.¹⁹²

Detective Inspector Leif Johansson believes that too much confidence is sometimes placed in specialisation as a means of achieving change and that it is necessary to consider personal aptitude. He points out that the human factor is important and some police officers and prosecutors are simply better at dealing with these cases than others. In practice, however, any police officer may encounter a raped woman and all police personnel must therefore maintain a good and professional attitude and have a good basic knowledge of, and familiarity with, the relevant procedures.¹⁹³

The police and the prosecution view cases involving sexual offences from different perspectives and may have a poor understanding of each other’s work. For this reason, DI Johansson argues that it is important for the police and prosecutors to attend joint courses for training and skills development. Close cooperation between the police and the prosecution authorities may have a positive influence on the outcome of these cases, according to Johansson.

DI Johansson also believes it is imperative for the police to prioritise this type of crime at a senior level and follow-up work must be made more stringent. For a number of years the police have been committed to combat violent crime against women and will continue this work within the framework of the national project *Crime within intimate relationships*. DI Johansson believes that considerable progress has been made, but he also cautions that it remains to be seen which types of crime the government will prioritise in the future: serious organised crime or so-called “mass crime” (everyday crime) including violence against women.¹⁹⁴

The research project *The legal handling of violations of women and children* has also looked at the relationship between the quality of investigations and the way police districts are organised. It is concluded that cooperation between the police and prosecutors is probably the single most important factor determining the quality of investigations: closer cooperation means better investigations. Whether or not the police are working within family violence units appears to have no unequivocal or decisive significance for the quality of the

¹⁹¹ Information from Lisbeth Johansson, Director of the Public Prosecution Authority, in a meeting held 2008-06-16.

¹⁹² Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008.

¹⁹³ Information from DI Leif Johansson, Stockholm police authority, telephone interview on 2008-05-19.

¹⁹⁴ Ibid.

investigations or the rate of prosecution for sexual offences. At the same time, the project emphasises that the quality of work with victims is improved if engaged and committed staff members work together, effective routines are developed and mutual support is offered within family violence units. Better quality work with victims could lead to greater trust, confidence and inclination on the part of the women to pursue the process.¹⁹⁵

All the police districts in Stockholm county, and several police districts in the rest of the country, also have a crime victim coordinator whose duty is to inform complainants about their rights and any support available, such as, for example, women's shelters and crime victim support centers. In one of Stockholm's police districts, the crime victim coordinator has an extended role and is also responsible for monitoring the way in which the police and the prosecution look after the interests of the complainant through, for example, obtaining restraining orders or the rapid appointment of a complainant's counsel. A general extension of the role of the crime victim coordinator could be one way of improving work with victims of crime, according to the researchers. Some police districts in Sweden are too small to justify the establishment of family violence units and increasing the role of crime victim coordinators could be an important way of improving the situation for victims of rape and other sexual offences and crimes against the integrity of women.¹⁹⁶

According to the Prosecutor-General, close and continuous cooperation between the police and the prosecution in so-called "family violence teams" provides the best prospects for improving the investigation of rape cases, which may, in turn, lead to a higher rate of prosecution. However, the Prosecutor-General believes that investments in enhancing competence, developing methodology and improving cooperation will not result in an appreciable increase in the prosecution rate.¹⁹⁷

According to detective inspector Leif Johansson, cooperation with other actors outside of the legal system is a very important issue. The police can contribute to building a network around the woman that will remain in place when "the authorities let go". However, the police cannot provide therapeutic support. Cooperation between different actors is crucial and DI Johansson believes that the social services, among others, must become better at providing long-term support for women subjected to violence and women who are victims of sexual offences. This is important, not least with regard to violence against women within intimate relationships where rape is part of a pattern of violence. According to DI Johansson, the main reason why women report their partner to the police is to get help with their life situation, rather than to get the man convicted.

Lisbeth Johansson, Director of the Public Prosecution Authority, points out that the prosecution authorities are being forced to rethink their priorities, as a result of the increased number of cases. In this kind of situation, the first priority to be abandoned is cooperation with other actors in the community. Cooperative relationships take a long time to establish

¹⁹⁵ Eva L Diesen: *Family violence and sexual abuse – a comparison of investigative quality between police commissioner districts in Stockholm country*. Interim report, 2008.

¹⁹⁶ Ibid.

¹⁹⁷ "Do not expect an increase in rape convictions," DN Debatt 2007-10-19, Fredrik Wersäll, Prosecutor-General, and Lisbeth Johansson, Director of the Public Prosecution Authority (in Swedish).

but are easily destroyed, and poor cooperation disadvantages both the understanding of the roles of the various authorities and service providers and, ultimately, the crime victims.

3.5.12 EDUCATION AND SPECIALISATION: JUDGES

In connection with changes to the organisation of district courts in Stockholm county, emphasis was placed on the importance of taking advantage of the opportunities for increased specialisation offered by the new courts. During 2006, the National Swedish Judiciary Administration carried out a pilot project concerning the specialisation of judges in the field of family law (*humanjuridik*).¹⁹⁸ The goal of this pilot project was to develop a tested model of specialised units dealing with family law matters that could be used by the new courts and also serve as a model for raising the competence of judges and other personnel in this field.

The training provided by the project included subjects such as honour-related violence, treatment and handling issues, child development/custody investigations, management of the legal process, violence within intimate relationships, human trafficking and sexual offences (primarily against children).¹⁹⁹ Some 30 judges, mainly women, participated in the project and although it has been described as being “appreciated”, many of the participants dropped out. One problem with the project has been to involve men. Family law has traditionally had a low status and specialisation has only existed within “real law”, according to Ylva Myhrberg, district court judge at Norrtälje District Court and one of the participants in the project.²⁰⁰

Agneta Claesson Norell, district court judge at Attunda district court and one of the project participants, believes that specialisation may raise the status of cases relating to violations of women’s integrity and family law. According to Claesson Norell, compulsory training is the only practical way to demonstrate how violence against women and crimes against women’s integrity relates to sexual offences. She also suggests that increased knowledge gives greater insight into one’s own prejudices and reactions and makes challenging these possible. Greater knowledge and experience give judges better tools, which, in turn, embolden them in the execution of their work.²⁰¹ Many of the cases dealt with have been considered problematic and professional guidance has also been tested during the project, which has been experienced as very positive.

Claesson Norell, who was head secretary of the 1993 Commission on Violence Against Women, points out that even at that time there was a focus on the treatment of victims. She argues that considerable improvements have taken place in the legal system since the early 1990s. Many judges are also reported to have become more aware of defence lawyers putting humiliating questions to complainants and will now react against them. But Claesson Norell points out that such questions may come up without prior warning, making it difficult for the judge to prevent them. In such situations, the role of the complainant’s

¹⁹⁸ “Humanjuridik” is a concept often used for fields of law that deal with matters concerning private individuals, such as family matters.

¹⁹⁹ *Specialisation of judges in humanjuridik*. Final report, the Swedish National Courts Administration, 2007. (In Swedish)

²⁰⁰ Information from Ylva Myhrberg, district court judge at Norrtälje District Court, at a seminar in the Swedish Parliament, 2007-05-30.

²⁰¹ Information from Agneta Claesson Norell, district court judge at Attunda District Court, in meeting held 2008-02-01.

legal counsel is of the utmost importance. Complainants should be informed by their counsel that they are not obliged to reply to humiliating questions that are irrelevant to the case. Their counsel can also urge the chairman of the court to intervene when such questions are asked.²⁰²

One of the outcomes of the project has been the formation of a network of judges who meet for further training activities a few times every year. A family law group, including judges from six judicial units, has been established in Stockholm City district court. In other district courts in Stockholm county, the specialist judges are often responsible for cases of this type in their units. Cases are no longer assigned randomly to individual judges but allocated to the unit and trials are assigned to different judges on a weekly basis. As violation crimes are numerous, these judges take on the more difficult cases.²⁰³

3.5.13 AMNESTY INTERNATIONAL SWEDEN'S MAIN CONCERNS

- Rape is a crime that is chiefly committed against girls and women and the fact that investigations rarely result in a charge or a conviction may constitute discrimination against women, as this limits their right to a fair trial and an effective remedy and the fact that investigations into rape rarely result in prosecution or trial may constitute discrimination against girls and women, as this limits their right to a fair trial and to redress and compensation. Amnesty believes that detailed, comprehensive and systematic analyses to assess why the majority of rape investigations are closed and why such a small number of rape cases lead to prosecution. It is important to identify and point to shortcomings that are attributable to the investigation itself, to achieve an exhaustive basis for improvement. In this context, Amnesty wishes to underline the need to further investigate whether particularly vulnerable and exposed victims are lacking legal protection, and, if this is the case, what can be done to strengthen their position.

Amnesty also argues that the reported differences in investigation quality in rape cases between (and within) different police districts and divisions of the public prosecution office in the country are a cause of deep concern. Amnesty is particularly concerned about the information that preliminary investigations in rape cases are closed without the interrogation of suspected and identified. This needs to be further investigated, as such practices may lead to a situation of impunity for many perpetrators, which is incompatible with the positive duty of the state to prevent, investigate and punish rape in an efficient and effective manner.

- Without exhaustive and detailed studies and follow-ups, it is difficult to develop the investigatory work in a way that would result, in practice, in improved possibilities of ensuring the victim's right to justice, redress and compensation. The fact that the scrutiny of and research into the quality of rape crime investigations is so limited is a serious shortcoming that needs to be addressed immediately. More independent research is needed, at the same time as the government has a responsibility to follow up and ensure more strictly that the quality of the investigations carried out by the police and the prosecution authori-

²⁰² According to the Code of Judicial Procedure, chapter 46, section 4, the court should ensure "discipline and order of handling...]. The court should also ensure that a case is investigated as required by its nature and that no unnecessary aspects are included in the case."

²⁰³ Information from Agneta Claesson Norell, district court judge at Attunda District Court, in a meeting held 2008-02-01

ties is of a uniform and high quality. Amnesty therefore proposes the establishment of an independent monitoring commission tasked with systematically gathering information on all closed rape investigations and decision not initiate legal proceedings and then analysing and reporting on the reasons for these closures/decisions and assessing the investigation quality in these cases. The work of the monitoring commission would provide opportunities for carrying out large and comparative studies that could serve as the basis for any further measures to improve the legal process in rape cases. The commission's findings could also enable the introduction of a monitoring system to improve the quality of the police districts' work and bring about a higher level of consistency and uniformity in the practices of the different police districts and prosecution divisions. The systematic examination of all closed rape investigations would also lead to more stringent follow-up work, to ensure the effectiveness of new as well as already implemented measures and their implementation in police districts' daily processing of these cases.

The monitoring commission should be independent of local police and prosecution authorities. However, the commission's work should be carried out in cooperation; for example, with the Prosecution Authority Development Centre in Gothenburg and the National Police Board.

- At the same time as Amnesty International is concerned about the shortcomings indicated by existing research and monitoring, we welcome that an array of measures has been taken to improve police and prosecution efforts to combat violence against women. Amnesty particularly welcomes the intensified efforts of the National Police Board to prevent and investigate men's violence against women, including rape, through the ongoing project *Crime in Intimate Relationships*. Amnesty believes that there is a need for the prosecution authorities to intensify their work to change attitudes, raise the quality of preliminary investigations and resolve differences between different divisions of the Public Prosecution Office. It is of the utmost importance to improve the quality of the work, as a way of ensuring crime victims their right to justice and redress, but also to enhance the trust of the public in the ability of the judiciary to investigate, prosecute and try crimes as serious as rape. In the longer term increased prosecution rates may also result in a greater readiness to report rape.

- As the number of report of rape cases has increased dramatically over the past few years, Amnesty International Sweden emphasises the need to allocate sufficient resources to all stages of the legal process in this field. This applies to the work of both the police and the prosecution authorities, including, for example, the appointment of specialist prosecutors and increased cooperation. Judges specialising in family law should also be appointed in more district courts and courts of appeal all over the country.

3.6 SUPPORT FOR VICTIMS OF RAPE

A prerequisite for the complainant's participation throughout the whole legal process is access to various forms of support, including, for example, legal aid, medical care and psychosocial support.

3.6.1 LEGAL SUPPORT – COMPLAINANT’S COUNSEL

In 1988, victims of crime were given the right to free legal aid and the assistance of legal counsel. The legal counsel’s role was to ensure that the complainant’s interests were protected throughout the legal process. Since 1988, the law has been amended several times.

In addition to supporting and safeguarding the interests of the complainant, the counsel may appear for the plaintiff during the trial, thereby making it possible for the complainant to participate actively in the process. Another task for the counsel is to claim damages on behalf of the complainant during the trial.

The commission of inquiry into complainants’ counsels presented its final report in January 2007.²⁰⁴ The report proposed that victims of sexual offences should have a *mandatory* right to be assisted by a complainant’s counsel, unless it was obvious that such a counsel was not needed. The counsel for the complainant should be appointed at an early stage of the investigation. In order to shorten the decision-making process, it was proposed that the decision regarding appointment should be transferred from the court to the prosecutor. It was also proposed that the competence of the complainant’s counsel should be clarified, as a part of the process of assuring an appropriate level of support for the complainant. In principle, the complainant’s counsel should be an experienced lawyer with the necessary competence, which has been defined as equivalent to the requirements that apply to defence counsels.

The need to strengthen the legal position of victims of sexual offences has been emphasised previously in the memorandum *Reporting and investigation of sexual offences*.²⁰⁵ This memorandum further suggested that a person who had been subjected to a sexual offence should have access to free legal advice, even before reporting the crime to the police.

In addition to a complainant’s counsel, the woman can also have a support person with her during police interviews and the trial. Such a person could be, for example, a resource person from a women’s shelter or from a crime victim support centre. The Swedish Association for Victim Support is a non-profit organisation with just over 100 local centres covering all the police districts in Sweden. The association works to ensure that all crime victims and witnesses are treated in a dignified manner during the legal process and in their contact with the social services and with representatives of the healthcare services. Crime victims can receive free advice and support from the crime victim support centres, including help with contacting authorities and guidance through the legal process. Some women’s shelter also offer legal advice by legal experts.

3.6.2 MEDICAL, PSYCHOLOGICAL AND SOCIAL SUPPORT

Most women who have been raped never file a report with the police. Few persons seek and get help and assistance in direct conjunction with the perpetration of the act, which

²⁰⁴ *Complainant’s counsel – an active support person in the legal process*. Swedish Government Official Report, 2007:6. (In Swedish)

²⁰⁵ *Reporting and investigation of sexual offences – proposals for improvement from a crime victim’s perspective* Ju 2004:1 (in Swedish).

often have negative consequences on the life of many women and girls. It is of particular concern that so few believe they have the right to help at all. Instead, too many victims of rape and other sexual violence put the blame on themselves and can not express their experiences in words. As previously mentioned, physical injuries are not very common, but many women may need considerable psychosocial support and crisis therapy. It is not uncommon for women to need considerable time before they can cope with talking about what has happened to them or, indeed, dare do so. Psychosocial support is also important in terms of women's motivation to report the incident to the police and to cope with the possible ensuing legal process.²⁰⁶

Shelters for women and girls, crime victim support centres, and – to the extent that they exist – municipal crisis centres for women, can provide different forms of support.²⁰⁷ Sometimes, but far from always, professional welfare officers and psychologists are available at the shelters or crisis centres. In several cities there are special support centers for young crime victims below the age of 23. Crime victim support centres for LGBT persons have been provided by the Swedish Federation for Gay and Lesbian Rights (RFSL) in Stockholm, Gothenburg, Malmö and Linköping.

Women and girls who have been raped may need long-term professional help from, for example, psychologists or therapists. Amnesty International Sweden has not been able to find a comprehensive nationwide information of the resources available for long-term support. Privately financed therapy or counselling is available almost everywhere, but the possibility of using such services depends on the economic situation of the individual woman or girl.

According to a follow-up project by the National Board of Health and Welfare, which looked at municipalities' work with and for crime victims, about half of those who were interviewed within the social services suggested that crime victims should receive help and support of a kind not offered by the social services, such as financial contributions and help with contacting a psychologist.²⁰⁸

In this context, it is important to emphasise that the fact that a preliminary investigation into a rape or other type of violent crime has been closed, or has not led to legal proceedings, does not mean that the woman has not been subjected to abuse. The right of crime victims to receive support and rehabilitation should be respected, regardless of the identity of the perpetrator and of whether or not the perpetrator is convicted in a court of law.

The national programme for the healthcare services' handling and treatment of victims of sexual abuse will hopefully improve these services' ability to handle rape victims in a professional manner. Even so, there may be grounds to improve support further by establishing

²⁰⁶ Ibid.

²⁰⁷ The non-profit National Organisation for Women's and Girls' Shelters in Sweden (ROKS) has 94 member shelters and the Swedish Association of Women's Shelters (SKR) has approximately 60 member shelters and local organisations. In previous studies, Amnesty International Sweden has reported on the extent to which municipalities contribute financially to the work of non-profit women's shelters. See, e.g., "*Not a priority issue*" – *A study of the work of Swedish municipalities to combat men's violence against women*. 2005.

²⁰⁸ The National Board of Health and Welfare. "*An account of the situation. Social Services Act, Chapter 5, Section 11 – A Follow-Up of the Work of the Social Services*". 2004.

special clinics or centres for victims of sexual offences in large towns and cities. Only a few specialised clinics exist in Sweden. These include the Emergency Clinic for Raped Women at Södersjukhuset in Stockholm and the Protection of Women's Integrity Centre at the Academic Hospital in Uppsala.

Proposals to establish local specialised units with the competence and preparedness to handle victims of sexual offences of different ages and ethnic backgrounds or with substance abuse problems and disabilities were previously been put forward in the memorandum *Reporting and investigation of sexual offences for the purposes of improving medical and psychosocial support*. According to the proposal, everyone should have access to a specialised unit "within a reasonable distance".

3.6.3 AMNESTY INTERNATIONAL SWEDEN'S MAIN CONCERNS

- Amnesty International Sweden welcomes the inquiry into complainants' counsels and urges the government to process the issue speedily. Although almost two years have passed since the inquiry presented its final report, the issue has not yet been dealt with. Amnesty International Sweden supports the report's proposal to the effect that complainants in cases involving sexual offences should be given a mandatory right to a complainant's counsel, and the police and the prosecution, as part of their duty to provide information, should ask the complainant by whom she/he wishes to be represented. It is also important to ensure that the complainant's counsels have adequate competence and is an experienced lawyer or solicitor. Amnesty International Sweden also welcomes the proposal that the complainant's counsel should be informed when a victim is going to be interviewed as to facilitate the complaint counsel's presence during police interviews. Amnesty International Sweden believes that a significantly greater degree of active support from the complainant's counsel is needed in order to may help alleviate the stress of the legal process for a victim of rape or of another sexual crime.
- As was proposed in the memorandum *Reporting and investigation of sexual offences: proposals for improvement from a crime victim's perspective*, Amnesty International Sweden believes that free legal advice should be available to victims of sexual offences, even before they have considered reporting the crime to the police.
- Amnesty International Sweden believes that special rape units should be established in major towns and cities for victims of sexual offences in order to further improve medical and psychosocial support.
- Long-term, professional psychosocial support and rehabilitation in the form, for example, of psychological or other counselling, must be made available to women and girls who have been subjected to rape, regardless of their economic situation and regardless of the identity of the perpetrator and of whether or not the perpetrator is convicted in a court of law.

3.7 POLITICAL LEADERSHIP IN RELATION TO SEXUAL CRIMES AGAINST WOMEN

For several years, Amnesty International Sweden has been urging the Swedish government to adopt a national action plan to combat men's violence against women.²⁰⁹ We therefore welcome the government's action plan, launched in November 2007, to combat men's violence against women, honour-related violence and oppression and violence in same-sex relationships.

The action plan includes 56 measures, several of which have been adopted previously. Only a few of the measures explicitly mention sexual offences. Some of these stress the need to improve the treatment of victims of sexual crimes within the judicial system, to improve knowledge about such treatment and to re-evaluate legislation covering sexual crimes. Other measures may, of course, also be of importance to victims of sexual offences even if they are not specifically mentioned, for example, the provision by the police of better information about support available for victims of crime. A final follow-up report on the implementation of the plan will be submitted to parliament in 2010.

Amnesty International Sweden believes that these measures are necessary but not adequate. In this report we have described a range of complex problems and failures in the legal system in relation to rape and the provision of support to persons who have been subjected to rape.

A very important consideration is the need for preventive work to reduce rape crimes in the long term in Sweden. Amnesty International Sweden has previously pointed out the need for long-term, comprehensive measures to change attitudes that should be especially targeted at young people, both inside and outside school.²¹⁰ The government bill *A Renewed Public Health Policy* emphasises the promotion of young people's sexual health and the need to combat sexual violence and coercion that will result in physical, psychological and reproductive health problems.²¹¹ The bill also concludes that there are shortcomings and quality differences in the sex education currently provided. However, no concrete measures are suggested in the bill.

In June 2008, the minister for integration and gender equality and the minister for education promised to launch "the most extensive efforts ever" to promote gender equality in schools and SEK 110 million was earmarked for a three-year period. A large proportion of this money will be used to educate teachers further about counteracting traditional gender roles and to boost sex education.²¹²

Amnesty International Sweden demands justice, redress and support for victims of rape and other forms of sexual violence to ensure that violated women are afforded basic human

²⁰⁹ See Amnesty International (Swedish section): *Men's violence against women in intimate relationships - an account of the situation in Sweden*, April 2004 and "High time to implement the law on violence against women" (debate) in Göteborgs-Posten 2007-03-20

²¹⁰ Amnesty International (Swedish Section) *Where should we draw the line? - a survey on attitudes to rape*, April 2008.

²¹¹ Government bill, 2007/08:110. *A Renewed Public Health Policy*.

²¹² "SEK 110 million for gender equality at school". DN Debatt 2008-06-11

rights, as recognised under international human rights law and standards. Increased and intensified efforts are required if Sweden is to live up to its international commitments to prevent gender-related violence against women, protect women from such violence, investigate crimes effectively and efficiently and bring the perpetrators to justice.

Amnesty International Sweden welcomes the government's initiative, but also emphasises the fact that organisations such as the National Association for Sexual Information (RFSU), the National Federation of Teachers and the Equal Opportunities Ombudsman have repeatedly pointed out the shortcomings and the variations in quality of the sex education offered in schools and demanded that sex education should be made compulsory in teacher-training programmes. Amnesty International Sweden supports this demand.

3.7.1 AMNESTY INTERNATIONAL SWEDEN'S MAIN CONCERNS

- There is no comprehensive strategy today for combating rape and other forms of sexual violence. Amnesty International Sweden urges the government to develop a special action plan to prevent and combat rape and other forms of sexual violence. The plan should include preventive, long-term measures, especially targeted at changing attitudes to rape among young people. It should also include concrete measures directed at the legal system to improve the quality of investigations, with the aim of achieving a higher rate of prosecutions and trials in rape cases. The plan should also include further efforts to improve support for victims.

3.8 AMNESTY INTERNATIONAL SWEDEN'S RECOMMENDATIONS TO THE SWEDISH GOVERNMENT

These recommendations summarise the conclusions drawn in this report. Amnesty International Sweden call on the Swedish government to:

STRENGTHEN THE SEXUAL INTEGRITY AND AUTONOMY IN THE LEGISLATION

Amnesty International Sweden welcomes the prospect of a follow-up and review of the legislative treatment of the crime of rape. The organisation welcomes a legislation that further emphasise the rights of all individuals to sexual self-determination and integrity, which should be clearly reflected in the legal definition of rape. The definition of the conditions under which penetration and other sexual acts takes place should reflect the fact that rape occurs through the use of many kinds of coercion, not merely violence or threats of violence. Linking the question of guilt in rape cases to the lack of genuine and freely-given consent, rather than to the presence of violence, would bring the Swedish legislation in line with international developments.

ADOPT A SPECIAL ACTION PLAN

Amnesty International Sweden urges the government to develop and adopt a comprehensive action plan to prevent and combat rape and other forms of sexual violence. The plan should include both preventive measures, including training and education to change discriminatory attitudes towards women in society at large, and concrete measures targeted at the legal system to improve the quality of rape investigations. Specific and adequate

resources should be allocated to this aim. The particular needs of girls under 18 should be addressed as a part of the action plan.

STRENGTHEN AND DEVELOP SUPPORT SERVICES FOR RAPE VICTIMS

Measures to further strengthen legal, medical and psychosocial support for crime victims are needed. Amnesty International Sweden believes that special units should be established in major towns and cities for victims of sexual offences in order to further improve medical and psychosocial support. Long-term, professional psychosocial support and rehabilitation must be made available to women and girls who have been subjected to rape.

ESTABLISH A MONITORING COMMISSION

Amnesty International Sweden proposes the establishment of an independent monitoring commission tasked with systematically gathering information on all closed rape investigations and decision not to initiate legal proceedings. The reasons for these closures/decisions should be analysed and the investigatory quality should be assessed and reported. It is important to identify and point to shortcomings that are attributable to the investigation itself, to achieve an exhaustive basis for improvement. The work of the monitoring commission would provide basis for any further measures to improve the legal process in rape cases.

The fact that investigations into rape rarely lead to prosecution and trial may constitute discrimination against girls and women, as this limits their right to a fair trial, redress and compensation in practise. Therefore, Amnesty International Sweden believes that detailed, comprehensive and systematic analyses to assess why the majority of rape investigations are closed and why such a small number of rape cases lead to prosecution.

In this context, Amnesty International Sweden wishes to emphasise the need to further investigate whether particularly vulnerable and exposed victims are lacking legal protection, and, if this is the case, what can be done to strengthen their position. Amnesty International Sweden is also concerned about the reported differences in investigation quality in rape cases between (and within) different police districts and divisions of the public prosecution office in the country. Information that preliminary investigations in rape cases are closed without the interrogation of suspected and identified is the cause of particular concern. This needs to be further investigated, as such practices may lead to a situation of impunity for many perpetrators, which is incompatible with the positive duty of the state to prevent, investigate and punish rape in an efficient and effective manner.

4. RAPE AND HUMAN RIGHTS IN FINLAND

“To truly eliminate violence against women in Finland we need to change attitudes, we need to have more men participating in the process and we need to execute full evaluation of the effectiveness of the current Penal Code. But first and foremost we need to appreciate the significance of gender in the context of violence.”

Docent Johanna Niemi:
“Finnish legislation and violence within intimate relationships,”
8.4.2008 in her presentation during the “Violence against women” seminar at the Finnish Parliament.

4.1 SUMMARY

In Finland, fewer than 10 per cent of rapes are estimated to be reported to the police. According to a study of female victimisation in Finland, carried out in 2005, approximately 15,000 women between the ages of 18 and 74 had been coerced into performing or participating in a sexual act during the previous year. The number is almost 46,000 if situations where a woman was unable resist are included.

On average over the last ten years, 541 cases of rape have been reported to the police each year. Approximately 15 per cent of rape cases recorded by the police in 1997-2005 resulted in prosecution with rape charged as the main criminal offence. Only one in seven rapes reported to the police ended with the accused being convicted in court. According to the Crime Trends Yearbook 2006, the reason stated by the prosecutor for not pressing charges in cases involving rape was “no evidence” in 88 per cent of cases.

The chapter on sexual offences in the Finnish Penal Code was completely reformed in 1998 and the new provisions came into force in 1999. There are now three categories of rape which are determined according to the severity of the physical violence used by the perpetrator. Coercing a person into sexual intercourse without the use of physical violence became explicitly punishable as the offence of coercion into sexual intercourse (also referred to as lesser degree rape). This was a major substantive amendment of the legal reform. Offences of this type are complainant offences. This means that the offence will only be investigated if the victim requests that the suspect be punished.

Several aspects of the Finnish legislation on sexual offences need meticulous scrutiny. Through its focus on the severity of physical violence used in rape, the current law fails to address the psychological harm done to victims. Under current legislation, the public prosecutor will not prosecute if victims of rape or, in certain cases, sexual abuse²¹³ demand “of their free will” that the prosecutor drops the charges. In the opinion of Amnesty International Finland, the public prosecutor should have a duty to proceed with the prosecution of all crimes against sexual self-determination and sexual integrity.

The need for a readily available nationwide support system for the victims of rape and sexual violence was acknowledged when the legislative reform took place. Even so, ten years after the law was reformed, support services for victims remain inadequate.

The Finnish authorities still struggle to recognise violence against women, including sexual violence, as a violation of human rights. This makes it difficult for the authorities

²¹³ Guardians of a minor are also allowed to exercise their “free will” in cases of sexual abuse of a minor. See section 12 of the Appendix to this report for more information.

to respond effectively to the problem. Despite repeated international criticism of Finland's lack of a national action plan to prevent violence against women, Finland has still failed to implement a permanent, cross-sector action plan.

4.2 INTERNATIONAL CRITICISM

Finland is repeatedly reminded of its widespread problem of violence against women and recommended to take more efficient measures to deal with the situation. International criticism concentrates on the lack of measures to combat violence against women in general and in particular on the lack of a national action plan to combat such violence and on the lack of legislation on domestic violence.²¹⁴ Sexual violence against women is hardly mentioned specifically in the criticism. Finland has still not adopted a permanent, cross-sectional, adequately funded, national action plan on preventing violence against women.²¹⁵ Such an action plan would require the Finnish government to direct special efforts to provide sufficient funding and human resources to enable its effective implementation.

Finland has repeatedly been criticised by international human rights bodies about the inadequacy of its measures to counter violence against women. In 2001, the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) recommended the Finnish government to pay more attention to the prevention of violence against women. The committee advised that a preventive project then in existence, which addressed violence against women and issues concerning prostitution,²¹⁶ should be transformed into a permanent, national, government-sponsored action plan.²¹⁷ This recommendation was not implemented. In 2008 the CEDAW Committee more or less repeated the recommendations given in 2001.

The existence of an effective national action plan in every EU Member State is one of the main goals of the Council of Europe's (CoE) Campaign to Combat Violence against Women.²¹⁸ In March 2006, the Council of Europe's Commissioner for Human Rights urged the Finnish government to evaluate whether actions aimed at addressing violence were sufficiently specific and adequately funded to cover violence against women.²¹⁹

²¹⁴ See also 7.2: Political leadership relating to sexual offences against women. The general government programmes targeted at reducing the overall level of violence in Finnish society do not identify or focus on the effective prevention of violence against women.

²¹⁵ In Finland, Amnesty International's international campaign Stop Violence Against Women (SVAW) is known as Joku raja! This can be roughly translated as "Enough is enough!" or "Some limits!" The implementation of a national action plan has been the main demand addressed to the Finnish government by Amnesty International Finland since the start of the SVAW campaign.

²¹⁶ Coordinated by STAKES – Expert Agency of Knowledge for Welfare and Health. The project lasted from 1998 to 2002.

²¹⁷ CEDAW committee: Fourth periodic review of Finland. Whole report available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N00/292/69/IMG/N0029269.pdf?OpenElement>

²¹⁸ Blueprint of the Council of Europe Campaign to Combat Violence against Women, including domestic violence (2006). Page 9, IV Aims of the Campaign: (3) "To promote the implementation of effective measures ... through legislation and national action plans..."

²¹⁹ The Council of Europe's Commissioner for Human Rights: FOLLOW-UP REPORT ON FINLAND (2001 – 2005) <https://wcd.coe.int/ViewDoc.jsp?id=984045&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogge d=FFC679>.

In its concluding observations dated January 2008, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) expressed concern that violence against women is still a widespread problem in Finland. The committee requested Finland, in its next periodic report, to submit detailed information on the prevalence of violence against women and the measures taken to combat such violence. The committee also encouraged Finland to enact specific legislation to criminalise domestic violence.²²⁰

Finland's fifth and sixth periodic reports on its implementation of CEDAW were examined at CEDAW's 41st session (30 June- 18 July 2008). The list of issues and questions addressed in advance to Finland noted the lack of specific legislation and the lack of services with regard to violence against women.²²¹ Sexual violence against women is rarely mentioned in the international criticism Finland has received. As Liz Kelly states in her study,²²² it seems that, when it comes to violence against women, rape is still the forgotten issue both nationally and internationally. Consequently, it is hardly surprising that sexual violence against women and rape are both, in many ways, marginalised issues in Finnish society.

4.3 LEGAL FRAMEWORK

The chapter on sexual offences in the Finnish Penal Code was completely reformed in 1998.²²³ A key purpose of the reform was to ensure the right to sexual self-determination of every individual. Current legislation provides for three categories of rape: rape, aggravated rape and coercion into sexual intercourse. The latter category was explicitly enacted to make the use of coercion, other than violence, to force a person into having sexual intercourse punishable as 'coercion into sexual intercourse' (also referred to as lesser degree rape). Offences of this type and, in some cases sexual abuse, are complainant offences. This means that the public prosecutor will not bring charges if the victim requests "of his/her free will" that the charges are dropped.

4.3.1 HISTORICAL DEVELOPMENT OF THE LAW ON SEXUAL OFFENCES IN FINLAND

Johanna Niemi-Kiesiläinen²²⁴ distinguishes four phases in the historical development of the Finnish law on sexual offences. Initially, sexual relationships were regulated as a form of property right and were a means of exchange between families (in the Middle Ages and early modern times). The second phase is illustrated by the Code of 1734, a law that defined chastity and the regulation of patriarchal power (sixteenth and seventeenth centuries). The Code of 1734 was a comprehensive codification of Swedish law, covering both Sweden and Finland. Finland was a province of the Kingdom of Sweden until 1809.²²⁵

²²⁰ Committee on Economic, Social and Cultural Rights (CESCR), 38th session.

²²¹ CEDAW: List of issues and questions with regard to the consideration of periodic reports. 16.1.2008. <http://daccessdds.un.org/doc/UNDOC/GEN/N08/259/28/PDF/N0825928.pdf?OpenElement>.

²²² Kelly & Regan (2001): Rape: The Forgotten Issue? A European Attrition and Networking Study, Child and Woman Abuse Studies Unit, London.

²²³ The law came into force in 1999

²²⁴ Niemi-Kiesiläinen, 2004, 170-178

²²⁵ Although Finland was under Russian rule (1809-1917) before independence, the Swedish-Finnish legal tradition survived during this period. Since 1917, there has been both informal and formal judicial cooperation between the two countries (Niemi-Kiesiläinen, 2004, 189).

During the third phase, which was characterised by the liberal social attitudes of the early nineteenth century, the protection of morals took on a new form in which the patriarchal double standard played a crucial role, that is to say, different social norms were applied to male and female sexuality. For example, rape within marriage was not regarded as a criminal act. The legislation indicated that only women were possible to be raped, and the crime itself was a complainant offence. The fourth phase is represented by the modern liberal type of regulation enacted in the new Finnish Sexual Offences Act of 1998.²²⁶

Compared to Sweden, Finland has been slower to reform legislation on violence against women. In Sweden, domestic violence was already illegal in 1864, while in Finland such violence was not outlawed until 1970, over a hundred years later. In Sweden the punishment of victims of incest was abolished in 1937, but not until 1971 in Finland. Rape within marriage was criminalised in Sweden in 1962, but the equivalent Finnish legislation only came into force in 1994 – making Finland one of the last European countries to criminalise marital rape. In addition, assaults taking place on private property did not become impeachable offences in Finland until 1995. Only in 1997 did victims of sexual offences and domestic violence in Finland become entitled to government-funded counselling and support services for the duration of their court cases.

The chapter on sexual offences in the Finnish Penal Code was completely reformed in 1998 and the new provisions came into force in 1999. The old provisions on rape were designed to protect general sexual morality and an important goal of the reform was to attain neutrality in relation to different expressions of sexuality and to ensure the right of sexual self-determination of every individual. In the 1998 reform, gender-neutral language was used to underline the law's neutrality.

4.3.2 CURRENT LAW

The current legislation provides for three categories of rape: rape, aggravated rape and coercion into sexual intercourse. There is a separate section in the Finnish Penal Code where certain sexual offences are defined as sexual abuse, although sexual intercourse is also one of the essential elements of some forms of sexual abuse. This means it is also necessary to analyse crimes defined as sexual abuse when reviewing the effects of the current legislation.²²⁷

Other sections covering sexual offences in chapter 20 of the Finnish Penal Code include provisions dealing with, for example coercion into sexual act, the sexual abuse and aggravated abuse of a child, pandering and the purchasing of sexual services from a young person. However, the focus here is on reviewing sections 1, 2, 3 and 5 (rape, aggravated rape, coercion into sexual intercourse and sexual abuse), as well as the related sections 10, 11 and 12 (definitions, the right to bring charges and the waiver of measures).

The crime of rape is categorised according to the severity of the violence used by the

²²⁶ See also Utriainen (2006): *Seksuaalirikokset historian ja tilastojen valossa*. Kirjassa *Oikeusteorian poluilla*. Professori Rauno Halttusen juhlaKirja. Lapin Yliopiston oikeustieteellisissä julkaisuissa. Rovaniemi 2006. [Utriainen (2006): *Sexual offences seen through history and statistics*. In *Oikeusteorian poluilla*. Professori Rauno Halttusen juhlaKirja. Edited Sauli Mäkelä. Publications of the University of Lapland. Rovaniemi]

²²⁷ According to the current legislation, an attempted rape or attempts at other sexual crimes are also liable to be punished.

perpetrator and similar criteria are applied as in earlier reforms of the Penal Code in relation to other crimes, such as assault and robbery. The legislation focuses on violence and there is no mention of the concept of consent as an element of rape. However, the incapacity to express or make a decision is included in the section defining sexual abuse. An essential substantive amendment brought about by the law reform ten years ago was that the use of coercion, other than violence, to force a person into having sexual intercourse became explicitly punishable as a lesser degree of rape.

The key purpose of the current law on sexual offences is the protection of every individual's right of sexual self-determination. The second primary aim is to improve the protection of children against crime.²²⁸ Other goals of the legal reform included increasing the rate of prosecution in cases involving rape and other forms of sexual violence and improving the handling of rape cases in criminal proceedings.²²⁹

As part of the 1998 reform, the prosecutor's rights to institute criminal proceedings were extended. For example, rape and aggravated rape were made subject to public prosecution. However some offences are still categorised as complainant offences including, for example, forced sexual intercourse and, in some cases, sexual abuse. Table 1 lists the categories of sexual offences that include intercourse as an essential element of the crime along with rights to bring charges and the applicable sentences.

TABLE 3.

Four categories of sex offences where intercourse is one of the essential elements of the crime together with the applicable sentences under the Finnish Penal Code.²³⁰

Offence	Right to bring a charge	Sentences available under the Finnish Penal code
Rape	Public prosecution	Imprisonment for a minimum of one year and a maximum of six years.
Aggravated rape	Public prosecution	Imprisonment a minimum of two years and maximum of ten years.
Coercion into sexual intercourse (lesser degree rape)	Complainant offence	Fine or imprisonment for a maximum of three years.
Sexual abuse	Public prosecution but in some cases this is a complainant offence*	Fine or imprisonment for a maximum of four years.

*Sexual abuse is a complainant offence in cases where the victim is "a person younger than eighteen years of age, whose capacity of independent sexual self-determination, owing to his/her immaturity or the age difference between the persons involved, is essentially inferior to that of the offender" and the crime is defined as one "where the offender blatantly takes advantage of such immaturity". Sexual abuse is also a complainant offence when "a person is especially dependent on the offender and where the offender blatantly takes advantage of their dependence". See the appendix to this chapter for further details.

²²⁸ Chapter 20 of the Penal Code also includes penal provisions for the sexual abuse of children (including aggravated offences), the purchasing of sexual services from minors and pandering.

²²⁹ Government bill 6/1997.

²³⁰ For more information see also the appendix to this chapter on Chapter 20, Sex offences in the Finnish Penal Code, definitions, right to bring charges and waiver of measures.

4.3.3 DEFINITIONS OF RAPE, AGGRAVATED RAPE, COERCION INTO SEXUAL INTERCOURSE AND SEXUAL ABUSE

The present law defines sexual intercourse as sexual penetration by a sexual organ, or directed at a sexual organ, of the body of another person. References to gender or sexual preference are excluded from the legislation.

According to the letter of the law, rape is defined as sexual intercourse obtained by the use or threat of violence. According to the present legal definition, a person may be convicted of rape if “he/she takes advantage of the incapacity of another to defend himself/herself and has sexual intercourse with him/her, after rendering him/her unconscious or causing him/her to be in such a state of incapacity owing to fear or another similar reason”.

If grievous bodily injury, serious illness or a state of mortal danger are inflicted on the victim of a rape, or if the offence is committed by several people, the crime is regarded as an aggravated rape. The rape will also be aggravated if the perpetrator inflicts particularly extreme mental or physical suffering, if the offence is committed in a particularly brutal, cruel or humiliating manner, or if a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made.

If the rape, in view of the slight degree of violence or threats and other particulars of the offence, is “deemed to have been committed under mitigating circumstances when assessed as a whole”, the offender shall be convicted of coercion into sexual intercourse.

The crime is categorised as sexual abuse when “a person abuses his/her position and entices another person into sexual intercourse or into another sexual act that is essentially violating his/her right of sexual self-determination.” A person shall also be convicted of sexual abuse if he/she has taken advantage of the incapacity of another to defend himself/herself or of the victim’s incapacity to make or express a decision, owing to unconsciousness, illness, handicap or other helplessness, and has sexual intercourse with him/her, or gets him/her to perform a sexual act essentially violating his/her right of sexual self-determination or to submit to such an act. (For more information see the appendix to this chapter.)

It is worth noting that the definitions do not include penetration using an object. It is also notable that, although the definitions do mention, for example, that the degree of mental suffering is relevant for assessing whether the crime should be categorised as coercion into sexual intercourse or as rape, the main focus is on the level of physical violence.

Coercion into sexual act is also criminalised in the Finnish Penal Code. Sexual acts are defined as followed: “A person who by violence or threat coerces another into a sexual act other than that referred to in section 1 or into submission to such an act, thus essentially violating his/her right of sexual self-determination, shall be sentenced for coercion into a sexual act to a fine or to imprisonment for a maximum of three years”.²³¹ Because of the limited scope of this report, it is not possible to cover the offence of obtaining sexual acts by coercion. However, it is notable that the definition of this offence is broader than the definitions of the other crimes considered here. The crime is a complainant offence. In 2006,

²³¹ For more information see the appendix to this chapter regarding chapter 20, section 4 of the Penal Code.

sentences for obtaining sexual acts by coercion ranged from six months' imprisonment (one conviction) to a three-month conditional prison sentence (three convictions). Perpetrators in four cases were sentenced to a fine.

4.3.4 LEVEL OF CONVICTIONS

At the start of 2008, sexual offences against children were the subject of heated public debate in Finland. In particular, questions were raised about the fairness and appropriateness of levels of convictions. Amnesty International Finland welcomed this debate. Although this report does not consider sexual crimes against children, which require a separate, in-depth analysis that is not possible here, it is obvious that suggestions made about ways in which the fundamental freedoms and human rights of sexually exploited children could be better served apply equally to rape victims and victims of sexual violence in general.²³²

4.3.4.1 RAPE PROVISIONS

In 2004, the National Research Institute on Legal Policy in Finland published research²³³ on the convictions for rape and the consistency of the means of punishment. The research concluded that sentences for rape are now approximately six months longer than under the old legislation.

During 2001-2003, the average sentence for rape was two years' imprisonment. However, only 63 per cent of offenders served their sentences in prison, as 37 per cent of sentences were conditional. The average sentence for aggravated rape was four years' imprisonment. According to the research, sentences for coercion into sexual intercourse were almost invariably one year's conditional imprisonment. Only 4 per cent of offenders actually went to prison.

Prison sentences of up to two years are often made conditional, provided the offender has not been convicted during the three preceding years to a sentence exceeding one year or

²³² A doctoral thesis regarding sexual crimes against children, drafted particularly from the viewpoint of fundamental freedoms and human rights was published by current ECHR judge Päivi Hirvelä (2006). In her thesis, Hirvelä investigated what kinds of protection the criminal process can offer in cases of sexual offences committed against children and how this protection corresponds with the legal protection guaranteed to the suspected perpetrator.

Hirvelä's findings showed that clearing processes for cases involving the sexual abuse of children in Finland are incoherent and investigative standards fluctuate. Crimes committed against children that come to the knowledge of the authorities do not always result in criminal proceedings at all. Legislative problems connected with reporting are linked to both health and social care legislation. In her research, Hirvelä also discovered problems in the cooperation between the authorities responsible for preliminary investigations. Hirvelä suggested transferring responsibility for these investigations to the prosecution, together with the adoption of a so-called Children's House model of centralised multidisciplinary investigative practices. Such reforms would unify investigative methods while improving investigative standards and the gathering of evidence, as well as enhancing the legal protection of those involved.

Hirvelä's research also examined the evaluation of evidence. She found that the courts evaluate the reliability of a child's statement according to reliability criteria established by witness psychology and the evidence is evaluated in these cases using extreme caution. The greatest challenge for the criminal process in relation to crimes against children lies in the need for certain legislative reforms, the need to overhaul the process of criminal investigation and different authorities' cooperation in practice.

²³³ Lappi-Seppälä & Hinkkanen (2004): Selvityksiä raiskausrangaistuksista ja rangaistuskäytännön yhtenäisyydestä. Oikeuspoliittinen tutkimuslaitos, tutkimusraportti 61. [Report on convictions for rape crimes and the consistency of the means of punishment]. The National Research Institute on Legal Policy in Finland, report no. 61.

if there is no preceding criminal record for the last three years, or if the person is under 18. If the offender commits further crimes while on parole – in conditional prison sentences parole lasts from one to three years – the sentence will become custodial.

Prison sentences of less than eight months can also be converted into community service if the offender is deemed suitable for community service by the court.

Sentences for aggravated rape are always served in prison.

A comparison of sentences for different crimes in Finnish criminal law would seem to indicate that coercion into a sexual act or coercion into sexual intercourse is a lesser crime than, for example, gross theft of a motor vehicle. Or to take another comparison, in Finland, military service for men is compulsory, although it is possible to serve 362 days' civilian service instead. Refusal to perform civilian service results in a prison sentence of at least six months.²³⁴

TABLE 4. RAPE CONVICTIONS AND CONVICTIONS FOR SEXUAL ABUSE 2006

Offence	Average sentence (months)	Convictions in 2006
Rape	Custodial sentences 25.2 (2.1 years) Conditional sentences 17,6 (1.4 years)	40 convictions (23 acquittals) 23 custodial sentences 7 conditional prison sentences 6 conditional prison sentences + community service 3 conditional prison sentences + fine 1 crime expired
Aggravated rape	Custodial sentences 45.2 (3.7 years)	5 convictions (1 acquittal) 5 custodial sentences
Coersion into sexual intercourse (lesser degree rape)	Custodial sentences 16 (1.3 years) Conditional sentences 7.5 (0.7 years)	25 convictions (11 acquittals) 2 custodial sentences 16 conditional prison sentences 4 conditional prison sentences + fine 1 community service 2 fines
Sexual abuse	Custodial sentences 6.7 (0.7 years) Conditional sentences 6.1 (0.6 years)	71 convictions (35 acquittals) 4 custodial sentences 37 conditional prison sentences 5 conditional prison sentences + fine 2 community service 23 fines

Source: Statistics Finland, information received by email 5.6.2008

²³⁴ Amnesty International's report *The state of the world's human rights (2008)* states that the length of the civilian alternative to military service in Finland is punitive and discriminatory. Conscientious objectors were obliged to perform 362 days of civilian service, which was 215 days longer than the usual length of military service. Amnesty International considered 12 imprisoned conscientious objectors in Finland to be prisoners of conscience. Most were serving sentences of 197 days for refusing to perform alternative civilian service.

4.3.5 PROBLEMS WITH THE CURRENT FINNISH LEGISLATION ON SEXUAL OFFENCES

4.3.5.1 IMPLICIT PRESUMPTIONS CONCERNING THE VICTIM'S BEHAVIOUR AND INADEQUATE PROTECTION OF SEXUAL SELF-DETERMINATION

In the travaux préparatoires to the 1998 Sexual Offences Act, normal sexuality is depicted as being freely exchanged between two equal individuals, neither of whom is in a position of power over the other. Furthermore, the new law construes sexuality in a way that centres on the act itself. The sub-division of rape crimes into different degrees of rape was justified by the seriousness of the violation of sexual self-determination (Government bill 6/1997, 164).²³⁵

Aggravated rape requires a higher degree of physical violence or threats of violence. For coercion into sexual intercourse, which is a complainant offence, no physical violence is needed for the crime to take place. From the point of view of protecting a person's physical integrity, the matter is straightforward. Severe violence is a clear violation of physical integrity, while in the case of sexual intercourse obtained by coercion the violation is seen as less severe.

From the perspective of the right of sexual self-determination, however, there is no clear difference between the outcomes of these crimes. A woman's right of sexual self-determination may, for example, be violated, perhaps repeatedly, by the perpetrator's threats that she will lose her job unless she agrees to have sex with him. In such a situation, the threats may represent a continual restriction on the woman's right of sexual self-determination, unless she resigns from her job. The same is true of rape within marriage.²³⁶

In a long-term relationship, a victim of sexual violence may not recognise that her experiences constitute rape. She may be forced by the perpetrator to accept sexual violence as a "normal" part of the relationship.²³⁷ This does not mean that such sexual violence is any less damaging. Women also frequently consent to intercourse in order to avoid other forms of violence.

There are also situations where the victim of violence may passively "submit to being raped". This may be because she is paralysed by fear as a result of the threatening situation. Being suddenly paralysed by fear is a well known cognitive-physiological response and such paralysis cannot be consciously controlled. In a violent situation, it may also be safer strategy for the victim to "submit to being raped". Many international studies have shown that active defence may result in the victim suffering more severe physical injuries. The presence or absence of violence cannot be used as a tool to evaluate the devastating effects of rape on the victim.

²³⁵ Johanna Niemi-Kiesiläinen, (2004): The reform of Sex Crime Law and the Gender-Neutral Subject (167-194). In Svensson, Pylkkänen & Niemi-Kiesiläinen (2004): Nordic equality at a crossroads. Feminist legal studies, coping with difference. Ashgate, Wiltshire.

²³⁶ For more contemplation of this issue, see Niemi-Kiesiläinen, 2004

²³⁷ The normalisation of violence is reviewed, for example, in Kelly & Lovett (2005): What a waste – a case for an integrated Violence Against Women Strategy. The report is available in full from: www.thewnc.org.uk/wnc_work/violence_against_women.html

A study conducted by Heini Kainulainen in 2004 into police reports of rapes revealed that women often relied on a variety of coping strategies to get out of the situation. Earlier studies had indicated that women were more likely to use violence in self-defence against strangers than against men known to them. This was confirmed in Kainulainen's study.²³⁸

The above observations indicate that the current law on sexual offences does not adequately address the psychological harm caused by sexual violence.²³⁹ Only the definition of aggravated rape mentions the mental harm caused to the victim.

Another problem identified in the current academic research is the fact that the courts often ignore the significance of an existing power relationship between the accused and the victim. Examples include abuses of trust within intimate relationships or within the context of professional relationships between colleagues. While a relationship between the victim and the accused is often seen as a mitigating circumstance, the importance of an existing power relationship is often ignored.

4.3.5.2 RAPE AS A COMPLAINANT OFFENCE

Coercion into sexual intercourse is, according to the law, a rape committed under mitigating circumstances. The police will start a preliminary investigation only where the victim demands that the perpetrator be punished.

One problem relating to the definition of the crime concerns the question of evidence. Often the victim's testimony is viewed as being the only evidence of the crime. Often a raped woman is too distressed, or not sufficiently confident, to ask for the case to be prosecuted, even though she may seem calm during the police interview. If she is told – at this time – that due to “lack of evidence” the charges may be dropped, she may easily interpret this as a signal that she should not demand an investigation. Frequently, however, a careful investigation will uncover other kinds of evidence. According to current Finnish research, courts do not always attach much importance to such evidence.²⁴⁰ However, international research recommends that all available evidence that supports the victim's story should be taken into account when bringing charges and handling the case in court. This recommendation has not been made because the practice has been “proven” to be effective, but because it reflects UN policy and baseline human rights.²⁴¹

²³⁸ In 2004, Heini Kainulainen published a research report examining the reasons for the low prosecution rate for reported rapes and the influence on the authorities' activities of the new legislation on sexual offences. The study was based on all reported rapes during 1998-1999, meaning that data from 1999 reflected proceedings under the new law. Data also consisted of pre-trial investigative material gathered from some police units as well as police interviews.

²³⁹ Punamäki & Ylikomi (2007): Raiskaustrauma I, *Lääkärilehti* Nro 8/2007 [Punamäki & Ylikomi (2007): Rape trauma I. Finnish medical journal Vol 8/2007.]

²⁴⁰ Jokila, Helena (2008): Uskottava raiskauksen uhri todistusharkinnassa. Teoksessa Näre & Ronkainen (2008): Paljastettu intiimi. Sukupuolistuneen väkivallan dynamiikkaa. Lapin yliopistokustannus, Tampere. [Jokila, Helena (2008): Testimony given by a credible victim of rape. In Näre & Ronkainen (2008): The exposed intimate. Dynamics of gendered violence. University of Lapland. Printed in Tampere. Only available in Finnish]

²⁴¹ Kelly, Liz (2005): Promising practices addressing sexual violence. Expert paper. Expert Group Meeting, organised by the UN Division for the Advancement of Women in collaboration with UN Office on Drugs and Crime. Vienna, Austria, 17-20. of May in 2005.

Current academic research has identified two problems that need careful consideration in relation to coercion into sexual intercourse. Firstly, the level of sanction for coercion into sexual intercourse seems lenient in view of the potential psychological harm that may result.²⁴² Secondly, when the Finnish law is viewed in the context of the Statute of the International Criminal Court (the ICC), it seems alarming that coercion into sexual intercourse is “enough” to constitute a war crime, but in Finland does not even fall under the jurisdiction of the public prosecutor.

In 1997, in its 52nd General Assembly, the United Nations adopted without a vote a list of measures to enhance crime prevention and promote criminal justice to eliminate violence against women. The general assembly resolution clearly states that responsibility for initiating prosecutions primarily lies with prosecuting authorities, not with women subjected to violence.²⁴³

Finland has ratified the Rome Statute of the ICC. Even though the ICC’s mission is to investigate and rule on international crimes, such as mass rapes committed during armed conflicts, the Rome Statute may be regarded as a model for national legislation.²⁴⁴

The essential element of the ICC’s definition of rape is the lack of the victim’s consent, not the use of other forms of violence. In the case of *M.C. vs. Bulgaria*, the European Court of Human Rights, reflecting the definitions of rape in many jurisdictions, including international law, noted that:

“The development of law and practice in that area reflects the evolution of the societies toward effective equality and respect for each individual’s sexual autonomy.”²⁴⁵

As coercion into sexual intercourse is one form of rape, it is questionable whether Finnish legislation is in line with developments in international law and guidelines on sexual violence.

On the basis of these observations, current Finnish criminal law clearly fails sufficiently to protect an individual’s right of sexual self-determination in situations where rape is categorised as sexual intercourse obtained by coercion.

4.3.5.3 RAPE OR SEXUAL ABUSE?

As explained above, under current law the crucial factor is the use or threat of violence. Alternatively, rape can be committed by causing the victim to become unconscious or otherwise unable to protect herself. It is interesting to note that while the definitions of rape do not mention the concept of consent, it is present – albeit using other words – in the definition of sexual abuse. If a man takes advantage of an intoxicated or disabled woman who is not able to express herself, this is punishable as a lesser crime, i.e., sexual abuse. Here the focus is actually on the actions of the victim. If she has fallen asleep because of illness or the excessive use of alcohol, the violation is not defined as rape.

²⁴² For more information see Niemi-Kiesiläinen, 2004.

²⁴³ General Assembly Res 52-86, II. CRIMINAL PROCEDURE, paragraph 7.

²⁴⁴ See also: Stop Violence Against Women: how to use international criminal law to campaign for gender-sensitive law reform. AI Index: IOR 40/007/2005. May 2005

²⁴⁵ *M.C vs. Bulgaria*, European Court of Human Rights, Application number 39272/98, judgment, 4 December 2003.

This is clearly opposed to the judgment of the European Court of Human Rights in the case of *M.C. vs. Bulgaria*, where the crime in question was defined as rape even though there was neither physical resistance nor consent. This judgment defined rape as non-consensual intercourse.

4.3.5.4 THE SUPPOSED “FREE WILL” OF THE RAPE VICTIM AS A REASON FOR NON-PROSECUTION

In some cases, victims of sexual abuse or rape can ask for charges not to be pressed by exercising their own “free will” if they object to the proceedings.²⁴⁶ The relevant legislation states that the prosecutor may waive criminal proceedings if the victim objects to them of her own free will and if there is no significant public or private interest that requires charges to be pressed. Charges may be dropped on such grounds in cases of rape, sexual abuse (section 5, second paragraph) and the sexual abuse of children.

The problem with this concept is that pressure may be put on the victim to drop the charges. In cases of domestic violence, the woman will often be pressured “to put the incident behind her” by close relatives, the alleged perpetrator and friends. The closer the offender is to the victim, the easier it is for him to put pressure on her to have the charges withdrawn. The prosecutor has no means of establishing whether the victim is in fact acting according to her own “free will”.

Whereas international human rights law and standards require equality before the law, this provision in the Finnish Penal Code privatises violence, leaving it up to the victim to decide whether the violence she has experienced was indeed a criminal act. It reflects the double standard still extant in the Penal Code: crimes committed in private or intimate circumstances are not considered as serious as crimes committed in the public domain. Where a rape has been committed and the public prosecutor has decided to press charges, this provision allows the state to evade its responsibility to punish the crime committed against the woman.

Attempts have been made to argue that this provision is not “harmful” as it is so rarely used (from 1999 to 2006 the average was three cases per year). In practice, however, prosecutors use this provision more frequently than statistics suggest. Cases are marked as dropped due to “no evidence” or “no crime” when in fact the victim has exercised her “free will” and asked for criminal proceedings to be waived.

Heini Kainulainen’s study from 2004 showed that police reports on rapes frequently mentioned that the victim did not wish to proceed with the case (this was true of 11 per cent of all reports in 1999). Most withdrawals were made in rape cases involving acquaintances and intimate relationships. The research material included mentions of the victim blaming herself for what had happened and consequently withdrawing the charges. There were also cases involving rapes within intimate relationships where women told the police that they had settled the matter with their spouse.

²⁴⁶ See appendix to this chapter on section 12: the waiver of measures.

4.3.6 AMNESTY INTERNATIONAL FINLAND'S MAIN CONCERNS:

- Rape and sexual abuse are crimes that must not remain unpunished under any circumstances. Public prosecutors should have a duty to bring charges in all crimes against the rights of sexual self-determination and sexual integrity. Acts of sexual intercourse where consent has not been freely given should be thoroughly investigated and charges brought accordingly.
- Current Finnish research and international human rights standards indicate that significant aspects of Finland's legislation on sexual offences require meticulous review.

4.4 THE SCALE OF THE PROBLEM

Up to 90 per cent of rapes committed in Finland are estimated not to be reported to the police.²⁴⁷ According to an extensive study of female victimisation carried out in 2005, approximately 15,000 women aged 18-74 had experienced enforced sexual activity during the past year. This number was almost 46,000 if situations where the woman was unable resist were included.²⁴⁸ On average, 541 cases of rape are reported to the police each year. Approximately 15 per cent of rape cases recorded by police in 1997-2005 led to charges where rape was the main criminal offence.²⁴⁹

4.4.1 ESTIMATES OF PREVALENCE

4.4.1.1 UNREPORTED RAPES: ESTIMATES OF PREVALENCE AND REASONS FOR NOT REPORTING

It is well known that only a small proportion of sexual offences comes to the attention of the police and only a few of the reported cases will reach a court of law. The situation is similar all over the world.²⁵⁰ In Finland it is estimated that fewer than 10 per cent of rapes are reported to the police.²⁵¹

There are several reasons why rape and sexual violence are so widely unreported. To experience rape is traumatic and gives rise to feelings of self-blame, vulnerability and often extreme shame. Despite this, most rape victims who suffer from trauma-related psychological symptoms do not seek psychological help, but instead contact healthcare services for different reasons such as, for example, treatment for injuries that are seemingly unrelated to the crime of rape, post-coital contraception and HIV-testing.²⁵² Not naming or identifying the

²⁴⁷ Poliisin tietoon tullut rikollisuus 1991 & 1992 [Crimes reported to the police 1991 & 1992], Piispa, Heiskanen, Kääriäinen & Siren (2006): Naisiin kohdistunut väkivalta 2005 – tutkimus. Oikeuspoliittinen tutkimuslaitos ja HEUNI, publication series No. 51. [Piispa, Heiskanen, Kääriäinen & Siren (2006): Violence Against Women in Finland 2005. National Research Institute on Legal Policy and HEUNI (The European Institute for Crime Prevention and Control, affiliated with the United Nations), publication series No. 51.]

²⁴⁸ Piispa, Heiskanen, Kääriäinen & Siren, 2006

²⁴⁹ Honkatukia & Kainulainen (2007): Rikollisuustilanne 2006 (77-84). [Honkatukia & Kainulainen: Crime Trends in Finland 2006 (77-84).] Publication available at: <http://www.optula.om.fi/40495.htm>

²⁵⁰ For more information see Regan & Kelly (2003): Rape: still the forgotten issue. Briefing document. A European Attrition and Networking Study, Child and Woman Abuse Studies Unit, London.

²⁵¹ See reference 37 (Crimes reported to the police 1991 & 1992 and Piispa (et al.): Violence against Women in 2005.

²⁵² Campbell, Sefl, Barnes, Ahrens, Wasco and Zaragoza-Diesfeld (1999). Community services for rape survivors: Enhancing psychological well-being or increasing trauma? *Journal of Consulting Clinical Psychology* 1999: 67: 252-9.

experience as rape is also common: according to research in the USA, over half of women who had experienced rape (the essential elements of the crime were fulfilled) did not define their experience as rape.²⁵³

Rape is not an easy issue for women to talk about, even with a gynaecologist. According to a Nordic study, most women (92-98 per cent of respondents) had not talked about rape or other kinds of sexual abuse with their gynaecologists. The 3,641 women who participated in the study were attending five departments of gynaecology in Denmark, Finland, Iceland, Norway and Sweden.²⁵⁴ In Finland, 16.5 per cent of the respondents had experienced severe sexual abuse (forced or attempted penetration with a penis or object). The percentage increased to 27 per cent when mild and moderate sexual abuse was included. Only approximately one percent of the patients had been asked about sexual abuse by their gynaecologist.²⁵⁵

Estimates of the prevalence of rape in Finland in the Crime Trends Yearbook 2006 are based on following sources: female victimisation surveys, caller statistics from Rape Crisis Centre Tukinainen, crime statistics and statistics from the legal authorities.

4.4.1.2 FEMALE VICTIMISATION SURVEY 2005 AND CALLER STATISTICS FROM RAPE CRISIS CENTRE TUKINAINEN

Violence against women in Finland has been investigated in two extensive studies of female victimisation, carried out in 1997 and 2005. The latter study, published in December 2006, indicated something of an increase in sexual or physical violence or threats of violence outside a relationship.²⁵⁶

In the 1997 survey, only one question addressed sexual violence within an intimate relationship. In the follow-up survey in 2005, questions focused more on sexual violence. The questions dealt with sexual acts obtained by force or attempts to do so.²⁵⁷ One of the questions dealt with sexual acts in situations where the woman was unable to refuse sex.²⁵⁸ Nine per cent of women who responded to the survey had been forced, or been subjected to an attempt to force them, to participate in sexual activity during their lifetimes.

When looking at different kinds of relationships, it is notable that, according to the study, 6,500 women had been forced to participate in sexual activity during the past year within their present intimate relationship. Table 1 present the results of the 2005 female victimisation survey with respect to sexual violence during the past year.

²⁵³ Judith Herman (1994): *Trauma and Recovery: From Domestic Abuse to Political Terror*. London, Pandora.

²⁵⁴ Across the five countries, the range for lifetime prevalence was 17-33 per cent for sexual abuse, including rape.

²⁵⁵ Wijma B., Schei B., Swahnberg K. ym. (2003). Emotional, physical and sexual abuse in patients visiting gynaecology clinics: a Nordic cross-sectional study. *Lancet* 2003; 361: p. 2107-13. In Finland, 583 women participated in the study.

²⁵⁶ Violence outside a relationship, i.e. violence or threats of violence by someone other than the woman's current or former husband or cohabiting male partner after the woman reached the age of 15, had increased from 24.4 per cent to 29.1 per cent over this eight-year period. In the majority of these situations, the perpetrator was someone the victim was familiar with, e.g., a former male partner, an acquaintance, a friend, a fellow student or a family member other than the woman's partner. (Heiskanen, Markku (2006))

²⁵⁷ This survey used a three-part series of questions from a 2001 Swedish female victimisation survey. See Lundgren et al. 2001

²⁵⁸ The reason for this were, for example, being asleep, passing out after drinking, or being unconscious or otherwise in a confused state of mind.

TABLE 5.

Results of the 2005 female victimisation survey (Piispa, Heiskanen, Kääriäinen, Siren, 2006) with respect to questions addressing sexual violence during the past year. Sexual violence occurring outside an intimate relationship, within a present relationship and within a former relationship is included (n = number representing the relative proportion of the Finnish population).

Experiences of sexual violence and threats of such violence during the past year, women 18-74 years	per cent	n
Forced to participate in sexual activity	0.8	14,963
Forced (or subjected to attempted forcing) into sexual interaction when the woman was unable resist due to sleep, intoxication or illness	2.5	45,742

Source: Piispa, Heiskanen, Kääriäinen & Siren, 2006, an unpublished table.

Finland currently has two toll-free rape crisis hotlines, both operated by Rape Crisis Centre Tukinainen. In 2007, the centre received 12,851 calls. The main reason for calling was rape (33.6 per cent). Caller statistics from 2006 show that continuous sexual violence was experienced by 12.4 per cent of callers.²⁵⁹ This percentage shows that sexual violence is commonly experienced within an intimate relationship as a series of acts, rather than as a single, clearly definable act.

4.4.2 REPORTED RAPES

4.4.2.1 RAPES REPORTED TO THE POLICE

Data concerning offences under the Penal Code collected by Statistics Finland refers to offences suspected by the police. An offence may be reclassified in court, in addition, a large number of cases never reach a court of law.

The average number of rapes reported annually has increased steadily. From 1995 to 1999, the average was 457, while in 1999 to 2006 – since the current legislation came into force - the average has risen to 541. In all, 5,408 rapes or attempted rapes were notified to the police during the period 1997 to 2006.

During 2006, reports to the police of aggravated rape, rape and coercion into sexual intercourse totalled 613. Though intercourse is one of the defining elements of sexual abuse, cases of sexual abuse are not included in this total. In 2007, the increase was remarkable: the police received reports of 748 rapes.²⁶⁰

4.4.2.2 WHAT DO THE POLICE REPORTS SUGGEST ABOUT THE VICTIM AND THE ASSAILANT?

In an academic research report that analysed all reports of criminal assaults and attempted assaults during 1998, the results indicated that in 25 per cent of rape cases the assailant was unknown to the victim. In another 25 per cent of cases, the victim had been in the

²⁵⁹ Rape Crisis Centre Tukinainen, Yearbook 2007 and Yearbook 2006. In the 2007 Yearbook, caller information was classified differently: there were no longer data available that would indicate the per centage of women who experience continuous sexual violence.

²⁶⁰ Statistics Finland (<http://statfin.stat.fi/StatWeb/catnewfi/nelj2007.asp>)

company of the assailant out of his or her own will. This would include cases where, for example, both parties had left a restaurant together to continue the evening at one of their homes. In 20 per cent of cases, the victim and assailant were acquainted being, for example, friends of partners or relatives, work colleagues or neighbours. In 14 per cent of cases the assailant was a former or current partner or, in a few cases, a close relative. In rest of the cases it was not possible to ascertain from the police reports the relationship between the assailant and victim.²⁶¹

According to the research, both parties in rape cases were typically young: over 70 per cent of victims were under 30. Partly for this reason the victims, and especially the accused, were rarely from the highest socio-economic grouping when compared to the whole population. The largest group (61 per cent) of reported rapes were reported by the victims themselves. Two-thirds were reported immediately or the next day at the latest. The research concludes that sexual offences often go unreported, especially in cases where the assailant is acquainted with or closely related to the victim.²⁶²

Another, more recent, study showed that in most cases the victim and the perpetrator knew each other and the offence took place at one of their homes. Women were attacked by strangers in only one in four cases. Close to half the rape cases reported to the police occurred among acquaintances or at a time when the persons involved were acquainted (so-called “date rapes”). Intimate or family relations were involved in 13 per cent of cases, where the offender was typically the present or ex-spouse, cohabitant or boyfriend. In 14 per cent of reports, the offences involved group rape.²⁶³

Among rapes within intimate relationships, various categories of rape were identified. According to the police investigations, one category involved one-off occurrences where the couple wanted to continue living together and did not want the case to be examined by the court. Other categories involved long-term spirals of violence, where the man over time had become increasingly violent. Another category consisted of reports made in connection with divorce.²⁶⁴

4.4.3 AMNESTY INTERNATIONAL FINLAND’S MAIN CONCERNS:

- There is a lack of data and statistical information about rape and other crimes involving sexual violence and, in particular, about the prevalence of these crimes. The Finnish government is urged to commission research of the reasons for the low levels of reporting to the police. A follow-up study of victims and assailants in reported rape cases since the current legislation came into force is also needed.

²⁶¹ Honkatukia, Päivi (2001): Ilmoitti tulleensa raiskatuksi. Tilastokeskus, Oikeus 2001:2, OPTL :publication 180/2001. [Honkatukia, Päivi (2001): Reported being raped. Statistics Finland & National Research Institute of Legal Policy: publication 180/2001]

²⁶² Honkatukia, Päivi (2001): Ilmoitti tulleensa raiskatuksi. Tilastokeskus, Oikeus 2001:2, OPTL :publication 180/2001. [Honkatukia, Päivi (2001): Reported being raped. Statistics Finland & National Research Institute of Legal Policy: publication 180/2001]

²⁶³ Kainulainen, 2004

²⁶⁴ Kainulainen, 2004

4.5 THE LEGAL JOURNEY

Current research has revealed many problems in connection with the police investigation, prosecution and court handling of cases involving rape. There are regional variations in standards and practices in relation to the medical examination of rape victims and the relevant recommendations are neither widely known nor used in public health services. Only a few (approximately 15 per cent) of reported rapes reach the courts. Where the prosecution decides not to prosecute, this is due to lack of evidence in 88 per cent of cases. Academic research indicates that attitudes held by the courts affect decisions and there is often focus on the victim's behaviour. Research conducted by the National Research Institute of Legal Policy shows regional inconsistencies in relation to the categorisation of crimes.

THE OUTLINE OF THE JUDICIAL PATH OF A RAPE CASE IN FINLAND

Proceedings are normally instigated by the victim of a rape or sexual assault who reports the crime to the police.

In some cases, the police may become aware of the crime from other sources or while investigating another crime. Based on the initial report, and before commencing any pre-trial investigations, the police determine whether the crime in question is subject to public prosecution or whether it is a complainant offence. A complainant offence is investigated only if the victim presents a request for the punishment of the suspect. The police have a duty to notify the victim that the police-led pre-trial investigations will be discontinued if the victim decides to withdraw the request.

Upon completion of the pre-trial investigation, the file is sent to a public prosecutor who, on the basis of the evidence compiled by the police, evaluates whether a prosecution is warranted and, if it is, on what charges the suspect will be indicted. Before making this decision, the prosecutor may invite any of the parties to the case or their counsels to discuss issues related to the case if this will be of assistance to the prosecutor's decision-making or if it will facilitate proceedings before the court. The prosecutor may also require the police to collect further evidence on specific matters.

The prosecutor has a duty to prosecute if there is a prima facie case against the suspect. The prosecutor may waive the charges if there is not enough evidence or if charges cannot be brought for other reasons, for example, owing to the statute of limitations. If the prosecutor decides not to prosecute, for example, because of the lack of evidence, the victim can take the case to court.²⁶⁵

The prosecutor raises the charges before a court of first instance, a district court. The prosecutor, the defendant and the victim are all parties to the proceedings and may appear before the court and present claims and evidence and name witnesses. The district court will pronounce judgment either verbally at the end of the proceedings or in writing, normally within one month. All parties may appeal the judgment to a regional court of appeal. A judgment by a court of appeal may be appealed to the Supreme Court, subject to leave being granted.

²⁶⁵ The secondary right to institute criminal proceedings. If the victim loses the case, she is responsible for paying her own and the alleged perpetrator's legal expenses.

4.5.1 REPORTING THE CRIME TO THE POLICE AND THE POLICE INVESTIGATION

4.5.1.1 THE IMPORTANCE OF THE NATURE OF THE VICTIM'S ENCOUNTER WITH THE POLICE

Interviewing the injured party is often essential for determining the type of crime involved. During the interview, the police will establish the nature and extent of any injury or damage sustained by the injured party and any claims that she may have.

In Heini Kainulainen's study from 2004, many of the police officers interviewed pointed out that it was not their role to cater for the victim's mental wellbeing. Some of the officers feared that, if they were too empathetic in their approach, the impartiality of the pre-trial investigation might be jeopardised.

Kainulainen describes how, in their first meetings with women reporting rape, some police officers displayed a suspicious attitude. They did not necessarily believe the women's stories, or believed the women to be at least partly responsible for the fact that the situation had got out of hand. There were also instances where women had been given advice by the police on how to behave to avoid being raped.

The questioning of the rape victim is an important part of the pre-trial investigation. The attitude taken by police officers towards rape victims will influence the effectiveness of their investigation. If the rape victim feels that she is not getting enough support during the preliminary investigation, she may feel it is better not take the case any further. Police officers need thorough training on how to interview and deal with rape victims in a professional yet considerate manner.

The victim has a right to be represented by a state-funded attorney. Crime victims, people close to them and witnesses can have access to a support person from Victim Support Finland, an NGO. Victim Support Finland has volunteers specially trained for this task. The police must ensure that the victim is aware of these rights and must help them to contact other sources of help and support. A better arrangement might be for the police more actively to direct the support person from Victim Support Finland (etc.) to make contact with the victim. To do this the police need the victim's permission to supply contact information to a representative from a non-governmental organisation.

4.5.1.2 MEDICAL EXAMINATIONS AND PRESERVATION OF THE EVIDENCE

Often the first place the victim contacts after the rape is the local health centre. Information from various actors²⁶⁶ has revealed regional variations in standards and practices concerning the collection and preservation of medical evidence. It has been claimed that, in some healthcare centres, forensic evidence is not always collected if the victim has not yet decided whether she is going to report the crime. The length of time the evidence is kept

²⁶⁶ This information is based on the answers given by Finnish healthcare workers for the survey Amnesty International Finland conducted in 2005-2006: "...but we need an engine," Amnesty International Finland's national survey on work against violence against women in the Finnish municipalities in 2005-2006 (only available in Finnish). [The title in Finnish: "...mutta veturi puuttuu". Amnestyn Suomen osaston valtakunnallinen kyselytutkimus naisiin kohdistuvan väkivallan vastaisesta työstä Suomen kunnissa vuonna 2005-2006]. Other actors working in the field of violence against women have confirmed this problem.

also varies greatly. It is shocking that victims, who subsequently feel ready to report a rape, may be informed that the medical evidence has been destroyed simply because of “lack of space”.

The problem is linked to healthcare legislation. There are unofficial recommendations about the kinds of samples needed and the preservation of the evidence. Unfortunately the handbook containing this information is neither widely known nor used.²⁶⁷ Accordingly, it would be helpful if a minimum preservation time could be stipulated in the Act on patients’ safety.²⁶⁸

All measures that could harmonise and improve investigative standards and the gathering of evidence, as well as improve the legal protection of those involved, need to be carefully investigated.²⁶⁹ Amnesty International Finland also urges that the Guidelines for medico-legal care for victims of sexual violence, produced by the World Health Organisation, should be translated, disseminated and included in the training of healthcare professionals.²⁷⁰

4.5.2 STEP TWO: PROSECUTION.

4.5.2.1 STATISTICS FOR CHARGES BROUGHT, ACQUITTALS AND CONVICTIONS IN CASES INVOLVING RAPE

Only a few of the rapes reported to the police reach court, with only one in seven reported rapes ending with the conviction of the perpetrator.²⁷¹ Most of the analysis here is based on statistics in the latest Crime Trends Yearbook (2006), which presents figures for 1997-2005. However, more recent information from Statistics Finland relating to acquittals and the reasons behind decisions not to prosecute are also presented here.

Between 1997 and 2005, a total of 738 cases involving rape, aggravated rape or coercion into sexual intercourse (including attempts in relation to each crime) led to prosecution. Thus approximately 15 per cent of the rape cases recorded by the police in 1997-2005 led to a charge of rape as the main criminal offence.²⁷² Comparison of statistics for each year, however, shows a positive development: in 1998, only 10 per cent of reported cases were

²⁶⁷ RAP folder: a handbook for healthcare workers concerning the acute treatment and support of a rape victim. The handbook was a joint project by NGOs and STAKES – Expert Agency of Knowledge for Welfare and Health. Rape Crisis Centre Tukinainen has organised educational courses for health professionals entitled: “There are no unnecessary medical examinations”. The need for this kind of education speaks for itself.

²⁶⁸ Law on patients’ safety, which establishes other standards on the periods for which various information (x-ray films, etc.) about patients has to be kept.

²⁶⁹ In her 2006 doctoral thesis, Päivi Hirvelä identified problems concerning cooperation between the authorities responsible for the preliminary investigation of sexual offences against children. The problems were mainly caused by lack of coordination. People working with victims of sexual violence have noted the same problems where the victims are adults.

²⁷⁰ The same recommendation has also been made to the Hungarian government. For more information see Amnesty International’s publication: Hungary: Cries unheard, p. 23. AI Index: EUR 27/002/2007

²⁷¹ Estimate calculated based on figures in the Crime Trends Yearbook 2006. The percentage of convictions where rape is the main criminal offence are presented in table 18, p. 84., Convictions 1997-2005.

²⁷² Honkatukia & Kainulainen (2007): Rikollisuustilanne 2006 (77-84). [Honkatukia & Kainulainen: Crime Trends in Finland 2006 (77-84).] Available at: <http://www.optula.om.fi/40495.htm>

convicted in district courts, while in 2001 the figure reached 22 per cent, although it fell again in 2003 to 16 per cent.²⁷³

The grounds for non-prosecution are either procedural or consequential. Grounds of the latter type include, for example, non-prosecution when the crime is considered to be minor, or where the victim exercises her right to use her own “free will” and asks the prosecutor not to bring charges.²⁷⁴ Such grounds are less frequently cited as the reason for non-prosecution than grounds concerning legal process. Statistics for non-prosecution for procedural reasons are presented in table 2.

According to the Crime Trends Yearbook 2007, the prosecutor decides not to prosecute in approximately 41 per cent of rape cases handed over to the prosecutor by the police. In 88 per cent of cases the reason for non-prosecution was “no evidence”. In 2007, the acquittal rate in district courts was 23 per cent.²⁷⁵

TABLE 6. NON-PROSECUTION.

Data based on legal statistics from Statistics Finland, 2007.²⁷⁶

Non-prosecution based on procedural reasons or “free will” of complainant (waiver of measures)						
Year	Charges dropped	No crime	No evidence	Right to institute criminal proceedings expired	No right to institute criminal proceedings	“Free will”
1998	90	1	73	0	12	2
1999	87	0	73	0	7	3
2000	136	2	118	2	6	5
2001	112	2	97	1	4	3
2002	128	3	102	0	15	2
2003	140	3	129	2	4	1
2004	165	4	137	4	10	8
2005	136	1	119	2	8	2
2006	177	2	152	3	13	-*

*Information not available/found.

273 Utriainen (2006): Seksuaalirikokset historian ja tilastojen valossa. Kirjassa Oikeusteorian poluilla. Professori Rauno Halttusen juhlaKirja. Lapin Yliopiston oikeustieteellisiä julkaisuja. Rovaniemi 2006. [Utriainen (2006): Sexual offences seen through history and statistics. In Oikeusteorian poluilla. Professori Rauno Halttusen juhlaKirja. Edited Sauli Mäkelä. Publications of the University of Lapland. Rovaniemi]

274 See appendix to this chapter on section 12.

275 However, the statistics in relation to prosecution rates give rise to some important questions. To take an example with actual mean values: of 541 rapes reported to the police, 311 are referred to the prosecutor. Of the original 541, the prosecutor will only prosecute with rape as the main offence in 15 per cent of cases (n= 80, out of 541) -> 15 per cent of all reported rapes end up in court. However, a greater per cent of these cases are in fact prosecuted in Finland. The overall prosecution rate in cases of rape is 59 per cent (n=185 cases, out of 311). This is why the non-prosecution rate is 41 (n= 126, out of 311). What happens in the more than 105 cases where the prosecutor brings charges, but the main offence is not rape? The article in the Crime Trends Yearbook does not answer this question. It is obvious that in many cases the offence is simply reclassified, often as a more serious crime, for example, aggravated assault. It is argued that the decisions made by the prosecution suggest that violation of the right of sexual self-determination not involving serious physical violence is not prosecuted as vigorously as “real” violence. However, this argument cannot be investigated here, but officials in the Finnish legal system are encouraged to carry out an in-depth analysis of prosecution practices.

276 http://pxweb2.stat.fi/Database/StatFin/oik/sytr/sytr_fi.asp

4.5.2.2 HAS THE LEGAL REFORM INCREASED THE NUMBER OF CHARGES IN RAPE CRIMES?

In Heini Kainulainen's study published in 2004, where reported rapes took place within an intimate relationship, charges were brought in 28 per cent of cases. The charges were not, however, necessarily for rape or any other sexual offence, but might simply be, for example, for physical abuse. These cases were also dropped for a variety of reasons.

According to the study, statistics showed that the legal reform had increased the number of rapes being reported to the police. A higher proportion of cases were also being solved and more cases were being referred to the public prosecutor. Prosecutors were also bringing more charges for rape or attempted rape than during previous years and more offenders were being convicted.

But the study also revealed many problems in relation to police investigations, prosecutions and court proceedings. For example, the police were dismissing rapes as non-crimes more frequently than before, prosecutors were waiving charges more frequently due to lack of evidence, and there had been an increase in decisions by the courts to dismiss charges. This indicates that closer attention needs to be paid to matters concerning the charging of alleged offenders and legal proceedings.

4.5.2.3 DELIBERATION BY THE PROSECUTOR: NO EVIDENCE OR JUST NOT VALUED AS EVIDENCE?

The testimony of the victim is often considered to constitute the only evidence of the crime, especially where no injuries are documented. Careful investigation, however, will often uncover other kinds of evidence – text messages, e-mails, psychologists' opinions, testimonies from support persons from non-governmental organisations, testimonies from friends etc. – but importance is rarely attached to such evidence in court, or considered as constituting proof by the prosecutor. However, such evidence should be taken into account when bringing charges.

Many researchers and practitioners of law have stated that bringing more rape cases to trial will enhance victims' rights. According to academic research, in cases where it is especially difficult to prove that a crime has been committed – such as cases where the essential elements of the crime are often referred to as being more subjective (in rape the issue is whether there was consent to intercourse) – the criteria as to what constitutes adequate evidence for pressing charges cannot be the same as in cases where the essential elements of the crime can be assessed more objectively.²⁷⁷

4.5.2.4 ARE THERE REGIONAL VARIATIONS (AND DIFFERENCES IN REASONING) BEHIND SENTENCES FOR RAPE?

Research conducted by the National Research Institute on Legal Policy in Finland identified a judicial problem in relation to rape, that is, there were regional inconsistencies in the way the crimes were categorised.²⁷⁸ The research states that this indicates differences in

²⁷⁷ For references of the importance of the subjective criteria see Klami (1990, 196-199), Ekelöf and Boman (1992, 119) and Hahto (2004, 475- 478, 539-544).

²⁷⁸ Lappi-Seppälä & Hinkkanen (2004): Selvityksiä raiskausrangaistuksista ja rangaistuskäytännön yhtenäisyydestä [Report on convictions for rape and consistency in the means of punishment]. The National Research Institute on Legal Policy in Finland, report number 61.

reasoning about the essential elements of the crime. The decision whether to bring the crime to court as aggravated rape, rape or sexual intercourse obtained by coercion is the result of a deductive process. If these crimes are identified differently in different courts this will obviously affect the level of convictions, since the punishment in lesser crimes is less severe.

The regional inconsistencies identified by this research indicate that the way the present legislation is implemented compromises the rights both of the victim and of the accused. Proceedings concerning sexual offences in courts at all levels need to be carefully monitored.

Transparency in relation to the prosecution of sexual offences against women would be increased by establishing a specific body to monitor reported rapes throughout their legal journey. This would assist the authorities in identifying weaknesses in the current system and help bring about urgently needed improvements in the legal protection of women.

4.5.3 COURT PROCEEDINGS AND THE COURTS' ATTITUDE TO RAPE

4.5.3.1 MITIGATING CIRCUMSTANCES

It is alarming that the existence of a relationship between the victim and the perpetrator is still often seen as a reason to minimise the gravity of the sexual crime. As Niemi-Kiesiläinen points out, any interaction between the victim and the perpetrator before the rape has historically been used to induce feelings of guilt in the victim and to minimise the seriousness of the crime. This approach has not been wholly eliminated in the new law on sexual offences. Niemi-Kiesiläinen proves this by referring to the explanatory notes to the current law.²⁷⁹ Although the notes state that "... the relationship between the perpetrator and the victim should not be mentioned as an extenuating circumstance...", a little later the text makes a u-turn, stating that "... interaction between perpetrator and victim prior to the act together with other circumstances of the act" could constitute extenuating circumstances (Government Bill 6/1997, 175).²⁸⁰ What is the distinction between a relationship and an interaction? Niemi-Kiesiläinen suggests a worst-case scenario where the mention of interaction in this context could give rise to a serious danger of widening the scope of mitigating circumstances to different kinds of interactions between, for example, a boyfriend and girlfriend, between spouses or ex-spouses and so on.²⁸¹

4.5.3.2 DOES THE VICTIM'S BEHAVIOUR PLAY A CRUCIAL ROLE IN RAPE TRIALS IN FINLAND?

Research by Vilja Hahto published in 2004 studied the attitudes of members of the court. Hahto states that it is typical in Finland for rape trials to focus on the victim's behaviour, while in other kinds of crime the victim is seen more as a "pure" victim, not as someone who may have provoked the offence. According to Hahto, there are two situations in rape trials where it is common for the court to consider whether the victims' behaviour contributed to the commission of the crime.

²⁷⁹ Niemi-Kiesiläinen, 2004, 184

²⁸⁰ Niemi-Kiesiläinen, 2004, 184

²⁸¹ As stated earlier, marital rape has been criminalised in Finland, although this only happened 10 years ago. But marriage is still specifically mentioned as a ground on which the victim may withdraw her complaint or the prosecutor may drop the charges (Government Bill 6/1997).

Firstly, the court may investigate whether the accused could have been mistaken about the victim's consent. In this regard, however, courts seem less concerned with the offender's reasoning than with the victim's communication of her lack of consent. Reading between the lines, the court is really saying: Perhaps she consented to sex after all? This approach clearly has roots in attitudes to women's and men's sexuality, gender roles and stereotypes.

Hahto emphasises that courts should consider whether it is ever really possible for perpetrators to be mistaken. If a perpetrator's alleged mistake is based on damaging, discriminatory fantasies about women's sexuality, it should not be accepted as a defence.²⁸²

Secondly, the court may examine the victims' behaviour in relation to her character. This approach is also clearly unjustified from a human rights perspective. Hahto's research reveals that the amount of attention paid in court to the victim's behaviour raises doubts about the fairness of trials. For example, during both police investigations and court proceedings, there is far more focus on the victim's use of alcohol than the perpetrator's level of intoxication. Time spent together by the victim and the perpetrator is also seen as a mitigating circumstance. Hahto insists that the court cases analysed in the study do not suggest that victims' actions wrongfully facilitated the crimes or diminished the culpability of the offenders.²⁸³

Hahto identifies three contexts²⁸⁴ where the victim's behaviour is subjected to closer examination during legal proceedings: the time leading up to the rape; the rape itself; and, finally, in connection with the evaluation of other relevant matters.²⁸⁵

Hahto concludes that the Finnish courts often put the blame for the rape on the victim by signalling that she should not have consumed alcohol, flirted or, in particular, accepted an invitation to continue the evening on private premises.

The research was based on material collected from Finnish court cases, of which the majority were heard before 1999. Approximately one-third were heard during 2000-2002. Accordingly there is no certainty that the attitudes of the prosecutors, judges and jurors presented in Hahto's study are the same today. Attitudes do not change quickly, however, nor have there been widespread changes in court personnel.²⁸⁶

²⁸² Hahto, 2004, 475

²⁸³ Hahto, 2004, 542

²⁸⁴ Hahto, 2004, 467-515

²⁸⁵ It is interesting to see that Hahto's examples of Finnish court cases contain similarities to cases referred to in Chapter 2 of this report (on Denmark). For example, though victim cried throughout the rape, pleading that she had recently had an abortion and the doctor had forbidden intercourse. The court did not view this as "strong resistance". To review the Finnish example see Hahto, 2004, 505

²⁸⁶ In 2004, legislative counsellor Vilja Hahto from the Finnish Ministry of Justice published research into the victim's contributory liability for rape and the liability of the offender. One purpose of Hahto's study was to define how the behaviour of the victim could affect the criminal and tortious liability of the offender. Another objective was to clarify the current legal position in both theory and practice. By referring to cases, Hahto examines situations where the court accorded relevance to the victim's actions. In her research, Hahto addresses particular questions concerning sexual intercourse obtained by coercion, rape and aggravated rape.

Research into criminal proceedings for rape since the current legislation came into force is very scarce. This is because, since the legal reform, nearly all rapes that are prosecuted are heard in closed court sessions. This makes it very difficult to carry out research into the courts' reasoning in relation to convictions for rape and other crimes against the right of sexual self determination. However, without research or scrutiny of the way in which rape cases are investigated, of the way the legislation is applied in practice and of the courts' reasoning behind convictions, it is impossible to assess whether the current legislation has enhanced the rights of the victim.

4.5.4 AMNESTY INTERNATIONAL FINLAND'S MAIN CONCERNS:

- There is a need to increase awareness of the traumatising effects of violence and, in particular sexual violence, in the basic and advanced training of police officers and prosecutors. Methods for investigating sexual violence need further development, including police officers' treatment of rape victims.
- Amnesty International Finland recommends the adoption in the Finnish Penal Code and legal practice of the principles of evidence in cases of sexual violence set forth in the Rules of Procedures and Evidence of the ICC.²⁸⁷
- Amnesty International Finland is also concerned about regional variations in forensic examinations. The state has a duty to raise the standards of forensic examinations and of the medical treatment of victims of rape and sexual violence.
- According to an established international recommendations the legal process should not focus on the victim's behaviour. In court proceedings, relations between the perpetrator and the victim should not be seen as a mitigating circumstance. If such relations are referred to, this should include an analysis of the power relations existing both between the parties in particular and in terms of society's gender-based attitudes in general. In other words, the court should bear in mind that power relations are influenced by gender.
- There is an urgent need for a higher level of transparency and increased research in relation to sexual offences against women. Amnesty International Finland calls for the establishment of a monitoring body tasked with following cases of rape throughout their legal journey. Such scrutiny would assist the authorities in identifying weaknesses in the current system and help bring about urgently needed improvements in respect of legal protection for women. Such a monitoring body would also enhance the transparency of the legal processes in question.

4.6 LEGAL AND PSYCHOSOCIAL SUPPORT FOR VICTIMS OF RAPE

In Finland, victims of sexual offences or offences involving domestic violence may obtain the help of a legal counsel and/or support person appointed by the court. There is no system of state-run or organised support for victims of sexual violence in Finland. The need for

²⁸⁷ ICC, Rules of Evidence and Procedure, Rule 70:

- a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or by taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent,
- b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent.
- c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence

nationwide, easily available services for victims of sexual violence was acknowledged when Parliament debated the legal reform in 1997, but so far there has been no real progress in establishing such a system. A special programme to assist victims of rape has been developed at one hospital in Finland. In addition, Finland currently has one nationwide organisation specialising in helping people exposed to sexual violence.

In Finland, the injured party may engage a legal counsel for the pre-trial investigation. Such counsel may also be present during the victim's interview with the police. Victims of sexual offences or offences involving domestic violence may obtain the help of a legal counsel and/or support person appointed by the court. Victims of crimes involving serious violence or sexual crimes may be provided with a trial counsel at the expense of the state, regardless of his or her financial status. However, healthcare personnel fail to make rape victims sufficiently aware that this type of support is available.

Amnesty International Finland carried out a national survey on work in municipalities during 2005-2006 to combat violence against women. The results revealed a lack of awareness among healthcare personnel at a municipal level about available information on sexual violence. There is a handbook – known as an RAP folder – aimed at healthcare personnel, which gives information about the acute help needed by rape victims. According to the survey, the folder was known about and used in only 23 per cent of the municipalities that responded to the survey.²⁸⁸

There is only one hospital in Finland that has a special programme to support rape victims. The programme (known as RAISEK) was initiated by gynaecologists working at the Central Finland Central Hospital. The staff found caring for rape victims both challenging and distressing and decided in 2001 to start a development programme to improve the situation. Importance was attached to involving professionals from various fields in the development of the programme, which also aimed to focus on the victim's point of view.²⁸⁹ The programme aims to provide continuous and comprehensive support for the victim, improve staff competence and provide information and training at a regional level.²⁹⁰

Finland currently has one nationwide organisation that specialises in supporting people exposed to sexual violence: Rape Crisis Centre Tukinainen. The centre maintains two toll-free emergency helplines. One helpline provides support for people exposed to sexual violence, their relatives and friends, and also advises experts from various fields who are in need of consultation. The other helpline offers legal advice. The centre also organises open and long-term crisis groups and week-end sessions. The centre currently has two offices, one in Helsinki and another in Jyväskylä.

²⁸⁸ The whole report is available at the amnesty.fi website, but unfortunately only in Finnish.

²⁸⁹ More information about the development of RAISEK: Nykänen (2004): Raiskauksen ja/tai seksuaalisen väkivallan kohdanneen naisen hoidon kehittäminen Keski-Suomessa. Diakoninen sosiaali-, terveys ja kasvatusalan koulutusohjelma, Pieksämäen yksikkö. [Nykänen (2004): Developing care of women exposed to rape and / or sexual violence in Keski-Suomi. Education programme for deacons working in the area of social-, health- or education. Pieksämäki unit, Finland]

²⁹⁰ Amnesty International Finland recognised the pioneering work carried out in Central Finland's healthcare district and Central Hospital with a Candle Prize awarded on 10.12.2007. The Candle Prize is awarded for outstanding grassroots human rights work in Finland.

Help is also available for victims of sexual violence and rape from other non-governmental organisations, such as the Victim Support Finland, which is a joint initiative by several national organisations. Victims, people close to them and witnesses may request help from a support person provided by Victim Support Finland when necessary. Victim Support Finland has volunteers specially trained for this task.²⁹¹

4.6.1 AMNESTY INTERNATIONAL FINLAND'S MAIN CONCERNS:

- Amnesty International Finland reminds the government of its international obligation to establish state-funded services that are readily available nationwide for victims of rape and sexual violence.

4.7 POLITICAL LEADERSHIP RELATING TO SEXUAL CRIMES AGAINST WOMEN

The Finnish government has responded to international criticism by claiming that various measures have been taken to combat violence against women. Unfortunately, these measures have taken the form of short-term interventions, such as, for example, the project coordinated by the Ministry of Social Affairs and Health, which focused on preventing violence within intimate relationships and domestic violence. The project was launched in 2004 but was wound up in 2007.

In general, the government has argued against any obligation to take specific measures targeted at preventing violence against women, since it believes its general programmes, which aim to reduce violence in society as a whole, are sufficient. These general programmes make hardly any mention of sexual violence and rape as a form of violence against women. Actions taken so far, by both central and local authorities, have been inadequate.

4.7.1 SEXUAL VIOLENCE IS GENDER-BASED

Organisations that campaign against gender-based violence and sexual violence in Finland are often confronted by the argument that sexual violence is not gendered, since women are also liable to perform acts of sexual violence. From an individual and psychological perspective, it is clear that some women use various forms of violence. From a societal perspective, however, there is no doubt about the gender of perpetrators. According to statistics from 1999-2006, in 99.3 per cent of all convictions for aggravated rape, rape, sexual intercourse obtained by coercion, sexual abuse and enforced sexual acts, the offenders were men (N = 1,017). During that period, there were only seven convictions (0.7 per cent) – for sexual abuse and enforced sexual acts – where the perpetrators were women.²⁹²

²⁹¹ There is also the Monika – Naiset liitto ry - Multicultural Women's Association that assists women and their children who are victims of violence. The Association also distributes information with the aim of preventing violence against women and attempts to facilitate the integration of immigrants in Finland. Another NGO providing help, advice and support, especially for women who have experienced violence or the threat of violence, is Women's Line. Women's Line is a national telephone helpline that was set up in spring 2002. See the Amnesty.fi website for information about other organisations involved with the SVAW campaign in Finland.

²⁹² Information provided on request from Statistics Finland.

Rape Crisis Centre Tukinainen records that 2 per cent of rape victims calling its helplines are men, and of callers having experienced sexual abuse as a child 6 per cent are men.²⁹³ The fact that children are a risk group – both girls and boys – also indicates that sexual violence is associated with existing power relationships in society.²⁹⁴

In Finland, 2 per cent of girls under 15 have experienced coercion into sexual activity, with 6 per cent of these girls having experienced violence in this context. Among boys of the same age, 0.3 per cent reported having experienced sexual coercion or violence.²⁹⁵

There is no official data on the prevalence of sexual offences committed against LGBT persons. Academic research studies indicate that only a few victims (0.4 per cent) of sexual violence are men.²⁹⁶

It needs to be made clear that campaigns that uncover the gender- and power-based causes of violence do not aim to stigmatise men, rather they aim to identify behaviour and situations that lead to crimes of violence and propose practical solutions that address the effects of such crimes. It is society and the normative heterosexual culture that gives rise to gender-based violence that have to change. The human rights of all groups, both minorities and majorities, will benefit from improved recognition of sexual violence, the special knowledge needed to support victims of sexual violence and preventive actions targeted to combat violence at a grassroots level. Accordingly, preventive work at all levels of society, especially within schools, is imperative.

4.7.2 NEED FOR A SPECIFIC NATIONAL ACTION PLAN TO COMBAT VIOLENCE AGAINST WOMEN IN FINLAND

The government of Finland has sidestepped international criticism by asserting that measures aimed at combating violence against women are included in other state-coordinated action plans, such as, for example, the Finnish government's Internal Security Programme and the National Programme for Reducing Violence. However closer examination of, for example, the Internal Security Programme shows that violence against women is not named, discussed nor specially targeted. The wording carefully excludes references to gender, referring to, for example, "violence in the family" and "violence in close relationships". This gender-neutral approach has been claimed to reduce political resistance, but so far the programme has not helped develop better services or legislation to protect the victims of gender-based violence.

Another problem with these programmes is that sexual violence and violence against women are concealed underneath other kinds of threats to security and forms of vio-

²⁹³ Rape Crisis Centre Tukinainen Yearbook 2007.

²⁹⁴ There is recent research available about the sexual abuse of, and sexual violence against, children in Finland, but the scope of this article makes impossible to review this research.

²⁹⁵ These results are reported in Ellonen, Kivivuori, Kääriäinen (2007): *Lapset ja nuoret väkivallan uhreina* [Children and adolescents as victims of violence]. Published by the Police Academy of Finland and the The National Research Institute on Legal Policy in Finland, Helsinki.

²⁹⁶ Kainulainen, Heini (2007): *Raped? Sexual Assault in Criminal Proceedings*. In *Procedural Law, court administrations*. Edited by Peter Wahlgren. *Scandinavian Studies in Law*, Vol.51. Stockholm Institute for Scandinavian Law. Stockholm.

lence.²⁹⁷ One concrete consequence of the wide-ranging nature of these programmes is that, though the programmes mention several worthwhile proposals to combat “violence in close relationships” or even sexual violence (as in the National Programme for Reducing Violence), experience has shown that the government is unwilling to allocate adequate funding to execute the proposed actions.²⁹⁸

The government of Finland has finally made plans to establish a specific cross administrative action plan in order to reduce violence against women (in the Government Action Plan for Gender Equality 2008-2011). Amnesty Finland welcomes the good news, but at the same time emphasizes, that it is important to focus on the implementation of the action plan and make sure, that enough resources are directed to enforcement of the plan.

On 13 May 2008, the Ministry of Social Affairs and Health published recommendations for local and regional authorities on how to guide and lead actions for the prevention of interpersonal and domestic violence and the reduction of problems caused by it. The recommendations stress the importance of regional action programmes and of improving coordination. They also focus on improving the professional skills of employees within social and healthcare services.

Amnesty International Finland welcomes these recommendations: it is important to stress the fundamental importance of strategic planning in preventing violence within the private sphere. Amnesty International Finland participated in drafting the recommendations and secured the inclusion of various additions concerning treatment and support services for victims of sexual violence and rape. However, it is still disappointing that sexual violence is only discussed briefly. Another flaw is that the relationship between gender and sexualised violence is completely ignored.²⁹⁹

The recommendations refer to the ongoing national action plan to promote sexual and reproductive health (2007-2010), especially in connection with measures targeted against sexual violence. The latter action plan superficially covers the phenomenon of sexual violence and the short text includes 17 recommended measures aimed at preventing rape and sexual violence. Amnesty International Finland considers these nutshell recommendations to be excellent. The problem remains of implementing these measures, not to mention questions regarding the overall funding of the whole programme. The same concern applies to the

²⁹⁷ The Internal Security programme includes measures to counter all threats to the security of the citizens of Finland, for example, racism, computer crime, violence against children, internal catastrophe, fire, lack of safety at sea, etc. In the National Programme for Reducing Violence (2005), the other areas addressed are alcohol-related violence, violence against children and adolescents and violence at work. However, the programme also includes a section dedicated to violence against women, and this section addresses sexual violence.

²⁹⁸ Neither the former (2003-2007) nor the current (2007-2011) governments, both led by prime minister Matti Vanhanen, have kept their promises to direct funding and other resources to combat violence against women. This is in spite of the economic cost of violence against women for Finnish society: direct costs amount to almost EUR 50 million and indirect costs to EUR 60-111 million (Piispa & Heiskanen (2001): *The Price of Violence*. Statistics Finland and the Council for Equality. Justice 2001:3, Helsinki.)

²⁹⁹ In the recommendations for local and regional authorities on how to guide and lead actions for the prevention of interpersonal and domestic violence, gender is only mentioned in the context of the need for special services for male victims of sexual violence.

recommendations directed at local and regional actors. Without any government-coordinated support and follow-up, these recommendations are simply impossible to follow.

There is no state-run or organised support system for victims of sexual violence in Finland. The need for nationwide, easily available services for victims of sexual violence was acknowledged when Parliament debated the legal reform in 1997, but so far there has been no real progress in establishing such a system.

4.8 AMNESTY INTERNATIONAL FINLAND'S RECOMMENDATIONS

- The Government of Finland has still not established a permanent, cross-sectional action plan to combat violence against women in Finland. Amnesty International Finland calls on the Finnish government to create such a national action plan without further delay. The plan must cover all administrative sectors and include specific measures to prevent rape and sexual violence.
- Amnesty International Finland regards the current law on sexual offences as insufficiently effective for prosecuting crimes against sexual self-determination and sexual integrity. The problems lie both in the legislation and in official practices. A revision of the Finnish legislation on sexual offences is essential to improve and promote the human rights of the victims of rape and sexual violence. An effective monitoring mechanism is also needed to review the legal process. Criminal investigations and proceedings relating to sexual violence must be strengthened. Personnel within the prosecuting authorities and judiciary, as well as within the healthcare system, need to be educated about gender-based sexual violence.
- According to international human rights norms, Finland is obliged to provide nationally available services for victims of sexual violence. Such services are not currently available in Finland. Finland has an urgent obligation to establish readily accessible services nationwide for victims of rape and sexual violence.
- Amnesty International Finland stresses that regionally co-ordinated action plans at a municipal level are urgently needed to combat violence against women. The Finnish government is obliged to provide co-ordinated support for local authorities in order to fulfil recommendations made by the Ministry of Social Affairs and Health.
- Schools reflect wider society. The same forms of violence suffered by women throughout their lives are present in the lives of Finnish girls at school. Preventive work is essential for the effective elimination of sexual violence from society. Amnesty International Finland calls on government officials and bodies, including schools, in collaboration with all relevant parties, to implement the six steps presented in the Safe School for Girls report to stop violence against schoolgirls.³⁰⁰

³⁰⁰ For more information see Amnesty International (2008): Safe schools – every girl's right. Stop Violence Against Women. AI index: ACT 77/001/2008

- Most research concerning police investigations, prosecutions and court proceedings is based on material dating from before the legal reform. Amnesty International Finland regards it as essential for more research to be carried out on the implementation of the new Sexual Offences Act. Amnesty International Finland also recommends the Finnish government to collect data and publish statistical information about rape and other crimes of sexual violence and, in particular, about the prevalence of such crimes and to conduct or commission research into the reasons for the low levels of reporting to the police. A follow-up study of victims and assailants in reported rapes since the current legislation came into effect is also needed.

5. RAPE AND HUMAN RIGHTS IN NORWAY

“We cannot live with the fact that less than one per cent of rapists are convicted”

Knut Storberget, Minister of Justice ³⁰¹

“Rape is possibly the biggest challenge to legal protection in Norway today”

Anne Marit Bjørnflaten, Leader of the Justice Committee in the Norwegian Parliament ³⁰²

5.1 SUMMARY

A man who commits rape in Norway is unlikely to be punished. Increased efforts during the past few years, such as, for instance, improved access to rape units and amendments to the sexual offences provisions in the Penal Code have not changed this. In fact, the statistics show no real improvement.

These are the facts:

- most rapes in Norway are never reported;
- 84 per cent of all rape cases reported to the police never reach court;
- about 36 per cent of all rape trials end with an acquittal.³⁰³

The question is simple - why? The answer is complex.

At a practical level, measures on which there is already agreement have not been implemented throughout the system. In addition, there is a need for new initiatives.

At a less tangible, structural level, discriminatory attitudes towards women continue to prevail and need to be countered through appropriate measures, including the education of children and adolescents, as well as gender-sensitive training of targeted groups within the police and the judiciary.

Until gender-based sexual violence against women is effectively prevented, investigated and punished in accordance with national law and international obligations, women's ability to exercise and enjoy basic human rights and fundamental freedoms on the basis of equality with men in Norway is severely hampered.

5.2 INTERNATIONAL CRITICISM

The handling of rape cases in the Norwegian legal system is not only an issue of national concern. As a signatory party to the UN Convention on the Elimination of All Forms of

³⁰¹ Press release from the Ministry of Justice and the Policy 24.01.2008

³⁰² Norsk Politi 2/2007, page 17

³⁰³ 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 behind the report has processed the STRASAK statistics (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.

Discrimination against Women (CEDAW), Norway has an international obligation to act with due diligence to prevent, investigate and punish all forms of gender-based violence against women, including rape, and to provide compensation to the victims.

In January 2003, the CEDAW Committee expressed serious criticism about the lack of legal security for rape victims in Norway. In its concluding comments on the fifth and sixth periodic reports from Norway on the implementation of the Convention, the Committee expressed its concern about the fact that: "... an extremely low percentage of reported rapes results in convictions and that the police and public prosecutors dismiss an increasing number of such cases."³⁰⁴ The Committee further stressed the need to address violence against women as an infringement of women's human rights, and urged the Norwegian government to adopt appropriate measures and introduce laws to prevent violence, prosecute offenders and to provide support services and protection for victims.³⁰⁵ The Committee also urged Norway to initiate research into, and analysis of, the causes of the very low percentage of trials and convictions in reported rape cases.³⁰⁶

Although this UN criticism was a severe blemish on Norway's human rights record, it was some time before the criticism was taken seriously by the Norwegian government. The appointment of a public committee on rape in 2006 was a long-awaited response to the CEDAW Committee's criticism.³⁰⁷

Norway submitted its seventh periodic report to the CEDAW Committee in November 2006. This report stated that two initiatives had been instigated: a report from the Director of Public Prosecutions on the quality of charges in rape cases that ended in acquittal, and the establishment of a government-appointed public committee on rape. The government also stated its aim to raise the level of sanctions for rape.³⁰⁸

Although the CEDAW Committee, in its concluding comments in August 2007, expressed its continued concern about the prevalence of violence against women in Norway, no specific reference was made to rape. The Committee urged Norway in general terms to: "... ensure that comprehensive measures are in place to address all forms of violence against women, including domestic violence, recognising that such violence is a form of discrimination and constitutes a violation of women's human rights under the Convention."³⁰⁹

³⁰⁴ CEDAW 2003 article 419

³⁰⁵ CEDAW 2003 article 420

³⁰⁶ CEDAW 2003 article 420

³⁰⁷ White Paper 2008:4 page 20. In January 2008, a government-appointed public committee on rape, including politicians, health officials, researchers and others, released a report focusing on ways to prevent and combat rape. In its report, the committee put special emphasis on the attrition process, including failure to report rape to the police. The report contains a number of recommendations on different issues, including preventive measures, as well as improvements to the legal and healthcare systems.

³⁰⁸ CEDAW 2007 a

³⁰⁹ CEDAW 2007 b article 19-20

5.3 LEGAL FRAMEWORK

Norwegian rape law has developed continuously since the General Civil Penal Code was established in 1902. Although the current law is satisfactory, there are still challenges to be addressed. The new provision on rape by gross negligence requires thorough evaluation in order to identify the reasons why so few cases are prosecuted on the basis of this provision.

5.3.1 HISTORY

Rape has been a criminal offence in Norway since the first written laws appeared during the tenth century. According to the Gulathing Law, a collection of Norway's original written laws, a man guilty of committing rape would be outlawed, provided the victim reported the crime on the very day it happened.

The law of Magnus Lagabøte in the thirteenth century also outlawed convicted rapists, as well as stripping them of their property. In Christian V's law of 1687, rape victims were divided into categories. A wife, a widow or an honest virgin were "worthy" victims. Other women were not worthy of protection. The penalties for rape of a "worthy" victim were death, compensation or marriage with the victim. The two latter penalties were based on the fact that the rape had lowered the "market value" of the victim.

The development of the Norwegian Penal Code mirrors the position of women through the centuries. Laws were originally made by men to protect their own interests. For instance, until recently rape within marriage was not acknowledged as constituting a crime. It was not until 1974 that the Supreme Court for the first time convicted a man of raping his wife.³¹⁰

5.3.2 CURRENT LAW

The Sexual Offences Provisions in the Penal Code were last amended in 2000. The definition of rape was extended to include the abuse of people "incapable of resisting the act" due to, for example, unconsciousness, intoxication or sleep.

Linguistic changes regarding the word "force" were also made to prevent the courts from making an issue of the victim's response, that is, whether the victim had tried hard enough to resist the rape.³¹¹

Rape is defined as follows in paragraph 192 of the Norwegian Penal Code:

"Any person who:

- a) engages in sexual activity by means of violence or threats, or
- b) engages in sexual activity with any person who is unconscious or incapable for any reason of resisting the act, or
- c) by means of violence or threats compels any person to engage in sexual activity with another person, or to carry out similar acts with himself or herself."³¹²

³¹⁰ White Paper 2003:31 Chapter 3.2.1.1

³¹¹ Odelstingsproposisjon no. 28 (1999-2000), Preparatory Notes on Changes in the Penal Code, page 29

³¹² Ministry of Justice and the Police, 2006. Unofficial English translation of The General Civil Penal Code.

Intercourse is no prerequisite for defining a sexual act as rape. In addition to intercourse,³¹³ the following sexual acts are considered rape according to Norwegian law:

- touching of genitals, with or without movement;
- a man's exposed genitals being rubbed between a woman's thighs, or on her stomach or buttocks;
- masturbation (by one or both parties);
- licking and sucking of genitals;
- insertion of fingers or objects into the vagina or anus.³¹⁴

Paragraph 192 does not distinguish between the rape of adults and the rape of children, nor between the rape of women and the rape of men. In rape cases involving children, other sections of the Penal Code relating to the sexual violation of children will be applied jointly. Paragraph 192 states that “importance shall be attached” to whether the rape victim is under fourteen years of age.³¹⁵

Only offences covered by paragraph 192 of the Penal Code are formally considered rape. Sexual offences falling outside paragraph 192 may, however, still be covered by other provisions in chapter 19 of the Penal Code.

5.3.2.1 RAPE BY GROSS NEGLIGENCE

The objective criteria for holding a rape punishable according to the law are the occurrence of a sexual activity and the use of violence or threats of violence.

In addition to the objective criteria, the first three sections of paragraph 192 of the Penal Code presuppose the existence of a subjective criterion of criminal intent. This means that the man must be aware of the forced or coercive nature of the woman's participation in the sexual act. He must understand that the reason why the woman is involved in the sexual act is violence or threats of violence.

The final amendment to the Sexual Offences Provisions in the Penal Code in 2000 took the form of a new fourth section of paragraph 192, which criminalised rape by gross negligence. This new provision opens up the possibility of convicting a person for rape despite a lack of criminal intent. Thus, if a person due to gross negligence fails to understand that a woman's involvement in a sexual act is of a forced or coercive nature, he can be convicted of rape by gross negligence.

This new provision has been disputed. During the hearings held prior to the amendment of the Sexual Offences Provisions in the Penal Code, most legal experts argued against the inclusion of a provision on rape by gross negligence. Organisations working with and

³¹³ It follows from paragraph 206 of the Penal Code that the term “intercourse” includes vaginal, anal and oral intercourse, as well as the insertion of objects into the vagina or anus.

³¹⁴ Odelstingsproposisjon no. 28 (1999-2000), Preparatory Notes on Changes in the Penal Code, page 29. Unofficial translation.

³¹⁵ The legal age of consent in Norway is 16 years. Any sexual act involving children under the age of 16 is thus a crime per se, whether or not it is consensual. Paragraphs 195 and 196 of the Penal Code address sexual acts involving children under the ages of 14 and 16 respectively – the main difference being the level of sanctions.

for victims of rape supported the provision. The Ministry of Justice and the Police recommended the provision, arguing that organisations safeguarding the interests of the victims were in favour.³¹⁶

Legal experts believed the new provision would have little effect. According to a report by the Director of Public Prosecutions, in none of the 123 reviewed rape cases where charges had been dropped could “gross negligence” have been used to avoid dropping the charges.³¹⁷

Since 2000, between ten and 13 reported rape cases a year have been registered as rape by gross negligence.³¹⁸ Five rape cases were registered as rape by gross negligence in 2006, out of a total of 840 reported rape cases.³¹⁹ There are no specific official statistics on convictions in cases prosecuted on the basis of the gross negligence provision. According to a report from the Director of Public Prosecutions, there was one conviction and one acquittal on charges of rape by gross negligence in 2003, while there were none in 2004 and four convictions and two acquittals in 2005.³²⁰

The Penal Code Commission stated as early as 2002 that they believed the “gross negligence” provision to be “unfortunate”, signalling a recommendation to remove it.³²¹

5.3.3 LEVEL OF SANCTIONS

Rape is punishable by up to ten years’ imprisonment. If the sexual activity was sexual intercourse, or if the offender deliberately caused the victim to be unconscious or incapable of resisting the act, the sanction should be no less than two years.

If the rape was committed by two or more persons acting jointly, if the offender has previously been convicted of a rape or of sexual acts with children, if the rape was committed in a “particularly painful or offensive manner”, or if the victim dies or sustains significant injuries, rape can be punishable by up to 21 years’ imprisonment – the strictest punishment in the Norwegian legal system. Rape by gross negligence is punishable by up to five or eight years’ imprisonment. In other words: the higher the degree of violence, force and damage, the higher the sanction.

The Ministry of Justice and the Police has announced it will submit changes to the Sexual Offences Provisions in the Penal Code in December 2008, including a rise in the level of sanctions for sexual violence and rape.

³¹⁶ Odelstingsproposisjon no. 28 (1999-2000), Preparatory Notes on Changes in the Penal Code, page 37

³¹⁷ The Director of Public Prosecutions Rapport 2/2000 page 44-45. The high attrition rate in rape cases prompted the Director of Public Prosecutions in 1998 to appoint an internal committee to study the quality of the work done by the police and prosecuting authorities in rape cases reported between 1990 and 1999. The committee released its report in April 2000, highlighting the fact that 80 per cent of all rape cases reported to the police were dismissed. The committee surveyed 123 rape cases dismissed by the police and concluded that in almost half of these cases the police investigation was substandard. The report concluded with several strong recommendations.

³¹⁸ Numbers from internal police statistics (STRASAK) www.politi.no

³¹⁹ Official numbers from Statistics Norway (SSB)

³²⁰ Director of Public Prosecutions Norway 1/2007 pages 36-37.

³²¹ White Paper 2002:04 Ch 10

5.3.4 AMNESTY INTERNATIONAL NORWAY'S MAIN CONCERNS

Amnesty International Norway acknowledges the efforts of the Norwegian government to strengthen women's protection against gender-based violence through improvements to the Sexual Offences Provisions in the Penal Code. However, there are still challenges to be addressed.

From a more holistic perspective, the very basis of the law could be said to be biased. While international criminal law recognises the lack of genuine consent, rather than the use of force, as the essential element of rape,³²² 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.³²³

It would be in line with international developments to link the question of guilt in rape cases to the lack of genuine and freely-given consent, and the exercise of sexual autonomy, rather than to the presence of violence. The new provision of rape by gross negligence can be considered a step in the right direction. Rather than considering the removal of the provision on gross negligence, the government should research and explore the reasons why the police and the prosecuting authorities make so little use of this provision.

5.4 THE SCALE OF THE PROBLEM

When Norwegian Minister of Justice Knut Storberget states that, "We cannot live with the fact that less than one per cent of rapists are convicted,"³²⁴ this is no more than an estimate. No one knows how many women in Norway experience rape each year as there is no national incidence study, and only a minority of rapes are reported to the police.

The fact that we know so little about the actual extent of such a serious breach of basic human rights mostly affecting women is, in itself, a form of gender-based discrimination.

5.4.1 UNREPORTED RAPES

Norway has 4.7 million inhabitants.³²⁵ There are no national incidence data documenting the number of women exposed to rape each year. The only available information is documentation on lifetime prevalence.³²⁶

³²² European Court of Human Rights, application 39272/98, *M.C. v. Bulgaria* paragraphs 154-166

³²³ Odelstingsproposisjon no. 28 (1999-2000), Preparatory Notes on Changes in the Penal Code, page 29

³²⁴ *Dagbladet*, July 7, 2007"

³²⁵ Statistics Norway (SSB) as of October 1, 2007.

³²⁶ According to a report by Stefansen and Mossige (NOVA 20/07) on exposure to violence amongst adolescents, 9 per cent of girls and less than 1 per cent of boys participating in the survey reported that they had been exposed to rape or attempted rape. In a report from the Norwegian Institute for Urban and Regional Research (NIBR 2005), 10 per cent of the women participating in the survey reported that they had experienced rape after the age of 15. Almost 20 per cent had experienced attempted rape. These figures exclude rape within intimate relationships.

In January 2008, a government-appointed Committee on Rape estimated that somewhere between 8,000 and 16,000 women are raped in Norway each year. This is the highest estimate ever put forward.³²⁷

5.4.2 REPORTED RAPES

The number of reported rapes has increased steadily in the new millennium, from 599 in 2001 to 840 in 2006.³²⁸ The number of reported attempted rapes hovers around the 100 mark, increasing to 134 in 2006.

Most rape victims are young. In almost 45 per cent of the rapes reported in 2006, the victim was under 20. Data on reported rapes in Statistics Norway (SSB) document that in almost 75 per cent of cases, the victim was under 30.

The Police Directorate suggested, in its comments to the internal police statistics (STRASAK) in January 2007, that the increase in reported rape cases probably is due to an increased focus on rape, and to the expansion of the definition of rape in the Penal Code in 2000.³²⁹ The Directorate concludes that these factors might have lowered the threshold for reporting.³³⁰

There are, however, researchers and practitioners who suggest that rape has, in fact, become more prevalent. Violence researcher Ragnhild Bjørnebekk, at the Police Academy in Oslo, believes rape is on the increase and refers to general societal developments, with an increase in both the occurrence and severity of violence, as well as easier access to violent pornography.³³¹ Senior physician Helle Nesvold at the Sexual Assault Centre in Oslo believes the increase in reported rapes is due to the combination of a lower threshold for reporting and an actual increase in rapes. She adds that another indicator of an actual rise in the number of rapes is the general increase in the use of drugs and alcohol and more hardcore party culture – as intoxication is a common risk factor in rape cases. Drug and alcohol consumption is an associated factor in most cases seen at the Sexual Assault Centre in Oslo.³³²

³²⁷ The report bases its estimate on an incidence study conducted in Norway's capital Oslo. According to this survey, 2 per cent of women aged 24 to 55 reported that they had been subjected to enforced sex, rape or attempted rape during the past year. The data were expanded geographically to include all of Norway's female population as well as agewise to include a broader age group between 16 and 70 years. To eliminate all margins of error, the incidence percentage is reduced from 2 per cent to between 0.5 and 1 per cent. Based on official demographic data indicating that there are about 1.6 million women in Norway between the ages of 16 and 70, the conclusion was that the number of women exposed to rape in Norway each year is somewhere between 8,000 and 16,000. The estimate is described as being "conservative". Such a use of statistics is questionable and can not be considered as constituting research-based information on the incidence of rape in Norway.

³²⁸ Official statistics from SSB. They include all age groups, including children. Out of 840 reported rapes in 2006, 13 victims were younger than nine years old, and 342 were between ten and 19 years old. The statistics does not show how many were under the age of 16, which is the legal age of consent.

³²⁹ STRASAK figures with comments 2006 at www.politi.no

³³⁰ STRASAK statistics are internal police statistics. The SSB processes STRASAK numbers and publishes Norway's official criminal statistics. This report only quotes the number of rapes reported in 2006, as the 2007 SSB statistics have still not been published. The STRASAK figures, however, indicate a further increase in reported rapes: 900 in 2007.

³³¹ Interview Amnesty International November 2007

³³² Interview Amnesty International November 2007

5.4.3 WHY RAPE IS NOT REPORTED

There are a number of reasons why rape is not reported. Some of these reasons are related to the intimate nature of the crime, involving an invasion of the intimacy of the body and, within relationships, an abuse of trust, and associated with shame and taboos connected with sexuality.

The closer the relationship between the assailant and the victim, the less likely it is that the victim will report the crime.³³³

There is a widespread assumption in Norwegian society that a woman is wholly or partly responsible for being exposed to rape if she transgresses societal norms for “correct” or “proper” behaviour. In 2007, Amnesty International Norway and Reform Resource Centre for Men published a report based on a public survey among men about their experiences with, and attitudes towards, violence against women.³³⁴ Although the report documents men’s opposition to violence against women, it also uncovers men’s discriminatory attitudes towards women who have been exposed to sexual violence. Half the men interviewed deemed a woman to be wholly or partly responsible for the violation if she was openly flirting, while one in three men thought she was wholly or partly responsible if she was intoxicated or dressed in a “sexy” way. When the woman was known to have had several partners, one in five men thought she was wholly or partly responsible. If these norms are internalised by a woman who has experienced a rape, feelings of shame and guilt may prevent her from reporting it.

Furthermore, the trauma of a rape will cause many women to avoid anything reminding them of the experience. Many never tell anyone what happened, consequently they never report.

There are also serious legal and procedural reasons for not reporting. Before a rape victim will be willing to subject herself to the hardships of a legal process, she must have a reasonable hope that justice will be done. Today, most rape victims who report the crime only obtain a place in the statistics about cases that have been closed. If more cases were prosecuted with more offenders being convicted in court, this would most likely have an impact on the level of reporting.

Perceptions of the police and prosecuting authorities’ conduct in rape cases also play a part. For years, women who have reported rape have told stories of being distrusted by the people who are supposed to help them. This still happens.³³⁵ As long as the impression prevails that, by reporting rape, a woman exposes herself to suspicion and distrust by the police and the prosecuting authorities, few women will see a reason to report rape.

There also needs to be more general awareness of what constitutes rape. A report from the Sexual Assault Centre in Oslo concludes that a common misconception among victims of rape is that they have only been raped if they have been subjected to forced intercourse.³³⁶

³³³ White Paper 2008:4 page 37

³³⁴ Amnesty International Norway and Reform – Resource Centre for Men (2007).

³³⁵ Director of Public Prosecutions Norway 1/2007 page 57

³³⁶ Oslo Casualty and Emergency Centre 2004

At least one impediment to reporting a rape has been removed. In a case that was the subject of heated debate, a woman reported a rape, but the evidence was not sufficient to press charges. The alleged rapist sued her for defamation and the civil court found her liable to pay him damages, because she had told friends about what she perceived to be rape. The libel laws were changed in 2000 to avoid cases like this arising in the future.

5.4.4 AMNESTY INTERNATIONAL NORWAY'S MAIN CONCERNS

Action to prevent gender-based human rights violations must be based on knowledge, not assumptions. Amnesty International Norway recommends the government to conduct a national survey on the incidence of sexual violence and rape in Norway. In order to obtain reliable information on what policies and practices are most effective in preventing and addressing sexual violence and rape, national incidence studies must be conducted on a regular basis.³³⁷

Preventive work against rape and sexual violence has been neglected and must be reinforced and developed. Effective measures to eliminate gender-based prejudices and practices that constitute a barrier to the prevention, as well as to the reporting, of sexual violence against women and girls are urgently needed.

To achieve success, it is important to start raising awareness as early possible. Education on gender equality, as well as on sexuality, respect for sexual integrity and the right of sexual self-determination should therefore be included in the school curriculum in primary and secondary schools.

5.5 THE LEGAL JOURNEY

Rape is subject to public prosecution in Norway. This means that when a rape is reported, the police are obliged to investigate the alleged crime.

However, 84 per cent of rape cases reported to the police never reach court, mostly due to lack of evidence. As outlined below, evidence may be lacking because of investigative inefficiency, not because there is no evidence to be found. Only 16 per cent of all reported rapes go to trial. Since every third rape trial ends with an acquittal, only 12 per cent of all reported rapes end with a conviction.³³⁸

The attrition process observed at every step of the legal process is not only a strong indication of the existence of pervasive gender-based discrimination against women in Norway, but also a grave attack on women's right to legal protection and equality with men before the law.

5.5.1 A QUESTION OF CREDIBILITY

Although rape is a complex crime to investigate and prosecute, research shows that there is room for major improvement at every stage of the legal process.

³³⁷ UN General Assembly 2006, page 107

³³⁸ The Director of Public Prosecutions 1/2007 page 4. The statistics are based on reported rape cases between 2003 and 2005.

Most rape cases have two main characteristics: there is rarely scientific evidence and there are rarely witnesses. Many victims know their rapist, the rape is often committed in the victim's, the rapist's or their joint home, and the rapist often admits sexual contact, but claims it was consensual.³³⁹

For a number of reasons, many rapes are not reported immediately. According to a report from the Director of Public Prosecutions in Norway, based on a study of 123 closed cases, 65 per cent of the cases were reported to the police within a month. Of these, 37 per cent were reported within 24 hours.³⁴⁰ The longer it takes to start criminal investigations, the greater the chances that crucial evidence will be lost.

In the absence of scientific evidence and witnesses, the case often boils down to the credibility of the victim. This is a difficult situation for the victim of any crime, all the more so for a woman who has been subjected to a sexual violation. But a situation of one party's word against the other doesn't have to result in deadlock. Supporting evidence can play an important role in strengthening the credibility of the victim.

The initial phase of a rape investigation, including crime scene and forensic investigations, is crucial for the outcome, regardless of whether the rape has been reported immediately or some time after it happened. Mistakes at this stage can be irreparable.

5.5.2 POLICE INVESTIGATIONS

National and international studies conclude that the standard of the police investigation is of vital importance in a rape case. The outcome of a case depends on the ability of the police to present sufficient and credible information.

Regretfully, and despite the fact that both the Minister of Justice and the Director of Public Prosecutions have instructed the police to prioritise the investigation of rape cases, the police still do not seem to be giving rape cases the necessary priority.

5.5.2.1 PRIORITY AND STATUS

A lack of knowledge and experience, and the fact that the police officer in charge of the investigation may be acting alone or as one of only a few investigators, influence the quality of the investigation and the time it takes for a case to move through the system.³⁴¹

A report dating from 1998 on sexual violations of women and children in the three northern counties concluded that in some police units, responsibility for investigating sexual offences, particularly rape, was allocated to the youngest officer, especially if that officer was a woman. In other places, the rape victim risks encountering whichever officer happens to be on duty, who may have neither competence, nor any special interest, in sexual offences.³⁴²

³³⁹ When the rape included intercourse, the accused admitted sexual contact, but claimed consent, in close to 100 per cent of cases which went to court between 2003 and 2005, according to the 2007 report from the Director of Public Prosecutions. Of all cases that went to court, the accused did not admit to sexual contact in 33 per cent of cases that ended in an acquittal and in 25 per cent of cases that ended in a conviction.

³⁴⁰ Director of Public Prosecutions Norway 2/2000 page 20.

³⁴¹ Director of Public Prosecutions Norway 1/2007

³⁴² Texmo, Å. and Aarvik, L.(1998)

This is still the case today. In 2000, an expert committee appointed by the Director of Public Prosecutions concluded that insufficient resources were allocated to the investigation of rape cases.³⁴³ In some instances, cases were considered “lost” even before the investigation began. Frequently, police investigations were disorganised and took too long. In half of the cases reviewed, the investigations were found to be inefficient. In addition, in many cases the interrogation of witnesses and the securing of scientific evidence were not sufficiently thorough.

Eight years on, although there are signs of efforts to improve the system, in general the investigation of reported rapes still depends on the personal dedication of the individuals involved.³⁴⁴

The government-appointed Public Committee on Rape puts it bluntly: “The Committee’s main impression is that the police do not give rape cases the priority and attention the severity of the cases requires”.³⁴⁵ The Committee points to a poignant paradox: rape cases are often handed over to young and inexperienced police investigators because they are so complex and difficult, not simply in spite of their complexity.

Police officers told the Committee that the fact that rape cases are so hard to investigate and so rarely go to court discourages officers from taking on the investigations. Compared with high profile investigations into murder, drugs, serious robberies and economic crimes, police officers working on sexual offences felt their work had less status – not only among their colleagues, but also in terms of the police service as a whole. Rape cases rarely end in convictions and the police leadership tends to prioritise crimes that yield better results and look good in the statistics. Police officers working on rape cases do not have the same access to career advancement, training or salary increases as colleagues working on higher profile crimes that yield better statistical results.

5.5.2.2 INTERROGATION OF THE VICTIM

The statement given by the victim is the core of a rape investigation. The police interrogator must have special competence in interrogating the victims of sexual assault and must be free of discriminatory attitudes. An open mind and a professional attitude are vital for creating the necessary trust. The interrogation must be planned properly to ensure no stone remains unturned. The police should pay special attention to the fact that the credibility of the victim will be of the utmost importance in the legal process.

Since 2001, the methods of interrogation used by the Norwegian police have generally improved due to the introduction of research-based investigative interviewing, the KREATIV method. KREATIV develops skills on communicating with traumatised victims and is believed to produce more reliable information.³⁴⁶

Regrettably, as long as the investigation of rape cases are not given the necessary priority by the police, rape victims still risk to encounter police officers without the necessary compe-

³⁴³ Director of Public Prosecutions Norway 2/2000

³⁴⁴ White Paper 2008:4 page 56

³⁴⁵ White Paper 2008:4 page 57

³⁴⁶ Interview with police superintendent Kari-Janne Lid at the Police Academy by Amnesty International Norway Nov 2007

tence in the handling of victims of sexual assault. This increases the risk that discriminatory and stereotyped attitudes will influence the interrogation of victims in rape cases. Women who are intoxicated, who previously have reported a sexual crime or are already known to the police for other reasons, and who have a certain “reputation”, seem to be especially likely to be subjected to mistrust and scepticism.³⁴⁷ This is an issue of considerable concern because it affects the legal protection of particularly vulnerable victims.³⁴⁸

An expert committee appointed by the Director of Public Prosecutions has suggested that police interrogations of the victim should be videotaped to a greater extent.³⁴⁹ Even if the victim, in most cases, must address the court personally, the taped interrogation might serve as supporting evidence of her state of mind directly after the alleged rape. It could also serve a purpose when the public prosecutor is evaluating whether to press charges, as a visual statement may give other clues than those appearing in the written material. This suggestion is supported by the Public Committee on Rape, which recommends the mandatory sound- and video recording of all interrogations in rape cases, including the interrogation of the accused.³⁵⁰

Although videotaping the interrogation of the victim would document the victim’s emotional reactions at the time of her reporting, this could turn out to be a double-edged sword. Society’s notions of rape and rape victims are loaded with myths and prejudices.³⁵¹ If the emotional reactions of the rape victim do not comply with stereotyped expectations as to the stress reactions of a “real” rape victim, there is a danger that videotaped evidence could damage the credibility of the victim unjustifiably.

5.5.2.3 INTERROGATION OF THE ACCUSED

Unlike the interrogation of the victim, several studies have found that interrogations of the accused are undertaken too infrequently and not sufficiently thorough.³⁵²

The initial interrogation of the accused is often poorly planned, with confrontational questions often being left for subsequent interrogations. It is important for the first interrogation to be as thorough as possible, as the accused may choose not to be interrogated again. In many cases, the accused is never confronted with contradictions between his own statements, and the statements of the victim or witnesses. In some cases, the accused seems to have been “heard” rather than “interrogated”.³⁵³

³⁴⁷ Director of Public Prosecutions Norway 1/2007 page 57

³⁴⁸ Drug and alcohol consumption is an associated factor in most rape cases reported to the police. In 70.4 per cent of the rape cases reported to the police in Oslo in 2007, the victim was intoxicated at the time of the assault. See Grytdal and Meland 2008 page 15. An other vulnerable group are women in prostitution, who are highly exposed to rape and sexual abuse. According to a recent report from ProSenteret in Oslo, 24 per cent of the women participating in the survey reported to have been subjected to rape the last year. See Bjørndahl and Norli 2008 page 30

³⁴⁹ Director of Public Prosecutions Norway 1/2007 page 61

³⁵⁰ White Paper 2008:4 page 66

³⁵¹ Kelly, Liz et al (2005)

³⁵² Director of Public Prosecutions Norway 2/2000 and 1/2007

³⁵³ Director of Public Prosecutions Norway 2/2000 page 28

Repeated interrogations are often necessary as the case progresses. However, in only half of the cases reviewed by an expert committee appointed by the Director of Public Prosecutions, the accused was interrogated more than once.³⁵⁴

5.5.2.4 INTERROGATION OF WITNESSES

There are rarely eyewitnesses in rape cases. However, there might have been people who saw the victim immediately after the incident, heard something during the assault, or may have other information relevant to the case.

Although available research concludes that witness interrogations are adequate, in some cases too much time elapses before witnesses are interrogated and, in many rape cases, witnesses are never interrogated at all. In some cases the police seem, rather than trying to identify witnesses, actively to try to limit their number.³⁵⁵

5.5.2.5 CRIME SCENE INVESTIGATIONS AND SEARCHES

Crime scene investigations seem to be neglected in too many cases. A survey conducted by the Director of Public Prosecutions found that such investigations had been carried out in only about half of the cases reviewed, mostly when the rape was reported relatively quickly.³⁵⁶ In many cases where the accused claimed that the sexual contact was consensual, the crime scene was not investigated at all. Nevertheless, the crime scene – whatever the explanation offered by the accused – can provide situational clues, such as overturned furniture, broken items etc.

Searches of the home of the accused (that is, where his home is not the crime scene) are also often neglected. Supporting evidence may be found even months after the crime was committed. An abnormal amount of pornographic material, especially violent types of pornography, may give clues and relevant background information about the accused. Pictures, notes and other material may link the accused more closely to the victim than he has admitted.

There is reason to believe that, in some cases, evidence secured is not analysed and toxicological tests are not carried out for financial reasons, even if they could have shed light on the case. Such analysis is expensive and the police district has to carry the cost.³⁵⁷

5.5.2.6 IMPROVEMENTS IN DNA EVIDENCE

DNA technology has progressed dramatically in recent years. In rapes committed by an unknown assailant, DNA technology could be of vital importance for finding and convicting the rapist. However, Norway only has a moderately sized DNA register, making it difficult to find an unknown assailant through the use of DNA technology. The government has recently changed the Criminal Procedure Act to allow more entries in the DNA register from 2008 onwards. Nevertheless, increased registration and the use of DNA technology raises ethical questions and concerns that have to be taken into account and balanced against the benefits of better evidence in criminal cases.

³⁵⁴ Director of Public Prosecutions Norway 1/2007 page 55

³⁵⁵ Director of Public Prosecutions Norway 2/2000 page 28

³⁵⁶ Director of Public Prosecutions Norway 1/2007

³⁵⁷ White Paper 2008:4 page 79

5.5.3 MEDICAL EVIDENCE

Not all rape victims seek medical help, but when they do, medical evidence provides some of the most important supporting evidence in a rape case. Securing evidence that indicates the use of force will often be of greater importance than evidence proving sexual contact.

Forensic medical examinations seem to be conducted in most cases when the rape is reported immediately after the incident. However, the quality of the medical examinations varies greatly. In some cases victims are examined by medical personnel with special expertise, in others simply by the doctor on duty. The extent to which a medical report may constitute supporting evidence will therefore vary substantially.³⁵⁸

Easy access to specialised medical personnel improves the chances of obtaining the necessary medical evidence. Access to specialised medical personnel as soon as possible after the violation is also critical for the victim's well-being.

5.5.3.1 THE USE OF MEDICAL REPORTS

In the past, the police have tended not to consult the medical profession in cases involving rape. In many cases, existing medical evidence is not used to back up the victim's allegation of rape.

In a substantial number of cases where a rape victim has been examined at the Sexual Assault Centre in Oslo, the police never ask the Centre for its forensic report during their criminal investigations.³⁵⁹ The reasons for this appear to be partly financial. If the police request a forensic report, the Centre may claim a refund for expenses connected with the medical examination. If the police don't request a report, the Centre must carry the costs. Some physicians report claiming fewer hours than they actually spent on the examination to ensure that the police do not fail to collect forensic evidence for financial reasons.³⁶⁰

Direct government funding of sexual assault centres, as proposed by the government-appointed Public Committee on Rape, could prevent the police from failing to obtain medical reports for financial reasons.

In addition to collecting medical evidence, the understanding and interpretation of such evidence is crucial. To make proper use of the medical evidence available, the police must go thoroughly through the medical records, clarifying misunderstandings with the medical personnel and requesting medical information that is missing. This does not always happen.

5.5.3.2 CLINICAL FORENSIC MEDICINE

Clinical forensic medicine, that is, the examination of living rather than dead victims, has a lower status in Norway than in other Nordic countries.³⁶¹

³⁵⁸ Director of Public Prosecutions Norway 1/2007 page 42.

³⁵⁹ White Paper 2008:4 page 78 and interview with senior physician Helle Nesvold at the Sexual Assault Centre in Oslo by Amnesty International Norway Nov 07

³⁶⁰ White Paper 2008:4 page 78.

³⁶¹ Director of Public Prosecutions Norway 1/2007 page 88

According to senior physician Helle Nesvold at the Sexual Assault Centre in Oslo, until now there have only been a handful of medical professionals dealing with rape victims in Norway who are skilled in clinical forensic medicine and able to perform proper forensic evaluations for the police and judicial system.³⁶² This affects the quality of forensic evidence and means that vital evidence may not be presented. In addition, it limits the usefulness of medical reports, as the medical jargon obscures the findings for the police and prosecuting authorities.

5.5.3.3 DOCUMENTATION OF EMOTIONAL REACTIONS

About half of all victims who seek help at the Sexual Assault Centre in Oslo have no visible marks or injuries that can document the use of force.³⁶³ It has therefore been suggested that, in addition, acute and long-term stress reactions that might support the victim's credibility in court should be documented in a more systematic manner.³⁶⁴

An expert committee appointed by the Director of Public Prosecutions has proposed the videotaping of rape victims' dialogue with medical personnel in sexual assault centres in order better to document the woman's state of mind at the time of the reporting.

Amnesty International Norway is concerned about this proposal because such a use of videotape could violate the victim's right to confidentiality in her communications with medical personnel and imply a breach in the duty of medical personnel to exercise professional confidentiality. A victim of sexual violence has experienced a profound violation of her personal integrity. Videotaping her dialogue with medical personnel could be detrimental to the restoration of her sense of sexual, physical and psychological integrity.

In addition, and as previously stated, such recordings could easily turn out to be a double-edged sword. While on the one hand, a videotaped interview would accurately document the victim's state of mind, on the other, the stereotyped narrative of "a real rape" includes a perception of how "a real victim" behaves. If the victim's stress reactions do not comply with such stereotypes, this could damage her credibility unjustifiably. Stereotypes must be challenged so there is greater experience and understanding of the reality that victims face.

5.5.3.4 MORE EFFICIENT USE OF MEDICAL EVIDENCE NECESSARY

The police and prosecuting authorities must make better use of existing medical and forensic evidence. This includes not only the active collection of forensic evidence, but also the necessary steps being taken by the police and the prosecuting authorities to understand and interpret the medical information correctly.

5.5.4 POLICE ORGANISATION AND COMPETENCE

Despite the fact that both the Minister of Justice and the Director of Public Prosecutions have instructed the police to prioritise the investigation of rape cases, the police still do not appear to give rape cases the necessary priority. This indicates a need to move beyond the giving of instructions to individuals towards organisational restructuring. Many police

³⁶² Interview with senior physician Helle Nesvold by Amnesty International Norway November 2007

³⁶³ Interview with senior physician Helle Nesvold by Amnesty International Norway November 2007

³⁶⁴ White Paper 2008:4 page 78.

districts need to adopt a more systematic and coordinated approach to the investigation of rape cases.

5.5.4.1 ORGANISATION OF RAPE INVESTIGATIONS

The Public Committee on Rape has pointed out that, as a result of the flexible organisation of the police, sexual offences are not given the necessary priority. A lack of clear strategies and binding obligations seems to lead to a lack of prioritisation of rape and sexual offences within the police.³⁶⁵

Norway previously had 54 police districts. This number was reduced to 27 following Police Reform 2000. One objective of the reform was to improve the districts' ability to investigate crime, by restructuring their personnel resources and organising the districts according to local needs.

Each of the 27 police districts in Norway is responsible for investigating crimes in its own region. There seems to be no correlation between the size of the police district and the quality of the police work carried out in rape cases. In fact, the smaller districts in general conduct better investigations.³⁶⁶

Since the reform, the way in which each police district has chosen to organise rape investigations varies.

- Some districts, such as Agder, have established a central investigative unit for sexual crimes where the victim is aged under 18 years of age. However, if the victim is an adult, the investigation is carried out by the local police unit.
- A few districts, such as Follo and Hedmark, have appointed a coordinator for sexual offences for the whole district. The coordinator is responsible for improving competence, as well as coordinating and assisting in local investigations of sexual offences.
- In large cities, such as Oslo, rape is investigated by police units consisting of personnel with special competence in investigating violence and sexual offences. Their main challenge is the enormous case load.

In 2007, an expert committee appointed by the Director of Public Prosecutions suggested that each police district should appoint a special coordinator with the necessary competence on the investigation of sexual offences.³⁶⁷ The Police Directorate has decided not to follow up on this recommendation, arguing that special teams in too many fields will limit the flexibility of the police.

5.5.4.2 SPECIFIC INSTRUCTIONS TO THE POLICE DISTRICTS

In 2000, the Director of Public Prosecutions was recommended by an internal expert group on the handling of rape cases to issue a written brief to the police and prosecuting authorities clarifying procedures for the investigation of rape cases. The brief never materialised.

³⁶⁵ White Paper 2008:4 page58-59

³⁶⁶ Director of Public Prosecutions Norway 2/2000

³⁶⁷ Director of Public Prosecutions Norway 1/2007

In an interview with Amnesty International Norway in 2004, the head of the expert group, Monica Hansen Nylund, underlined the importance of this brief.³⁶⁸ Former Minister of Justice Odd Einar Dørum was also confronted about the missing brief by Amnesty International Norway in 2004, and promised to follow the matter up. The issuing of this brief was one of the initiatives included in the government action plan “Violence in intimate relationships 2004 – 2007”. As of July 2008, the brief has still not been issued.

5.5.4.3 POLICE TRAINING

There is little training within the police targeted at the investigation of rape. Although there have been some developments, their effects remain to be seen.

The amount of time spent on rape investigations at the Police Academy was quadrupled between 2005 and 2006. Training now includes a one-day case study and four hours of interrogation studies. There are plans to expand the training further from 2009. In addition, a four-week advanced course in investigating violence and sexual offences was established in 2006.

Since 2001, investigators from police districts have been invited to join Norway’s National Investigation Service, KRIPOS, for up to two years at a time to develop their tactical and technical expertise in the investigation of sexual offences.

5.5.5 THE DECISION TO PROSECUTE

In Norway, the decision to prosecute in rape cases rests with the public prosecution. To press charges, the public prosecutor must be convinced that the accused is guilty and that his guilt can be proven beyond reasonable doubt in court. This only happens in 16 per cent of reported rape cases.³⁶⁹

There is little information available about the work of the prosecution. Amnesty International Norway recommends the prosecution’s decision-making processes to be more transparent.

5.5.5.1 THE FUNCTIONING OF THE PROSECUTION

The police prosecutor makes a recommendation to the public prosecutor, who decides whether to prosecute a case.

In most rape cases, charges are dropped because the public prosecutor considers the evidence to be insufficient to secure a conviction in court, or because a lack of information about the assailant.

It has been pointed out that the public prosecutors take too long to make their assessment once the police investigation is finished.³⁷⁰

³⁶⁸ AmnestyNytt 2/2004

³⁶⁹ Director of Public Prosecutions 1/2007 page 4. The figure is based on reported rape cases between 2003 and 2005.

³⁷⁰ Director of Public Prosecutions Norway 2/2000

Cases dropped by the public prosecutor can be appealed to the Director of Public Prosecutions. Several of these appealed cases have ended with a conviction in court.³⁷¹ Some legal counsellors have argued that the public prosecutors to a larger degree should press charges in cases where the victim's word is set against that of the accused in order to secure a legal and transparent assessment of the credibility of the victim and the accused in a court of law.³⁷²

5.5.6 RAPE CASES IN COURT

Compared to other crimes, few rape cases end with conviction in court. Between 2001 and 2005, the percentage of acquittals for all reported crimes was 7-8 per cent. During the same period, the percentage of acquittals in rape cases was 25-30 per cent, with a high of 36 per cent in 2004.³⁷³

5.5.6.1 CREDIBILITY AND "MORALS"

In the preliminary documents that paved the way for the changes in the Penal Code in 2000 (see section 5.3 on the legal framework), the lawmakers made it clear that the previous sexual behaviour or the general "morality" of a woman, unless directly relevant to the case, should not be considered in a rape case. The documents also state that "exercising regular freedom of movement" should not be a factor.³⁷⁴

The intentions of the law may be clear, but courts still take the "morality" of victims into account. A report on rape trials published in 2001 by the Equality and Antidiscrimination Ombud and the Ombud for Children found numerous examples of descriptions of victims that should have been irrelevant to the proceedings. The report concluded that stereotypical and discriminatory attitudes prevailed in the courts.³⁷⁵

The district court is the court of first instance in Norway. Cases are decided jointly by judges and laymen and their evaluations are made public. The court of appeal is the next level of judicial authority. Certain cases are decided by a jury, who only have to say whether or not they find the accused guilty, without stating any reason for their decision.

In a recent study undertaken by former appeal court judge Lars-Jonas Nygard, jury members in six rape cases that ended in conviction in the district courts and were appealed to the courts of appeal were interviewed.³⁷⁶ The study revealed that members of the jury often applied prejudices relating to sexual or "moral" behaviour when considering evidence in rape cases. The study documents severe prejudice against women among members of the jury, resulting in acquittals even in cases where the evidence was considered good.

³⁷¹ Dagbladet 22.03.2008, and interview with counsellor Trine Rjukan by Amnesty International Norway March 2008

³⁷² Interview with counsellor Trine Rjukan and counsellor Inger Lise Sætren by Amnesty International Norway March 2008

³⁷³ Director of Public Prosecutions 1/2007 page 4

³⁷⁴ Ot.prp.no 28 1999-2000, preparatory notes on changes in the Penal Code.

³⁷⁵ The Gender Equality Ombud and the Ombud for Children 2001. The report was intended as a supplement to the 2000 report from the Director of Public Prosecutions and dealt with attitudes influencing the treatment by the courts of rape and other sexual offences.

³⁷⁶ The study is presented in the report of the Director of Public Prosecutions 1/2007 pages 58-59

The jury's moral evaluations were particularly related to the conduct of the victim immediately before the rape. "That slut knew what was coming" and "a decent girl doesn't hang around like that" were among statements from jury members.

A report from the Director of Public Prosecutions, which included the findings by Lars-Jonas Nygard, stated that the evidence in the six cases reviewed in the study was considered to be sufficient to uphold the convictions in the courts of appeal.³⁷⁷ In other words, it was probably the attitudes of the jury, rather than the evidence presented, that led the jury to acquit the accused. The report concluded that the discriminatory attitudes shown by many jury members probably also prevailed in the police, the prosecuting authorities and the courts in general.³⁷⁸ The conclusion is clear: moral evaluations contribute to the closure of cases as well as acquittals in rape cases.

5.5.6.2 THE STATUS OF THE VICTIM IN COURT

In Norway, rape cases are subject to public prosecution. Until now, the victim of a rape has not been an official party to the case, only a witness for the prosecution. In consequence, the victim and her legal counsel were barred from parts of the court proceedings and had only limited rights to view court documents.

Professor of law Anne Robberstad suggests that increased procedural rights for the victims of violent crimes might increase the level of "correct conclusions" by the courts. In addition, it might increase the victim's sense of dignity and closure, whatever the outcome of the trial.³⁷⁹

A government-appointed commission on the revision of the Criminal Procedure Act issued a report on procedural rights for victims of violence and their relatives in November 2007. The commission suggested giving victims of violence and their relatives certain procedural rights, although the commission did not recommend giving full procedural status. The rights suggested were:

- improved access to information at all stages of the case;
- the right to be present throughout the legal proceedings;
- to be entitled to give a statement in court before the examination of the accused;
- to be entitled to ask questions, comment on the evidence, and make a concluding statement.

In February 2008 the Norwegian parliament adopted these suggested changes in the Criminal Procedure Act, to be implemented from July 1st 2008.

5.5.6.3 SANCTIONS

Although the maximum terms of imprisonment in rape cases have increased slightly over the last 20 years, actual sanctions still tend towards the lower end of the scale. So-called blitz rapes tend to be punished more severely.³⁸⁰

377 Director of Public Prosecutions 1/2007 page 14

378 Director of Public Prosecutions 1/2007 page 6

379 Robberstad, A. 2002

380 White Paper 2008:4 page 19

5.5.6.4 A LONG WAY TO JUSTICE

A serious impediment to the legal protection of rape victims is the length of time a case takes to proceed through the legal system. Apart from the increased strain on the victim and the accused, the delay can impair the evidence.³⁸¹

In cases that went to court between 2003 and 2005, it took on average between 100 and 300 days from the time the crime was reported until charges were pressed. The delay might be due to the fact that it takes too long to obtain opinions from external experts, as well as the lack of resources and priority given to the cases by the police and the prosecuting authorities.

An acquittal is more likely in cases where it takes more than 300 days to bring charges. However, neither the Minister of Justice nor the Director of Public Prosecution recommends a specific time limit.³⁸²

5.5.7 AMNESTY INTERNATIONAL NORWAY'S MAIN CONCERNS

In almost all reported cases of rape against persons aged over 15 in Norway, the victim is a woman and the perpetrator is a man. The fact that criminal investigations rarely result in a charge or a conviction may constitute a form of discrimination against women, as this limits women's right to a fair trial and effective remedy. The fact that a large number of reported rapes never result in prosecution and conviction is therefore, in itself, a human rights issue.

As the number of reported rapes has increased dramatically over the past few years, Amnesty International Norway emphasises the need to allocate sufficient resources to conduct all the necessary steps in the legal process properly.

In addition to these measures, Amnesty International Norway believes it is necessary to carry out comprehensive and systematic analyses and research of the reasons for the closure of the majority of rape investigations and the small number of rape cases that lead to a prosecution. Without exhaustive and detailed studies into the causes of these problems, it will be difficult to develop the investigative work in a way that will lead to increased prosecution rates in practice.

5.6 SUPPORT FOR THE VICTIMS OF RAPE

5.6.1 ACCESS TO SEXUAL ASSAULT CENTRES

Norway's capital Oslo has had a sexual assault centre within its emergency clinic for over 20 years. According to the police in Oslo, 63.7 per cent of victims reporting rape sought medical assistance in 2007.³⁸³ Ideally, sexual assault centres should be readily accessible from all parts of the country. Over the years, several sexual assault centres with varying degrees of competence and experience have been established around the country.

³⁸¹ Director of Public Prosecutions 1/2007 page 40

³⁸² Aftenposten, 20 September 2007

³⁸³ Grytdal, Veslemøy and Meland, Pål (2008)

The government has decided that at least one sexual assault centre should be established in each of Norway's 19 counties, and that the general level of competence should be improved. The Director of Public Prosecutions has also recommended an increase in the number of sexual assault centres.³⁸⁴

In June 2006, the Directorate for Health and Social Affairs informed Amnesty International Norway that all counties had established or were in the process of establishing sexual assault centres. A survey conducted by Amnesty International Norway in March 2007 revealed, however, that some counties still did not have sexual assault centres. Financial problems had led to the closure of centres in some counties and the postponement of plans to open them in others. In one county, Sogn- og Fjordane, the county physician had no plan to establish a sexual assault centre at all. In a letter dated 13 March 2007, Amnesty International Norway asked the Minister of Health, Sylvia Brustad, to impose a legal obligation on all counties to establish and fund sexual assault centres. As of July 2008, Amnesty International is still waiting for a reply.

Lack of access is not the only reason why many rape victims fail to seek medical help. The myths surrounding rape create a strong narrative of what is perceived to be a "real" rape: a stranger attacking and violating a sober woman with good "morals" in a public place. This narrative affects the understanding of rape in Norwegian society, including the legal system,³⁸⁵ as well as victim's perception of her own situation.³⁸⁶

Accordingly, many victims of rape believe that access to a sexual assault centres is reserved for victims of "real" rapes – rapes where the rapist is unknown to the victim, the victim was sober, there was physical violence and the assault included intercourse.³⁸⁷

5.6.2 LEGAL COUNSEL TO THE VICTIM

To improve the position of rape victims in court, since 1981, rape victims have had access to state-funded, court-appointed legal counsel throughout the investigation and court proceedings.³⁸⁸

To encourage rape victims to report the crime, since January 2006, rape victims have had the right to three hours' free legal advice prior to reporting the rape.

The role of the legal counsel is to be the guardian of the victim's interests. The legal counsel may consult the police on the progress of their investigation, suggest witnesses, forward medical statements and appeal decisions made by the prosecution. The legal counsel may, for instance, request the court to proceed behind closed doors or require the accused to leave the court while the victim is giving her statement. The law also says in general terms that the legal counsel should assist the victim in non-legal matters, such as obtaining professional medical help or applying for economic compensation.

³⁸⁴ Director of Public Prosecutions Norway 1/2007 page 60

³⁸⁵ Director of Public Prosecutions Norway 1/2007 page 6

³⁸⁶ Stefansen, Kari and Smette, Ingrid (2006)

³⁸⁷ Oslo Casualty and Emergency Centre (2004) page 75

³⁸⁸ Paragraph 107, Criminal Procedure Act.

In February 2008, the Norwegian parliament amended the Criminal Procedure Act, giving the legal counsel expanded procedural rights in court. He or she may ask questions, comment on the evidence and make a concluding statement (see section 5.5.6.1 on the status of the victim in court for further details).

5.7 POLITICAL LEADERSHIP RELATING TO SEXUAL CRIMES AGAINST WOMEN

There seem to be few problems in terms of the political will to take rape seriously, and to prosecute and punish sexual violence and rape in Norway. Both the present centre-left Stoltenberg coalition government and the previous centre-right Bondevik coalition government have focused on the issue of violence against women through several national plans of action against violence within intimate relationships.

Despite this focus at government level, according to Amnesty International Norway's report on the municipalities, there is little political willingness to combat violence against women at local municipal level.³⁸⁹ This underlines the need for the national authorities to communicate clearly to local authorities the goals in the national plan of action against violence within intimate relationships. Municipalities remain the main provider of services for victims of rape and other forms of gender-based violence, and also play a crucial role in preventive work.

Minister of Justice Knut Storberget has taken the work on violence against women seriously, and repeatedly described rape as "almost murder".³⁹⁰ In January 2008, a government-appointed Public Committee on Rape, which included politicians, health officials, researchers and others, released a report focusing on ways to prevent and combat rape. In its report, the Committee particularly emphasised the attrition process, including the failure to report the crime. The report contains a number of recommendations on different issues, including preventive measures and improvements to the legal and healthcare systems.

The Ministry of Justice and the Police has taken the lead against gender-based violence, including rape, in Norway. Although the Ministry coordinates a larger group of ministries involved in combating violence against women, the Ministry of Justice remains the most reflective and outspoken about the issue. One consequence of this has been that most of the efforts to combat gender-based violence have taken place in the legal sector. These include changes in the Penal Code and the Criminal Procedure Act, as well as a restructuring of the police.

A holistic approach is needed to fight gender-based violence, including rape, in an effective manner. This presupposes that other ministries, including the Ministry of Education, the Ministry of Public Health and Care Services and the Ministry of Children and Discrimination, will also take responsibility and follow up with appropriate measures.

³⁸⁹ Amnesty International Norway 2005

³⁹⁰ Dagbladet, 7 July, 2007

5.8 AMNESTY INTERNATIONAL NORWAY'S RECOMMENDATIONS

ON LAW:

- Amnesty International Norway recommends the government to investigate why the police and prosecuting authorities make so little use of the provision on rape by gross negligence in the Penal Code. The inclusion of a provision on rape by gross negligence in section 192 of the Penal Code is in line with developments in international standards where the question of guilt in rape cases is linked to lack of consent, rather than to the presence of violence.

ON RESEARCH:

- Amnesty International Norway recommends the government to conduct a national survey on the incidence of sexual violence and rape in Norway. To obtain reliable information on the policies and practices that are most effective in preventing and addressing sexual violence and rape, incidence studies need to be conducted on a regular basis, in addition to research into the experience of women and girls who bring complaints to the authorities. Particular attention must be given to the specific realities of assaults against girls under 18, and their experiences in seeking a remedy. Action to prevent gender-based human rights violations must be based on knowledge, not assumptions.

ON EDUCATION:

- Amnesty International Norway recommends the government to include specific information on gender equality, as well as on sexuality, respect for sexual integrity and the right of sexual self-determination in the school curriculum in primary and secondary schools.

ON POLICE ORGANISATION:

- Amnesty International Norway recommends the government to establish sexual offences teams (SO teams), with technical, tactical and legal expertise in relation to sexual offences, in every police district in Norway.
- Amnesty International Norway recommends the establishment of a central sexual violence unit at the Police Directorate. The establishment of such a unit would aid the development and dissemination of the necessary competence and knowledge, and could give a necessary boost to the status of police work on sexual offences.

ON PROSECUTION:

- Amnesty International Norway recommends greater transparency in the public prosecutor's assessment of evidence in rape cases. As a first step, an independent, temporary body should be established with the task of reporting on all closed rape cases and the reasons for the decision not to prosecute.

ON THE TRAINING OF THE JUDICIARY:

- Amnesty International Norway recommends the government to provide and fund specialised 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.

ON VICTIM SUPPORT:

- Amnesty International Norway recommends the government to include the provision of sexual assault centres in section 1–3 of the Act on Municipal Health Services (Kommunehelsetjenesteloven) in order to ensure that victims of rape and sexual violence have access to sexual assault centres with special competence in safeguarding the short- and long-term medical needs of the victim, as well as the adequate securing of forensic evidence. The needs of particular groups of victims, particularly girls under 18, should be taken into account when planning and providing services. Amnesty International Norway urges the government to ensure that at least one sexual assault centre is established in each county. Sexual assault centres must be accessible for all victims of rape and sexual violence and must be open and accessible 24 hours per day, 7 days per week. Amnesty International Norway urges the government to secure the funding of sexual assault centres in order to avoid situations where certain services, such as forensic examinations, are not carried out for financial reasons.

6. CONCLUSIONS

Rape is one of the most serious attacks on the sexual integrity and autonomy of a person. Every year, many thousands of women are raped in the Nordic countries. For various reasons, the vast majority of the victims will never report the crimes to the police. Women may feel ashamed, or even blame themselves, for being raped. Many women fear that reporting will have negative consequences. Others may lack sufficient support and encounter distrust and negative attitudes from people around them. At the same time, thousands of women do report the crimes they have been subjected to, but their claims for justice and reparation are rarely met.

As this report shows, an extensive array of legislative and other measures has been taken in order to improve legal protection and the legal process in rape cases in the Nordic countries. However, many challenges remain. Although governments and justice systems in the Nordic countries claim to give high priority to the struggle to combat gender-based violence, including rape, the victims' right to justice is still hampered in practice in all four Nordic countries. Amnesty International is concerned that alarming attrition rates have, in practice, led to a situation of impunity for many perpetrators of rape in Denmark, Sweden, Finland and Norway, as rape crimes against women are rarely prosecuted. As stated in the UN Secretary General's in-depth study on violence against women, it is now well established under international law that violence against women is a form of discrimination against women and a violation of human rights.³⁹¹ State obligations to respect, protect, fulfil and promote women's rights encompass the responsibility to prevent rape and other forms of sexual abuse, to protect women from such violence and to hold the perpetrators accountable.

Amnesty International believes that intensified, creative and coordinated efforts and measures are needed in all four countries to prevent rape and to ensure justice for all rape victims in accordance with the positive obligations on states contained in international human rights law. Amnesty International calls on the Nordic governments to act now to show – *“clear political will, outspoken, visible and unwavering commitment at the highest levels of leadership of the State”*.³⁹²

6.1 LEGAL FRAMEWORK

Historically, laws on sexual violence were intended to protect women's honour and their value as the property of fathers and husbands. As views on women's role in society have changed over time, so has the understanding of the nature of rape. These changes are reflected in current legislation in Denmark, Sweden, Finland and Norway. However, these countries' laws have not developed identically, nor have the legal developments been simultaneous.

³⁹¹ In-depth study on all forms of violence against women. Report of the Secretary General. July 2006. A/61/122/Add.1

³⁹² Ibid.

Compared to other Nordic countries, it is clear that Finland has been slower to reform its legislation on violence against women and rape. For example, Sweden was one of the first countries in the world to declare rape within marriage a crime, while Finland was one of the last European countries to criminalise marital rape.

The enhancement and protection of the right to sexual integrity and autonomy of each individual, regardless of gender or marital status, should be the basis of any criminal law regarding rape and other sexual violence.

6.1.1 DEFINITIONS OF RAPE AND LEGISLATIVE PROVISIONS

In Finland, the essential element of rape is forced or coerced penetration of a person's body, including the sex organs, mouth or anus, by a body part. In Norway, Sweden and Denmark, the definition of rape is more inclusive: definitions include intercourse obtained by force, understood or defined to be violence or threats of violence, as well as comparable forced sexual acts that do not require any kind of penetration.

It is interesting to observe the differences between the Nordic countries in how the boundaries between rape and sexual abuse are defined. For example, if a woman cannot defend herself because of sleep, self-imposed intoxication, unconsciousness or illness, the crime is defined as sexual abuse, not rape in Denmark and Finland. The maximum punishment for sexual abuse in Finland is lower than that for rape. In Denmark, the maximum punishment for sexual abuse is half the maximum penalty for rape. In Sweden and Norway, provisions covering rape specifically include situations where the victim is unable to resist due to her helpless state.

In the Danish Penal Code, the provisions on rape are included in the chapter dealing with vice crimes. This sends a signal that the focus of the law is on the protection of morality, rather than the protection of sexual integrity and autonomy. Furthermore, the Danish Penal Code provides that the perpetrator's subsequent marriage or registration of partnership with the victim is grounds for reducing or remitting punishment. Various sections of the code refer to marital status. Rape and sexual violence are serious violations of a woman's right of sexual self-determination and integrity – marriage with the perpetrator does not change this fact.

Finland is the only country where obtaining sexual intercourse by coercion, also known as “lesser degree rape”, and certain forms of sexual abuse, are complainant offences. Also in Finland, a victim of rape or sexual abuse can exercise her “free will” and request the prosecutor not to prosecute. This opens up the possibility for the perpetrator or others to pressurise the victim to withdraw the charges, with the prosecutor having no means of assessing whether the victim is in fact acting of her own “free will”. This sends a signal that it is up to the victim to decide whether a crime has been committed. All crimes against sexual integrity and autonomy should be subject to public prosecution.³⁹³

³⁹³ UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.

In all the national legislation examined here, violence or threats of violence still define the seriousness of rape, which indicates that rape is still viewed as an assault, rather than as a crime against an individual's sexual integrity and right of sexual self-determination.

While rape legislation in the Nordic countries still links the question of guilt to the ability to prove that the sexual act was obtained through the use of, or threats of, violence, international criminal law recognises lack of genuine consent to be the defining element of rape. This approach is evident in the European Court of Human Rights ruling in the case of *MC v the State of Bulgaria*. According to the Court's judgment, states are obliged to punish and prosecute all sexual acts, even in the absence of physical resistance on the part of the victim. The Court also noted developments towards recognising rape as a violation of sexual autonomy.³⁹⁴ This approach has also been adopted by the International Criminal Court (ICC).³⁹⁵

6.1.2 RAPE BY GROSS NEGLIGENCE

In Norway, if a man due to gross negligence fails to understand that a woman's involvement in a sexual act is non-consensual, he can be convicted of rape by gross negligence. This law is an attempt to find a solution to the problem of the large number of cases that are discontinued because of a lack of evidence of a criminal intent to commit rape. Where there is a problem finding evidence of a specific intent to rape, instead of automatically leading to non-prosecution, a prosecution may be brought for rape by gross negligence. This provision is rarely used.

6.2 THE SCALE OF THE PROBLEM

The countries' crime statistics only include a small proportion of the rapes actually committed. No one knows for certain how many cases go unreported and estimates vary both within and between the countries. Some knowledge has been gained through prevalence studies that have been conducted in all four countries during the last decade or so. No specific yearly incidence studies on rape are conducted in any of the four countries, but questions about exposure to various forms of sexual violence, including rape, are included in other annual population-based surveys in Sweden and, on a less regular basis, in Denmark.

The number of unreported cases seems to be particularly high in Finland: an estimated 2–10 per cent of all rapes are reported, compared to 27 per cent (official estimates) in Denmark. In Sweden an estimated 10 to 20 per cent of all rape crimes are reported to the police. No estimates are available for Norway.

³⁹⁴ European Court of Human Rights, application 39272/98, *M.C. v Bulgaria* paragraphs 154–166

³⁹⁵ ICC, *Rules of Evidence and Procedure*, Rule 70:

- Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or by taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent,
- Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent.
- Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence

Numbers of reported rapes, including attempted rapes, vary considerably between the countries. While the number of reported rapes seems to have been stable over a long period in Denmark, where around 500 rapes are reported each year, this is far from the case in the other Nordic countries.

In Sweden, the number of reported rapes has quadrupled during the past 20 years. In 2007, just over 3 500 rapes against persons over 15 were reported. In Norway, the number of reported rapes has increased by almost 32 per cent during the last eight years, to just under 1 000 cases in 2006. Numbers have increased similarly in Finland over the last decade and, in 2007, close to 750 rapes were reported.

Some of these increases can be explained by gradual reforms that have expanded legal definitions of rape and an increased willingness to report rape crimes. But it is not possible to exclude the possibility that the increase in reporting reflects an actual increase in the number of rapes committed in Sweden, Norway and Finland.

Denmark is the only country where surveys suggest that the actual number of rapes may have fallen over recent decades. The reasons for this have not been explored in depth, but are generally explained as the result of changes in social norms in Denmark.

There are various reasons for the evident differences in the reported rape statistics for the Nordic countries. First of all, the size of the population varies, with close to 9.2 million inhabitants in Sweden, 5.5 million in Denmark, 5.3 million in Finland and 4.7 million inhabitants in Norway.

Secondly, the countries' crime statistics are not comparable. The Swedish mode of recording is sometimes referred to as "extensive counting", since the crime statistics cover reported acts of rape. If a woman reports that she was subjected to several rapes by a group of men, or to repeated rapes on different occasions by one and the same man, each rape will be registered as a separate offence in the Swedish crime statistics. Furthermore, if a woman is subjected to repeated rapes during the same day by the same perpetrator, this may be registered as one or several crimes, depending on whether it is possible to distinguish each separate act. In Denmark and Norway, the statistics refer to cases. In general, one case will be opened for each victim, so the statistics do not indicate the actual number of rapes.

In addition, the legal definition of rape in national legislation will obviously affect crime statistics. In Finland, where the legal definition of rape is very narrow, many acts that would be considered rape in Denmark, Norway and Sweden, are defined as sexual abuse. In both Finland and Denmark, non-consensual sex with a victim who is in a state of self-imposed helplessness is not considered rape.

Interestingly enough, despite differences in the numbers of unreported and reported rapes and in the modes of recording the problem in crime statistics, there are evident similarities in the attrition rates in all four countries.

UN CONVENTION ON THE RIGHTS OF THE CHILD

ARTICLE 1 For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

ARTICLE 3 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

ARTICLE 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

ARTICLE 39 States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

6.2.1 YOUNG WOMEN

It is noticeable in the country reports that many of those experiencing rape are girls under 18 and other young women. For example, in Denmark surveys show that one of 10 girls between 16 and 19 had experienced coerced sexual acts. In Norway 45 per cent of rapes reported in 2006 involved a victim under 20 years of age and in almost 75 per cent of cases the victim was under 30. Similarly, in Sweden 29 per cent of the victims who reported rape were aged between 15 and 18 and in more than 60 per cent of the cases the victim was aged between 15 and 30. This relatively high proportion of girls within the total number of victims indicates that states should take particular care to research their experiences, particularly the identity of perpetrators, the situations in which rapes take place, and their particular needs for medical and psychosocial assistance due to their age and status as children under the Convention on the Rights of the Child.

6.3 THE LEGAL JOURNEY

High attrition rates are a reality in all four Nordic countries, despite differences in legislation and practices. This means that Nordic women who report a rape to the police have only a small chance of having their cases tried by a court of law, which may result in impunity for many perpetrators.

Some cases are closed because the perpetrator is never identified, but the majority of cases are closed because of the 'state of the evidence'. Furthermore, even if cases do go to trial, many women will see the accused acquitted.

Even so, this report has revealed a common cause for concern in terms of the lack of legal protection of victims of rape in the Nordic countries:

- In Denmark, approximately 25 per cent of reported rapes go to court. The acquittal rate in 2006 was 25 per cent. This means that one in five reported rapes leads to a conviction
- In Sweden, approximately 12 per cent of rape victims have their case tried in court. The acquittal rate is about 27 per cent
- In Norway, approximately 16 per cent of reported rapes go to court. The acquittal rate is 36 per cent. One in eight reported rapes leads to a conviction
- In Finland, approximately 15 per cent of reported rapes go to court. In 2007, the acquittal rate in district courts was 23 per cent. One in seven reported rapes leads to a conviction.

The numbers of closed cases differ slightly from country to country and are not directly comparable, due to differences in statistical compilation. Rape is a form of gender-based violence against women, and victims' lack of protection and the reparation may effectively constitute gender discrimination.

According to international human rights standards, the state has a positive obligation to protect women from gender-based violence, including rape to thoroughly and efficiently investigate the crimes and to and efficiently, to ensure that the perpetrators are held accountable. The state is further obliged to guarantee victims of rape access to support services and redress. In reality, the majority of women subjected to rape in the Nordic countries

have only limited access to these rights. Despite the differences in numbers, registration, legislation and practices, rape is a crime where, in practice, there is a high level of impunity for perpetrators in all the Nordic countries. This report suggests some possible explanations for this problem.

6.3.1 POLICE INVESTIGATION

Two crucial areas that need to be addressed if attrition rates are to be reduced in the Nordic countries are the police investigation and decisions made by the public prosecutor.

In Denmark, Norway and Finland, the police are in charge of the investigation. In Sweden, the investigation is normally led by the prosecutor, who gives directives to the investigating police.

The collection and evaluation of evidence and testimonies from the victim, the alleged perpetrator and other witnesses are of great importance for the handling of the case. In Sweden and Norway, the quality of police work in the investigation of rape crimes is a cause for concern. In Norway, the police fail to allocate sufficient resources to the investigation of rape crimes and the quality of investigations appears to be inadequate. On the basis of the limited amount of material available, Amnesty International has found reason for concern regarding the evident differences in investigation quality, both in Sweden and Norway, between different investigators and/or districts. The quality of the police investigations in Denmark and Finland has not been researched in depth, which in itself is a cause for concern.

Medical evidence is essential in rape cases and much can be done to improve this aspect of investigations. Procedures for collecting evidence are in place in Denmark, but statistical information indicates that, even where there is medical evidence of physical violence, cases are closed with reference to “the state of the evidence”. This raises questions about the use and assessment of the medical evidence.

In Sweden, medical evidence is only used in some rape cases and the police do not always request the type of legal certificate that has the highest value as evidence, either due to lack of knowledge or because of the work involved. A national programme has recently been developed to ensure that sampling and documentation procedures are uniform and legally secure in all parts of the healthcare system. The point of departure is that healthcare services should be seen as an important link in the legal process.

In Norway, the quality of medical examinations varies and victims are not always examined by experienced personnel. In many cases the police never request the medical reports, due to lack of resources and knowledge. In Finland, there are regional variations in the quality of the medical examinations. Lack of knowledge among healthcare personnel about the importance of, and standards for, the medical examination of rape victims has negative consequences for the collection of evidence.

Substandard police investigations are part of the reason for the high attrition rates in all the Nordic countries. Lack of knowledge and training in how to treat victims during interrogation, how to question suspects and how to secure the necessary evidence are central factors. This may also be part of a vicious circle, as the closure of large numbers of rape cases

before they reach court may make police investigators less motivated, because they may assume that cases will be closed anyway. In any event, a related issue concerns attitudes towards women and girls who report rape.

6.3.2 ATTITUDES

The assessment of the victim's and the alleged perpetrator's credibility plays a critical role in determining the outcome of a rape case. It is inevitable that these assessments will be influenced by the norms and values held by the police investigator, the prosecutor and, ultimately, the court. These norms and values concern general perceptions of norms for men's and women's moral behaviour. As outlined in the chapter on Sweden, research indicates that young women, especially when they have been consuming alcohol, seem to have difficulties fulfilling the stereotypical role of the "ideal victim" of a rape. Victims of rape who come from marginalised groups in society, such as women from ethnic minorities, homeless or mentally ill women, sex workers, and LGBT persons in the case of same-sex may rape also risk encounter other kinds of discriminatory attitudes that may form a barrier to their access to legal protection.

When a rape case is processed in the judicial system, the main issues are whether the sexual interaction was the result of coercion and whether the perpetrator was in fact aware of the forced or coercive nature of the sexual act. "Blitz rape", where an unknown man assaults a woman, is often perceived a "real" and "uncomplicated" rape, because it seems obvious that a woman would not consent to sex with a complete stranger jumping out from a bush. But in many rape cases, the woman and the man already know each other. Beneath the narrative of "blitz rape" as "real" rape lies an assumption that an acquaintance rape is not "real". Such rapes are referred to as "difficult" and more questions are raised about the credibility of the victim.

Regrettably, there are indications that the police sometimes distrust women and girls who report rape. Such attitudes may jeopardise the thoroughness and professionalism of the investigation of rape.

Stereotypes about male and female sexuality seem to offer more support for the credibility of the accused than for the credibility of the victim. Many rape cases boil down to "his word against hers", bringing into play values and norms about the way in which a woman is expected to behave and the expectations to which her behaviour may give rise. Consequently, rape cases where the accused and the victim are acquainted are especially at risk of being closed mainly on the basis of gendered norms, attitudes and stereotypes.

Stereotypical notions about female and male sexuality, about what is, and what is not, normal, and about women's availability for sex have deep roots in society. 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 states' obligation, under Article 5a of CEDAW, to *"modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"*.

Such commonplace stereotypes may also affect the judgement of police, prosecutors, judges and juries and directly contribute to the unacceptable levels of attrition in rape cases and the inequality of women and girls before the law.

Further, these notions and stereotypes may also affect women and girls' own understanding of their experience of abuse as a crime, and therefore their appreciation of the possibility for reporting crimes to the authorities. Women and girls, as well as men and boys, should be informed of their right to sexual autonomy, how it can be violated, as well their rights to justice and reparation.

6.3.3 LACK OF TRANSPARENCY

In all the Nordic countries, the lack of transparency in the handling of rape cases is a cause for concern. The crucial assessments about the relative credibility of the victim and the accused and the reasons for deciding whether to close a case because of the state of the evidence or to proceed in court are, to a large extent, non-transparent. It is especially necessary in cases involving rape, where credibility assessments and the influence of subjective norms and values are of such importance, to enable transparency and monitor the reasoning behind decision-making, in order to ensure that attitudes and stereotypes about male and female sexual behaviour are not decisive for the evaluation of the case. Such transparency is not in place in the Nordic countries.

6.4 SUPPORT FOR THE VICTIMS OF RAPE

6.4.1 SUPPORT SERVICES

There is no "one-size-fits-all" solution with regard to the establishment of systems for victim support. Each country needs to take its specific social, demographic and geographic context into consideration in the provision of necessary support services for victims of sexual violence.

As signatory parties to CEDAW, the Nordic countries have committed themselves to act with due diligence not only to prevent, investigate and punish all forms of gender-based violence against women, but also to provide rehabilitation for the victims. However, there are major differences between the victim support systems in the four Nordic countries, presumably reflecting differences in their recognition of this international obligation.

In Denmark and Norway, centres for victims of sexual assault are in place in major towns and cities, providing women subjected to sexual violence with medical and psychological help. In addition, these centres also perform expert forensic examinations and play an important role in obtaining the necessary medical evidence in cases where the rape is reported to the police. Although a lack of sustainable funding and a lack of access to emergency rape centres in certain counties in Norway remains an issue of concern, national authorities in both countries are clear in their acceptance that victim support is a state responsibility.

The situation in Sweden and Finland is quite different. In Sweden, rape victims are generally taken care of at the women's clinics in public hospitals and there are, at present, only

a few specialised centres for victims of sexual assault. Since public discourse on gender-based violence in Sweden so clearly defines gender-based violence as a matter of public concern, it is difficult to understand why there is, at present, no public system providing specialised support centres for victims of rape and other sexual offences. One explanation could be that support for victims of sexual violence, such as that provided by women's shelters in Sweden, is generally taken care of by individuals and non-profit organisations. The newly established national programme on care for victims of sexual violence aims to ensure legally secure procedures for sampling and documentation, but it does not address the need for long-term rehabilitation, including psychological help.

In Finland, there is no official support system for victims of sexual violence. On the basis of a private initiative among gynaecologists, one hospital has developed a special programme for victims of rape. In addition, various non-governmental organisations provide some limited help and support for victims of sexual violence. Finland is obviously not adhering to its international obligation to provide rehabilitation for victims of sexual violence. This reflects the general trend in Finland to consider issues of gender-based violence a "private" matter. This remains the major difference between the situation in Finland and that in the other Nordic countries.

Despite the fact that victims of rape in Denmark and Norway have easier access to specialised medical care and forensic examination, this has not resulted in any significant difference between attrition rates in the Nordic countries. This strongly indicates that forensic medical evidence is necessary but not, in itself, sufficient to reduce the rate of attrition. Forensic evidence has to be presented and properly explained if it is to be of any use. In addition, as long as gender stereotyping, and especially stereotyping in relation to sexual behaviour, continues to cloud the interpretation of evidence, rape trials may end with acquittals despite the presence of good forensic evidence.

6.4.2 LEGAL COUNSEL

In the 1980s, Nordic countries were pioneers in providing victims of sexual violence with free legal advice, together with assistance from a complainant's counsel during the police investigation, as well as during the hearing in court. This was an important step in improving the victim's legal position and restoring her sense of dignity during the police investigation and the trial. However the counsel's parameters of action vary between the Nordic countries. Where necessary, the counsel's possibilities to participate actively in the legal process should be strengthened to improve further the victim's legal position and protect her interests.

6.5 POLITICAL LEADERSHIP RELATING TO SEXUAL CRIMES AGAINST WOMEN

The political handling of rape in the Nordic countries reflects the general pattern observed in other areas: while Denmark, Norway and Sweden have action plans on violence against women in place, Finland is lagging behind.

Denmark and Sweden both have a comprehensive and integrated action plan to combat men's violence against women.³⁹⁶ Norway, on the other hand, has a comprehensive action plan on violence within intimate relationships. There seem to be differences in the public discourse on violence against women in the Nordic countries. For instance, contrary to the situation in Sweden, where the debate on violence within intimate relationships has been clearly gendered, actors in the public debate on violence within intimate relationships in Norway have explicitly understated the importance of gender.

Norway adopted its first action plan in 2001, Denmark in 2002 and Sweden in 2007. A similar feature of all three action plans is a limited focus on sexual violence and rape. This is hard to understand, as sexual violence is, in itself, a major component of gender-based violence against women, as well as a central and integrated feature of men's violence against women within intimate relationships. It may be a reflection of the stigma of rape, which makes it hard to put the issue on the political agenda.

In Finland, the authorities still struggle to recognise gender-based violence against women as an issue for which the state bears responsibility. This lack of recognition makes it difficult to garner political support for the adoption of a much-needed integrated action plan.

A promising step has been taken in Norway, where the government appointed a public committee on rape in 2006, consisting of politicians, health officials and researchers. Their mandate was to focus on ways to prevent and combat rape. In early 2008, the committee presented a White Paper containing a number of recommendations, including preventive measures and improvements to the legal and healthcare systems. If the measures suggested in the White Paper were followed up and properly implemented, they could significantly improve the attrition rate in cases involving rape.

The involvement of leading politicians is crucial. Ministers, as well as members of parliament and local politicians in the municipalities, need to be outspoken about, and show commitment to, the curbing of gender-based violence against women, including rape and sexual abuse. Integrated action must be taken to reveal and address the failures that contribute to the attrition process, to develop a multitude of efficient preventive measures, including measures to challenge stereotypical attitudes in all parts of society, and to provide adequate support services for victims of rape and other forms of sexual violence. It is of great importance for reviews and follow-ups to be carried out regarding the implementation and effectiveness of laws and all other measures in order to ensure that the measures taken are relevant and sufficient to meet the goals, that is, increased protection against sexual violence and the strengthening of individuals' exercise of their sexual integrity and autonomy in practice.

³⁹⁶ The Swedish actionplan also focuses on violence in same-sex relationships and so called honour related violence.

6.7 RECOMMENDATIONS TO THE NORDIC GOVERNMENTS

- Amnesty International urges all the Nordic countries to adopt a legal definition of rape based on international human rights principles on sexual integrity and autonomy.³⁹⁷ This would necessitate the revision of current legislation in relation to, for example, the issue of victims in a self-imposed helpless state, the abolition of references to marriage as a mitigating factor, the abolition of the complainant's exercise of 'free will' to prevent the pressing of charges and the inclusion of all rapes under public prosecution.
- Amnesty International calls on the Nordic governments to take effective measures to eliminate gender-based prejudices and practices that constitute a barrier to women's reporting of rape and other sexual violence. Further, to ensure that all legal procedures in cases involving such crimes are impartial and fair, and are not affected by stereotypes about sexuality or prejudices towards certain groups of girls and women. To achieve this, a wide range of preventive measures is needed, including training and education to change discriminatory attitudes towards women. Concrete measures targeted at the legal system are necessary to improve the quality of rape investigations and the judicial handling of rape cases.
- Amnesty International proposes the establishment of an independent monitoring mechanism to systematically gather information on all rape investigations that are closed before coming to trial in order to analyse and report on the reasons for closing the cases. The knowledge gained would form the basis for future improvements in the handling of rape cases by the criminal justice system. Such monitoring would also enable the assessment of the quality of investigations carried out by different police districts, which would allow measures to be put in place to ensure a higher level of consistency and uniformity. The scrutiny involved in the systematic monitoring of all closed rape investigations would also ensure that new and existing measures are both effective and actually form part of police districts' daily practices.
- Amnesty International urges the Nordic governments to formulate action plans to prevent and combat rape and sexual violence. These should either take the form of specific national actions plan on rape and sexual violence or be integrated into national action plans on men's violence against women. Amnesty International calls on the Nordic governments to prepare, and reassess existing, action plans in the light of international law and standards on violence against women.³⁹⁸ The particular needs of girls under 18 in relation to effective prevention, prosecution and reparation for sexual abuse and rape should be part of these action plans.

³⁹⁷ For more information see: 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.

³⁹⁸ For a detailed and recent overview, see: the UN Secretary-General's *In-depth report on all forms of violence against women, and Making Rights a Reality: the duty of states to address violence against women*, AI Index ACT 77/049/2004, June 2004 . For recommendations in the European context, see: *Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence*, adopted on 30 April 2002 and *Explanatory Memorandum* (Adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers' Deputies)

[http://www.coe.int/t/e/human_rights/equality/05_violence_against_women/003_Rec\(2002\)05.asp#TopOfPage](http://www.coe.int/t/e/human_rights/equality/05_violence_against_women/003_Rec(2002)05.asp#TopOfPage)

- Amnesty International urges the Nordic governments to reinforce and develop preventive work against rape and sexual violence in society at large. According to Article 5a of CEDAW, states are obliged to take 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.

7. REFERENCES

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8. ANNEX

RAPE AND HUMAN RIGHTS IN SWEDEN

SWEDISH AUTHORITIES IN BRIEF

NATIONAL COUNCIL FOR CRIME PREVENTION – BRÅ

BRÅ's principal task is to encourage crime prevention measures through activities involving evaluation, research, development and information within the field of criminal policy. The Council is also responsible for the official Swedish judicial statistics.

THE POLICE AUTHORITIES

Sweden has 21 police authorities, one for each county. The police authorities are responsible for ensuring the legal rights and equality before the law of individual citizens. This includes the prevention and detection of crime and ensuring the identification and prosecution of offenders.

THE NATIONAL POLICE BOARD

The National Police Board (RPS) is the police service's central administrative authority and is headed by the government-appointed National Police Commissioner. The RPS is responsible for supervising the police service, for providing methodological support and planning, coordination and rationalisation. The RPS distributes resources allocated by the government to Sweden's police authorities.

THE PUBLIC PROSECUTION AUTHORITY

There are 34 divisions of the Office of the Public Prosecutor, responsible for the operational work of the prosecution service. The divisions normally have a geographical field of operation that corresponds to a whole county, with the exception of the three counties that include the largest cities in Sweden (Stockholm, Gothenburg and Malmö), where there are several divisions.

The three development centres of the Public Prosecution Authority (in Stockholm, Gothenburg and Malmö) are responsible for compiling knowledge within their respective fields of responsibility and for methodological and legal development work and monitoring within their respective criminal fields. The Gothenburg development centre is responsible for violent crime, harassment and unlawful threats, sexual offences and the legislation on female circumcision and restraint orders. Reviews of prosecutors' decisions in cases concerning sexual offences are handled by the Gothenburg development centre.

THE OFFICE OF THE PROSECUTOR-GENERAL

The Office of the Prosecutor-General is an independent authority under the government. The Prosecutor-General heads the Public Prosecution Authorities, supervises their work and acts as prosecutor in the Supreme Court regarding changes to and the development of legislation. The Office of the Prosecutor-General is also the central administrative authority for the Public Prosecution Authority and has the task of leading and coordinating its work and ensuring that it is run efficiently.

COURTS IN SWEDEN

According to the Swedish constitution, the courts enjoy an independent position. Crime cases are handled by the public courts. The courts of first instance are the district courts (53 courts). District court decisions may be appealed to a court of appeal (6 courts). Court of appeal decisions may be appealed to the Supreme Court (HD). For an appeal to be heard in the Supreme Court, the court must grant a review permit. This will normally only be granted in cases where it is important to obtain a decision that may serve as a guideline for the district courts and the courts of appeal (precedent). The National Judiciary Administration is a government agency under the supervision of the government and acts as a service organisation for the courts in Sweden.

NATIONAL CENTRE FOR THE PROTECTION OF WOMEN'S INTEGRITY

The National Centre for Battered and Raped Women in Uppsala was established by the government in 1994 and reformed in 2006 as the National Centre for the Protection of Women's Integrity (NCK). The NCK is not an authority, but is commissioned by the government to work on methodological development, information, education, knowledge compilation and research. The NCK Women's Protection Centre offers care and treatment for women who have been subjected to assaults or sexual abuse. In 2008, the NCK started the Women's Protection Line, a national telephone support service that is open 24/7.

RAPE AND HUMAN RIGHTS IN FINLAND

CHAPTER 20 – SEX OFFENCES (563/1998)

SECTION 1 – RAPE (563/1998)

- (1) A person who coerces another into sexual intercourse by the use or threat of violence shall be sentenced for rape to imprisonment for at least one year and at most six years.
- (2) A person shall also be sentenced for rape if he/she takes advantage of the incapacity of another to defend himself/herself and has sexual intercourse with him/her, after rendering him/her unconscious or causing him/her to be in such a state of incapacity owing to fear or another similar reason.
- (3) An attempt is punishable.

SECTION 2 – AGGRAVATED RAPE (563/1998)

- (1) If, in the rape,
 - (1) grievous bodily injury, serious illness or a state of mortal danger is inflicted on another;
 - (2) the offence is committed by several people; or especially hard mental or physical suffering is caused;
 - (3) the offence is committed in a particularly brutal, cruel or humiliating manner; or
 - (4) a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made, and the rape is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated rape to imprisonment for at least two years and at most ten years.
- (2) An attempt is punishable.

SECTION 3 – COERCION INTO SEXUAL INTERCOURSE (563/1998)

(1) If the rape, in view of the slight degree of the violence or threat and the other particulars of the offence, is deemed to have been committed under mitigating circumstances when assessed as a whole, the offender shall be sentenced for coercion into sexual intercourse to imprisonment for at most three years.

(2) A person who coerces another into sexual intercourse by a threat other than that referred to in section 1(1) shall also be sentenced for coercion into sexual intercourse.

(3) An attempt is punishable.

SECTION 4 – COERCION INTO A SEXUAL ACT (563/1998)

(1) A person who by violence or threat coerces another into a sexual act other than that referred to in section 1 or into submission to such an act, thus essentially violating his/her right of sexual self-determination, shall be sentenced for coercion into a sexual act to a fine or to imprisonment for at most three years.

(2) An attempt is punishable.

SECTION 5 – SEXUAL ABUSE (563/1998)

(1) A person who abuses his/her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his/her right of sexual self-determination, or into submission to such an act,

(1) a person younger than eighteen years of age, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender;

(2) a person younger than eighteen years of age, whose capacity of independent sexual self-determination, owing to his/her immaturity or the age difference of the persons involved, is essentially inferior to that of the offender, where the offender blatantly takes advantage of the immaturity,

(3) a patient in a hospital or other institution, whose capacity to defend himself/herself is essentially impaired owing to illness, handicap or other infirmity; or

(4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of the dependence, shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.

(2) A person shall also be sentenced for sexual abuse if he/she takes advantage of the incapacity of another to defend himself/herself or to make or express a decision, owing to unconsciousness, illness, handicap or other helplessness, and has sexual intercourse with him/her, or gets him/her to perform a sexual act essentially violating his/her right of sexual self-determination or to submit to such an act.

(3) An attempt is punishable.

SECTION 10 – DEFINITIONS (563/1998)

(1) For the purposes of this chapter, sexual intercourse means the sexual penetration, by a sex organ or directed at a sex organ, of the body of another.

(2) For the purposes of this chapter, a sexual act means an act whose purpose is sexual arousal or satisfaction and which is sexually significant in view of the circumstances and the persons involved.

SECTION 11 – RIGHT TO BRING A CHARGE (563/1998)

The public prosecutor shall not bring a charge for the offences referred to in sections 3 or 4 or section 5(1)(2) or 5(1)(4), unless the injured party reports the offence for the bringing of a charge or unless a very important public interest requires that a charge be brought.

SECTION 12 – WAIVER OF MEASURES (563/1998)

Where the injured party in an offence referred to in sections 1, 5(2) or 6 on his/her own free will requests that a charge not be brought, the public prosecutor may waive the bringing of a charge, unless an important private or public interest requires that a charge be brought.

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