



TIME FOR CHANGE

JUSTICE FOR RAPE SURVIVORS
IN THE NORDIC COUNTRIES

AMNESTY
INTERNATIONAL



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EXECUTIVE SUMMARY

“All those hopes for justice and redress, and in the end - nothing. It was just another police report. I don’t believe in the justice system today. I don’t think it works the way it should”

Karina, Sweden

Gender-based violence remains widespread in Europe, and the Nordic countries examined in this report (Denmark, Finland, Norway and Sweden) are no exception. Despite various efforts, including legislative changes and other measures, the level of gender-based violence, including rape and other sexual violence, as well as impunity for these crimes remain high in the Nordic region. While statistics are gathered in different and incomparable ways in the countries examined here, all countries show a low level of reporting by rape survivors and of those rape survivors who do report, few see their cases ultimately heard in court. This affects confidence in the will and ability of the authorities to prosecute these serious crimes, both among rape survivors and the public, further exacerbating impunity for sexual violence. For instance, in Finland, some 50,000 women experience sexual violence, including rape, but in 2017 (the last year for which the figures are available), convictions were obtained in the cases of just 209 charges of rape.

Women in all four Nordic countries examined in this report encounter multiple barriers to access to justice for rape and sexual violence. This stands in stark contrast to the high scores the region has consistently achieved in gender equality in many areas of life.

For this report, Amnesty International interviewed 45 women and girls who have experienced rape. Interviewees came from diverse ethnic and national backgrounds, some of which are highlighted in cases where the survivors felt these backgrounds affected their experiences of rape or their legal process. In all four countries, Amnesty International also conducted extensive desk research, drawing from studies conducted by state bodies and official statistics, among other documents. The organisation shared its findings with the authorities in the four countries and sought their written feedback on the main conclusions ahead of this report.

This report updates the Amnesty International research, *Case Closed: Rape and human rights in the Nordic countries*, published in 2008. Since its publication more than ten years ago, there has been progress and important steps were taken to enable effective prosecution of acts of rape in the countries, with Sweden taken a significant step forward in 2018, after long and effective campaigning by women’s rights groups and activists, with the introduction of legislation to recognise that sex without consent is rape. However, this new research shows the significant changes that all four countries, including Sweden, still need to make to fully bring their legislation and practices in line with human rights law and ensure effective and meaningful access to justice for rape survivors.

In Norway, Finland and Denmark a key factor in denying rape survivors’ access to justice is the law itself. Although all are parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), they have yet to introduce legislation which defines rape clearly in terms of lack of consent. While the definitions in the laws of each country vary, they each in different ways define rape in terms of the use or threat of violence or the ability of the victim to resist, rather than on the absence of freely given consent. This has enormous repercussions both in terms of the ability to successfully prosecute crimes, but also in terms of how society itself perceives rape.

As “Liv” from Norway told Amnesty International, **“Unless we, rape victims, are beaten up, there is not enough evidence in the case, and it is word against word.... I wished he’d been rougher so that I would have had more tangible proof.”**

Campaigners, survivors and some professionals, emphasized to Amnesty International that changing the legal definition of rape to one based on sexual autonomy and consent has significant potential to bring about broad, systemic societal change and prevent rape in the long term.

“Anne”, survivor of rape in Denmark said, **“the law is a symbol of what we in our society consider to be right and wrong. And the law should reflect what we think is wrong and what we think is right... the important thing is that we have said that we think that every time you have sex without consent that it's rape. And I think that it will be reflected in our culture. And I think that's actually the most important thing.”**

However, in addition to legislative changes, this report shows that all four countries need to do more to get to the root cause of impunity, invest in support services, strengthen their investigative capacities and address victim blaming and prejudice influenced by deeply entrenched myths about rape and gender stereotypes.

Under the Istanbul Convention, state parties have an obligation to provide initial and continuous training to professionals working on various forms of violence against women, including sexual violence. Survivors, experts and professionals interviewed for this report stressed that this was an important area for much needed improvement.

In Finland, while some survivors told Amnesty International about positive and supportive experiences in their dealings with the criminal justice system others highlighted a lack of understanding of how victims respond to sexual violence at all levels of the criminal justice system, including the courts. For example, rape survivors who “freeze” with fear or who do not report the rape soon after it occurs are less likely to receive justice. Victim blaming was also highlighted as an issue:

“Tiina” from Finland said: **“In the District Court I was just asked all the time what I did wrong, why I didn't prevent the rape. How much I had drunk, why I didn't ask for help, why I didn't get a taxi. No one asked the perpetrator why he started following [me] or why he thought it was ok to start leading someone around town or stop them from getting into a taxi or anything.”**

Similarly, in Norway, the uneven quality of forensic examinations and stereotypical notions about female and male sexuality and rape myths in society at large and among judges were also identified as important factors contributing to the high level of impunity. Training to be aware of and overcome such attitudes is not systematically available to judges and forensic medicine is not a recognized medical specialization in Norway.

The report also shows shortcomings in police investigations. In Sweden the inconsistent application of working methods during investigations into sexual offences against adults and significant delays in interviewing and obtaining results of forensic analysis were highlighted by representatives of different authorities. Inconsistency of practice was also highlighted in Denmark as a serious barrier to reporting and prosecution.

Survivors spoke powerfully of the effect on their lives not only of the crime itself, but also of the prolonged process from reporting to court judgment. Delays not only make a successful conviction less likely, they can also be an obstacle to the healing process, forcing survivors to hold in the forefront of their minds a traumatic event and causing further harm.

State parties to the UN Convention on the Elimination of All Forms of Discrimination against Women and other international and regional treaties are obliged to counter and eliminate harmful gender stereotypes in society, for instance through provision of comprehensive, age-appropriate, evidence-based and unbiased sexuality and relationships education to children and young people. Challenging rape myths and gender stereotypes at all levels of society is an important element of this.

Rape is a serious crime and lack of access to justice a human rights violation that affects tens of thousands of women and girls, men and boys, transgender and non-binary people in the Nordic region every year. While acknowledging that all sexual violence, regardless of the gender, gender identity or gender expression of the victim is equally serious as a human rights issue, this report focuses mainly on rape against women and girls over the legal age of consent, reflecting the fact that rape is predominantly a crime perpetrated by men and boys against women and girls.

While many of the stories set out in this report paint a painful and distressing picture, they also underscore the determination and resilience of survivors themselves and the positive developments that they and those working to support them have achieved in recent years. This shows that change is possible. While each of the countries covered in this report has made some steps in these directions, more can and must be done to prevent rape and other sexual violence and realize the right to justice of rape survivors in the Nordic countries.

While Amnesty International gives a full range of specific recommendations to each government under each country chapter, these are the key cross-cutting recommendations that apply to several or all countries examined in this report:

- To authorities in Denmark, Finland and Norway: to urgently amend the definition of rape in the Criminal Code so that it is based on the absence of consent, bringing it in line with international human rights and revise the legislation to ensure that particular circumstances such as the abuse of a position of power are considered aggravating factors in sexual crimes.
- Ensure sufficient resources and ongoing capacity building for the police, forensic examinations, the public prosecution services and the courts to deal with rape cases sensitively, efficiently and without undue delay. Ensure that all reported rape cases are promptly, thoroughly and effectively investigated.
- Provide appropriate, systematic and mandatory training for the relevant professionals working with sexual violence survivors in prevention and detection of sexual violence, gender equality and intersectional discrimination, rape myths and stereotypes, with a view to preventing secondary victimization, and eradicating discriminatory practices and the application of gender stereotypes at all stages of the legal process;
- Promote changes in the social and cultural patterns of behaviour of people of all genders with a view to eradicating harmful gender stereotypes and myths around sexual violence, including by providing comprehensive, age-appropriate, gender-sensitive, evidence-based and unbiased sexuality and relationships education to pupils and students of all genders, including education about consent, bodily and sexual autonomy and the right to bodily integrity.

BACKGROUND

This report continues Amnesty International's research and campaigning work against rape in the Nordic countries – Sweden, Norway, Finland and Denmark¹ – initiated over a decade ago. It focuses on legal and other barriers to access to justice and redress for victims of rape.

Rape is a serious crime and human rights violation that affects tens of thousands of women and girls, men and boys, transgender and non-binary people in the region every year.² It affects the individual's right to bodily integrity and sexual autonomy and impairs the enjoyment of a range of human rights, including the rights to physical, mental and sexual health; personal security; equality and non-discrimination; and equal protection before the law. It occurs within both heterosexual and same-sex relationships and outside intimate relationships. While acknowledging that all sexual violence, regardless of the gender, gender identity or gender expression of the victim is equally serious as a human rights issue, this report focuses mainly on rape against women and girls over the legal age of consent,³ reflecting that rape is predominantly a crime perpetrated by men/boys on women/girls.⁴

The pervasiveness of rape was highlighted in Amnesty International's report *Case Closed: Rape and human rights in the Nordic countries*, published in Denmark, Finland, Norway and Sweden in 2008⁵ and summarized in an international report in 2010.⁶ The right to be free from rape was also addressed by Amnesty International in an overview of rape laws in Europe, published in 2018.⁷ Rape victims' access to justice in Finland and Denmark has been more extensively analysed in two separate reports published in 2019.⁸ These form the basis of the chapters on Finland and Denmark in this report.

Despite various efforts on the part of the governments, including various legislative changes and other measures, the level of gender-based violence, including rape and other sexual violence, against women and girls in the Nordic countries remains high.⁹

While a number of the recommendations in the 2008 report have been adopted by the Nordic governments, concerns remain.¹⁰ Women and girls who are raped in the Nordic countries still face barriers at the various stages of the legal process, resulting in them being denied their rights to justice and redress and further exacerbating impunity for sexual violence.

¹ Iceland is also considered a Nordic country, but is not covered in this report.

² See Executive Summary above.

³ The legal age of consent is 15 in Denmark and Sweden and 16 in Finland and Norway.

⁴ Although this report does not address rape against men (whether gay, bisexual, transgender, heterosexual or men who have sex with men) or homophobic attacks of a sexual nature against LGBTI people, these are all important human rights issues that require attention, not least to ensure that all victims of such crimes can report without fear of prejudice or discriminatory behaviour and treatment from law enforcement authorities and that support services are made available to all genders and adequately respond to the victims individual needs.

⁵ *Case Closed: Rape and human rights in the Nordic countries*, September 2008, <https://amnesty.dk/media/1557/case-closed.pdf>

⁶ *Case Closed: Rape and human rights in the Nordic countries: Summary report*, 8 March 2010, (Index number: ACT 77/001/2010) www.amnesty.org/en/documents/act77/001/2010/en/

⁷ *Right to be free from rape: Overview of legislation and state of play in Europe and international human rights standards*, November 2018, www.amnesty.org/en/documents/eur01/9452/2018/en/

⁸ *Fighting the Lottery: Overcoming barriers to justice for women rape survivors in Finland*, 6 March 2019, https://s3-eu-west-1.amazonaws.com/frantic/amnesty-fi/2019/03/19144800/Fighting-the-lottery_final.pdf; and 'Give us respect and justice! Overcoming barriers to justice for women rape survivors in Denmark', 5 March 2019, (Index number: EUR 18/9784/2019), <https://www.amnesty.org/en/documents/eur18/9784/2019/en/>

⁹ Amnesty International reports on Denmark: *Choosing between violence and expulsion. The dilemma of family reunified migrant women who suffer domestic violence*, June 2006;

on Sweden, *Men's violence against women in intimate relationships – an outline of the situation in Sweden*, April 2004 (in Swedish and English); *"Not a priority issue" – a review of the work of Swedish Municipalities to Combat Men's Violence Against Women*, March 2005 (in Swedish and English); *Tillfälle att prioritera frågan: Uppföljning av svenska kommuners arbete för kvinnofrid*, November 2005, (in Swedish only); *Var går gränsen? En attitydundersökning om våldtäkt*, April 2008 (in Swedish only) April 2008; and *Sweden: Submission to the UN Committee on the Elimination of Discrimination Against Women*, 63rd session, 15 February – 4 March 2016, 25 January 2016, (Index number: EUR 42/3305/2016);

on Norway: *Glansbildet slår sprekker. En rapport om norske kommuners arbeid mot vold mot kvinner*, 2005 (in Norwegian only); *Hvem bryr seg? En rapport om menns holdninger til vold mot kvinner*, 2007 (in Norwegian only), Amnesty Norway and Reform – Resource Centre for Men; and Amnesty International submission to the UN Committee on the Elimination of Discrimination against Women 68th Session 23 October–17 November 2017

on Finland: "...mutta veturi puuttuu" Amnestyn Suomen osaston valtakunnallinen kyselytutkimus naisiin kohdistuvan väkivallan vastaisesta työstä Suomen kunnissa vuonna 2005–2006 (in Finnish only), 2 May 2006.

¹⁰ See the chapters on each country for more details.

A first step towards protecting women and girls' bodily integrity and sexual autonomy is to adopt and effectively implement consent-based laws on sexual violence. Sweden is the only one of the four countries discussed in this report that has adopted human rights compliant rape legislation where the defining element of rape is lack of consent (the wording used is 'voluntary participation').

Ensuring assistance and support for all rape survivors, regardless of whether they decide to report or not is also crucial. The rape survivor's chances of obtaining justice and redress are largely dependent on the quality of the preliminary investigation as the evidence gathered will form the basis for the public prosecutor's decision on whether to prosecute or close a case. While there seems to have been some progress in the attitudes towards and treatment of rape victims in the legal process in at least some of the Nordic countries, the percentage of reported cases successfully prosecuted and tried remains small. So, while Sweden, Norway and Finland have seen a continuous increase in the number of reported rapes over the last decade, the rate of prosecutions and convictions has remained fairly static.¹¹

THE “NORDIC PARADOX”

The Nordic countries are often praised for achievements of gender equality. However, widespread gender-based violence against women, including sexual violence, reveals the unequal power relations between men and women that still prevail in all of these countries. For example, Sweden and Denmark came first and second in the 2017 Gender Equality Index in the EU, which examines areas such as work, money and health.¹² Nevertheless, in a follow-up report to the Index published in November 2017, which provides more data on violence against women, Denmark, Finland and Sweden were among countries with the highest prevalence of violence against women, including sexual violence, among the EU member states. An average of 30% of women in Denmark, Finland and Sweden had experienced intimate partner violence compared to an EU average of 22%.¹³ This discrepancy between high levels of gender equality and the elevated levels of intimate partner violence against women has been referred to as “the Nordic paradox.”¹⁴

Harmful rape myths and gender stereotypes may be one factor contributing to the “Nordic paradox”. Part of the rape myth is to hold women responsible for being subjected to violence and abuse. Victim blaming seems to be particularly tenacious. Other stereotypes include ideas about what rape is like. Skewed news reporting may also contribute to the impression that, for example, rape by a complete stranger is common or that rape is mostly perpetrated by certain types of men. Yet another type of harmful stereotypes includes the idea that men cannot be raped.

States have an obligation to prevent and ultimately eliminate gender-based violence and a key part of this is working to dismantle the harmful gender stereotypes and norms that underpin gender-based discrimination and violence and which also can create barriers to justice. As the report shows, these stereotypes and norms remain deeply entrenched in the Nordic countries.

¹¹ Official crime statistics and other data is available in all four countries. However, it is not possible to compare one country with another for a number of reasons. The legal definition of rape varies between countries. A specific act that is considered rape in one country may be defined as, for instance, sexual abuse in another. In some countries, including Finland and Sweden, the crime statistics on reported rape cover the number of acts of rape, not the number of victims. For example, if a husband rapes his wife four times during a month, it will be counted as four rapes in the Finnish and Swedish crime statistics. Similarly, if a person reports being raped by several perpetrators, each rape will be recorded. By contrast, the statistics for Norway and Denmark reflect the number of victims not acts of rape.

¹² European Institute for Gender Equality (EIGE), *Gender Equality Index 2017. Measuring gender equality in the European Union 2005-2015*, p. 3, www.eige.europa.eu/rdc/eige-publications/gender-equality-index-2017-measuring-gender-equality-european-union-2005-2015-report

¹³ EIGE, *Gender Equality Index 2017. Measurement framework of violence against women*, Figure 6, pp. 32-33, www.eige.europa.eu/rdc/eige-publications/gender-equality-index-2017-measurement-framework-of-violence-against-women

¹⁴ E. Gracia and J. Merlo, 'Intimate partner violence against women and the Nordic paradox', in *Social Science & Medicine* Vol 157, 2016, pp. 27-30. This study found a surprising lack of research on the subject and urged for more research, www.washingtonpost.com/news/worldviews/wp/2016/06/10/the-best-countries-for-gender-equality-may-also-have-a-domestic-violence-problem/?noredirect=on&utm_term=.e4404ef372ea

METHODOLOGY

This report is based on desk and field research carried out by Amnesty International in Denmark, Sweden, Finland and Norway, between March and December 2018. The research used various methodologies to collect and analyse data and testimonies in the different countries.

In total, Amnesty International's researchers interviewed 45 women and girls over the age of consent who have experienced rape.¹⁵ In all four countries, the survivors interviewed were identified with the help of civil society and victim support organizations, as well as through activists campaigning for improved access to justice for rape survivors in Denmark and by posting an announcement on a women's forum on Facebook in Norway.

In Denmark and Sweden, all the survivors were interviewed in person, while in Finland and Norway, interviews took place in person, over the phone or via Skype. Women from all parts of the respective countries were enabled to participate in the interviews. Interviews were conducted in English (sometimes with interpretation) or in one of the Nordic languages.

Interviewees came from diverse ethnic and national backgrounds, some of which are highlighted in cases where the survivors felt these backgrounds affected their experiences of rape or the legal process. All the survivors interviewed were cisgender women and the report's findings reflect their experiences. However, in Denmark, Amnesty International researchers interviewed a representative of a trans rights organization. The transgender woman who were to be interviewed decided that they were not yet ready to share their experiences at the time of the research. Some of the women interviewed by Amnesty International had reported the rape to the police, some had gone through a trial, while others had not reported the crime.

Amnesty International also interviewed representatives of other civil society organizations, police departments, prosecuting authorities, district and appeals courts, ministries, defence counsel, victims' counsel, health-care workers, social workers and academic researchers.¹⁶ In Denmark and Sweden, Amnesty International also interviewed family members of rape victims.

The names of some of the survivors have been changed and other identifying details withheld at their request to protect their identity and privacy. Also, some of the officials and health-care professionals requested that their identities be withheld. All those cited have given their informed consent to the inclusion of their views and experiences in this report.

In all the four countries, Amnesty International also conducted extensive desk research, drawing from previously published academic and the organization's own research, studies conducted by state bodies, official statistics and parliamentary materials, including the preparatory works accompanying legislation.

¹⁵ Eighteen survivors were interviewed in Denmark, six in Sweden, seven in Finland and fourteen in Norway.

¹⁶ In Denmark, Amnesty International held meetings with relevant authorities, including representatives of the National Police, Sydsjællands and Lolland-Falsters District Police, the Danish Bar Association, the Department for Research of the Ministry of Justice, the Director of the Public Prosecutor's Office and the State Prosecutor's Office for Copenhagen (whose office covers the whole Zealand region). Amnesty International also interviewed a judge from Roskilde District Court and a former senior State Prosecutor. A request for a meeting with the Association of Danish Judges was refused. Amnesty International researchers also met 11 representatives of civil society organizations, two lawyers who represent rape survivors, a law professor, three representatives of the Crime Prevention Council and two experts from Centres for Victims of Sexual Assault (in Aarhus and Copenhagen).

In Sweden, Amnesty International interviewed three individuals from the Police Authority, three from the Public Prosecutor's Authority, four complainant's counsel, a staff member from the Emergency Clinic for rape victims in Stockholm, a psychotherapist specializing in trauma, a social worker, a representative of the National Centre for Knowledge on Men's Violence Against Women (NCK) and nine representatives of six NGOs. The not-for-profit NGOs interviewed were Brottsofferjouren, Fattal, Föreningen Storasyster, Föreningen Tillsammans, RFSU, RFSL.

In Finland, Amnesty International conducted interviews with three police officers, two prosecutors, two district court judges, an appeals court judge as well as a psychologist, a midwife and a doctor from the Helsinki Sexual Assault Support Centre. Eight of the interviewees work in Helsinki, two in Inland Finland and one in Eastern Finland. In addition, Amnesty International organized two semi-structured workshop discussions with lawyers and academic researchers.

In Norway, Amnesty International interviewed several stakeholders, including three representatives from the Oslo Police and two representatives from the National Police Directorate; three representatives from the prosecuting authorities, including a representative from the Office of the Director of Public Prosecutions and two representatives from different regional offices; an appeals court judge; two defence lawyers and two lawyers with extensive experience of giving legal counsel to survivors of rape. In addition, Amnesty International interviewed three staff members at the Sexual Assault Centre in Oslo. Interviews were also conducted with several researchers, including researchers from the University of Oslo and the Norwegian Centre for Violence and Traumatic Stress Studies, as well as with Dixi Resource Centre for Rape Victims and JURK – Legal Advice for Women. Amnesty International also asked for an interview with the Ministry of Justice and Public Security on several occasions, but this was refused.

In Denmark and Finland, Amnesty International analysed district court judgments and decisions by prosecutors or the police to close investigations. In Denmark, the analysis included 94 district court judgments handed down between May 2017 and May 2018 and 353 decisions closing investigations by the prosecution taken between December 2017 and May 2018. In Finland, Amnesty International analysed 112 police decisions¹⁷ to discontinue an investigation and 124 prosecutors' decisions¹⁸ not to press charges made in 2017 as well as 81 district court judgments involving 88 charges of rape handed down in 2016-2017.¹⁹ Access to these materials was granted on the condition that the cases reported are not identifiable in any Amnesty International publications.

In all four countries, Amnesty International shared its findings with the authorities and sought their written feedback on the main conclusions ahead of the publication of this report.²⁰ Their responses, where available or received prior to the publication, are included or reflected in the text. In Denmark, Amnesty International and survivors also held a meeting with the Minister of Justice Søren Pape Poulsen, and with relevant Ministries.²¹

Any translations from interviews or the written materials are unofficial and have been done by Amnesty International.

ACKNOWLEDGEMENTS

Amnesty International would like to thank everyone who agreed to be interviewed for this report and especially the women who so courageously shared their experiences. Amnesty International is also grateful to the representatives of the authorities, lawyers, academics and health-care workers, as well as representatives of NGOs and other interviewees, who generously shared their time, knowledge and expertise.

¹⁷ This included all police decisions in cases of rape in 2017 that fell within the scope of this report. In total, 49 other police decisions were filtered out. Apart from focusing on female victims, other reasons for filtering cases out from the analysis included that: a) the suspected perpetrator was below the age of criminal liability (15 years in Finland); b) the police could not identify the victim; c) there was insufficient detail in the decision to draw meaningful conclusions; d) the suspected perpetrator had died before the police investigation could be carried out; and e) the case had been transferred to another police station or combined with another case.

¹⁸ Amnesty International was granted research permits in order to access the decisions from five regional prosecutors' offices that had made the highest number of decisions not to prosecute in rape cases in 2017. The most recent 24-27 cases (depending on the number of cases received) from each prosecutor's office were analysed. Rapes where the victim was a child below the age of 16 or male were excluded.

¹⁹ Each charge was analysed separately as the reasoning concerning each charge is done separately, and so is referred to as one "judgment" later in this report. The analysis included decisions from six district courts, with the highest numbers of judgments handed down in cases of rape and sexual abuse in 2016-2017 (the longer time period was chosen due to the lower number of cases handled by each court, relative to the prosecutors' offices and the police). Amnesty International was granted research permits from three district courts and in addition, three other courts provided public versions of judgments (no permit was applied for). Public versions omit the identity of the victim and sometimes also the reasoning of the court (in which case the judgment could not be used for analysis), while when a research permit was granted, Amnesty International received full details of the judgment (but no other court materials). Within the materials received, 44 acquittals and 44 convictions were chosen randomly for analysis. Rapes where the victim was a child below the age of 16 or male were excluded.

²⁰ In Norway, Amnesty Norway approached Acting Minister of Justice Jon Georg Dale by email on 15 March 2019, presenting the main findings and recommendations in the chapter on Norway and asking for the Minister to comment by 22 March 2019. Amnesty Norway also asked for a meeting with him to present Amnesty's concerns and recommendations prior to the publication of the report. At the time of printing, the Minister has not responded to the request for a meeting, nor given a written response.

In Finland, written feedback was sought on the full report *Fighting the Lottery: Overcoming barriers to justice for women rape survivors* in Finland, 6 March 2019, https://s3-eu-west-1.amazonaws.com/frantic/amnesty-fi/2019/03/19144800/Fighting-the-lottery_final.pdf, which forms the basis of the chapter on Finland in this report. Requests for feedback were sent to the Acting Minister of Justice, the Acting Minister of the Interior, the Acting Minister of Social Affairs and Health, the Acting Minister of Finance, the Supreme Court, the Office of the Prosecutor General and the National Police Board. Responses were received from the Office of the Prosecutor General, the National Police Board and the Ministry of the Interior and they are reflected in the chapter on Finland. The Supreme Court declined to comment. No response was received from the other authorities. The requests were sent by email on 14 March 2019 with responses requested by 24 March 2019.

In Denmark, Amnesty International received a written response from the Minister for Fisheries and Equal Opportunities and Minister for Nordic cooperation Eva Kjer Hansen who expressed support for Amnesty's main recommendations. The Minister of Justice, Søren Pape Poulsen, told Amnesty International that he supports the recommendation on consent-based legislation.

In Sweden, Amnesty International sought written feedback from the Minister of Interior Mikael Damberg and the National Police Commissioner Anders Thornberg by email on 15 March 2019. A written response was received by e-mail on 21 March from Per Ottosson and Anna Lindström on behalf of the Swedish Police Authority. The response did not address the findings of Amnesty International, but outlined on-going projects and efforts for improvement, most of which Amnesty already mentioned in the chapter of Sweden. Amnesty International did not receive a written response from the Minister of Interior, but a meeting in person has been scheduled for 4 April 2019.

²¹ Representatives of the National Police, Sydsjællands and Lolland-Falsters District Police, the Danish Bar Association, the Department for Research of the Ministry of Justice, the Director of the Public Prosecutor's Office and the State Prosecutor's Office for Copenhagen (whose office covers the whole Zealand region). A request for a meeting with the Association of Danish Judges was refused.

TERMINOLOGY

This report uses the terms “victim” and “survivor” interchangeably. The term “victim” is customarily used to describe people whose human rights have been violated, for example, it is the term adopted in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power²² and the Rome Statute of the International Criminal Court.²³ While acknowledging that “victim” is the appropriate legal term, Amnesty International recognizes that the term “survivor” better reflects the strength and resilience of women and girls who have experienced sexual violence and is the preferred term for many women and girls themselves and also many human rights activists.²⁴

“Sexual violence” is a broad term used in international law to describe unwanted or non-consensual sexual activity. Sexual violence includes rape.

The term “rape”, when used to describe a victim’s experience, is used in the sense of international human rights law, as non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object. When used as a legal term in national laws, the term “rape” follows the definition of the relevant Penal Code (unless otherwise specified).

A “rape myth” is a deeply held erroneous belief about what constitutes rape, who can be a rape victim, or how victims react before, during or after they have been raped. Some common rape myths include that rape is perpetrated by a stranger, that a victim “asks for sex” if they flirt with the perpetrator, or that a rape victim will fight back with all their strength and will behave hysterically after the rape. Rape myths are underpinned by harmful gender stereotypes related to male and female sexuality or sexual behaviour.

²² Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34 (1985).

²³ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.

²⁴ Rahila Gupta, “‘Victim’ vs. ‘Survivor’: feminism and language”, Open Democracy, 16 June 2014, www.opendemocracy.net/5050/rahila-gupta/victim-vs-survivor-feminism-and-language

1. INTERNATIONAL HUMAN RIGHTS LAW

International law and standards on rape have been developed within the framework of gender-based violence and violence against women.²⁵ Gender-based violence against women is violence directed against a woman because she is a woman, or which affects women disproportionately. Gender-based violence is a form of discrimination that inhibits women's ability to enjoy rights and freedoms on an equal basis with men and helps perpetuate stereotyped gender roles and the inferior position of women.

The prohibition of gender-based violence against women has evolved into a principle of customary international law.²⁶ States have an obligation to adopt appropriate and effective measures to prevent and prosecute all forms of gender-based violence, whether committed by agents of the state or private individuals.²⁷

All the Nordic countries are parties to the Convention on the Elimination of All Forms of Discrimination against Women, Article 2 of which obliges states to pursue policies to eliminate gender-based discrimination and violence against women.²⁸ They are also state parties to the European Convention on Human Rights and to the International Covenant on Civil and Political Rights both of which guarantee the right to security of the person.²⁹

All the Nordic countries are also parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), which is the most comprehensive legal instrument on gender-based violence, including sexual violence and rape.³⁰ This obliges states to “take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors”.³¹ Article 49(2) of the Istanbul Convention requires states to ensure effective investigation and prosecution of acts of violence against women, including sexual violence.³²

1.1 DEFINITION OF RAPE

In 2003, the European Court of Human Rights made it clear that: “Member States' positive obligations under Articles 3 and 8 of the [European] Convention [on Human Rights] must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim.”³³ The Council of Europe Convention on Preventing and Combating Violence against Women

²⁵ This framework includes legally binding treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). In addition, there has been authoritative guidance by the CEDAW Committee in its General Recommendations No.19 on violence against women (1992), No. 28 on the core obligations of States parties under article 2 of the Convention, UN Doc. CEDAW/C/GR/28, (2010), No. 33 on women's access to justice, UN Doc. CEDAW/C/GR/33, (2015), and No.35 gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GR/35, (2017), and in multiple concluding observations on countries; international policy instruments such as the Beijing Declaration and Platform for Action; ground-breaking CEDAW Committee decisions (e.g. AT v Hungary (2005), Fatma Yildirim v Austria (2007); Vertido v The Philippines (2010), S.V.P. v Bulgaria (2011); R.P.B v The Philippines (2011)); as well as decisions by the Inter-American Commission on Human Rights, Inter-American Court, and the European Court of Human Rights (e.g. Maria da Penha Maia Fernandes v Brazil (2000); Velasquez-Rodriguez v Honduras (1988), Raquel Martí de Mejía v Peru (1996); Aydin v Turkey (1997); Opuz v Turkey (2009)).

²⁶ See e.g. 1 Report of the Special Rapporteur on violence against women (Yakin Ertürk), “Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women – The Due Diligence Standards as a Tool for The Elimination of Violence Against Women”, UN Doc. E/CN.4/2006/61.

²⁷ CEDAW, General Recommendation 19, para 24 (a)

²⁸ CEDAW Article 2, CEDAW Committee General Recommendation 35, para 21. The Nordic countries have ratified the CEDAW and it has entered into force: Sweden 1980, Norway 1981, Denmark 1983, Finland 1986.

²⁹ European Convention on Human Rights, Article 5 and International Covenant on Civil and Political Rights, Article 9.

³⁰ All Nordic countries have ratified the Istanbul Convention, and are as such obliged to implement the Convention.

³¹ Istanbul Convention, Article 5(2).

³² Istanbul Convention, Article 49(2).

³³ M.C. v. Bulgaria (2003) ECHR 651, para. 166.

and Domestic (Istanbul Convention) also affirms that states should take all necessary legislative or other measures to ensure all sexual acts of sexual nature are criminalised.³⁴

According to the Convention, and in line with other international standards, a comprehensive definition of rape should include all non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object.³⁵

The Istanbul Convention also calls for the legal definition of crimes of rape to be based on lack of consent rather than on the use of force or threats by the perpetrator or the victim's resistance.³⁶

1.1.1 CONSENT

According to international human rights law and standards, sexual violence, including rape, should be defined by the lack of consent to sexual activity.³⁷ Legislation should include a combination of gender-neutral and gender-specific provisions to reflect the specific experiences and needs of women and girl survivors of violence, while allowing the prosecution of gender-based and sexual violence against men and boys too.³⁸

No international or regional human rights instrument provides a definition of consent. However, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) specifies that: *"Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances."* (Article 36(2)).

The Explanatory Report to the Istanbul Convention further clarifies that prosecutions "will require a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. It is equally important to ensure that interpretations of rape legislation and the prosecution of rape cases are not influenced by gender stereotypes and myths about male and female sexuality".³⁹

Consent is a voluntary and ongoing agreement to engage in a particular sexual activity and so can be rescinded at any time.⁴⁰ Developments in international criminal law have led to the recognition that consent can be given freely and genuinely only where the free will of one of the consenting parties is not overpowered by coercive circumstances and when the person is capable of consenting.⁴¹

Other international human rights bodies have stated that the definition of rape should include a broad range of coercive circumstances where consent cannot be freely given. Outside such circumstances, while the burden of proof remains with the prosecution, the accused should be questioned about steps taken to ascertain whether the complainant was consenting.⁴²

³⁴ Istanbul Convention, Article 36(1)(a).

³⁵ Istanbul Convention, Article 36(1)(a). See also International Criminal Court, "Elements of Crimes" (2011), Elements 1 and 2 of the Elements of Crimes relating to the crime against humanity of rape under Article 7(1)(g)-1, p. 8, and the war crime of rape in international and non-international armed conflicts under Article 8(2)(b)(xxii)-1, p. 28, and Article 8(2)(e)(vi)-1, pp. 36-37.

³⁶ Istanbul Convention, Article 36.

³⁷ See Istanbul Convention, Article 36 (1) and Committee on the Elimination of Discrimination against Women Committee General Recommendation No. 35, para. 33. See also Committee of Ministers of the Council of Europe Recommendation No. R (2002) 5, adopted by the Committee of Ministers on 30 April 2002, and Explanatory Memorandum H/Inf (2004), para. 35, which urges states to punish all non-consensual acts, including where the victim does not show resistance. See *M.C. v. Bulgaria* (2003), European Court of Human Rights 651, paras 164-166. See also International Criminal Court, Elements of Crimes (2011), Elements 1 and 2 of the Elements of Crimes relating to the crime against humanity of rape under Article 7(1)(g)-1, p. 8, and the war crime of rape in international and non-international armed conflicts under Article 8(2)(b)(xxii)-1 (p. 28) and Article 8(2)(e)(vi)-1, pp. 36-37.

³⁸ UN Handbook for Legislation on Violence against Women, United Nations Entity for Gender Equality and the Empowerment of Women (2012), p. 12, www.unwomen.org/en/digital-library/publications/2012/12/handbook-for-legislation-on-violence-against-women

³⁹ Explanatory Report to the Istanbul Convention, para. 192.

⁴⁰ This has been affirmed in national court judgments, for example, by the High Court of Justice of England and Wales in *R v. DPP and "A"* [2013] EWHC 945 (Admin) and, in the USA, the Supreme Court of California, 29 Cal. 4th 756, 60 P.3d 183, 128 Cal. Rptr. 2d 783, 2003 Cal.

⁴¹ See International Criminal Court, Elements of Crimes (2011), Elements 1 and 2 of the Elements of Crimes relating to the crime against humanity of rape under Article 7(1)(g)-1, p. 8, and the war crime of rape in international and non-international armed conflicts under Article 8(2)(b)(xxii)-1 (p. 28) and Article 8(2)(e)(vi)-1, pp. 36-37. See also International Criminal Court, Rules of Procedure and Evidence, UN Doc ICC-ASP/1/3 (2002), Rule 70(a), (b) and (c).

⁴² *Vertido v. The Philippines*, CEDAW Communication 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010), para. 8.9(b)(ii).

There should be no assumption in law or in practice that a victim gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether or not the perpetrator threatened to use or used physical violence.⁴³

1.1.2 AGGRAVATING CIRCUMSTANCES

The UN Handbook for Legislation on Violence against Women states that legislation must provide for aggravating circumstances, including, for example, the age of the survivor, the relationship between the survivor and the perpetrator, the use or threat of physical violence, the presence of multiple perpetrators and the grave physical or mental consequences of the attack on the victim.⁴⁴ The Istanbul Convention also identifies a number of circumstances that should be considered aggravating circumstances when passing a sentence, including where the violence is committed by a former or current spouse or partner or against a person made vulnerable by particular circumstances or where it resulted in severe physical or psychological harm to the victim.⁴⁵

1.2 ACCESS TO JUSTICE

International human rights standards require states to take all necessary measures to protect the rights and interests of the victims, including their special needs as witnesses, at all stages of investigation and legal proceedings.⁴⁶

To overcome barriers to reporting, states should ensure that the physical environment and location of judicial and other services are welcoming, secure and accessible to all victims.⁴⁷ The Explanatory Report to the Istanbul Convention clarifies that such measures should include, for example, speaking to victims “in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel”.⁴⁸

Article 57 of the Istanbul Convention requires states to “provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law”.⁴⁹ The Explanatory Report to the Convention stresses that while free legal aid is not an automatic right under the Convention, victims need the assistance of legal counsel to be able to assert their rights satisfactorily.⁵⁰

Women’s access to justice depends on the quality of police and prosecution investigations. Under Article 49 of the Istanbul Convention, states have a responsibility to ensure that investigations into violence against women, including rape, are carried out in an effective manner and taking into account the rights of the victim at all stages of criminal proceedings.⁵¹

States also have an obligation to provide initial and continuous training to professionals working on various forms of violence against women.⁵² Such training should include prevention and detection, gender equality, victims’ needs and rights, as well as the prevention of secondary victimization. The professional groups who should receive such training include, police and other law enforcement officials, prosecutors, judges and educational staff.⁵³ The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has recommended that states:

⁴³ *M.C. v. Bulgaria* (2003), European Court of Human Rights (ECHR) 651.

⁴⁴ UN Handbook for Legislation on Violence against Women, 2012, p. 24.

⁴⁵ Istanbul Convention, Articles 46.

⁴⁶ UN Handbook for Legislation on Violence against Women, 2012, p. 37. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Resolution 60/147, 16 December 2005, UN Doc. A/RES/60/147 92006.

⁴⁷ CEDAW General Recommendation No. 33, para. 17 (e).

⁴⁸ Explanatory Report, para. 258.

⁴⁹ Istanbul Convention, Article 57.

⁵⁰ Explanatory Report, para. 294.

⁵¹ Istanbul Convention, Article 49.

⁵² Istanbul Convention, Article 15, and Explanatory Report, para. 99.

⁵³ Explanatory Report, para. 100.

“Ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women.”⁵⁴

1.3 VICTIM PROTECTION

Survivors have the right to decide whether to appear in court or to submit evidence by alternative means and to give evidence in court in a manner that does not require confronting the defendant,⁵⁵ as well as to protection within the court structure to ensure that contact between victims and perpetrators is avoided where possible.⁵⁶ The UN Handbook for Legislation on Violence against Women provides useful recommendations with respect to victim protection during legal proceedings related to sexual violence.⁵⁷ These include, for example, support in court, including being accompanied and represented by a specialized survivors’ service, as well as measures to ensure survivors do not have to meet the defendant in court.⁵⁸

The EU Victims’ Rights Directive requires states to ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner. In addition, the Directive includes provisions on the rights of victims to support services, to information in a language that the victim understands and to victim protection to avoid secondary or repeat victimization, intimidation or retaliation.⁵⁹

⁵⁴ Vertido v. The Philippines, para. 8.9(b).

⁵⁵ Istanbul Convention, Article 56(i), UN Handbook for Legislation on Violence against Women, p. 39.

⁵⁶ UN Handbook for Legislation on Violence against Women, p. 39; Istanbul Convention, Article 56(g);

⁵⁷ UN Department of Economic and Social Affairs, Division for the Advancement of Women, Handbook for Legislation on Violence against Women.

⁵⁸ UN Handbook for Legislation on Violence against Women, p. 40.

⁵⁹ Directive 2012/29/EU (Victims Directive)

2. RAPE AND HUMAN RIGHTS IN NORWAY

2.1 EXECUTIVE SUMMARY

"It took almost two years from the time I reported in the autumn of 2016, till the case was closed in the spring of 2018. It is a long time to wait. I also think there are several investigative steps the police could have taken, but that they did not take. I guess other cases had a higher priority."

"Astrid"⁶⁰

Gender-based violence, including rape, remains widespread in Norway. A national prevalence study published in 2014 concluded that almost one in 10 women in Norway had been raped at least once in their lifetime, nearly half before the age of 18.⁶¹ The study found no indication that the prevalence of rape has decreased in recent years; younger women do not report fewer incidents of rape before the age of 18 compared to older women.

Most of the rape survivors in Norway interviewed by Amnesty International reported a significantly lower quality of life in the period after the rape. Some experienced considerable and prolonged health problems, including suicide attempts, self-destructive behaviour such as eating disorders, problems with relating to family and friends and difficulties at work or in school.

Despite the scale of the problem and the serious consequences on the lives and health of women and girls, the Norwegian authorities have not taken the necessary measures to prevent rape and other forms of sexual violence or to address the consequences when such crimes occur. Prevailing and erroneous myths about rape make it hard for rape victims to report the crime to the police or to seek medical help. Rape myths also influence the way rape cases are handled by the criminal justice system.

Despite the good will expressed by all actors in the judicial system, rape survivors experience significant barriers to accessing to justice. One of these is the law itself. The law falls short of international human rights standards which set out a consent-based approach to the definition of rape. Instead, the Norwegian Penal Code defines the crime of rape with a limited set of qualifying circumstances revoking consent. As a consequence, the courts are required to focus on the qualifying circumstances set out in law, rather than to assess the woman's free will in the context of the surrounding circumstances. The law limits the rape victim's access to justice and reparation and, more broadly, affects the wider understanding in society of what constitutes rape.

Many rapes are not reported to the police, but even those survivors who do turn to the police face a lengthy and often flawed process. Lack of capacity and weaknesses in police investigations mean that few cases result in successful prosecutions in Norway. The figures paint a startling picture: only one in 10 women who

⁶⁰ Skype interview with "Astrid" 14 November 2018. (Name has been changed to respect the interviewee's privacy.)

⁶¹ Thoresen and Hjemdal: Vold og voldtekt i Norge, NKVTS, 2014, <https://bit.ly/2DN6tJR>

are raped report rape to the police and between 75% and 80% of investigated cases are closed by public prosecutor and never reach the stage of prosecution.⁶²

Of those that do reach the courts, a recent study documents that 30% of rape cases end in acquittal.⁶³ Among the factors contributing to this high level of impunity are stereotypical notions about female and male sexuality and rape myths in society at large and among judges. Training to be aware of and overcome such attitudes is not systematically available to judges. Another factor is the uneven quality of forensic examinations at the sexual assault centres; forensic medicine is not a recognized medical specialization in Norway.

This wider picture of impunity was reflected in the experiences of the 14 women rape survivors interviewed by Amnesty International in Norway. Nine of the survivors reported the rape to the police. One retracted her report a few weeks after reporting as she found the process too burdensome. One woman is still awaiting the decision of the public prosecutor. The cases of the other seven women have been closed by the police. In one case, the police decided to prosecute on their own initiative. The trial ended with a conviction in the district court, but with an acquittal in the court of appeal because, while there was no doubt on the part of the court that she had not given her consent to sexual intercourse, the elements of rape stipulated in the law were not present. Four of the survivors decided for a variety of reasons not to report the rape to the police.

While this paints a negative picture of the steps taken by the Norwegian authorities to address the shortcomings in its response to rape set out in Amnesty International's report *Case Closed: Rape and human rights in the Nordic countries*, published 10 years ago, there have been positive developments. One of these highlighted by several interviewees was the high standard of police interviews. As a rule, those who are responsible for conducting the interviews in cases of sexual assault including rape are trained specialists. In addition, the right to free legal counsel is an important and necessary support to the victims of rape during the whole judicial process.

Amnesty International welcomes these important steps forward. Nevertheless, in order to fulfil their obligations under international law and to the women and girls whose security they have a responsibility to protect the Norwegian authorities need to do much more.

2.2 INTRODUCTION

Norway has been praised as a “haven for gender equality”,⁶⁴ ranks among the countries with the highest levels of gender equality, according to the UN,⁶⁵ and has taken a number of initiatives to advance women's rights. Nevertheless, the prevalence of sexual violence, including rape, remains high. According to a 2014 study, there is no indication that rape of young women has decreased the last 50 years.⁶⁶ The number of rape survivors who see the perpetrator brought to justice remains low.⁶⁷ In short, in Norway, gender equality seems to have stopped at the threshold of the bedroom door.

Since 2012, several UN treaty bodies have expressed repeated and consistent concerns about Norway's failure to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for gender-based violence against women.⁶⁸ The Committee against Torture, the CEDAW Committee and the Committee on the Rights of the Child have all pointed out the high incidence of gender-based violence against women in Norway and at the societal and legal barriers faced by rape survivors seeking justice. These include a legal definition of rape that is not centred on the principle of consent.⁶⁹

Various treaty bodies have presented recommendations to the Norwegian government on preventing and eliminating gender-based violence against women and girls and on ensuring that perpetrators of gender-based violence are brought to justice. A number of these recommendations have not been implemented by

⁶² Statistics Norway, www.ssb.no/en/statbank/table/09405

⁶³ National Criminal Investigation Service (NCIS), *Voldtektssituasjonen 2014*, <https://bit.ly/2GMfZQh>

⁶⁴ Quote from the Norway's examination for the CEDAW in 2003, <https://bit.ly/2Gf0uze>

⁶⁵ Norway was rated 5 on UNDP's Inequality Index 2017, <http://hdr.undp.org/en/composite/GII>

⁶⁶ Thoresen and Hjemdal: *Vold og voldtekt i Norge* Page 21. NKVTS 2014, <https://bit.ly/2DN6tJR>

⁶⁷ *Bak lukkede dører. En bok om voldtekt*, p.p. 161-241. Anne Bitsch og Anja Emilie Kruse. Cappelen Damm 2012, <https://bit.ly/2lg4SAk>

⁶⁸ CEDAW General Recommendation No. 35, Art. 24 b); Committee against Torture, General Recommendation No. 2 on the implementation of article 2 by States parties, Art. 18; Istanbul Convention Article 5(2).

⁶⁹ Concluding observations of the Committee on the Elimination of Discrimination against Women: Norway, UN Doc. CEDAW/C/NOR/CO/8, 9 March 2012; UN Doc. CEDAW/C/NOR/CO/9, 22 November 2017; Committee against Torture, Concluding observations on the combined sixth and seventh periodic reports of Norway, UN Doc. CAT/C/NOR/CO/6-7 13 December 2012; UN Doc CAT/C/NOR/8 15 May 2018; Human Rights Committee, Concluding observations on the seventh periodic report of Norway, UN Doc CCPR/C/NOR/CO/7, 25 April 2018; and Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Norway, UN Doc. CRC/C/NOR/CO/5-6, 4 July 2018.

the Norwegian authorities, including the 2017 CEDAW Committee recommendation to systematically implement gender training and capacity building for judges who hear criminal cases involving gender-based violence⁷⁰, and the 2018 UN Human Rights Committee recommendation to strengthen efforts to raise public awareness of the adverse impact of sexual and gender-based violence.⁷¹

In March 2017 the Norwegian Parliament unanimously ratified the Istanbul Convention, which entered into effect in November 2017.⁷² In December 2017, the Socialist Left Party presented a proposal to Parliament asking the government to develop a White Paper on the adoption of a consent-based rape provision in the Penal Code. On 5 April 2018, the proposal was rejected by Parliament by 52 to 38 votes.⁷³ On that very same day, the UN Human Rights Committee published their concluding observations on Norway.⁷⁴ One of the Committee's recommendations was to amend Section 291 of the Penal Code and ensure that the lack of freely given consent is at the centre of the definition of rape.⁷⁵

2.3 THE SCALE OF THE PROBLEM

2.3.1 CONSEQUENCES

A physician at the Sexual Assault Centre in Oslo described rape as a life-changing event. Many rape survivors will have a significantly lower quality of life for a period of time and many experience considerable long-term health problems.⁷⁶ The survivors of rape whom Amnesty International interviewed confirmed this.

“Liv”, a single parent in her early thirties, lives in a city in the west of Norway. In 2016, she was attacked unexpectedly by a friend who came to visit her. He raped her while her young son slept in the room next door. The consequences of the sexual assault have been severe. “Liv” told Amnesty International:

“I received the diagnosis PTSD with depression and anxiety after the rape. I did not have any mental health problems before.”⁷⁷

For some, the consequences of the sexual assault are prolonged and damaging and can include suicide attempts, hospitalization, self-destructive behaviour including eating disorders, problems relating to family and friends and difficulties at work or in school.

Susanne, a queer activist, was raped by a female acquaintance at an afterparty when she was new in the queer community. Susanne told Amnesty: **“After the rape came a period of alcohol and substance abuse, before I tried to take my own life. When I came to that point, I was hospitalized and got help.”⁷⁸**

One prevalent rape myth in Norway is that rape of a person in a helpless state has fewer consequences on the victim's physical and psychological health than rape involving a violent assault. Physicians at the Sexual Assault Centre in Oslo said that their experience did not support this myth: **“I can't say that I see the difference in terms of reactions. We see people having strong reactions after having been victim of rape in a helpless state, as well as after assault rape. It really means that we need to take rape of a person in a helpless state very seriously ... The most important element of rape is the violation of personal integrity.”⁷⁹**

2.3.2 PREVALENCE

The high prevalence of rape has long been a living reality for women and girls in Norway. This was clearly reflected in the way some of the rape survivors interviewed by Amnesty International contextualized their own experience.

“Maria”, who is now in her early thirties, lives with her boyfriend in a major city in Norway and combines study and work. Maria was raped in 2009, when she was 21. She had gone to sleep at a friend's house after

⁷⁰ UN Doc. CEDAW/C/NOR/CO/9 22 November 2017 Art.25 c), <https://bit.ly/2HJu02a>

⁷¹ UN Doc CCPR/C/NOR/CO/7, 25 April 2018 Art. 14 d), <https://bit.ly/2Tucqkt>

⁷² Prop. 66 S (2016 –2017). Available at: <https://bit.ly/2Gj6lhB>

⁷³ Proposal available at <https://bit.ly/2CW114A>

⁷⁴ Press release from UN Human Rights Committee 05042019, <https://bit.ly/2UEuUim>

⁷⁵ Human Rights Committee Concluding Observations to the seventh periodic report to Norway 14b), <https://bit.ly/2GOWzGK>

⁷⁶ Interview with staff at the Sexual Assault Centre in Oslo, 29 October 2018.

⁷⁷ Skype interview with “Liv”, 19 November 2018.

⁷⁸ Interview with Susanne in Oslo, 27 November 2018.

⁷⁹ Interview with staff at the Sexual Assault Centre in Oslo, 29 October 2018.

a party. She woke up to find him raping her while she was asleep. She told Amnesty International: **“I’ve always expected to be raped. I was not shocked when it happened. I expect that it could happen again.”**⁸⁰

After “Sofe” finished junior college in 2017, she moved to a town in the north of Norway and started to work as a hotel receptionist. Just before Christmas that same year, she was raped by an acquaintance after a party. He broke into her apartment and raped her while she was asleep. She told Amnesty International: **“There are so many who experience rape, so I have in a way been certain that it was going to happen to me, one time or another.”**⁸¹

In 2014, the Norwegian Centre for Violence and Traumatic Stress Studies⁸² published the first and so far only national study of the prevalence of rape and sexual violence in Norway.⁸³ The study concluded that almost one in 10 women in Norway have been the victim of forcible rape at least once in their lifetime, nearly half (49%) before the age of 18.⁸⁴ Also 1,1% of the men have been the victim of forcible rape at least once in their lifetime. According to the study, there is no indication that the prevalence of rape has decreased over time, as younger women did not report fewer incidents of rape before the age of 18 compared to older women. Almost a third (29%) of women victims reported physical injury. Only 11% contacted health services afterwards.⁸⁵

This is at present the only available national prevalence study in Norway. The lack of population-based surveys conducted at regular intervals and relevant disaggregated statistical data makes it difficult to assess the prevalence and developing trends in the incidence of sexual violence in Norway. This lack of information is in breach of Norway’s human rights obligation to ensure data collection and research on all forms of gender-based violence against women, clearly set out in the Istanbul Convention and by the CEDAW Committee.⁸⁶

2.3.3 REPORTING

According to the national prevalence study of rape in Norway, only one in 10 female rape victims reported the crime to the police.⁸⁷ At present, there is no evidence-based research that can identify the reasons behind this, but stigma and the ineffectiveness of rape prosecutions could be contributing factors.⁸⁸

The statistics in this chapter are drawn from Statistics Norway⁸⁹ and exclude statutory rape, that is the rape of a minor below the age of 14 (Section 299 of the Penal Code).

TABLE 1: RAPE (PENAL CODE SECTION 291) REPORTED TO THE POLICE 2008-2017.⁹⁰

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|------------------------|------|------|------|-------|-------|-------|-------|-------|-------|-------|
| Rape | 904 | 948 | 897 | 1,038 | 1,056 | 1,089 | 1,088 | 1,233 | 1,504 | 1,467 |
| Aggravated rape | 40 | 50 | 44 | 37 | 61 | 48 | 39 | 54 | 57 | 51 |
| Attempted rape | 118 | 117 | 106 | 138 | 104 | 100 | 85 | 82 | 113 | 107 |

⁸⁰ Interview with “Maria” in Oslo, 29 November 2018. (Name has been changed to respect the interviewee’s privacy.)

⁸¹ Interview with “Sofe” in Oslo 29th November 2018. (Name has been changed to respect the interviewee’s privacy.)

⁸² The Norwegian Centre for Violence and Traumatic Stress Studies (NKVTS) develops research on violence and traumatic stress. The Ministry of Health and Care Services, Ministry of Justice and Public Security and Ministry of Children and Equality are the primary financiers of the NKVTS. The NKVTS also undertakes projects financed by the Norwegian Research Council, the EU and others.

⁸³ This is a cross-sectional study of Norwegian men and women from 18 to 75 years of age, based on structured phone interviews conducted in the spring of 2013. Altogether, 2,435 women and 2,092 men participated.

⁸⁴ Rape of a person in a helpless state is not included in this figure. Questions asked were: has somebody ever forced you to have intercourse vaginal/oral/anal through the use of force and/or threats. The numbers on rape therefore only measures the prevalence if forcible rape. Thoresen and Hjemdal: Vold og voldtekt i Norge, NKVTS, 2014, <https://bit.ly/2DN6tJR>

⁸⁵ Thoresen and Hjemdal: Vold og voldtekt i Norge, NKVTS, 2014, p. 21.

⁸⁶ Istanbul Convention Article 11, <https://bit.ly/2n47c0y>; CEDAW General recommendation No. 35, <https://bit.ly/2H1BhZn>

⁸⁷ Thoresen and Hjemdal: Vold og voldtekt i Norge, NKVTS, 2014, p. 24.

⁸⁸ Interview with Dixi Resource Centre for Victims of Rape by National Broadcasting Company NRK, www.nrk.no/norge/ingen-kontroll-pa-antall-voldtekter-i-norge-1.12063399

⁸⁹ All statistics in this chapter are drawn from Statistics Norway, the national statistical institute of Norway, www.ssb.no/en

⁹⁰ Statistics Norway, www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/lovbrudda/aar

As Table 1 shows, the number of rape cases reported to the police has increased by 62% in the last 10 years. This is generally considered to be the result of an increased reporting rate rather than an increased incidence rate, although there is no research to confirm this. On the other hand, the number of reported acts of aggravated and attempted rape have not shown the same steady increase but have rather seen significant fluctuation.

2.3.4 INVESTIGATIONS

TABLE 2: NUMBER OF RAPE REPORTS (PENAL CODE SECTION 291) INVESTIGATED BY THE POLICE 2008-2017⁹¹

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|-------------|------|------|------|------|------|------|------|------|-------|-------|
| Rape | 724 | 811 | 806 | 822 | 903 | 883 | 935 | 908 | 1,028 | 1,146 |

The number of rape cases investigated by the police is considerably lower than the number of rape cases reported to the police. According to senior public prosecutor Katharina Rise from the Office of the Director of Public Prosecution, the facts of a reported crime will decide how the case is registered by the police. The crime will be given a code in accordance with the penal provision that has been breached.⁹² This classification can change if the investigation reveals that another penal provision with either a higher or a lower maximum sentence is more appropriately applied.⁹³ In addition, the police can close a case if there are no reasonable grounds to investigate whether a crime has been committed.⁹⁴

2.3.5 CASE CLOSURES AND PROSECUTION

Rape is subject to public prosecution in Norway. This means that when a rape is reported, the police are obliged to investigate and then hand the case over to the public prosecutor. The public prosecutor must be convinced that the accused is guilty, and that guilt can be proven beyond reasonable doubt in a court of law before deciding on indictments and prosecution. If they judge this not to be the case, the case is closed.⁹⁵

Between 75% and 80% of rape cases investigated by the police between 2008 and 2017 were closed by the public prosecutor and never reached the courts.

TABLE 3: NUMBER OF INVESTIGATED RAPE CASES (PENAL CODE SECTION 291) CLOSED BY THE PUBLIC PROSECUTOR 2008-2017⁹⁶

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|--|------|------|------|------|------|------|------|------|------|------|
| Total unsolved | 571 | 624 | 626 | 629 | 718 | 680 | 742 | 727 | 792 | 913 |
| Prosecution dropped, insufficient information about the offender | 106 | 102 | 105 | 128 | 156 | 115 | 101 | 91 | 80 | 73 |
| Prosecution dropped, lack of evidence | 462 | 517 | 512 | 495 | 554 | 563 | 635 | 632 | 701 | 832 |
| Prosecution dropped, insufficient investigation capacity | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Other unsolved | 3 | 5 | 9 | 6 | 8 | 2 | 5 | 4 | 11 | 8 |

⁹¹ Statistics Norway, www.ssb.no/en/statbank/table/09405/

⁹² Prosecution Instruction section 7-1 ref section 2-1. Available at: <https://lovdata.no/dokument/SF/forskrift/1985-06-28-1679>

⁹³ Interview with Public Prosecutor Katharina Rise, 23 October 2018.

⁹⁴ Director of Public Prosecutions Rundskriv 3/2018, Chapter 4.1.3, <https://bit.ly/2Tnq4ck>

⁹⁵ Director of Public Prosecutions Rundskriv 3/2018, Chapter 4.3.2, <https://bit.ly/2Tnq4ck>

⁹⁶ Statistics Norway, www.ssb.no/en/statbank/table/09405/

According to Oslo District Police Prosecutor Tina Helleland, the decision to close the case is appealed in a number of cases. An appeal will normally be reviewed by the Offices of the Regional Public Prosecutor. In most cases the decision to close the case is maintained.⁹⁷

TABLE 4: NUMBER OF REPORTED RAPE CASES (PENAL CODE SECTION 291) INVESTIGATED AND COMMITTED FOR TRIAL 2008-2017⁹⁸

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|-------------|------|------|------|------|------|------|------|------|------|------|
| Rape | 116 | 150 | 148 | 167 | 147 | 157 | 161 | 154 | 195 | 170 |

CONVICTIONS

In 2016, 1,504 rape cases were reported to the police. The reported rape cases involved 1,406 victims, including 72 men and 1,334 women. That same year, 1,028 rape cases were investigated by the police. While 195 rape cases were committed for trial, 78 persons were convicted of rape. All of them were men. Most perpetrators (70) received an unconditional prison sentence.

TABLE 5: RAPE CRIMES (PENAL CODE SECTION 291): NUMBER OF REPORTS, VICTIMS, INVESTIGATIONS, PROSECUTIONS AND CONVICTIONS

| Year | Rape reported ⁹⁹ | Number of victims ¹⁰⁰ | Rape investigated ¹⁰¹ | Rape cases prosecuted ¹⁰² | Sanctions for rape ¹⁰³ | Persons convicted of rape ¹⁰⁴ |
|-------------|-----------------------------|----------------------------------|----------------------------------|--------------------------------------|-----------------------------------|--|
| 2016 | 1,504 | 1,406 | 1,028 | 195 | 79 | 78 |
| 2015 | 1,233 | 1,155 | 908 | 154 | 80 | 80 |
| 2014 | 1,088 | 1,032 | 935 | 161 | 84 | 84 |

It is not possible to determine from the official crime statistics how many rape survivors see their cases tried in court, or how many of the reported rape cases end in a conviction. The statistics on criminal sanctions can include persons who may have been convicted of several rapes, and persons who may have been convicted of rape of the same person. In addition, rape may be reported one year, while the investigation and/or the decision to prosecute and/or the court decision are taken the year after or several years later. Amnesty International considers this to be a shortcoming of the present data collection system.

2.4 BARRIERS TO JUSTICE: THE LAW



CARINA

In June 2016, Carina returned home after a party together with her friend and one of her friend's acquaintances. At her house, the acquaintance was offered the guestrooms for the night, while Carina and her friend went to sleep in her bedroom. Carina told Amnesty International:

"I fell asleep but woke up because someone was having sex with me. It felt almost like a dream, as it happened while I was half asleep. I thought it was my friend, but when I turned to the right I saw my friend standing next to the bed. Then I realized I was not having sex with him, but with someone else. I pushed away the man who was having sex with me, my friend's acquaintance, and jumped out of the bed."

⁹⁷ Interview with Oslo District Police Prosecutor Tina Helleland, 23 October 2018.

⁹⁸ Statistics Norway, www.ssb.no/en/statbank/table/09405/

⁹⁹ Statistics Norway, www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/lovbrudda/aar

¹⁰⁰ Statistics Norway, <https://www.ssb.no/statbank/table/08638/tableViewLayout1/>

¹⁰¹ Statistics Norway, www.ssb.no/en/statbank/table/09405/

¹⁰² Statistics Norway, www.ssb.no/en/statbank/table/09405/

¹⁰³ Statistics Norway, www.ssb.no/en/statbank/table/10651/

¹⁰⁴ Statistics Norway, www.ssb.no/statbank/table/10633/

Carina decided not to report the rape to the police. But in November 2016, the police contacted Carina. Her friend was under investigation in another criminal case and the police had seized his mobile phone as part of that investigation. On his mobile phone, the police discovered pictures and film of a man having sex with a sleeping person. The police identified this person as Carina.

The public prosecutor decided in March 2017 to press rape charges against the acquaintance under Penal Code article 291 (b), sexual activity with a person who is unconscious or for other reasons incapable of resisting the act. Photos, film, and extensive electronic communications were central evidence in the case. No charges were pressed against Carina's friend for being an accomplice to the crime. Instead, he was called as a witness in the case.

In October 2017, the district court convicted the acquaintance and sentenced him to four years imprisonment. He lodged an appeal. In August 2018 the appeal court jury confirmed the conviction for rape, but the judges set the verdict aside, as they did not consider the evidence to be sufficient for a conviction.¹⁰⁵

In January 2019, the acquaintance was acquitted in the final appeal case in Borgarting Court of Appeal. The Court did not consider that there was sufficient evidence to prove beyond reasonable doubt that Carina had been asleep when the intercourse started. The Court did not doubt that Carina had no desire to have sex with the defendant, but the lack of voluntary consent is in itself not sufficient to secure a rape conviction in Norwegian law.¹⁰⁶

2.4.1 DEFINITION OF RAPE

The Istanbul Convention, to which Norway is a state party, states that the legal definition of rape must be based on lack of consent, rather than on the use of force or threats by the perpetrator or the victim's resistance. Despite this, the current definition of rape in Norwegian law is not centred on lack of consent, but rather criminalizes certain acts where the circumstances or characteristics of those involved result in an imbalance of power which makes consent impossible. Section 291 of the Norwegian Penal Code defines the crime of rape:¹⁰⁷

“A penalty of imprisonment for a term not exceeding 10 years shall be applied to any person who
a) obtains sexual activity through violence or threatening conduct,
b) engages in sexual activity with a person who is unconscious or for other reasons incapable of resisting the act, or
c) through violence or threatening conduct makes a person engage in sexual activity with another person, or perform acts corresponding to sexual activity on himself/herself.”¹⁰⁸

The law focuses on the use of violence, threatening behaviour, or the victim's helpless state, rather than on whether the right to sexual autonomy and physical integrity is safeguarded, and whether the parties engage in sexual activities based on mutual consent and voluntary participation assessed in the context of the surrounding circumstances.

This obliges the court to focus on the qualifying circumstances set by the law, rather than to assess the person's free will and whether a perpetrator could or should have been aware of the lack of victim's voluntary participation. As a result, the law limits rape survivors' access to justice and reparation.

¹⁰⁵ Judges had the right to set aside the verdict of the lay jurors under the previous jury system where lay jurors alone decided the question of guilt without any transparency around the reasoning behind their decision.

¹⁰⁶ Carina's story is based on Amnesty International's interview with Carina on 19 November 2018, observation of the hearing in Borgarting Court of Appeal in Drammen on 17 and 18 January 2019, and the final verdict from the Court of Appeal. The decision of the Court of Appeal LB-2017-168865 is available at <https://bit.ly/2Wl4HRv>.

¹⁰⁷ In the unofficial English translation of the Norwegian Penal Code, Article 291 is titled “Sexual Assault”. The title of Article 291 in the Penal Code in Norwegian is *voldtekt*, which usually is translated rape. Therefore, the term rape will be used in this chapter. The unofficial English translation of the Norwegian Penal Code is available at <https://bit.ly/2S5aS3K>.

¹⁰⁸ The rape provision is gender neutral.

2.4.2 THE PRINCIPLE OF PROPORTIONALITY

In the preparatory works to the Penal Code, which in Norway are considered important for statutory interpretation of the law by the prosecuting authorities and the courts, four basic concepts are set out to differentiate between various sexual offences of different seriousness and attracting different penalties: intercourse, sexual activity comparable to intercourse (hereafter sexual activity), sexual acts and sexual behaviour.¹⁰⁹ Intercourse and sexual activity are the most serious violations of sexual autonomy included in the crime of rape.¹¹⁰

According to the current Penal Code, the maximum sentence for rape is 10 years' imprisonment.¹¹¹ Aggravated rape carries a maximum sentence of 21 years.¹¹² The minimum penalty for rape involving intercourse was raised from one to two years imprisonment in 2000, and to three years imprisonment in 2005.¹¹³ In 2009, the government raised the standard penalty for rape by intercourse to a minimum of four years' imprisonment.¹¹⁴ This has since been confirmed by several decisions in the Supreme Court.¹¹⁵ Non-consensual sexual acts and non-consensual behaviour carry penalties of a fine or up to a year's imprisonment.¹¹⁶

In some cases, sexual activity without consent which at present falls outside the legal definition of rape is investigated and prosecuted as the lesser offence of a sexual act without consent.¹¹⁷ For example, in a recent court case a man was convicted of a sexual act with a woman without her consent. The court was clear that non-consensual vaginal penetration with a bodily part had to be defined as a sexual activity. However, the defendant was convicted of committing a sexual act without consent, rather than rape, as he did not use violence or threats. The defendant was sentenced to serve a six-month prison sentence.¹¹⁸

The principle of proportionality requires that crimes are codified and prosecuted in a way that is commensurate with the gravity of the offence.¹¹⁹ As long as the definition of rape in Norwegian law is not based on lack of consent, offences like this can only be prosecuted as the lesser crime of non-consensual sexual activity. The Committee against Torture criticized this practice in its concluding observations on Norway's eighth periodic report in 2018.¹²⁰

2.4.3 AGAINST HER WILL

The chapter on sexual offences in the Penal Code has undergone several major revisions. In the preparatory works to legislative changes in 2000, a consent-based rape provision was discussed but rejected by the Ministry of Justice and Police:

“Obtaining sexual activity with a person against his or her will is clearly reprehensible. But it is not necessarily appropriate to criminalize this kind of conduct. There are other ways apart from criminal law to label an action unwanted in society. These spheres of life are hard to regulate by criminal law.”¹²¹

¹⁰⁹ The preparatory works include white papers and expert reports commissioned by the government, as well as communications from the ministry, the government and parliament, including deliberations in parliament prior to the adoption of a law. The preparatory works clarify the intentions of the legislature and elaborate on the interpretation of compressed law provisions.

¹¹⁰ Ot.prp.nr.22 (2008–2009) Chapter 7.4.1, <https://bit.ly/2WxRQkQ>

¹¹¹ Penal Code, Section 291.

¹¹² Penal Code, Section 293.

¹¹³ Ot. prp. nr. 22 (2008–2009) Chapter 7.5.3.. Available at: <https://bit.ly/2WxRQkQ>

¹¹⁴ Prop. 97 L (2009–2010). Endringer i straffeloven 1902 mv, <https://bit.ly/2TpnEXg>

¹¹⁵ See Supreme Court decisions HR-2011-1015-A – Rt-2011-734 and HR-2013-300-A – Rt-2013-193

¹¹⁶ Penal Code, Sections 297 and 298, <https://bit.ly/2X7X879>

¹¹⁷ Sexual activity is defined as intercourse or activities comparable to intercourse, while sexual acts are defined as less intrusive acts, including touching breasts and genitals.

¹¹⁸ Frostating lagmannsrett - Dom - LF-2018-76465, <https://bit.ly/2FZAE2M>

¹¹⁹ This principle is clearly expressed in the Convention against Torture, Article 4 (2).

¹²⁰ Concluding observations on the eighth periodic report of Norway in 2018 Art. 24 (a): Amend section 291 of the Penal Code in order to ensure that the lack of free consent is at the center of the definition of rape, in compliance with international standards and its obligations under the Istanbul Convention, so that rape cases falling outside of the current narrow definition are not treated as a minor sexual offence and closed as “no criminal act proven”.

¹²¹ Ot.prp.nr.28 (1999–2000) Chapter 5.4: «Å skaffe seg seksuell omgang med noen mot vedkommendes vilje, er klart klanderverdig. Men det er ikke dermed sagt at det er riktig og hensiktsmessig å belegge slik atferd med straff. Det finnes andre måter enn straffelovgivningen til å markere at en handling er samfunnsmessig uønsket. Vi befinner oss her på et livsområde som er vanskelig tilgjengelig for strafferettslig regulering», <https://bit.ly/2SWO9Hm>

This statement seems to justify excluding certain forms of sexual violence from regulation by criminal law. Amnesty International believes this is inconsistent with Norway's human rights obligation to strengthen protection against rape and sexual violence through effective legislative and judicial action¹²² and its obligations under Article 36 of the Istanbul Convention which requires criminalization of all non-consensual sexual acts.¹²³

2.4.4 CRIMINALISATION OF NON-CONSENSUAL ACTIVITY

In 2005, the Norwegian Parliament enacted a new Penal Code to streamline and modernize the 1902 Penal Code. In the preparatory works to the 2005 Penal Code, the Ministry of Justice concludes that not all cases of sexual activity without genuine consent must be defined as rape, as there are other provisions in the Penal Code that deal with cases where sexual activity occurs under circumstances that exclude consent.¹²⁴ The preparatory works do not deliberate why certain circumstances excluding consent are exempted from the rape provision.

At present, several non-consensual sexual activities are criminalized but not defined as rape in the Penal Code and attract lower sentences. These include sexual activity by abuse of authority, dependency or trust, which carries a maximum sentence of six years (Section 295 of the Penal Code), and sexual activity with a person subject to one's authority or supervision in an institution under the control of the correctional services, the police or the child welfare services, which also carries a maximum sentence of six years' imprisonment (Section 296 of the Penal Code).

In a recent case in the Court of Appeal of Hålogaland, an officer was convicted of breaching Section 295 of the Penal Code and sentenced to eight months in prison after he walked naked into a soldier's bedroom after she had gone to sleep, lay down in her bed with her and initiated sex. When the soldier said she didn't want to have sex, the officer told her she had to. The officer was twice her age.¹²⁵

The Istanbul Convention states that all non-consensual sexual activity should be criminalized as rape (Article 36 (1)), and that state parties must ensure that abuse of authority and the exploitation of vulnerability are considered aggravating circumstances in determining sentences (Article 46). The principle of proportionality is breached when the rape provision in the Penal Code does not cover circumstances excluding consent and aggravating circumstances are not taken into consideration.

2.4.5 CRIMINALISATION OF RAPE BY GROSS NEGLIGENCE

A basic condition for Norwegian law stipulates that criminal liability only applies to intentional offences, unless otherwise stated.¹²⁶ However, certain crimes have an additional provision which makes it possible to convict despite a lack of criminal intent when the person is negligent and acts in contravention of the requirement of due care. Highly reproachable acts where there are grounds for significant blame constitute gross negligence.¹²⁷

An amendment to the chapter on sexual offences in the Penal Code in 2000 took the form of a criminalization of rape by gross negligence. A person who due to gross negligence fails to understand that the other person's involvement in a sexual act is of a forced or coercive nature, can be convicted of rape by gross negligence.¹²⁸

The present Section 294 in the current Penal Code states:

“Grossly negligent sexual assault is punishable by imprisonment for a term not exceeding six years. If circumstances as specified in section 293 [aggravated rape] exist, the penalty shall be imprisonment for a term not exceeding 10 years.”¹²⁹

Public prosecutor Hulda Karlsdottir told Amnesty International: “We always indict for intentional rape. So, if a person is convicted for rape by gross negligence, it is because a subsidiary question is asked in court. I do think we should ask the subsidiary question of rape by gross negligence in cases where the court answers no

¹²² This obligation is elaborated in General Comment 2 of the Committee against Torture, <https://bit.ly/2DMGrGy>

¹²³ Istanbul Convention, Article 36.

¹²⁴ Ot.prp.nr.22 (2008–2009) Chapter 7.5.1.5., <https://bit.ly/2WxRQkQ>

¹²⁵ Hålogaland Lagmannsrett LH-2017-46977, <https://bit.ly/2ErLFb1>

¹²⁶ Penal Code, Section 21, <https://bit.ly/2TS1e19>

¹²⁷ Penal Code, Section 23, <https://bit.ly/2TS1e19>

¹²⁸ Rape by gross negligence is criminalized in Section 294 of the Penal Code and carries a maximum sentence of six years. Aggravated sexual assault by gross negligence carries a maximum sentence of 10 years.

¹²⁹ Penal Code, Section 294, <https://bit.ly/2X7X879>

to the primary question of intentional rape, but where there is a possibility that this is because the court has not found criminal intent proven beyond reasonable doubt.”¹³⁰ In 2017, 18 cases of rape by gross negligence were reported to the police.¹³¹

2.5 BARRIERS TO JUSTICE: REPORTING

2.5.1 MYTHS ABOUT RAPE AND GENDER STEREOTYPES

A survey commissioned by Amnesty International in 2013 confirmed the prevalence of rape myths in Norwegian society. It revealed that almost one in four people in Norway consider a woman to be partially responsible for being raped if she agreed to join a man at an after-party. In addition, 28% of male respondents believed a woman who is raped is partly responsible if she had openly flirted with the man. One in 10 men consider a woman to be partly responsible if she was known to have had a number of partners.¹³²

A common rape myth is that rape is a single violent incident committed by a stranger in a dark alley.¹³³ This rape myth is often internalized, making it difficult for women to conceptualize what they experience as rape. These deeply entrenched views affect whether, when and how rape is reported to the police as well as the responses of those dealing with allegations of rape.

“Astrid” was sixteen when she was raped in 2006 by one of her mother’s students. She first reported the rape to the police ten years later, in 2016. “Astrid” tells Amnesty International¹³⁴:

“I didn’t think at first that this could be a rape. It was someone I knew, not a stranger who jumped out from behind a bush. When I finally decided to report, I was in doubt for a long time, since I had heard that women who report rape could be charged for giving a false statement.”¹³⁵

“Azmina” moved to Norway when she was sixteen. She never received any sexuality education, neither in her home country, nor in Norway. “Azmina” was raped by her boyfriend in 2010, when she was 18. She told Amnesty International that she had difficulty recognizing what happened to her as rape:

“I didn’t realize that it was a rape since he was my boyfriend. It actually took several months before I realized that I had been the victim of a rape.”¹³⁶

Susanne was raped by a woman, so her experience also challenges existing gender stereotypes. She told Amnesty International:

“I met a doctor who first took it very seriously, but when he realized the perpetrator was a woman, he began to trivialize it. It made me very unsure if it had happened. I started to wonder if this was something that I should just accept.”¹³⁷

CONSIDERATION BEFORE REPORTING RAPE

Nine out of the fourteen women interviewed by Amnesty International reported the rape to the police. In one case, the police decided to investigate and prosecute the case at their own initiative. Four of the women decided not to report the rape to the police. All took several issues into consideration before taking a decision, including the probability of getting a conviction.

“Azmina” never considered reporting:

“When I realized it was a rape many months had passed, and there was no evidence. I didn’t want to see the person again. I read the statistics and knew there was little chance to get him punished.”¹³⁸

¹³⁰ Interview with Public Prosecutor Hulda Karlsdóttir at the Oslo Regional Public Prosecution Offices, 15 October 2018.

¹³¹ Kripos. Voldtektssituasjonen i Norge 2017, p. 10, <https://bit.ly/2Xnh0TB>

¹³² Ipsos MMI conducted a survey of attitudes to rape in the population, as well as other matters related to the issue, on behalf of Amnesty International in Norway in the period 31 January and 12 February 2013. The survey was carried out in a national representative sample of the population aged 18 and over. In total 1,565 interviews were conducted. IPSOS MMI: En undersøkelse om voldtekt, <https://bit.ly/2GdvcZf>

¹³³ Jennifer Temkin and Barbara Krahé, *Sexual Assault and the Justice Gap: A Question of Attitude*, Oxford, Hart Publishing, 2008.

¹³⁴ Skype interview with “Astrid” 14th November 2018. (Name has been changed to respect the interviewee’s privacy).

¹³⁵ According to Section 320 (a) in the Penal Code, one cannot be held legally liable for reporting a crime of rape to the police.

¹³⁶ Interview with “Azmina” in Oslo, 21 November 2018. (Name has been changed to respect the interviewee’s privacy.)

¹³⁷ Interview Susanne in Oslo, 27 November 2018.

¹³⁸ Interview “Azmina” in Oslo, 21 November 2018.

Some of the women had specific reflections around cultural context and the possible ramifications of reporting a rape to their wider community. “Sofe” carefully considered if her reporting the rape would impact the Sámi community¹³⁹ she and the perpetrator belong to: **“At first I didn't want to report, since he has done a lot of important things for Sámi culture which I care about, and which I think is important. I don't want that anything he has done will colour the Sámi culture. This is very important for my part.”**¹⁴⁰

Many survivors blame themselves. This also contributes to a reluctance to report. “Eline” was 17 when she was raped by her boyfriend who came to visit her while her parents were out of town for the weekend. She told Amnesty International: **“It never occurred to me to report, because in my eyes, it was my mistake. He had not pressed the glass against my lips. I felt I should have argued more. Even though I had clearly stated I didn't want to have sex, I thought it was not sufficient.”**¹⁴¹

2.5.2. WAITING TO REPORT

According to a police prosecutor in Oslo Police District, if a rape is reported within 72 hours, the general rule is to immediately interview the rape survivor to secure the necessary evidence. When the rape has happened more than 72 hours earlier, a police investigator from the sexual assault unit will arrange an initial interview to ensure it is conducted by a police officer with the necessary skills and training.¹⁴² According to media reports confirmed by police and prosecuting authorities, in the autumn of 2018 rape survivors in Oslo who wanted to report a rape that happened more than 72 hours earlier had to wait three months before the initial interview was conducted.¹⁴³

The waiting period puts additional stress on rape survivors. “Norunn”, a student in her early twenties, was raped on two separate occasions. When she was 16 she was forcibly raped by her boyfriend. It took her two years to acknowledge what happened to her was rape. The second time she was raped was in 2016 when she was at a party with friends. She became drunk and was put to bed, and a man took advantage of her inability to resist and raped her. She reported both rapes to the police in 2017. She told Amnesty International:

“I was on the waiting line for two months. It was very painful. Everything was put on hold. I had a job that summer, but I didn't dare to take any shifts, since I had this upcoming interview, and I didn't know when it would take place. Time stopped. I felt deeply distressed.”¹⁴⁴

According to Ann Kristin Grosberghaugen, Head of Section for the Investigation of Serious Sexual Offences in Oslo Police District, the police district received additional resources in December 2018, and as of March 2019 the waiting period to report rape has been alleviated.¹⁴⁵ The information has been confirmed by police prosecutors and others. This positive development shows how deficits in the investigation of rape can be countered through the allocation of necessary resources and focused priorities within the police. Amnesty International remains concerned that the waiting line to report rape has affected the investigation in a number of cases and caused additional harm to survivors of rape. It also remains unclear if the continued increase in the number of reported rape cases is met with a similar increase in allocated resources to the investigation of serious sexual offences in the police districts of Norway.

Article 49 of the Istanbul Convention requires state to ensure that investigations into violence against women, including rape and other sexual violence, is carried out without undue delay. Prolonged waiting time to report rape is contrary to Norway's human right obligations.

¹³⁹ The Sámi people are Indigenous people living in large parts of Norway and Sweden, northern parts of Finland and the Murmansk Oblast of Russia. Under international law, they are entitled to special protection and rights. The Norwegian authorities have been criticized for its policy of “Norwegianization” and discrimination against the country's Sámi population. In 2018, UN Committee on the Elimination of Racial Discrimination (CERD) criticized the Norwegian authorities over reports that 49% of Sámi women have been subjected to physical, mental or sexual violence. See CERD concluding observations on the combined twenty-third and twenty-fourth periodic reports of Norway, Art. 21 (a) <https://bit.ly/2CewDnZ>

¹⁴⁰ Interview with “Sofe” in Oslo, 29 November 2018.

¹⁴¹ Skype interview with “Eline”, 28 November 2018. (Name has been changed to respect the interviewee's privacy.)

¹⁴² Interview with a police attorney from Oslo Police District, 22 October 2018.

¹⁴³ Article from the National Broadcasting Company NRK, <https://bit.ly/2RqzqvQ>

¹⁴⁴ Skype interview with “Norunn”, 29 November 2018. (Name has been changed to respect the interviewee's privacy.)

¹⁴⁵ Mail Correspondence with Anne Kristin Grosberghaugen 18th March 2019

2.5.3 SURVIVORS EXPERIENCE OF REPORTING

In public communications, the police encourage victims of rape to report to the police and view increases in reported rape cases as a desirable development.¹⁴⁶ On the other hand, some of the police officers Amnesty International interviewed expressed concern that the police use too many resources investigating cases where the circumstances or the evidence would make a successful prosecution difficult. One suggested:

“Maybe the legal counsel should have more than the stipulated 3 hours with the victim before reporting, and have time to consider whether the incident is a crime and to explain the chances to get the case through the system, and what she will be going through, instead of going straight to the police and use a lot of resources on this kind of cases.”¹⁴⁷

This dilemma is keenly felt by rape survivors and causes considerable confusion and distress. “Liv” told Amnesty International: **“Already during the first interview I was told that my case most likely would be closed. I had the impression the police meant it was positive I reported, but it's weird at the same time to be told that the case will be closed.”**¹⁴⁸

According to both the public prosecutors and the lawyers who spoke to Amnesty International, the interviews conducted by the police are generally of a high standard. As a rule, the officers who carry out interviews in cases of sexual assault including rape are trained specialists. In most cases, the victim’s legal counsel is present during the interview.

“Sofe” described her experience of reporting rape in 2017 in positive terms: **“The police officers were very nice. The one conducted the interview, while another sat in a different room and wrote notes. After the interview they drove me to the hospital. One of them told me my story made sense to him. It was very good for me to get their support.”**¹⁴⁹

Nevertheless, despite what seems a positive trend, not all rape survivors described the experience of reporting rape positively. In 2017, “Norunn” reported two different cases of rape. She told Amnesty International:

“The interview was difficult. It was a small white room with a window and two chairs, cold and impersonal, with a camera right on. I got to talk freely at first. Weird things happened, because I had not done this before, so I said things that I had repressed and didn't even notice what I said. I was not thinking while I was talking. I just went into the experience. It was very painful. I was asked what the rapists had had in mind, so I had to put myself in their heads, and answer whether they knew they raped me ... I was bewildered, and thought, ‘Should they not interrogate them, and ask them these questions?’”¹⁵⁰

2.6 BARRIERS TO JUSTICE: THE LEGAL PROCESS

2.6.1 DECISIONS TO CLOSE INVESTIGATIONS

According to the Criminal Procedure Act, a criminal investigation shall be carried out when a report or other circumstances give reasonable grounds to inquire whether a criminal act requiring public prosecution has taken place.¹⁵¹ The Director of Public Prosecutions has consistently made clear that serious sexual offences should be given particular priority with respect to initiating and enforcing criminal investigations.¹⁵²

Nevertheless, in the police district of Oslo, 26% of all rape cases with an identified perpetrator reported in 2011 were closed and classified as “no criminal offence proven», “no reasonable ground to investigate” or “reported condition is clearly baseless”.¹⁵³ In these cases, investigations are closed at an early stage.¹⁵⁴

¹⁴⁶ See statement of Harald Bøhler, Head of Department of Criminal Investigations, National Police Directorate, available at <https://bit.ly/2MlIr5z>

¹⁴⁷ Interview with police attorney from Oslo Police District, 22 October 2018.

¹⁴⁸ Skype interview with “Liv” 19 November 2018. (Name has been changed to respect the interviewee’s privacy.)

¹⁴⁹ Interview with “Sofe” in Oslo 29 November 2018.

¹⁵⁰ Skype interview with “Norunn” 29 November 2018.

¹⁵¹ Email from Ann Kristin Grosberghaugen, Head of Section for the Investigation of Serious Sexual Offences in Oslo Police District to Amnesty International 17 March 2019

¹⁵² See statement of Harald Bøhler, Head of Department of Criminal Investigations, National Police Directorate, available at <https://bit.ly/2MlIr5z>

¹⁵³ Interview with police attorney from Oslo Police District, 22 October 20

¹⁵⁴ Criminal Procedure Act 224A. Available at: <https://bit.ly/2BV6Y39>

According to Amnesty International's research, some of these cases are closed because of the way the crime of rape is defined in the law, focusing on qualifying circumstances including violence, threats or helpless state rather than on whether the sexual activity was based on mutual consent and voluntary participation. In an interview with Amnesty International, Oslo District Police Prosecutor Tina Helleland explained that reported rape cases where neither violence, threats nor inability to resist the sexual activity are documented do not meet the conditions set out in the law to be defined rape.

Helleland clarifies:

“These are the cases where the conditions for rape are not met. These are cases without violence or threatening behaviour ... The case can be covered by another provisions in law, but it is not a rape according to the law ... This clearly affects the cases where the issue is consent, but where there is no violence, threats or unconsciousness involved.”¹⁵⁵

Several survivors of rape told Amnesty International that their cases were closed without further investigation after initial reporting and interview. “Norunn” said: **“Two weeks after I reported the rape [in 2017] and was interviewed, I got a letter from the police prosecutor with the message that the first case had been closed since no criminal offence had been proven ... I was shocked.”¹⁵⁶**

According to Legal Advice for Women, rape by an intimate partner taking place under coercive circumstances without the use of violence or threats of violence will fall outside the present legal definition of rape.¹⁵⁷ This was the experience of “Erika”, who was in an abusive relationship for three years where she was regularly raped. She finally reported her boyfriend to the police. She had extensive evidence, including audiotaped confessions from her boyfriend. Her case was closed by the police after two months. She appealed the decision to the Regional Public Prosecutor's Office, but her appeal was turned down and her case was closed as “no criminal offence proven”. “Erika” told Amnesty International: **“The letter I received from the Prosecutor's Office stated that there was no doubt I had been exposed to an immoral act, but not to any criminal act. If we'd had a consent-based rape provision my case would have gone to court. But since the law does not explicitly include rape-induced paralysis¹⁵⁸, my case was closed.”¹⁵⁹**

2.6.2 QUALITY OF POLICE INVESTIGATIONS

Research commissioned by the Norwegian police and prosecuting authorities shows that weaknesses in police investigations contribute to the low level of prosecutions in rape cases. An evaluation by the National Criminal Investigation Service (KRIPOS)¹⁶⁰ published in 2015 showed that four out of 10 investigations of reported sexual offences were of low or very low quality and effectiveness.¹⁶¹ The most common flaws in investigations included crime scene investigations not carried out in 43% of cases where this was relevant; DNA from the alleged perpetrator not collected in 42% of cases where it was relevant; and electronic evidence not or not fully secured in 52% of cases where this was deemed necessary. In addition, cases with a low or very low-quality investigation were characterized by inefficient case processing, and disorganized written materials. Over 70% of solved cases were found to have had investigations of very high or high quality and efficiency, compared to 49% of unsolved cases.¹⁶²

¹⁵⁵ Interview with Oslo District Police Prosecutor Tina Helleland, 23 October 2018.

¹⁵⁶ Skype with “Norunn” 29 November 2018.

¹⁵⁷ Juridisk rådgivning for kvinner. Høring om endring av straffeloven 1902 og Straffeloven 2005, <https://bit.ly/2WYQnux>

¹⁵⁸ Recent research from the Department of Clinical Science and Education at the Karolinska Institute in Sweden has documented that tonic immobility is a common reaction during rape. See Møller, Sødgaard and Helstrøm. Department of Clinical Science and Education, Karolinska Institute, Stockholm, Sweden 2017, <https://bit.ly/2BdqWWB>

¹⁵⁹ Skype interview with “Erika” 19 December 2018. (Name has been changed to respect the interviewee's privacy.)

¹⁶⁰ KRIPOS received prosecution powers in 2005 and reports to the National Police Directorate. Its key functions are criminal investigation, forensic science services and criminal intelligence.

¹⁶¹ In 2013, the National Police Directorate commissioned Kripas to evaluate the quality of police investigations of sexual offences. Kripas' evaluation is based on an analysis of the quality of the investigations in 237 cases of sexual violence from ten out of 27 police districts. The 10 selected police district provide a cross section of police districts in Norway. The cases included were closed or settled in court between 01.01.13 and 01.06.14. In addition, the evaluation build on a survey distributed to all employees working with sexual offences in the ten featured police districts, and interviews with key individuals working on sexual offense in six of the ten featured police districts. Kripas Voldtektssituasjonen i Norge 2017. <https://bit.ly/2XnhOTB>

¹⁶² Evaluering av politiets arbeid med seksuelle overgrep, p. 7, Kripas 2015, <https://bit.ly/2G48Bzc>

In 2017, Norway's Director of Public Prosecutions published a national review conducted by the Regional Public Prosecution Offices on the quality of the investigations in 275 rape cases reported around the country in 2016.¹⁶³ The review concluded that there is considerable room for improvement in the quality of police investigations and pointed especially to weaknesses in the initial phase where the necessary steps to secure evidence are not always taken. It found that in 21% of cases reviewed, relevant evidence from mobile phones was not secured. In 21% of the cases where this was relevant, photos from the crime scene were not taken. In one in three cases, no written mandates to experts were prepared for the forensic investigation, despite the obligation on prosecuting authorities to provide these.¹⁶⁴ In 29% of cases, investigations were characterized by inefficient case processing.

"Astrid" told Amnesty International:

"It took almost two years from the time I reported in the autumn of 2016, till the case was closed in the spring of 2018. It is a long time to wait. I also think there are several investigative steps the police could have taken, but that they did not take. I guess other cases had a higher priority."¹⁶⁵

The lack of a thorough and timely investigation can result in cases being closed and women who have experienced a serious human rights violation are being deprived of their right to justice and reparation. "Elisabeth" was a student in junior high college when she was drugged and raped at a New Year's Eve Party in 2012. The rape was reported to the police the next day. In an interview with Amnesty International, "Elisabeth" stated:

"My case was closed. It took half a year. (...) He said it was voluntary, and I remembered nothing, so the police explained I was not a witness. My friends who witnessed the rape had been drinking, and therefore the police said that they were not valid witnesses. (...) I have not much faith in the legal system. My case was pretty solid, but I realized after a while it was not easy to get justice, even if many had seen what had happened."¹⁶⁶

One rape myth often referred to by the police officers and public prosecutors interviewed by Amnesty International is that many rape cases are closed because crucial evidence, including biological evidence, is lost as victims of rape wait too long before reporting. This is not borne out by the facts. According to the national review of the investigations of 275 rape cases published by Director of Public Prosecutions in 2017, half of rape cases were reported within three days, while an additional 27% were reported between three and 90 days after the offence had taken place.¹⁶⁷

"Liv" told Amnesty International she immediately called the police after she'd been raped in the summer of 2016. She was examined at the sexual assault centre and interrogated by the police that same night. The police also conducted a crime scene investigation. Nevertheless, her case was closed nine months later. "Liv" recalled:

"I never heard anything from the police after the initial interview. They have, as far as I know, not questioned any other witnesses, apart from these two friends of the guy who raped me, and my girlfriend whom I had called after the assault... Unless we rape victims are beaten up, there is not enough evidence in the case, and it is word against word. I had bruises on my neck as he had taken a stranglehold on me and had difficulties swallowing many days afterwards. I also had an insane headache because he had dragged me by the hair, but there were no marks, so it was not proven. He had also hit me in the face. I don't get bruises easily. I wished he'd been rougher so that I would have had more tangible proof."¹⁶⁸

¹⁶³ Riksadvokaten 1/2017: Statsadvokatenes kvalitetsundersøkelse 2016 voldtekt og mishandling av nærstående, p. 27, <https://bit.ly/2tEclW7>

¹⁶⁴ Criminal Procedure Act No. 148, <https://bit.ly/2BV6Y39>

¹⁶⁵ Skype interview with "Astrid" 14 November 2018. (Name has been changed to respect the interviewee's privacy.)

¹⁶⁶ Interview with "Elisabeth" in Oslo 4th November 2018

¹⁶⁷ Riksadvokaten 1/2017: Statsadvokatenes kvalitetsundersøkelse 2016 voldtekt og mishandling av nærstående, <https://bit.ly/2tEclW7>

¹⁶⁸ Skype interview with "Liv" 19 November 2018. (Name has been changed to respect the interviewee's privacy.)

In response to the serious questions around the quality of criminal investigations in general, the National Police Directorate has initiated a large-scale training programme to increase the competence of police investigators and police prosecutors. In 2017, approximately 4,000 police officers participated in the programme.¹⁶⁹ In addition, the Director of Public Prosecutions has announced a new review of the quality of police investigations in rape cases in 2020 and requested all Regional Public Prosecution Offices to thoroughly evaluate the quality of police investigations and the prosecution of at least one rape case in 2019.¹⁷⁰

2.6.3 PROLONGED PROCESSES

Many of the rape survivors interviewed by Amnesty International explained that after the initial reporting and interview, the process seemed to come to a halt. “Liv” told Amnesty International: **“I felt that nothing happened after the initial interview. I did not get any information from the police along the way in the process about which investigation steps had been taken.”**¹⁷¹ Legal counsel Hege Salomon confirmed this experience: **“Several investigative steps are taken right away and then the investigation can be left for months. It generally takes too long before the alleged perpetrator and witnesses are interviewed. In all rape cases, the processing time is far too long.”**¹⁷²

To ensure an efficient and effective investigation and avoid loss of evidence, the Director of Public Prosecutions has set a maximum time limit in rape cases of 130 days from the time of reporting to the prosecutor’s decision.¹⁷³ However, few police districts in Norway achieve this target. The average processing time increased by 19 days between 2017 and 2018 and was at 207 days in October 2018. The National Police Directorate considers this increase in processing time to be caused by the rise of the number of reported rape cases and the decision to prioritize investigations into sexual violence against children, which has affected police capacity to investigate cases involving adult victims.¹⁷⁴

Both representatives from the police and prosecuting authorities interviewed by Amnesty International admit that the time between initial reporting and the decision to prosecute is too long and that the investigation in many cases is too slow. Harald Bøhler of the National Police Directorate told Amnesty International:

“We have had an increase in the number of reported rape cases which affects a relatively small segment in the Norwegian police. There is no doubt that this challenges the Norwegian police both in terms of capacity and competence. It’s not just that we have had too few people. Not all police districts have personnel with the appropriate expertise... Investigations take too long. You find few people in the police who do not believe that this is extremely unfortunate.”¹⁷⁵

The ongoing implementation of ambitious police reforms including a comprehensive reorganization is also said to have affected the investigatory capacity of the police.¹⁷⁶ According to trade union representatives of the police and police prosecutors, serious cases of sexual violence are not investigated, work pressure is rocketing and staff turnover is high.¹⁷⁷ However, it remains unclear to what extent the organizational reform has contributed to or merely revealed the existing lack of capacity to investigate and prosecute rape cases in accordance with Norway’s human rights obligations.

¹⁶⁹ Handlingsplan for løft av etterforskningsfelt. National Police Directorate, <https://bit.ly/2ShU5tk>

¹⁷⁰ Letter from Director of Public Prosecutions to Regional Public Prosecution Offices 2 January 2019, <https://bit.ly/2DMwg4W>

¹⁷¹ According to Regulation on Prosecution Instructions Art. 7(6), the police shall keep the plaintiff and their legal counsel informed about the development and progress of the investigation, <https://bit.ly/2ECCV1X>

¹⁷² Interview with legal counsel Hege Salomon in Oslo, October 2018.

¹⁷³ Riksadvokatens mål og prioriteringer for 2018, <https://bit.ly/2IE2uDI>

¹⁷⁴ Statement from the National Police Directorate. These numbers also include cases of statutory rape against minors under the age of 14, <https://bit.ly/2Mllr5z>

¹⁷⁵ Interview with Harald Bøhler, National Police Directorate in Oslo, 28 October 2018.

¹⁷⁶ One of the purposes of the reform (Nærpolitireformen) is to ensure a more efficient and uniform investigation of serious crimes. See www.politiet.no/en/om/narpolitireformen/om-narpolitireformen/

¹⁷⁷ Article Norwegian Broadcasting Company, <https://bit.ly/2tGCNbu>

2.7 BARRIERS TO JUSTICE: IN THE COURTS

2.7.1 RAPE MYTHS AND CREDIBILITY

In 2015, KRIPOS published an analysis of court decisions in 179 rape cases.¹⁷⁸ Almost a third of the cases resulted in acquittal. This is a significantly higher percentage compared to other criminal trials. According to the Director of Public Prosecutions, approximately 95% of all criminal court cases end in a conviction.¹⁷⁹

According to a 2007 study, rape myths and stereotypical notions about female and male sexuality among jurors can contribute to acquittals in rape cases.¹⁸⁰ Although lay juries are no longer used in Norwegian courts, these attitudes have not necessarily disappeared.¹⁸¹ In an interview with Amnesty International, one regional public prosecutor described his concerns about minimum sentences in rape cases: **“I have had a lot of student cases – decent young men who have done something stupid. Not easy to convict a student who has come to this city to get a good education and who behaves well in court. He was drunk and horny and has done something stupid. And you know that if you convict him, he gets a minimum of three years’ imprisonment. We struggle because the penalties are so high. Then it is easy to find the reasonable doubt.”**¹⁸²

A study by Anne Bitsch and Marit Klemetsen found that perpetrators’ ethnic background as well as social and geographical context influenced sentencing practice in Norwegian courts of Appeal.¹⁸³ In an interview with Amnesty International, Anne Bitsch stated: **“We researched which legal and extra-legal factors determined the length of the penalty that is measured out in rape cases and found a normative hierarchy. Sentences are reduced when the rape is committed in a private space, is party-related, and where the victim and the offender know each other, or the perpetrator has an ethnic majority background. Even when controlling for the specific application of the law, including mitigating and aggravating circumstances, these manifestations of gender and race discrimination remains statistically significant.”**¹⁸⁴

Judge Irene Sogn from the Borgarting Court of Appeal acknowledged that emotions play a part in the court proceedings: **“It seems obvious that there is a degree of identification and prejudice that comes into play in the relationship between the victim, the defendant and the judges. It is naive to assume the court is emotionless. It’s not.”**¹⁸⁵

A study published in 2014 exploring the acceptance of rape myths and sexism among 48 court judges and 243 lay judges in Norwegian courts found a lower level of acceptance of rape myths among male judges than in a comparable representative reference group of ordinary citizens. Nevertheless, one in 10 judges who responded to the survey agreed with statements such as: “Many women report falsely because they regret having had sex” (11.6%); “In most rape cases, it is not the man’s intention to rape, but he can’t control his sexual desires” (9.2%); and “In a rape case, it is important to consider the victim’s character and past” (11.1%). There were no significant differences between the court judges and lay judges when controlled for age.¹⁸⁶ Such attitudes may be a contributing factor in the high level of acquittals in rape cases. One of the measures suggested by the researchers to avoid rape myths from affecting the assessments of evidence in a rape case was the systematic training of judges.

¹⁷⁸ The analysis is limited to all cases with a legally enforceable decision as of 14 November 2014 out of the 2,154 categorized rape cases registered 2011-2013. The selection does not represent the totality of all court decisions in these cases, NCIS, Voldtektssituasjonen 2014, <https://bit.ly/2GMfZQh>

¹⁷⁹ Information from the Director of Public Prosecutions. Available at : <https://www.riksadvokaten.no/om-oss/>

¹⁸⁰ The study is part of a doctoral thesis, and referred to in report 1/2007 from the Director of Public Prosecutions, p. 60, <https://bit.ly/2GTYTjk>

Information about the thesis available in English at <https://bit.ly/2H4mKvQ>

¹⁸¹ Until January 2018, in all criminal cases in the court of appeal where the maximum sentence exceeded six years, the question of guilt was decided by a lay jury consisting of 10 members. The jury only answered yes or no on the question of guilt and did not give reason to its decisions. In May 2017, Parliament adopted amendments to the Code of Criminal Procedure and since January 2018 the jury has been replaced by a panel of lawyers (*meddomsrett*) consisting of two professional judges and five lay judges. The decisions from the panel of lawyers must be justified. See Endringer i straffeprosessloven mv. (oppheving av juryordningen) Lovvedtak 87 (2016-2017), <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak?p=68454>

¹⁸² Interview with a regional public prosecutor in Oslo on 12 October 2018

¹⁸³ Anne Bitsch and Marit Elisabeth Klemetsen, “The legal grading of sexual citizenship: sentencing practices in Norwegian rape cases”, *Gender, Place & Culture: A Journal of Feminist Geography*, 2017, 24 (2), pp. 174-188, www.duo.uio.no/handle/10852/60785

¹⁸⁴ Interview with researcher Anne Bitsch in Oslo on 8 October 2018.

¹⁸⁵ Interview with Irene Sogn, judge at the Borgarting Court of Appeal, in Oslo on 19th/19 October 2018.

¹⁸⁶ Mons Bendixen, Siri Helle, Tor Langbach, Kirsten Rasmussen: Voldtektsmyter og kjønnsjåvinisme blant norske lekdommere og fagdommere. Tidsskrift for Norsk Psykologforening, Vol 51, nummer 1 | 2014, www.psykologtidsskriftet.no/index.php?seks_id=413199&a=4

2.7.2 LACK OF TRAINING FOR JUDGES

The judiciary in Norway are generalists who are expected to handle any type of crime. There is considerable resistance to the notion that the handling of sexual offences differs from the handling of other serious crimes and that training is needed to counter rape myths and gendered prejudices which might affect the assessment of evidence.

One of the regional public prosecutors interviewed by Amnesty International expressed his scepticism about the training of judges: **“I do not think it is relevant with training in gender and sexuality. These perceptions have manifested themselves within us as human beings, and a week's training cannot make them go away. If you have not learned the difference between right and wrong when you're 25, I don't think that such a course could teach you how to behave toward girls.”**¹⁸⁷

Others within the judiciary acknowledge the importance of training. Judge Irene Sogn stated: **“I think all professional judges should receive continuous training about issues of relevance to us. Not only on the law, but also related to the consideration of evidence. I think that any training that can make us better is good.”**¹⁸⁸

Despite several UN recommendations, the Norwegian authorities have still not taken any initiatives to ensure that both professional and lay judges receive suitable training to address gender stereotypes and bias in the judicial process. This includes a strong recommendation from the CEDAW Committee to systematically implement gender training and capacity building for judges in criminal cases involving gender-based violence.¹⁸⁹

2.7.3 THE RIGHT TO COMPENSATION

According to Norwegian law, a victim of violence is entitled to redress and reparation.¹⁹⁰ The person who has caused the suffering can be ordered to pay the victim compensation in a civil court case. A civil legal claim can under certain conditions be pursued in connection with a criminal case.¹⁹¹ As the standard of proof in a civil case is lower (“probability” or “clear probability”) than in a criminal case (“beyond any reasonable doubt”), an alleged perpetrator who is acquitted in a criminal case can nevertheless be held liable to pay redress and reparation in the ensuing civil case. An analysis by KRIPOS of court decisions in 179 registered rape cases published in 2015 showed that in 8% out of the 30% of cases that ended in acquittal in the criminal courts, the defendant was required to pay damages in the ensuing civil case.¹⁹²

A commission appointed by the government to review the Criminal Procedure Act,¹⁹³ presented its proposals in 2016.¹⁹⁴ One of the proposals is to remove the possibility of pursuing a civil claim in connection with a criminal case that ended in acquittal for consistency of outcome.¹⁹⁵ If adopted, the Commission’s proposal could imply that a 35-year practice to ensure compensation for victims of violent crimes is discontinued. This could negatively affect rape survivors’ right to compensation and redress.¹⁹⁶

¹⁸⁷ Interview with a regional public prosecutor 12 October 2018.

¹⁸⁸ Interview with Irene Sogn, judge at the Borgarting Court of Appeal, 19 October 2018

¹⁸⁹ CEDAW Committee, Concluding observations on the ninth periodic report of Norway 2017, Article 25 (c), <https://bit.ly/2HJu02a>

¹⁹⁰ Law on damage compensation Section 3-5, ref 3-3, <https://bit.ly/2Gage75>

¹⁹¹ Criminal Procedure Act 1981 Section 3, <https://bit.ly/2BV6Y39>

¹⁹² National Criminal Investigation Service (NCIS), Voldtektssituasjonen 2014, <https://bit.ly/2GMfZQh>

¹⁹³ The mandate of the Commission was to consider a new criminal procedure law that is better adapted to today’s challenges and ensures an efficient processing of criminal court cases in accordance with fair trial procedures and the rule of law. NOU 2016:24 Ny straffeprosesslov, Chapter 2.2, <https://www.regjeringen.no/no/dokumenter/nou-2016-24/id2517932/>

¹⁹⁴ NOU 2016:24 Ny straffeprosesslov, <https://www.regjeringen.no/no/dokumenter/nou-2016-24/id2517932/>

¹⁹⁵ NOU 2016:24 Ny straffeprosesslov, Chapter 25.2.3.1, <https://www.regjeringen.no/no/dokumenter/nou-2016-24/id2517932/>

¹⁹⁶ Redress includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The human rights obligation to ensure redress is explained and clarified in General comment No. 3 (2012) of the Committee against Torture, <https://bit.ly/2UGrVpy>

2.8 POSITIVE INITIATIVES

2.8.1 LEGAL COUNSEL TO THE VICTIM

The Criminal Procedure Act established the right to free legal counsel for victims of serious violent crimes, including victims of rape, in 1981. At present, the task of the legal counsel is to protect the victim's interests and rights and to provide help and support, including by attending police interviews and court hearings with the survivor, and asking the complainant questions and putting supplementary questions to the defendant and witnesses during the trial. Information about the right to free legal counsel should be provided to a victim when they report the rape to the police.¹⁹⁷ However, not all the survivors Amnesty International interviewed were informed about their right to free legal counsel when they contacted the sexual assault centre or the police.

Most of the survivors interviewed by Amnesty International stated the legal counsel provided them with important support during the process. Some said they would not have reported the rape if they had not had access to free legal counsel. Nevertheless, a few survivors reported negative experiences with the legal counsel appointed to them. "Elisabeth" told Amnesty International: "I didn't have much contact with my legal counsel. He wasn't very interested in my case... I had a couple of meetings with him, and a few conversations on the phone. I didn't know I could apply for compensation as the legal counsel did not mention this. I didn't think I was entitled since the case was closed."¹⁹⁸ Some of the lawyers interviewed by Amnesty International suggested that to ensure the quality of victims' counsel, a scheme for the certification of a legal counsel under the auspices of the Association of Lawyers should be considered.

In 2008, the revision of the Criminal Procedure Act guaranteed victims of serious violent crimes certain procedural rights. These include the rights to improved access to information at all stages of the legal process, to be present throughout legal proceedings, to give a statement in court before the defendant is questioned, to ask questions, to comment on the evidence and to make a concluding statement. There is concern, however, that a number of the current proposed revisions of the Criminal Procedure Act could remove some of the positive provisions introduced in 2008.¹⁹⁹ For example, the proposed changes will impose limitations on the right to make a concluding statement, the right to be present during trial procedures and the right to present evidence, as well as to the duties of the victim's counsel before and during police investigation and trial.

2.8.2 ACCESS TO SEXUAL ASSAULT CENTRES

At present, there are 24 government-funded sexual assault centres in Norway, at least one in each county. The sexual assault centres are based on a holistic approach to the treatment of victims of rape and sexual violence and provide comprehensive services, including medical treatment, psychosocial follow-up, and forensic examination. Several centres also offer both medical and psychosocial follow-up. Due to a scattered population, the number of cases varies at the sexual assault centres from 25 to 600 cases a year.

However, the quality of the forensic examination and documentation provided by the different sexual assault centres is a source of concern. There are regional differences in quality that can have legal consequences for criminal prosecutions.²⁰⁰ Some sexual assault centres provide comprehensive and accessible statements, others deliver quite meagre documentation. While the basic medical forensic procedures are generally performed at an acceptable quality and victim care-giving is good, the problem is related to the accessible time allocated and the competence in preparing statements for the judicial system.

¹⁹⁷ Criminal Procedure Act. Chapter 9a, <https://bit.ly/2BV6Y39>

¹⁹⁸ Interview with "Elisabeth" in Oslo, 4 November 2018.

¹⁹⁹ NOU 2016:24 Ny straffeprosesslov, <https://www.regjeringen.no/no/dokumenter/nou-2016-24/id2517932/>

²⁰⁰ En evaluering av overgrepsmottakene. NF-rapport 11/2012, p. 76, www.nordlandsforskning.no/publikasjoner/det-beste-ma-ikke-bli-det-godes-fiende-article264-152.html

According to Helle Nesvold, a senior consultant MD PhD working at the Oslo Sexual Assault Centre and member of the National Commission on Forensic Medicine²⁰¹, these differences are in part related to the fact that forensic medicine is not a priority for the Norwegian health authorities. Forensic medicine is not a medical specialization, and there are no formal qualification requirements for practitioners. Neither have the authorities given any national standards regarding the framework of the sexual assault centres, making clear that the hospital trusts running these centres have a responsibility to provide education, facilities and the time to do proper medical forensic documentation.²⁰²

Although the variable quality of forensic medical documentation has been identified as a problem by the legal authorities, the Ministry of Health and Care Services and the Directorate of Health have been slow to give this issue any priority. National Standards for the centres are supposed to be launched during 2019, whereas the question of establishing a forensic medical specialization still is to be discussed.

Approximately half of the victims who seek help at the Sexual Assault Centre Oslo in Oslo have no visible marks or injuries evidencing the use of force.²⁰⁴ This suggests that staff at sexual assault centres also need training to document demeanour and psychosocial consequences of rape in a more systematic manner. At present, this training is not satisfactory, according to a 2017 evaluation by the National Centre for Emergency Primary Health Care. Many assault centres still do not have sufficient budget to ensure training and capacity building, including training on clinical forensic examination and documentation.²⁰⁵

Sexual assault centres have in recent years experienced a marked increase in the number of rape survivors making contact. This increased demand for the services of the sexual assault centres is also affecting police investigations of reported rape cases. Sexual assault centres are responsible for writing the forensic protocol, an important document in the legal process. The organisation and funding of the sexual assault centres should ensure that any increase in the numbers of rape survivors seeking help does not affect the quality of forensic protocols, nor delay the delivery of statements.

2.9 RECOMMENDATIONS

TO THE NORWEGIAN GOVERNMENT:

1. Fully revise the legal definitions of rape so that the central aspect of the crime is the lack of consent assessed in the context of the surrounding circumstances, in line with international human rights law and standards. Particular attention should be paid to coercive circumstances that would negate the victim's consent. The law should clearly state that consent cannot be presumed. The law and the preparatory works should devise clear guidance about circumstances under which consent cannot reasonably infer to be given.
2. Revise the appropriate legislation to ensure that a close relationship between the victim and the perpetrator, the abuse of a position of power, and the targeting of a victim made vulnerable by particular circumstances are considered aggravating factors in sexual crimes, in line with Article 46 in the Istanbul Convention.
3. Ensure sufficient resources and ongoing capacity building for the police, the public prosecution services and the courts to deal with rape cases sensitively, efficiently and without undue delay. Ensure that all reported rape cases are promptly, thoroughly and effectively investigated. In cases where sufficient and admissible evidence is obtained, ensure that perpetrators are prosecuted and punished commensurate with the gravity of their crimes. Victims of gender-based violence should have access to full reparations.
4. Support research on all forms of sexual violence, including rape, in order to study its root causes and effects, incidences and prevalence rates, as well as the efficacy of measures taken to implement the Istanbul Convention. Conduct population-based surveys at regular intervals to assess the prevalence of and trends in rape and other forms of sexual violence.

²⁰¹ Helle Nesvold also is also a member of The Norwegian Board of Forensic Medicine (DRK) and National Centre for Emergency Primary Health Care (NKLM)

²⁰² Interview with Helle Nesvold, senior consultant MD PhD working at the Oslo Sexual Assault Centre, 29 October 2018.

²⁰³ Interview with staff at the Sexual Assault Centre in Oslo, 29 October 2018.

²⁰⁴ Overgrepsmottak 2017. Status ved spesialisthelsetjenestens ansvarsovertakelse, <https://bit.ly/2GndCCr>

5. Implement the national plan of action against rape with earmarked funding and ensure regular and transparent information on progress.
6. Raise public awareness of the adverse impact of sexual violence and rape on the lives and health of women and girls.

TO THE MINISTRY OF JUSTICE, THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS, AND THE NORWEGIAN COURTS ADMINISTRATION:

7. Ensure that specialized training in sexual crimes is made mandatory for prosecutors and judges who handle sexual crimes. Ensure that such training is available regularly and addresses and deconstructs harmful stereotypes and myths around rape and rape victims and raises awareness of how such myths and stereotypes may negatively influence the work of the prosecution and obstruct survivors' access to justice.

TO THE NATIONAL CRIMINAL INVESTIGATION SERVICES (KRIPOS):

8. Facilitate the reporting of rape and sexual violence including by systematically informing women and girls of their rights and of the existing legal avenues through which they can access resources, services, protection and justice.

TO THE MINISTRY OF HEALTH AND CARE AND THE DIRECTORATE OF HEALTH:

9. Develop forensic medicine as a distinct medical discipline in Norway.
10. Guarantee that sexual assault centers have sufficient budget to ensure training and competence building, including training on clinical forensic examination and documentation.

3. RAPE AND HUMAN RIGHTS IN FINLAND

3.1 EXECUTIVE SUMMARY²⁰⁵

“I admit that I myself have been afraid of, or imagined that a rape is an attack in a park. And that made me think [after my own experience], ‘Was this rape?’ Because I had such a strong mental image that a ‘real’ rape is one where the perpetrator attacks in a park and beats you senseless and you need to scream and shout and everything. And that it [rape] can’t possibly be what happened [to me], in a private apartment.”

“Laura”²⁰⁶

Every year, around 50,000 women in Finland experience sexual violence, including rape. Most of those responsible for these crimes are never brought to justice: in 2017 convictions were obtained in the cases of just 209 charges of rape.²⁰⁷

Finland, like other Nordic countries, is often praised for its achievements regarding gender equality. It was one of the first signatories to the Convention on the Elimination of all Forms of Discrimination against Women and ratified the Istanbul Convention in 2015. Nevertheless, widespread gender-based violence against women, including sexual violence, is evidence that unequal power relations between men and women still prevail in society.

The majority of women subjected to sexual violence do not report the crime to the police and those who do encounter a system that falls far short of human rights standards in the way it treats them. The cumulative effect of these failings is that the criminal justice system in Finland ignores, denies and tacitly condones sexual violence against women.

Survivors’ access to justice is a vital factor in reducing and ultimately preventing rape and other sexual violence. Amnesty International’s 2008 report, *Case closed: Rape and human rights in the Nordic countries*, highlighted the factors that prevented women who reported rape from having their cases tried by a court of law and seeing the perpetrator brought to justice.²⁰⁸ This chapter looks at the persistent challenges that remain 10 years on for rape survivors in accessing justice and at how women experience the legal process, from reporting through investigation and prosecution to the courtroom – and why so few cases reach a satisfactory conclusion.

²⁰⁵ This chapter is based on a more extensive report on Finland, “Fighting the Lottery. Overcoming barriers to justice for women rape survivors in Finland”, 6 March 2019, available at: https://s3-eu-west-1.amazonaws.com/frantic/amnesty-fi/2019/03/19144800/Fighting-the-lottery_final.pdf. Prosecutors commenting on behalf of the Office of the Prosecutor General considered that the report was comprehensive and stated that it was “easy to agree with the observations made about the shortcomings of the system, of the expertise [of the legal actors in the process] and of the law.” Response from the Office of the Prosecutor General received by email on 20 March 2019. The commenting prosecutors are specialized in sexual and violent crimes.

²⁰⁶ Telephone interview with “Laura”, 25 September 2018. (Name has been changed to protect the interviewee’s privacy.)

²⁰⁷ Statistics Finland, Oikeus, Syytetyt, tuomitut ja rangaistukset, Rangaistukset rikoksittain, <https://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/>; This includes the overall number of cases, as disaggregated data is not available.

²⁰⁸ Amnesty International, *Case closed: Rape and human rights in the Nordic countries*, <https://amnesty.dk/media/1557/case-closed.pdf>

According to international human rights standards, sexual assault, including rape, should be defined by the lack of freely given consent to sexual activity. However, the Finnish definition of rape falls short of this requirement. There are two aspects to the definition of rape in Finnish law: the first focuses on coercion through the use or threat of violence;²⁰⁹ and the second on sexual intercourse exploiting the inability of the victim to defend themselves or to formulate or express their will due to unconsciousness, illness, disability, state of fear or other “helpless state”.²¹⁰ The current focus in the definition and legal practice on the victim’s resistance and the level of violence used against them rather than their freely given consent helps perpetuate harmful gender stereotypes and allows for varied interpretations of the law, creating a lottery in terms of access to justice.

The responses of health-care professionals, police, prosecutors and judges analysed by Amnesty International varied. Some survivors described positive and supportive experiences. However, other interviewees and the documentation revealed a lack of understanding of how victims respond to sexual violence and reflect deeply entrenched myths about rape and female sexuality that impact directly on access to justice. For example, rape survivors who “freeze” with fear or who do not report the rape soon after it occurs are less likely to receive justice.

Impunity for sexual violence is widespread in Finland and this chapter highlights some of the factors contributing to this from the perspective of the victim’s experience. While rape survivors cannot be certain of an informed and supportive response from the first point of contact when they try to report the crime, serious underreporting is likely to continue. And while so many experiences in the justice system continue to pose a risk of further or exacerbated trauma, the justice system in Finland will continue to fail women and girls who experience rape and other sexual violence and deny them their right to justice and to a life free from violence.

3.2 INTRODUCTION

According to international human rights standards, sexual assault, including rape, should be defined by the lack of freely given consent to sexual activity. Two initiatives are pushing Finland in this direction. The first is a citizens’ legislative initiative for the revision of the law on rape (the Consent 2018 campaign) which had gathered over 50,000 signatures by December 2018.²¹¹ The second is an announcement by the Minister of Justice on 15 January 2019 that the Ministry was preparing amendments to the law on sexual crimes with the aim of strengthening the role of consent in the legislation. Amnesty International believes that the revised law must make lack of consent the central element in order to bring it into line with international law and standards.²¹²

3.2.1 THE SCALE OF THE PROBLEM

“Rape is really common... This is not ‘a girls’ problem’, that we need to be safe.”

“Helen”²¹³

The Institute of Criminology and Legal Policy (Kriminologian ja oikeuspolitiikan instituutti, Krimo) conducts annual national crime victim surveys covering a wide range of crimes, including sexual violence. These

²⁰⁹ Chapter 20, Section 1, para. 1 of the Finnish Criminal Code reads: “Rape. (1) A person who forces another into sexual intercourse by the use or threat of violence directed against the person shall be sentenced for rape to imprisonment for at least one year and at most six years.”

²¹⁰ Chapter 20, Section 1, para. 2 of the Finnish Criminal Code reads: “(2) Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is unable to defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape.”

²¹¹ A citizens’ legislative initiative allows citizens to initiate laws and amendments in parliament. An initiative needs to reach 50,000 citizens’ signatures within six months for parliament to consider it.

²¹² For more detailed discussion of methodology and findings of the research see Amnesty International’s report on Finland, from where this chapter is drawn: “Fighting the Lottery. Overcoming barriers to justice for women rape survivors in Finland”, 6 March 2019, available at: https://s3-eu-west-1.amazonaws.com/frantic/amnesty-fi/2019/03/19/144800/Fighting-the-lottery_final.pdf

²¹³ Interview with “Helen”, Helsinki, 1 November 2018. (Name has been changed to respect the interviewee’s privacy.)

suggest that every year, 2% of women in Finland experience sexual violence.²¹⁴ A study conducted by the EU Fundamental Rights Agency (FRA) in 2012 suggests an annual prevalence rate of 3%.²¹⁵ The difference in the prevalence rates between the studies may result from the different definitions of sexual violence used, the FRA survey being the more comprehensive of the two.²¹⁶

The studies suggest that every year 41,000-62,000 women in Finland experience sexual violence.²¹⁷ According to the FRA study, around 350,000 women in Finland (17% of the female population) have experienced sexual violence during their lifetime.

3.2.2 RATES OF REPORTING AND CONVICTION

A very small percentage of incidents of sexual violence is reported to the police.²¹⁸ Nevertheless, the number of reported rapes has increased every year since 2013, by an average of 73 cases each year (6.6%).²¹⁹ Krimo suggests that this reflects an increase in the likelihood of victims reporting rather than an increase in the prevalence of rape in Finland.²²⁰ The National Police Board draws a link between reporting and the available support services: the better the system of support services, the more likely it is that victims will report. The National Police Board draws a link between reporting and the available support services: the better the system of support services, the more likely it is that victims will report.²²¹ Increasing the reporting rate also requires cooperation between different authorities and support services as well as training and education on recognizing sexual violence for authorities and the general public.²²²

It is difficult to give a precise sense of how many reports of rape reach a satisfactory conclusion in the courts for a number of reasons. First, there is a time lag in a case proceeding from the police to the prosecutor and to court, so a rape may be recorded by the police one year, be considered by the prosecutor the next and reach the court the following year. Second, the precise charge may change during the course of the proceedings (for example from rape to coercion into a sexual act or the other way around). Third, the police, the prosecutor and the court can record acts of rape in different ways: normally each act of rape, sufficiently separated in time, will be recorded as one rape and will become one charge. They will also be recorded separately for each perpetrator and victim. However, in some cases, such as cases of long-term domestic violence, if the victim cannot clearly remember the exact timing of the incidents, they may be recorded as one act. In these cases, the number of acts can either increase or decrease during proceedings. The interpretation of statistics on an annual basis is complicated also when a victim reports many acts of rape from a long period of time; these reports will produce a spike in the statistics.²²³

²¹⁴ Results from the national crime victim survey 2017, p. 6, https://helda.helsinki.fi/bitstream/handle/10138/260559/Katsauksia_31_Danielsson_N%c3%a4si_2018.pdf?sequence=1&isAllowed=y; 2016, p. 6, https://helda.helsinki.fi/bitstream/handle/10138/225915/Katsauksia_23_Danielsson_K%c3%a4%c3%a4ri%c3%a4inen_2017.pdf?sequence=1&isAllowed=y; 2015, p. 4, https://helda.helsinki.fi/bitstream/handle/10138/161960/Katsauksia_13_Danielsson_K%c3%a4%c3%a4ri%c3%a4inen_2016.pdf?sequence=1&isAllowed=y; 2014, p. 4, https://helda.helsinki.fi/bitstream/handle/10138/155645/Katsauksia_3_Danielsson_Salmi_2015.pdf?sequence=1&isAllowed=y; and 2013, p. 4, https://helda.helsinki.fi/bitstream/handle/10138/152606/verkkok37_Danielsson_Salmi_Siren_2014.pdf?sequence=1&isAllowed=y.

²¹⁵ FRA, Survey on violence against women in EU <https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey?mdq1=country&mdq2=414&plot=inCountry&cntryName=Finland>

²¹⁶ Since 2013, the national crime victim surveys have covered coerced intercourse, attempted coerced intercourse, attempted coerced sexual acts. The FRA survey also included questions on sexual activity that the woman was made to take part in when she did not want to or was unable to refuse, as well as sexual activity that the woman consented to out of fear.

²¹⁷ In 2017, there were 2,050,912 women aged 15-74 in Finland, according to Statistics Finland, Väestö, Väestörakenne, Väestö iän (5-v.) ja sukupuolen mukaan 2017, <https://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/>

²¹⁸ According to Statistics Finland, 1,482 sexual crimes against women aged 15-74 were reported in 2017, including all categories of rape, sexual abuse, coercion into a sexual act, sexual harassment and the abuse of a victim of the sex trade, including attempts to commit these crimes. In the same year, there were 2,050,912 women aged 15-74 in Finland. With a prevalence rate of 2-3%, this would mean a reporting rate of between 2.4 and 3.6%. The general prevalence studies only cover women aged up to 74; however, six sexual crimes against women aged 75 or over were recorded by the police in 2017. Statistics Finland, Oikeus, Rikos- ja pakkokeinotilasto, Eräiden rikosten uhrin iän mukaan maakunnittain 2017, and Statistics Finland, Väestö, Väestörakenne, Väestö iän (5-v.) ja sukupuolen mukaan 2017, <https://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/>

²¹⁹ The figures from earlier years are not comparable due to changes to rape legislation made in 2011. The changes in the definitions of rape made in 2014 do not affect the total number of rape crimes, only the distribution of rape crimes between the different categories of rape. The data from 2018 is preliminary. Statistics Finland, Oikeus, Rikos- ja pakkokeinotilasto, Rikokset kuukausittain, <https://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/>

²²⁰ Krimo, *Rikollisuustilanne [Crime Trends in Finland] 2017*, pp. 84-85, https://helda.helsinki.fi/bitstream/handle/10138/239656/Katsauksia_29_Rikollisuustilanne_2017.pdf?sequence=2&isAllowed=y

²²¹ Response from the National Police Board, received by email 22 March 2019.

²²² Response of the National Police Board, received by email 22 March 2019, and response from the Ministry of the Interior, received by email 26 March 2019.

²²³ The last point was made by the National Police Board. Response of the National Police Board, received by email 22 March 2019.

Despite these difficulties in interpreting the statistics, the following indicative figures clearly show that impunity for crimes of rape is endemic in Finland.²²⁴ Few victims of sexual violence see the perpetrator brought to justice. In 2017, 1,244 acts of rape were reported to the police, while only 358 charges of rape came to trial (see Table 6). Of these, only 209 charges (58%) resulted in a conviction.²²⁵ Overall, only 17% of rapes reported to the police result in convictions.

Table 6: The progress of reported rapes through the criminal justice system

| | Rapes recorded by the police | Concluded investigations | Sent to prosecutor | Tried in court | Charges resulting in conviction |
|-----------------------------------|------------------------------|--------------------------|--------------------|----------------|---------------------------------|
| 2017 | | | | | |
| Total numbers | 1,245 | 888 | 874 | 358 | 209 |
| % of rapes recorded by the Police | | 71% | 70% | 29% | 17% |

In 2016, the CEDAW Committee noted that while 1,000 rape cases were investigated annually, only 150 resulted in a conviction. It found that Finland had, therefore, not fulfilled its obligation to take “specific measures to fully investigate, prosecute and punish perpetrators of rape in order to increase the conviction rates in cases of rape”.²²⁶

Similarly in 2017, the UN Committee against Torture noted its concern “at the prevalence of violence against women in the State party, including domestic and sexual violence, the underreporting of cases and the lack of funding allocated to tackle it”.²²⁷ The Committee recommended ensuring that all allegations of domestic violence, including sexual violence, be registered by the police and promptly, impartially and effectively investigated and that perpetrators be prosecuted and punished. Finland responded that the law already requires prosecutors to carry out their duties “promptly” and that grounds for urgency were already provided for in law; it made no reference to ensuring implementation in practice.²²⁸

In Finland’s 2017 Universal Periodic Review, one state recommended that Finland implement new measures to ensure victims of rape could seek redress. Finland “noted” this recommendation and partially accepted other recommendations related to funding the prevention of sexual violence.²²⁹

The high prevalence of sexual violence and low rate of prosecutions and convictions show that Finland’s actions to combat sexual violence against women and bring perpetrators to justice are inadequate and fall short of international human rights standards.

3.3 BARRIERS TO JUSTICE: THE LAW

3.3.1 THE NATIONAL LEGAL FRAMEWORK

In recent years, a number of legislative amendments have been introduced that bring Finnish legislation more into line with international standards. In particular, Amnesty International welcomed amendments to Chapter 20 of the Criminal Code in 2011 and 2014 that reflected some of the organization’s key

²²⁴ The National Police Board points out that finding out the final share of solved cases would require following each case from reporting to final judgment and states that interpreting the statistics is difficult. Response of the National Police Board, received by email 22 March 2019. For exactly this reason, the figures presented by Amnesty International are indicative only.

²²⁵ Statistics Finland, Oikeus, Rikos- ja pakkokeinotilasto, Tietoon tulleet rikokset ja niiden selvittäminen 2017, and Statistics Finland, Oikeus, Syytetyt, tuomitut ja rangaistukset, Rangaistukset rikoksittain 2017, <https://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/>

²²⁶ Letter from Xiaoqiao Zou, Rapporteur on Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, to the Permanent Representative of Finland to the United Nations Office at Geneva, 10 August 2016, [YH/follow-up/Finland/64](#) pp. 2-3.

²²⁷ Committee against Torture, Concluding observations on the seventh periodic report of Finland, [CAT/C/FIN/CO/7](#), para. 29(e).

²²⁸ Committee against Torture, Concluding observations on the seventh periodic report of Finland, [CAT/C/FIN/CO/7](#), para 29(e).and Addendum [CAT/C/FIN/CO/7/Add.1](#), paras. 31-33.

²²⁹ Human Rights Council, Report of the Working Group on the Universal Periodic Review of Finland, [A/HRC/36/8](#), 14.7.2017, p. 17, and Addendum [A/HRC/36/8/Add.1](#), 8.9.2017, p. 8.

recommendations set out in its 2008 report *Case Closed*.²³⁰ For example, in 2011, obtaining sexual intercourse by taking advantage a person's unconsciousness, illness, disability, state of fear or other helplessness, even when that state was not caused by the perpetrator, was incorporated into the definition of rape (Section 1, paragraph 2).

However, other amendments, while containing positive elements, were accompanied by new provisions that created issues around access to justice in practice.

In 2014 the provision on coercion into sexual intercourse (Section 3), often called “mild rape”, was repealed, although a paragraph on “less serious” rape was added to the section dealing with rape (Section 1, paragraph 3), with an addition that rape involving violence cannot be prosecuted as “less serious” rape (see ‘Categories of rape’ below). At the same time, the minimum penalty for “less serious” rape was changed from a fine to four months’ imprisonment and the maximum penalty increased from three to four years’ imprisonment.

Currently, the definition of rape in Finnish law covers two different possible types of circumstances. The first focuses on coercion through the use or threat of violence.²³¹ The second focuses on sexual intercourse by exploiting the inability of victims to defend themselves or to formulate or express their will due to unconsciousness, illness, disability, state of fear or other “helpless state”.²³² The definition covers two extremes – rape using violence and cases where the victim is unable to consent due to incapacity – but leaves an area in between where there is neither consent nor violence. Even though the threshold for violence is low (for example, using weight to hold the victim down is sufficient), the current law continues to fall short of international standards in terms of the way it defines, prosecutes and punishes rape. Central to these shortcomings is the failure to adopt a consent-based definition.

3.3.2 CONSENT

“According to Finnish legislation, having intercourse against the other person’s refusal does not fulfil the material elements of rape, unless it is associated with the elements explained above [violence or a helpless state].”

Prosecutor’s decision to close a case

In 2016, the CEDAW Committee found that Finland had not implemented the recommendation to place lack of consent at the centre of the definition of rape and remove the requirement of force or threat of force.²³³ Similarly, in 2017 the UN Committee against Torture recommended that Finland revise the definition of rape to include lack of consent, instead of categorizing rape according to the degree of physical violence.²³⁴ In Finland’s 2017 Universal Periodic Review, five states recommended that Finland review its definition of rape so that the degree of violence used or threatened is not the determining factor.²³⁵

Finland accepted these recommendations, maintaining that the current definition of rape implicitly includes lack of consent and that in substance the provision conforms to international standards even if the wording of the provision does not include the term “consent”.²³⁶

However, the current definition and legal practice allow for differing interpretations of the law, which place varying importance on the victim’s consent. Some legal professionals, such as Appeals Court Judge Timo Ojala, have said that the most complicated cases already hinge on whether the victim consented or not.²³⁷ However, for others the current definition can provide a pretext for not engaging with more complicated cases. The following sections highlight the different unsatisfactory interpretations that the current definition permits.

²³⁰ Amnesty International, *Case closed: Rape and human rights in the Nordic countries*, <https://amnesty.dk/media/1557/case-closed.pdf>

²³¹ Chapter 20, Section 1, para. 1 of the Finnish CriminalCode.

²³² Chapter 20, Section 1, para. 2 of the Finnish CriminalCode.

²³³ Letter from Xiaoqiao Zou, Rapporteur on Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, to the Permanent Representative of Finland to the United Nations Office at Geneva, 10 August 2016, [YH/follow-up/Finland/64](#) pp. 2-3.

²³⁴ Committee against Torture, Concluding observations on the seventh periodic report of Finland, [CAT/C/FIN/CO/7](#), p. 7.

²³⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review of Finland, [A/HRC/36/8](#), 14 July 2017, p. 12.

²³⁶ Committee against Torture, Concluding observations on the seventh periodic report of Finland Addendum [CAT/C/FIN/CO/7/Add.1](#), p. 6; Human Rights Council, Report of the Working Group on the Universal Periodic Review of Finland, Addendum [A/HRC/36/8/Add.1](#), 8 September 2017, p. 3.

²³⁷ Interview with Appeals Court Judge Timo Ojala, Helsinki, 18 September 2018.

3.3.3 FOCUSING ON RESISTANCE

There should be no assumption in law or in practice that a victim gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.²³⁸ However, by focusing on the victim's capacity to consent, the "helpless state" definition makes the survivor's resistance a key factor.

Several survivors interviewed by Amnesty International described how the police focused on whether they said "no" or physically resisted. "Helen" was raped by a person she did not know when she was very drunk, but the police considered that she was not in a "helpless state":

"During the first interview [the police officer] was asking, 'Did you say 'no'? Did you say 'no' in the elevator?'... Especially the 'fight' questions, 'Did you fight back?'... And during the second [interview] he was again asking: 'Were you violent? Was he violent?' And then he asked, 'How could he know that you didn't want to have sex?'... They said that if I had been conscious enough to [give him] a condom, that means I could have fought."

"Helen"²³⁹

In 2013, the Supreme Court ruled that a victim of rape or other violence should not be expected to undertake violent or other actions to resist the attacker. According to the Court, "freezing" or a lack of self-defence should not be taken to indicate that no crime has been committed.²⁴⁰ However, in six judgments analysed by Amnesty International, the judges stated that resistance by the victim forms one of the criminal elements of rape. Evidently, in these cases, the victim was expected to resist physically.²⁴¹

"The fact that a sexual partner says 'no, I don't want to' before sexual intercourse or between intercourses, is not always a sufficient signal to the other person that consent and willingness to continue sex is not present."

District court judgment, acquittal in a case with multiple accused

"The suspect says that the victim said 'no' once, but after that she had not resisted the sexual intercourse."

Prosecutor's decision to close a case

In 63 judgments analysed, the victim reported resisting either physically or verbally or both. Most cases where the victim reported resisting verbally (saying "no") ended with an acquittal (15 out of 20 cases). By contrast, most cases where the victim reported resisting physically or physically and verbally ended with a conviction (29 of 43 cases). Of the six cases where the victim "froze" (did not resist), five ended in acquittal.

The impact of a definition of rape that relies on evidence of violence by the perpetrator or on the victim's helpless state extends well beyond the courtroom. Some of the survivors interviewed, for example, described how it can lead to a process of internalizing certain rape myths:

"I admit that I myself have been afraid of, or imagined that a rape is an attack in a park. And that made me think [after my own experience], 'Was this rape?' Because I had such a strong mental image that a 'real' rape is one where the perpetrator attacks in a park and beats you senseless and you need to scream and shout and everything. And that it [rape] can't possibly be what happened [to me], in a private apartment."

"Laura"²⁴²

In practice, the threshold for a "helpless state" – when a person is considered to be unable to resist – is set very high. The definition is only applied in cases where the victim is fully unconscious (asleep) or extremely intoxicated. For example, if the victim is only half-asleep, the elements of rape are not considered to be

²³⁸ *M.C. v Bulgaria* (2003) European Court of Human Rights 651.

²³⁹ Interview with "Helen", Helsinki, 1 November 2018. (Name has been changed to respect the interviewee's privacy.)

²⁴⁰ Supreme Court precedent KKO:2013:96, point 33.

²⁴¹ Four of these cases ended in a conviction.

²⁴² Telephone interview with "Laura", 25 September 2018.

fulfilled, even if it is clear that the victim did not consent.²⁴² It is also unclear what level of intoxication should be considered to constitute a “helpless state”. The decision is left to the discretion of judges, resulting in inconsistent levels of protection for intoxicated victims.²⁴³

An additional shortcoming concerns the provision on the victim’s state of fear. Although the law recognizes that fear can cause a person to be unable to resist, in practice the provision is very seldom used. One police officer told Amnesty International that the state of fear must be caused by the perpetrator’s actions or arise from circumstances that would have been apparent to the perpetrator.²⁴⁴ One example given in the preparatory works of the law is when the perpetrator breaks into the victim’s house to rape her – an extremely rare occurrence in real life.²⁴⁵ Usually a state of fear is connected to a less obviously threatening situation.

3.3.4 GAPS IN THE CURRENT DEFINITION OF RAPE

Amnesty International’s analysis shows that situations where the victim has not given her consent, but the event can be interpreted not to be covered by the current legal definition of rape include situations where:

- The rape victim was passive or semi-conscious, perhaps half-asleep, drunk or had frozen with fright and did not resist, and the perpetrator did not use violence. In such cases, the perpetrator did not need to resort to violence, but neither was the victim in a fully unconscious or otherwise “helpless state”.²⁴⁶
- The perpetrator ignored the fact the rape victim said no or asked them to leave, but where the victim did not resist physically, and the perpetrator did not use violence.
- Penetration happened so suddenly that the victim did not have a chance to react.
- A rape victim withdrew consent during intercourse, but the perpetrator did not stop.
- The victim acquiesced to sex under duress by the perpetrator, for example when the perpetrator blackmailed the victim or used non-violent threats.²⁴⁷

Among the cases analysed by Amnesty International, these gaps played a role in 16 of the 112 cases closed by the police, 37 of the 124 cases closed by the prosecutor and 13 of the 44 acquittals in the district courts. A police officer and Public Prosecutor Nina Keskinen also listed the first three types of cases as falling outside the scope of the current definition of rape.²⁴⁸ Prosecutors commenting on behalf of the Office of the Prosecutor General considered that depending on the evidence, these cases could be considered to fall within the scope of the current definition, but said that the legal practice in such situations varies both among prosecutors and in courts.²⁴⁹ In all these situations, the lack of a rape definition based on active consent acts as a barrier to justice for rape survivors.

3.3.5 CATEGORIES OF RAPE

In Finnish law, there are three categories of rape, each of which carries a different penalty.

- The crime of rape carries a penalty of between one and six years’ imprisonment.²⁵⁰
- Aggravated rape carries a penalty of between two and 10 years’ imprisonment. Aggravating factors mainly relate to the level of violence used, for example, causing grievous injury, committing the rape in a particularly brutal manner, using a weapon such as a firearm or knife, causing especially marked mental or physical suffering, or making a threat of serious violence. Other factors

²⁴² In September 2018 the District Court of Helsinki convicted a man of sexual harassment who had had intercourse with a woman who was drunk, feeling sick and half-asleep. The perpetrator was a guest who entered the victim’s bedroom unbidden when she had gone to sleep. The victim initially thought the man in her bed was her husband. The Court concluded that the definition of rape was not fulfilled and convicted the man of sexual harassment. See www.hs.fi/kotimaa/art-2000005814875.html

“The Ministry of the Interior considered that the police may especially have trouble recognising ‘frozen fright’. Response from the Ministry of the Interior, received by email 26 March 2019.”

²⁴³ Judgments analysed by Amnesty International.

²⁴⁴ Interview with a police officer, Helsinki, 23 October 2018.

²⁴⁵ Government bill HE 216/2013 vp, p. 6.

²⁴⁶ The Ministry of the Interior considered that the police may especially have trouble recognising ‘frozen fright’. Response from the Ministry of the Interior, received by email 26 March 2019.

²⁴⁷ Even though this could fulfil the definition of “less serious rape”, the data analysed by Amnesty International included a case closed by the prosecutor where the perpetrator had used a threat other than of violence and the prosecutor considered that this did not fulfil the definition of rape.

²⁴⁸ Amnesty International interview with a police officer and with Public Prosecutor Nina Keskinen, Helsinki, 20 September 2018.

²⁴⁹ Response from the Office of the Prosecutor General received by email on 20 March 2019. The commenting prosecutors are specialised in sexual and violent crimes.

²⁵⁰ Chapter 20, Section 1, paras 1-2 of the Finnish Criminal Code.

constituting aggravating circumstances include a rape committed by several people or where the victim was under the age of 18.²⁵¹

- The third category of rape, which carries penalties ranging from four months' to four years' imprisonment, applies in cases where the rape is considered "less serious". The mitigating factors that can contribute to the rape being defined as "less serious" include, lesser or "petty" threats of violence, using a threat other than of violence, or "other circumstances connected with the offence".²⁵²

Amnesty International believes that all forms of rape are a serious offence and that the penalties imposed should be commensurate with the gravity of the crime. A key concern regarding the categorization above stems from the inconsistent application of the category of "less serious" rape because of the vague wording of the provision and the lack of clear guidance on the circumstances in which a rape should be considered "less serious". The examples mentioned in the preparatory works of the law concern a "petty" threat to use violence and "exceptional circumstances" connected with the rape. However, what these exceptional circumstances are is not explicitly stated.²⁵³ As a result, the interpretation is left to the discretion of the courts and varies considerably. For example, in one judgment the court stated:

"Considering the utter defencelessness of a strongly intoxicated and sleeping person, the rape as a whole is not considered less serious in a way that the accused should be sentenced on the basis of the lower scale."

District court judgment

In another case, however, the provision, which is not intended to be applied at all in cases where violence has been used, the interpretation was rather different. Amnesty International found a conviction of "less serious" rape had been handed down where the perpetrator threatened the victim with violence, grabbed hold of her head to try and force her into oral intercourse and later, when the victim had fallen asleep, raped her. The factors the court considered to make the rape "less serious" included that the intercourse did not involve the penetration of the victim's sexual organ, that the threat and use of violence were not enough to break the victim's will or make her leave the bedroom, and that the perpetrator had not attempted to continue the intercourse with violence after the victim woke up and pushed him off. However, the court does not explain how these factors would constitute "exceptional circumstances". Moreover, the reasoning puts the blame on the victim for not leaving the bedroom, rather than holding the perpetrator fully accountable for the range of abuse he inflicted on her.

3.3.6 SEXUAL ABUSE – ABUSING A POSITION OF POWER

The crime of sexual abuse is defined in Finnish law as enticing a person into sexual intercourse or into another sexual act essentially violating their right to sexual autonomy, or into submitting to such an act, by abusing a position of power or the dependency of the victim.²⁵⁴ The provision applies to, for example, under-aged school students as well as people in institutions whose capacity to defend themselves or to formulate or

²⁵¹ Chapter 20, Section 2, para. 1 of the Finnish Criminal Code states: "(1) If, in the rape, (1) grievous bodily injury, serious illness or a state of mortal danger is caused to another, (2) the offence is committed by several people, or especially marked mental or physical suffering is caused, (3) the victim is a child below the age of 18 years, (4) the offence is committed in a particularly brutal, cruel or humiliating manner, or (5) 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 10 years."

²⁵² Chapter 20, Section 1, para. 3 of the Finnish Criminal Code states: "If the rape, taking into consideration the pettiness of the threat or the other circumstances connected with the offence, is less serious when considered as a whole than the acts referred to in paras 1 or 2, the offender shall be sentenced to imprisonment for at least four months and at most four years. A person who forces another into sexual intercourse through other than the threat referred to in paragraph 1 shall be sentenced in a similar manner. What is provided above in this paragraph does not apply if violence has been used in the rape."

²⁵³ Government bill 216/2013, 57, available in Finnish at www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_216+2013.pdf

²⁵⁴ Chapter 20 Section 5 para. 1 of the Finnish Criminal Code reads: "Sexual abuse. (1) A person who abuses their position and entices one of the following into sexual intercourse, into another sexual act essentially violating his or her right of sexual self-determination, or into submission to such an act, (1) a person below the age of eighteen years, 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 below the age of eighteen years, whose capacity of independent sexual self-determination, owing to his or her immaturity and the age difference of the persons involved, is essentially inferior to that of the offender, where the offender blatantly takes advantage of this immaturity, (3) a patient being treated in a hospital or other institution, whose capacity to defend himself or herself or to formulate or to express his or her will is essentially impaired owing to illness, disability or other infirmity, or (4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of this dependence, shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years."

express their will is impaired due to illness or disability. The penalties for those convicted of sexual abuse range from a fine to four years' imprisonment.

According to Article 46 of the Istanbul Convention, abusing a position of power and targeting a particularly vulnerable person should be considered aggravating factors. However, this provision in Finnish law could result in the violation of the sexual autonomy of a person whose will is impaired due to disability being treated as sexual abuse rather than rape, in other words that their impairment leads to a lesser charge and a lower sentence, which is clearly contrary to international standards.

In 2016, the CEDAW Committee found that no concrete measures had been taken to ensure adequate protection in "cases of non-consensual sexual acts where there is an abuse of authority, such as in cases of rape committed against women who are residents in closed institutions". Finland had also not implemented the recommendation to align the punishments for such acts with those for rape.²⁵⁵

The provision on sexual abuse should be repealed and acts which constitute rape according to the definition in international human rights law should be incorporated into the definition of rape in the national law to ensure that it is brought into line with international standards. In addition, abusing a position of power and targeting a particularly vulnerable person should be considered aggravating factors as per Article 46 of the Istanbul Convention.

3.3.7 RAPE IN CLOSE RELATIONSHIPS

A close relationship between the survivor and the perpetrator should be considered an aggravating circumstance in determining the penalty for sexual violence offences.²⁵⁶ Also a precedent issued by the Supreme Court of Finland in 2012 stated that penalties in cases of domestic or intimate partner violence should be more severe.²⁵⁷ However, Chapter 6, Section 5 of the Criminal Code and the section on aggravated rape make no mention of the close relationship of the parties²⁵⁸ and it appears that Finnish legal practice does not always recognize an intimate or family relationship between the perpetrator and victim as an aggravating circumstance.

Judges have discretion in sentencing and the judgments analysed by Amnesty International indicate that some judges are either unaware of the requirements of Article 46 of the Istanbul Convention and the Supreme Court ruling or are choosing not to explicitly apply them. In only two of the 44 convictions for rape analysed were such factors as a close relationship between victim and perpetrator considered an aggravating factor in sentencing. In both cases, the parties were friends and it was the breach of a relationship of trust that formed an aggravating factor. In eight convictions, the perpetrator was a current or former intimate partner. However, the impact of the relationship of the parties on the sentencing was not explicitly considered in any of these. By contrast, in five cases the fact that the perpetrator was a stranger was explicitly considered an aggravating factor. This suggests judges are using different standards when setting the penalty and that there is a need for greater clarity and training to ensure the consistent implementation of the law in practice.

²⁵⁵ Letter from Xiaoqiao Zou, Rapporteur on Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, to the Permanent Representative of Finland to the United Nations Office at Geneva, 10 August 2016, [YH/follow-up/Finland/64](#) pp. 2-3.

²⁵⁶ UN Handbook for Legislation on Violence against Women, 2012, p. 24; Article 46 of the Istanbul Convention.

²⁵⁷ Supreme Court precedent KKO:2012:9, point 6: "the European Court of Human Rights has in its judgments (*Opuz v. Turkey* 9.6.2009, *E.S. and others v. Slovakia* 15.9.2009, *A v. Croatia* 14.10.2010, *Hajduova v. Slovakia* 30.11.2010) noted the harmfulness of domestic and intimate partner violence and the state's responsibility to protect effectively, for example using criminal law, victims of domestic and intimate partner violence who are in a vulnerable position. The Supreme Court considers that in cases of domestic and intimate partner violence, where the perpetrator and the victim are not in an equal position but rather the victim needs special protection, the harmfulness and dangerousness of the act and the level of guilt of the perpetrator supports measuring the penalty as more severe than the general level of penalties."

²⁵⁸ Chapter 6 Section 5 para. 1 of the Finnish Criminal Code reads: "The following are grounds for increasing the punishment: (1) the methodical nature of the criminal activity, (2) commission of the offence as part of the activity of an organized criminal group, (3) commission of the offence for remuneration, (4) commission of the offence for a motive based on race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds, and (5) the criminal history of the offender, if the relation between it and the new offence, due to the similarity between the offences or otherwise, shows that the offender is apparently heedless of the prohibitions and commands of the law." See section 4.3.5 Categories of rape above for the provision on aggravated rape.

3.4 BARRIERS TO JUSTICE: THE LEGAL PROCESS

The legal process is normally instigated by the rape survivor who reports the crime to the police. The crime may also be reported by someone else, for example hospital staff, a social worker, a family member, a friend or a witness. The police may also become aware of the crime while investigating another crime. The police must investigate and submit the case to the prosecutor for consideration if there is a “reason to suspect” that a crime has been committed.²⁵⁹ This threshold is meant to be very low.

On the basis of the investigation file submitted by the police, the public prosecutor then assesses whether to prosecute and, if so, on what charges. The prosecutor can order the police to collect further evidence on specific matters. The prosecutor has a duty to prosecute if the suspected conduct is punishable according to law, “probable grounds” exist to support the guilt of the suspect and the crime has not expired according to the statute of limitations. The prosecutor must waive charges if these conditions are not met.²⁶⁰

The decision of the police not to investigate and the decision of the prosecutor not to prosecute cannot be appealed. However, the victim can take criminal charges herself. In this case, if the victim loses the case, she is responsible for paying her own and the accused’s legal expenses. The victim can also lodge a complaint with the Parliamentary Ombudsman, the Chancellor of Justice, the relevant police department or the National Police Board.

3.4.1 SURVIVORS’ EXPERIENCES OF THE LEGAL PROCESS

“At the trial I thought, and said to my counsel, that if I had known what this would be like, I would never have reported the rape.”

“Tiina”²⁶¹

“Nothing can compensate for what I have lost: health is the most important thing.”

“Anna”, whose legal process lasted for over three years and went to appeal²⁶²

Survivors interviewed by Amnesty International described the legal process as “burdensome”, “stressful”, “scary”, “stigmatizing” and “victim blaming”, regardless of the outcome of the case. Several survivors reported severe health consequences, including one survivor who had attempted suicide.²⁶³ Hilla described the legal process as more traumatizing than the rape itself, while “Louise” said that the process left her feeling worse than before.²⁶⁴ Several survivors were doubtful as to whether they would have reported the rape if they had known what the legal process entailed. This psychological strain can become a significant barrier to access to justice, particularly for survivors who do not have access to adequate appropriate support and are unable to pursue the case.

3.4.2 HEALTH CARE PROFESSIONALS

Professionals in the health sector are often the first port of call for rape survivors, but it is clear from some of those interviewed by Amnesty International that understanding and experience of how to respond to rape survivors is often lacking in health facilities.

“When no one looks me in the eye and I’m just lying on the table and they’re plucking my pubic hairs – it’s so humiliating.”

Interviewed survivor²⁶⁵

²⁵⁹ Chapter 3 Section 3 of the Criminal Investigation Act. Translation available at: http://finlex.fi/en/laki/kaannokset/2011/en20110805_20150736.pdf

²⁶⁰ Chapter 1 Section 6 of the Criminal Procedure Act. Translation available at: http://finlex.fi/en/laki/kaannokset/1997/en19970689_20150733.pdf

²⁶¹ Telephone interview with “Tiina”, 8 August 2018. (Name has been changed to respect the interviewee’s privacy.)

²⁶² Interview with “Anna”, Helsinki, 11 September 2018. (Name has been changed to respect the interviewee’s privacy.)

²⁶³ Details of the interviews are withheld to protect the interviewees’ identities.

²⁶⁴ Hilla’s process ended in the conviction of the perpetrator (interview with Hilla Marin, Helsinki, 10 August 2018); in “Louise’s” case, the police closed the investigation because they did not consider a crime to have taken place (interview with “Louise”, Helsinki, 2 October 2018).

²⁶⁵ Details of the interview are withheld to protect the interviewee’s privacy.

For example, “Tiina” reported that the nurse and the doctor had started arguing about how to take forensic samples while she was lying on the examination table. The nurse had also said to her, “Don’t cry” and “be more careful next time”, which she found hurtful.²⁶⁶

“Laura” told Amnesty International that she wished that health-care workers had seen through her shock; although she was offered support, she downplayed her own shock and thus did not receive the help she needed. Later, when her health deteriorated significantly, finding help was difficult. She often encountered health-care workers who were reluctant to treat her, as they did not feel they had the appropriate training and skills and had never encountered a victim of sexual violence before.²⁶⁷

Avoiding further violations of the victim’s sexual autonomy and re-traumatization is important in the legal process. Therefore, forensic samples should always be collected only with the victim’s consent.²⁶⁸ However, this can mean that victims must make decisions in a distressed state and without enough information about the importance of the evidence for the legal process. For example, “Anna” described how the doctor asked her to decide on whether to take DNA samples, even though she was in shock. She thought the samples would not yield results as she had waited 1.5 days and had already showered. In reality, the samples could have yielded results, but the doctor did not encourage her to have them taken.²⁶⁹

3.4.3 THE POLICE

How victims of rape are met at their first point of contact with public officials can have a big impact on whether they decide to continue with the legal process. The victim’s cooperation is crucial throughout the legal process. If a victim does not come to the police interview or refuses to talk about the rape at the interview, the police will close the case.²⁷⁰

Some survivors told Amnesty International that they had had positive encounters with the police. It was important to them that the police took them seriously, gave them time to answer questions, did not rush them, encouraged them to seek support and helped them with practical issues, such as taking them to the hospital. It was also important that the police did not say things that appeared to blame the victim, but rather reassured them that being raped was not their fault and that it was not the police’s aim to seek to blame the survivor. For example, Hilla described how, when asking about how much she had had to drink and what she had been wearing, the police explained that they did not seek to blame her and said that these things did not reduce the responsibility of the perpetrator.²⁷¹

“Tiina”, who was raped by a stranger, also had a positive encounter with the police:

“The first time, when the police were really wonderful – the investigating police officer was really wonderful – she gave me all the papers, all the contact details of where to get help, and was concerned about me and was concerned about my partner... A very important thing was the police’s attitude, when they came to [the crime scene], they were so understanding and listened and believed and that has stayed with me very strongly... I don’t know how it would have gone if the police had had a worse attitude. I can’t stress that enough.”

“Tiina”²⁷²

However, several interviewees felt that the police had treated them with little respect and in ways that undermined their access to justice.

²⁶⁶ Telephone interview with “Tiina”, 8 August 2018.

²⁶⁷ Email exchange with “Laura” following the interview, 6 February 2019.

²⁶⁸ World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, p. 34, <https://apps.who.int/iris/bitstream/handle/10665/42788/924154628X.pdf;jsessionid=9D5A403B972E544697B9CEA50838C2AD?sequence=1>

²⁶⁹ Interview with “Anna”, Helsinki, 11 September 2018.

²⁷⁰ This was a reason behind closing the case in 20 out of the 112 police decisions analysed by Amnesty International. Two victims told the police that they were unable to talk about the rape because the trauma was too fresh.

²⁷¹ Interview with Hilla Marin, Helsinki, 10 August 2018.

²⁷² Telephone interview with “Tiina”, 8 August 2018.



“EMILIA”²⁷³

“Emilia” called the police from a hospital lobby, and was told to wait there. However, when the police officer arrived, she was told that “Emilia” had already left, so the officer also left. “Emilia” remained waiting in the lobby, approaching every police patrol that she saw arriving at the hospital, until finally one patrol helped her. “Emilia” told Amnesty International:

“Luckily there were three kind police officers who in that situation acted in a way that lifted the burden from me. They said, ‘Hey, there’s something strange in this, we will investigate, wait here, we will take care of this.’ And that felt really, really good. Even such a small thing, that someone says, ‘I will investigate and there has been a misunderstanding’.”

The patrol took “Emilia” to the police station, where she made contact with the first investigating police officer. “Emilia” apologized for and tried to explain the misunderstanding at the hospital, but the officer maintained that “Emilia” was responsible for the mistake and was clearly annoyed:

“In my opinion that came across into the reporting. She was really pissed off in that situation and behaved inappropriately... She said that she could log the first of the acts as a ‘mild’ [rape]²⁷⁴ – she used this expression, [although] she said that one may no longer say this, but this was mild – and what was maybe the rudest was that she said that ‘of course men will try begging for sex, as a woman you should know [how to deal with that]’. And that, I think, is thoroughly wrong, no one should be subjected to such nullification, in that situation... She categorized [the event] at a point of the process where she shouldn’t have said anything value-laden.”

Some police investigations described to Amnesty International by interviewees fell short of the international standards established for investigations.



“HELEN”²⁷⁵

“Helen” told Amnesty International that she reported the rape to the police immediately. The police officer promised to call the bar where she and the perpetrator had met straight away. However, the investigation was only started three weeks later. By this time, the CCTV tape of that night had been recorded over and the evidence was lost. The officer also did not advise “Helen” to seek medical assistance or take her to a hospital and as a result potential DNA evidence was also lost.

The police officer interviewed her immediately, but did not wait for an interpreter – the interview was conducted in English, which was neither Helen’s nor the officer’s first language – and as a result the interview had to be repeated. “Helen” found it stressful having to answer the same questions again, as if the first interview had never happened. She said she wished the officer had apologized and asked her to confirm the content of the first interview, rather than repeating the process: “He never admitted that it was his mistake... At one point I was more mad at this policeman than at the person who did it.”

Eventually the case was closed by the police due to “insufficient evidence”.

Timely and thorough initial investigation is especially important in rape crimes because the victim’s testimony is usually the key piece of evidence and physical evidence is often perishable.²⁷⁶ The time elapsed between the crime itself and interviewing the victim is also considered to affect the reliability of survivors’ testimony as they are more likely to plug memory gaps with information received from other people.

²⁷³ Interview with “Emilia”, Helsinki, 28 September 2018.

²⁷⁴ The officer was referring to the provision on coercion into sexual intercourse, known as “mild rape”, repealed in 2014. The provision was replaced by a new provision on “less serious” rape. See section on Categories of rape.

²⁷⁵ Interview with “Helen”, Helsinki, 1 November 2018.

²⁷⁶ The importance of the early investigation was highlighted by interviewed police officers, prosecutors and judges.

“I know that at some police stations they don't interview the victim because the case is dark [the identity of the perpetrator is unknown]. There will be big problems with access to justice then, if the suspect is later found out and there will be a six-month delay in interviewing the victim... The [victim's] story won't be nearly as credible, when she has processed it herself and maybe discussed it with others for six months.”

Interview with a police officer²⁷⁷

Amnesty International considers it especially alarming that receiving more information or talking with a friend about rape crimes can in themselves be considered sufficient to reduce the survivor's credibility. The myths surrounding rape and deeply entrenched gender stereotypes mean that victims frequently have trouble making sense of their experience at first and may require extra time and information to be able to identify their experience as a crime.

“The victim has reported the rape after receiving more information about rape crimes. Before the police report the victim and her friend have messaged about the event. These facts weaken the credibility of the victim's testimony. It is possible that the victim has supplemented her memories with erroneous impressions.”

District court judgment

3.4.4 LEGAL COUNSEL

The victim of a sexual crime is entitled to legal representation and a support person paid for by the state at all stages of the process, from the police interview onwards. Indeed, the presence of legal counsel was identified as a factor improving the victim's access to justice.²⁷⁸ Deciding on legal counsel is also a difficult decision and some survivors said they would have welcomed more practical help with finding one.²⁷⁹

“Someone could be made to take care at an earlier stage [that the victim has legal counsel], to have one in good time before the trial. In the worst case scenario, it can be that the trial should start and only in that situation one is found... The counsel could have better prepared the victim for this situation.”

District court judge Jukka Jaakkola²⁸⁰

In an example of a more supportive approach, one of the police officers told Amnesty International that police have extracted a list of attorneys in criminal law who work in Helsinki from the website of the Finnish Bar Association and may offer to call the attorney chosen by the survivor on their behalf, if the survivor wants them to. The Ministry of the Interior told Amnesty International that having a list of attorneys available should be standard practice across the country, but that in reality, practices may vary.²⁸¹ Hilla suggested that it would be helpful to survivors if a follow-up system were in place where someone would call to ask if the survivor had found an attorney and got support.²⁸² The Helsinki Sexual Assault Support Centre (see below) follows up on survivors' health and wellbeing for up to six months after their visit to the Centre.²⁸³ Such a system of follow-up for the legal side of the process would improve survivors' access to justice.

3.4.5 PROSECUTORS AND THE COURTS

Some survivors described their dealings with prosecutors and the courts in positive terms. “Emilia” told Amnesty International how the prosecutor greeted her before the trial and explained what would happen in the hearing. In the trial, the prosecutor made a simple remark (“Just now you described pretty well which

²⁷⁷ Interview with a police officer, Helsinki, 23 October 2018.

²⁷⁸ Interview with a police officer, Helsinki, 23 October 2018.

²⁷⁹ Prosecutors commenting on behalf of the Office of the Prosecutor General also considered that the practical application of the right to legal representation and a support person was deficient. They considered that the prosecutor could take a more active role in the implementation of this right and said that finding a legal counsel and a support person should “in no situation” be the sole responsibility of the victim. Response from the Office of the Prosecutor General received by email on 20 March 2019. The commenting prosecutors are specialised in sexual and violent crimes.

²⁸⁰ Interview with District Court Judge Jukka Jaakkola, Helsinki, 3 October 2018.

²⁸¹ Response from the Ministry of the Interior, received by email 26 March 2019

²⁸² Interview with Hilla Marin, Helsinki, 10 August 2018

²⁸³ Interviews with psychologist Pertti Hakkarainen (17 September 2018), a midwife (17 October 2018) and a doctor (31 October 2018) from the Helsinki Sexual Assault Support Centre.

[facts] were your recollections and which [facts] you have inferred later...) that gave "Emilia" confidence and made her feel that she had been heard.²⁸⁴

Survivors told Amnesty International that they wanted judges to behave in a neutral manner and set boundaries on what the defence could bring up so that questions would be limited to things that are relevant to the event.²⁸⁵

"In the Appeals Court they asked me about my private life: 'Are you in a relationship?' What difference does it make if I'm in a relationship? The defence counsel had changed, he harassed me, and no one stopped him.."

"Anna"²⁸⁶

"[In the District Court] At some point the judge started [saying to] the perpetrator, 'I understand that you have a tough background and you're scared, and this is difficult for you.' It was a horrible experience, the trial... The Appeals Court was better... there [the chairing judge] was stern, but he was stern to the perpetrator too and that felt like a fairer situation. It was very scary and the man was very grim, but maybe he treated both parties more fairly."

"Tiina"²⁸⁷

There were also examples among the judgments analysed where judges explicitly resisted rape myths or displayed a good understanding of victim psychology:

"The accused has admitted having sexual intercourse with the complainant who was in an unconscious state, as per the indictment. The attitude of the accused is illustrated by his statement in the hearing that the complainant did not in any way express that she was unwilling. This utterance means that a woman is in the accused's view always willing to have sex with him and that the opposite condition needs to be separately expressed."

"The complainant's testimony is also very typical for a person subjected to violence and sexual violence... The complainant told [the court] that after the first phase of violence she did not understand what had happened. She had thought that as the damage had already been done, nothing matters anymore. This utterance suggests in the court's opinion that the complainant was shocked, resigned and paralyzed from the violence directed at her and was for this reason later unable to defend herself or to formulate or express her will".

However, there were many examples of very different experiences. Several survivors described how the statements of defence counsel or judges were victim blaming:

"In the District Court I was just asked all the time what I did wrong, why I didn't prevent the rape. How much I had drunk, why I didn't ask for help, why I didn't get a taxi. No one asked the perpetrator why he started following [me] or why he thought it was ok to start leading someone around town or stop them from getting into a taxi or anything. And in court they [the defence] very largely tried to brand me as a whore and wanton and everything."

"Tiina"²⁸⁸

Both Public Prosecutor Nina Keskinen²⁸⁹ and Appeals Court Judge Timo Ojala considered that in the appeals court a recording from the district court should be used rather than requiring the survivor to appear in person. As Timo Ojala explained:

"If the victims have the energy to persevere until the district court, after that at the latest they try to get on with their lives. There's active forgetting of things, don't want to keep it in mind, but in one way or another try to get a hold of life again. And often then when we hear them in the appeals court, it's

²⁸⁴ Interview with "Emilia", Helsinki, 28 September 2018.

²⁸⁵ According to Chapter 17 Section 48 of the Code of Judicial Procedure, judges have the power and responsibility to limit arguments and questions to what is relevant for the case. However, the judges interviewed said that the threshold for using this power to the accused's detriment is dependent on the individual judge and can be rather high, as judges are careful to safeguard the accused's ability to mount an effective defence.

²⁸⁶ Interview with "Anna", Helsinki, 11 September 2018.

²⁸⁷ Telephone interview with "Tiina", 8 August 2018.

²⁸⁸ Telephone interview with "Tiina", 8 August 2018.

²⁸⁹ Interview with Public Prosecutor Nina Keskinen, Helsinki, 20 September 2018.

stressful and nasty to remember the event again when it has maybe already been suppressed a bit and then the statement can be quite brief and then we have to compare that with the earlier statements.”²⁹⁰

3.4.6 MYTHS ABOUT RAPE AND GENDER STEREOTYPES

International human rights law and standards require Finland to counter and eradicate gender stereotypes and discriminatory attitudes towards women as a means of preventing gender-based violence. However, stereotypes and myths about rape and victims of rape continue to affect legal proceedings.

In 2013, the Supreme Court stated that a long delay in reporting a sexual crime to the police is not uncommon as the victim may try to erase the experience and the shame, anxiety and fear associated with it from their mind. The Court also said that no particular behaviour should be expected from the victim of a sexual crime. In addition, the Court stated that in assessing the survivor’s credibility, the fact that the survivor has told others about the events little by little and that people close to them did not notice changes in their behaviour after the event is irrelevant.²⁹¹ However, the experiences of the people interviewed by Amnesty International and the official documentation analysed indicate that prosecutors and judges have yet to fully internalize these principles.

In one case, the prosecutor considered that the perpetrator had not acted with the required intent, by referring to the myth that women say “no” when they mean “yes” – a myth that had been internalized by the victim herself:

“The victim herself says that the suspect apparently did not entirely understand that she did not want sex. The suspect has perhaps thought her resistance was some sort of stupid foreplay. The victim has at some point asked him to at least put a condom on himself and after this has been more or less passive.”

Prosecutor’s decision to close a case

While expert witnesses, such as psychologists, can be called to court, this is dependent on the prosecutor, the victim or the defendant naming the expert as a witness. In the majority of judgments analysed by Amnesty International, there was no indication that an expert witness had been heard (although written medical statements were frequently presented).

“Judges don’t understand shock. For example, they asked me why I just waited at the door until the perpetrator left. There should be a psychologist or a psychotherapist at the trial who would explain to the judges about trauma. For example, when I was asked why I didn’t immediately go to the police or a doctor. I was in shock, I don’t know, why I didn’t do it.”

“Anna”²⁹²

Reporting the rape immediately to the police, security personnel or health-care professionals clearly increased the chances of securing a conviction in the judgments analysed by Amnesty International. Three-quarters of cases where the victim reported immediately ended in a conviction (25 out of 33 cases). By contrast, less than half the cases where the victim reported between one and seven days after the event ended in a conviction (eight out of 17). These very different outcomes suggest the enduring power of the myth that a “real” victim reports immediately.

In some decisions by both prosecutors and courts, the credibility of the victim was contested based on what the judge or prosecutor considered to be the actions of a “reasonable” person. For example, the following circumstances were cited as reducing the victim’s credibility:

- The victim did not immediately report to the police or seek medical help;
- The intercourse had taken place in a small apartment, where other people had been present, but the victim had not tried to get help from them or told them about the rape;
- The victim had kissed the accused immediately prior to intercourse;
- The victim had shared a bed with the accused after intercourse, or had otherwise allowed the accused to stay the night with her;

²⁹⁰ Interview with Appeals Court Judge Timo Ojala, Helsinki, 18 September 2018.

²⁹¹ Supreme Court precedents KKO:2013:96 and KKO:2013:97.

²⁹² Interview with “Anna”, Helsinki, 11 September 2018.

- The victim had had consensual sex with the accused after the alleged rape (particularly relevant in cases when the victim and the perpetrator are in an intimate relationship);
- The victim had voluntarily spent time with the accused after intercourse;
- The victim had not sent messages or tried to call her friends or parents to get help;
- The victim only told her friends about the rape little by little or did not tell them all the details.²⁹³

At least one of these elements was cited in 16 out of the 88 court judgments and 22 out of the 124 prosecutors' decisions.

In some cases, judges misinterpreted signs of trauma. For example, one victim had sent messages to her friend saying that she wondered if the police would think she was responsible for the rape because she had offered the perpetrator a place to stay the night. The court interpreted this as the victim displaying regret about consenting to intercourse and failed to understand that self-blame is not an indication of consent.²⁹⁴

One district court judgment records that the accused admitted having had intercourse with the victim while she was asleep and that the victim had said during the day that she did not want sex. Even though intercourse with a sleeping person clearly fulfils the elements of rape under the current definition in Finnish law, the court did not convict the accused, saying:

“The victim and the accused have been dating. They have had intercourse many times before the situation described in the indictment. In this kind of relationship doing a sexual act to a sleeping person is not to be evaluated in the same way as between strangers.”²⁹⁵

Such statements highlight the profound hold of myths about rape that continue to prevail in the criminal justice system and in society at large and the pernicious effect of the absence of a clearly consent-based legal framework.

3.5 BARRIERS TO JUSTICE: LACK OF SPECIALIST TRAINING, SUPPORT AND RESOURCES

The provision of comprehensive specialist services for victims of sexual violence in Finland is limited and the implementation of support services varies considerably across the country. This has a considerable impact both on survivors' access to justice and immediate support as well as consequences for longer-term healing.

3.5.1 LENGTHY PROCEEDINGS

“The process is psychologically very oppressive. So why does it have to be so long?”

Hilla²⁹⁶

Interviewees identified the length of the process as a problem because it complicates the assessment of evidence that is largely based on the testimonies of the parties or witnesses. Survivors also highlighted how the length of time it takes from reporting to trial also delays the psychological recovery of the victim.

It takes the police, on average, 6.4 months to process reports of rape.²⁹⁷ Where cases are passed to the prosecutor, that stage takes, on average, a further 4.2 months.²⁹⁸ Cases that reach the courts can then take around six months to conclude.²⁹⁹ However, the length of proceedings varies across the country and from case to case.

²⁹³ Judgments and prosecutor's decisions analysed by Amnesty International. See footnotes 18-19.

²⁹⁴ Judgment analysed by Amnesty International.

²⁹⁵ Judgment analysed by Amnesty International.

²⁹⁶ Interview with Hilla Marin, Helsinki, 10 August 2018.

²⁹⁷ Statistics from the National Police Board, 2017, which include all forms of rape and attempted rape.

²⁹⁸ Statistics from the Office of the Prosecutor General, 2017. The data does not include aggravated rape.

²⁹⁹ Based on statistics received from the District Courts of Helsinki, Pirkanmaa, Pohjanmaa and Pohjois-Savo.

The prosecutors and judges interviewed by Amnesty International stated that six months to a year was a reasonable length of time for cases to take from the moment they are reported to the police to the district court judgment.

The police and the judicial system have operated with reduced budgets in recent years. The number of police has fallen from almost 7,900 in 2010 to 7,200 in 2017.³⁰⁰ Some police departments and prosecutors' offices have made agreements on how to limit the number of cases being investigated and sent to the prosecutor.³⁰¹ Also the judicial system has seen funding "shaved" year on year.³⁰² While sexual crimes are always considered serious crimes, the pressure on the resources of the police, prosecutors and courts threatens the efficient and timely investigation, prosecution and handling of all types of cases.

3.5.2 SUPPORT FOR SURVIVORS

Currently there is only one Sexual Assault Support Centre in Finland, located at the Women's Hospital in the capital, Helsinki; this falls far short of the 13 recommended by the Council of Europe.³⁰³ Similar centres are planned in Turku, Tampere, Kuopio and Oulu, but sufficient funding for these has not been forthcoming to date. In the meantime, forensic samples are gathered elsewhere in the country in generalist health centres or hospitals. While the staff at the Helsinki Support Centre receive systematic training, the situation in the rest of the country varies.³⁰⁴

The Centre serves all people over the age of 16 who have experienced sexual violence in the previous month, regardless of sex or gender.³⁰⁵ People whose experiences of sexual violence are related to incidents further in the past are directed to other service providers, such as NGOs or other health-care units as the Centre lacks the resources to address the needs of these survivors.³⁰⁶ Lack of facilities and resources for services means that getting support can be extremely difficult. For example, one survivor described how she was only able to access support services after she attempted suicide.³⁰⁷

Amnesty International was told that some police officers and the Helsinki Sexual Assault Support Centre ask the victim for permission to give their contact details to a support organization, rather than the victim having to approach the organization themselves.³⁰⁸ This was viewed as a positive model by several interviewees.³⁰⁹

Staff at the Helsinki Sexual Assault Support Centre told Amnesty International that they considered specialization improved the care they provide. A midwife described how experience and routine in taking forensic samples improves the ability to care for the patient at the same time and reduces the fear of making a mistake.³¹⁰

Amnesty International considers that all victims, regardless of when their experience of sexual violence took place, should have access to comprehensive support services and that adequate resources should be allocated to enable the Helsinki Support Centre and similar centres in other parts of the country to provide them.

³⁰⁰ Reported in the major Finnish newspaper *Helsingin Sanomat*, 3 January 2019, <https://www.hs.fi/politiikka/art-2000005953932.html>

³⁰¹ Reported in the major Finnish newspaper *Helsingin Sanomat*, 29 December 2018, <https://www.hs.fi/kaupunki/art-2000005949603.html> and 3 January 2019 <https://www.hs.fi/kaupunki/art-2000005953250.html>

The chief of police at the Helsinki Police Department Tomi Vuori also wrote about the issue in the police blog, 31 December 2018, <https://blogi.poliisi.fi/priorisointi-on-vastuunkantaa/>

³⁰² See, for example, a blog post by the Finnish Association of Lawyers, 18 September 2017 <https://www.lakimiesliitto.fi/blogi/suomen-juhluvuoden-tarkein-seminaari/> and announcement from the Ministry of Justice, 25 January 2019, https://oikeusministerio.fi/artikkeli/-/asset_publisher/oikeusministeri-hakkanen-valimiesmenettelylainsaadannon-uudistaminen-kaynnistetaan

³⁰³ One support centre per 200,000 women. See Explanatory Report for the Istanbul Convention, para. 142.

³⁰⁴ Interviews with psychologist Pertti Hakkarainen (17 September 2018), a midwife (17 October 2018) and a doctor (31 October 2018) from the Helsinki Sexual Assault Support Centre.

³⁰⁵ See <http://www.hus.fi/en/medical-care/hospitals/womens-hospital/outpatient-clinics/Pages/Seri-Support-Center.aspx>

³⁰⁶ Email exchange with Pertti Hakkarainen, psychologist from the Helsinki Sexual Assault Support Centre, 17 October 2018.

³⁰⁷ Details of the interview are withheld to protect the interviewee's privacy.

³⁰⁸ According to the Ministry of the Interior, the standard practice of the police across the country is to ask whether they can give the victim's contact details to the support organisation Victim Support Finland. Response from the Ministry of the Interior, received by email 26 March 2019

³⁰⁹ Although "Helen" felt that this model did not suit her, as she preferred to choose the place and time to contact a support organization.

³¹⁰ Interviews with a midwife from the Helsinki Sexual Assault Support Centre, 17 October 2018.

3.5.3 SPECIALIZED TRAINING FOR THE POLICE, PROSECUTORS AND JUDGES

“[The police officer] was shaking, he was uncomfortable hearing about [the rape]... They need to get all the police officers, especially men, into training on how to communicate with victims of rape.”

“Helen”³¹¹

Training is crucial to give professionals the confidence and expertise to meet victims, ensure that the collection and preservation of evidence is done correctly and reduce false perceptions about rape.

Police, prosecutors and judges in Finland are generalists and as such each of them is expected to be able to handle any type of crime. However, the police, prosecutors and judges interviewed by Amnesty International considered that specialization increases the quality of the investigation and legal proceedings regarding sexual offences as staff gain more experience in addressing these crimes.

Police complete a three-year degree at the Police University College, including a module on violent crimes (including sexual violence) as well as courses on victim psychology, victims' rights and interviewing victims. Support organizations, such as Crime Victims Finland and Rape Crisis Centre Tukinainen, are also involved in teaching at these courses.³¹² After the completion of this degree, police can complete a two-week specialized course focusing on sexual crimes and children. One police officer interviewed said that the course was of high quality, but that two weeks was not enough time to cover all the necessary aspects properly.³¹³ This training is not compulsory, even for police who handle sexual crimes.³¹⁴

“Especially at smaller police stations and departments it can happen that someone ends up investigating sexual crimes because they are a woman, because it is thought that somehow weirdly a woman can naturally manage it even without training.”

Interviewed police officer³¹⁵

The level of specialization in dealing with sexual crimes among prosecutors varies across the country. In some regional prosecutor's offices, individual prosecutors specialize in sexual crimes after a time working on other types of crimes.³¹⁶ The Office of the Prosecutor General organizes a three-day training on domestic violence and sexual crimes against adults for prosecutors handling these cases. The training is given mostly by specialized prosecutors, with two one-hour sessions from NGOs on the victim's perspective. The training is practice-oriented and was found useful by a prosecutor and a judge interviewed by Amnesty International. However, the training is not compulsory and not available regularly enough.³¹⁷ Public Prosecutor Nina Keskinen said: “I myself handled these cases [sexual crimes] for about two years before I got to go to the training, so the training doesn't come early enough. They should be more frequent, so if a new prosecutor starts in January, they would get the training within, say, the first half a year.”³¹⁸

The Judicial Training Board, the courts and the Ministry of Justice are jointly responsible for the training of judges.³¹⁹ Judges do not have their own specialized course and the training aimed at prosecutors does not deal with all the issues relevant to a judge's work, even when a judge is able to access the training.³²⁰ Specialization takes place mainly through a peer-support system, where police officers, prosecutors or judges can consult more experienced colleagues.³²⁰

³¹¹ Interview with “Helen”, Helsinki, 1 November 2018.

³¹² Rape Crisis Centre Tukinainen has been involved periodically, Crime Victims Finland regularly. The National Police Board considers that the courses included in the degree are such that they fulfill Amnesty International's recommendation for training on the effects of trauma on victims of sexual violence and the sensitive handling of complaints and effective interviewing victims of sexual violence, as well as addressing and deconstructing harmful stereotypes and myths around rape and rape victims and raising awareness of how such myths and stereotypes may negatively influence the work of the police and obstruct survivors' access to justice (see below, under the section Recommendations). Response of the National Police Board, received by email 22 March 2019. However, police who have graduated a long time ago have not undergone this training.

³¹³ Interview with a police officer, Helsinki, 23 October 2018.

³¹⁴ The National Police Board and the Police University College are also involved in the EPRAS project (2017– 2019), which has created an online course for police, social workers and healthcare professionals on intimate partner violence and how to intervene in it.

³¹⁵ Interview with a police officer, Helsinki, 23 October 2018.

³¹⁶ They continue working on other types of crimes as well.

³¹⁷ Interview with Public Prosecutor Nina Keskinen, Helsinki, 20 September 2018.

³¹⁸ Chapter 21 Section 1 of the Courts Act. Translation available at <http://finlex.fi/en/laki/kaannokset/2016/en20160673.pdf>

³¹⁹ Interview with a district court judge, Central Finland, 11 October 2018.

³²⁰ Interviews with police officers, public prosecutors and judges.

Specialized training should be available to all police, prosecutors and judges who handle cases of sexual violence, everywhere in the country.³²¹ There should be structures ensuring that professionals can get advice and assistance in dealing with cases of sexual violence.

Specialization should be accompanied by the mainstreaming of skills in handling cases of sexual violence, especially in areas with low population densities, in order to ensure that specialization does not result in victims of sexual violence having to travel long distances to access effective services.³²² All public officials who may encounter rape victims should have a basic understanding of trauma and their role in supporting the victim. This includes lawyers in public legal aid offices and social workers as well as police patrols (regardless of their area of focus), health-care professionals, judges and prosecutors. Training is especially important for patrol officers, who are usually the ones who investigate the crime scene rather than the specialized investigating police officer.

3.6 RECOMMENDATIONS³²³

TO THE FINNISH GOVERNMENT AND PARLIAMENT:

1. Fully revise the legal definitions of rape and other sexual crimes so that the central aspect of the crime is the lack of consent assessed in the context of the surrounding circumstances, in line with international human rights law and standards. Particular attention should be paid to accommodating coercive circumstances that would negate the victim's consent. The provision on sexual abuse should be repealed and acts, which constitute rape according to the definition in international human rights law should be incorporated into the definition of rape in the national law to ensure that it is brought into line with international standards.
2. Revise the provision on sexual intercourse to ensure that an apparently gender-neutral provision does not, in practice, afford different levels of protection of sexual autonomy based on gender.
3. Revise the appropriate legislation or guidance to ensure that the close relationship between the victim and the perpetrator, the abuse of a position of power and targeting a victim made vulnerable by particular circumstances are considered aggravating factors in sexual crimes, in line with Article 46 in the Istanbul Convention.
4. Ensure that Supreme Court ruling 2013:96 is followed in courts. A victim of rape or other violence should not be expected to undertake violent or other actions to resist the attacker, and "freezing" or a lack of self-defence should not be taken to indicate that no crime has been committed.
5. Ensure sufficient resources and ongoing capacity building for the police, the prosecution service and the courts to deal with rape cases sensitively, efficiently and without undue delay.
6. Ensure sufficient resources for the Helsinki Sexual Assault Support Centre and the other planned support centres to be able to provide comprehensive care and assistance to all victims of sexual violence regardless of when the violence occurred. Bring the number of Sexual Assault Support Centres to the level recommended by the Council of Europe (1 centre per 200,000 women).
7. Ensure the specific needs of victims of sexual violence, including those related to collecting forensic samples, are taken into account in the planned reform of health services and regional government, in line with the standards set out in the World Health Organization Guidelines for medico-legal care for victims of sexual violence.
8. Ensure that treatment and rehabilitation programmes are available to all sexual offenders, regardless of the type of sentence, the time they have left to serve or the level of risk of re-offending.

³²¹ Ministry of the Interior and prosecutors commenting on behalf of the Office of the Prosecutor General agreed with this conclusion. Response from the Ministry of the Interior, received by email 26 March 2019, and response from the Office of the Prosecutor General received by email on 20 March 2019. The commenting prosecutors are specialised in sexual and violent crimes.

³²² The challenges presented by dispersed populations has been recognised by the National Police Board. Response of the National Police Board, received by email 22 March 2019.

³²³ These recommendations are almost identical with those presented at the end of the report "Fighting the Lottery. Overcoming barriers to justice for women rape survivors in Finland". The Ministry of the Interior agreed with the recommendations in that report, while prosecutors commenting on behalf of the Office of the Prosecutor General agreed with Amnesty International's key recommendations, here reflected in recommendations 1, 5, 6, 9, 11 and 12. Response from the Ministry of the Interior, received by email 26 March 2019, and response from the Office of the Prosecutor General received by email on 20 March 2019. The commenting prosecutors are specialized in sexual and violent crimes.

TO THE NATIONAL POLICE BOARD AND THE POLICE UNIVERSITY COLLEGE:

9. Provide appropriate training that is available regularly and mandatory to all public officials who come into contact with victims of sexual violence in their work. Such training should include, among other things, training on the effects of trauma on victims of sexual violence and the sensitive handling of complaints and effective interviewing victims of sexual violence. Such training should also address and deconstruct harmful stereotypes and myths around rape and rape victims and raise awareness of how such myths and stereotypes may negatively influence the work of the police and obstruct survivors' access to justice. Revision training should also be provided regularly.
10. Introduce mechanisms to ensure that victims have effective access to legal representation from the early stages of the process and that the responsibility for finding legal representation is not placed solely on the victim.

TO THE OFFICE OF THE PROSECUTOR GENERAL:

11. Ensure that specialized training in sexual crimes is made mandatory for prosecutors who handle sexual crimes. Ensure that such training is available regularly and also addresses and deconstructs harmful stereotypes and myths around rape and rape victims and raises awareness of how such myths and stereotypes may negatively influence the work of the prosecution and obstruct survivors' access to justice.

TO THE JUDICIAL TRAINING BOARD, THE MINISTRY OF JUSTICE AND THE COURTS:

12. Introduce mandatory specialized training in sexual crimes for judges and lay judges who handle sexual crimes. Ensure that such training is available regularly and also addresses and deconstructs harmful stereotypes and myths around rape and rape victims and raises awareness of how such myths and stereotypes may negatively influence the work of the prosecution and obstruct survivors' access to justice.

TO THE FINNISH BAR ASSOCIATION AND THE ASSOCIATION OF FINNISH LAWYERS:

13. Make available regular training on sexual crimes for legal counsel, especially focusing on the victim in the legal process; victim's rights and needs, including the experiences of trauma and its impact on the victims as complainants and witnesses; myths and stereotypes about rape and rape victims and their impact on legal process and survivors' access to justice; and measures to avoid re-traumatization.

4. RAPE AND HUMAN RIGHTS IN DENMARK

4.1 EXECUTIVE SUMMARY

“It was like an assault all over again... It was really hard to go through it all, and the way you were interrogated... You really felt that they thought you were just sitting there lying... So when they sit there and really push me in court, it is almost like experiencing it all over again, and then you end up feeling worse about yourself, feeling like ‘it’s my fault, it was me who did something wrong’.”

Emilie, recalling her experience of being questioned during an appeal hearing, which took around two hours.³²⁴

Every year, around 5,100 women in Denmark are subjected to rape or attempted rape, according to the Danish Ministry of Justice.³²⁵ The University of Southern Denmark’s research estimates that the figure for 2017 may have been as high as 24,000.³²⁶ Yet, according to official statistics, the same year, only 890 rapes were reported to the police³²⁷ and of these, 535 resulted in prosecutions and only 94 in convictions.³²⁸

While Amnesty International’s research in Europe shows that women’s access to justice for rape is an issue throughout the region, Denmark now has the opportunity to improve it, with strong survivors’ activism driving change.

One of the key factors in denying women in Denmark their right to access to justice is the law on rape itself. Currently, the Danish Criminal Code defines rape on the basis of physical violence or threat of violence, the presence of duress, or the victim’s inability to resist. It therefore falls short of international standards.

In 2014, Denmark became one of the first countries to ratify the Istanbul Convention, which requires state to ensure that rape and all other non-consensual acts of sexual nature are classified as criminal offences. However, Danish law still does not define rape on the basis of lack of consent, five years since ratification and despite recommendations from the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the body responsible for monitoring the implementation of the Istanbul Convention from 2017.³²⁹

The current law’s focus on resistance and violence rather than on consent has an impact not only on the reporting of rape to the police, but also on social awareness of sexual violence, both of which are key aspects of overcoming impunity for these crimes and preventing them from happening. As Hanne Baden Nielsen

³²⁴ Interview with Emilie, Aarhus, Denmark, 25 June 2018.

³²⁵ Anne-Julie Boesen Pedersen, Britta Kyvsgaard and Flemming Balvig, Ministry of Justice, University of Copenhagen, Crime Prevention Council and Director of Public Prosecutions, ‘Victims studies survey 2005-2016’, p. 88, www.dkr.dk/media/12899/offerrapport_2016.pdf

³²⁶ Laura Deen, Kathrine Bindesbøl Holm Johansen, Sanne Pagh Møller, Bjarne Laursen, ‘Violence and sexual abuse’, 2018, p. 52, www.sdu.dk/da/sif/rapporter/2018/vold_og_seksuelle_kraenkelser. The study was based on the Danish National Health survey, as well as qualitative research and data gathered from 12,615 women and girls above the age of 16.

³²⁷ National Statistics Office, www.dst.dk/en/Statistik/emner/levedilkar/kriminalitet/domme

³²⁸ National Statistics Office, www.statbank.dk/STRAF10

³²⁹ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Baseline Evaluation Report Denmark*, 2017, p. 46

from the Centre for Victims of Sexual Assault at *Rigshospitalet* in Copenhagen told Amnesty International: “Now, a man can say: ‘she did not say ‘no’.’ But the question should be whether she said ‘yes’. There must be a mindset change.”³³⁰

Several of the professionals, campaigners and survivors interviewed by Amnesty International emphasized that changing the legal definition of rape to one based on sexual autonomy and consent has significant potential to bring about broad, systemic societal change and prevent rape in the long term, especially if accompanied by adequate sexuality education and awareness-raising from a young age.

Other legislative gaps identified by Amnesty International include the non-compliance of some of the provisions on aggravating circumstances within the Istanbul Convention. The Danish authorities should revise the Criminal Code to ensure that it recognizes as aggravating circumstances sexual violence against a current or former partner, as well as sexual violence committed in situations of abuse of power, for instance in youth institutions or psychiatric wards.

In the 10 years since Amnesty International published its report, *Case Closed: Rape and human rights in the Nordic countries*,³³¹ the authorities have made welcome efforts to investigate why a large number of rape cases that never reach the courts, as well as to improve law enforcement agencies’ responses to rape, with the Ministry of Justice launching the “Respect for Victims of Rape” plan in 2016. Despite these efforts, however, rape survivors in Denmark often find the reporting process and its aftermath immensely traumatizing, particularly when faced with inappropriate questions, flawed investigations and inadequate communication. Many are met with dismissive attitudes, victim blaming and prejudice influenced by gender stereotypes and rape myths.

Current police practice remains inconsistent and often falls short of both the Danish Police National Guidelines on rape and of international standards. This continues to be a serious barrier to reporting. Survivors who experience rape in the context of domestic violence, women of colour, transgender women and refugee and migrant women face particular challenges in reporting and ultimately accessing justice.

While Denmark is one of the few countries in the region where victims have the right to assistance from state-funded legal counsel, this report shows that in practice, police do not always provide information about this right and in some cases, no lawyer is available. The level of experience of victim’s counsel lawyers in the area of sexual violence also varies. Under the Istanbul Convention, state parties have an obligation to provide initial and continuous training to professionals working on various forms of violence against women, including sexual violence. In Denmark, training in this area is limited for police officers and not mandatory for prosecutors and judges. Survivors, experts and some professionals interviewed by Amnesty International stressed that this was an important area for improvement.

Denmark, as a state party to the UN Convention on the Elimination of All Forms of Discrimination against Women and other international and regional treaties, is obliged to counter and eliminate harmful gender stereotypes in society, for instance through the provision of comprehensive, age-appropriate, evidence-based and unbiased sexuality and relationships education to children and young people. The Danish authorities should ensure that rape myths and gender stereotypes are challenged at all levels of society and the media are encouraged to counter violence against women rather than perpetuating harmful misconceptions.

Many of the women interviewed by Amnesty International have been speaking out about their experiences and campaigning to improve access to justice for rape survivors. The Danish authorities must listen to survivors and take the opportunity to live up to the country’s image as truly gender equal.

4.2 INTRODUCTION

“How many more women need to be assaulted before we open our eyes to how wrong this is?”

“Lene”³³²

³³⁰ Interview with Hanne Baden Nielsen, Copenhagen, Denmark, 14 March 2018.

³³¹ *Case Closed: Rape and human rights in the Nordic countries*, September 2008, <https://amnesty.dk/media/1557/case-closed.pdf>

³³² Interview with “Lene”, Aarhus, 25 June 2018. (Name has been changed to respect the interviewee’s privacy.)

According to a 2018 study by the University of Southern Denmark, an estimated 24,000 women in Denmark experienced rape or attempted rape in 2017.³³³ The Ministry of Justice, on the other hand, estimates that around 5,100 women each year are subjected to rape or attempted rape.³³⁴

This picture of widespread sexual violence stands in stark contrast to Denmark's high scores in terms of gender equality. For example, Denmark came second only to Sweden in the 2017 Gender Equality Index, which examines areas such as work, money and health.³³⁵ Nevertheless, in a follow-up report to the Index published in November 2017, which provides more data on violence against women in EU member states, Denmark was identified as having the highest prevalence of violence against women, including sexual violence, of any member state.³³⁶

4.2.1 ENDEMIC IMPUNITY

Rape is a vastly underreported crime and few rape survivors who do report it see the perpetrators brought to justice. For example, in 2017, 890 rapes were reported to the police;³³⁷ of these 535 resulted in prosecutions and only 94 in convictions.³³⁸ This endemic impunity reflects the findings of a 2014 study by the Fundamental Rights Agency on violence against women across the EU. This ranked Denmark highest in terms of the prevalence of rape among women and girls aged 15 and over (19% of women and girls interviewed) and among the lowest with regard to the number of rapes reported to the police (7%).³³⁹

In its evaluation of Denmark, GREVIO suggested further research was needed into the reasons why so many cases which are reported are closed at the investigation or prosecution stage.³⁴⁰ In 2016, the UN Committee against Torture also recommended that the authorities “address obstacles to the effective prosecution of acts of violence against women so that the judicial remedy is increasingly sought and used successfully”.³⁴¹

4.2.2 GAPS IN DATA COLLECTION

Under the Istanbul Convention, Denmark is obliged to collect disaggregated statistical data on violence against women and girls, including sexual violence, which can provide a clearer picture of who the victims are. However, while the data on rape convictions collected by various Danish authorities (for example, the National Statistics Office) is disaggregated by sex and age, other relevant data, for example on those reporting rape to the police, is not.³⁴²

Overall, data on rape is not disaggregated by other categories, such as sexual orientation, disability or the relationship between the victim and the perpetrator. This hampers thorough analysis of the statistics and does not provide sufficient information, for example, on the level of reporting by women, or the number of rapes committed by intimate partners. No data is collected on sexual violence committed against transgender women.

“As with most services and research in Denmark (and beyond), the surveys are catered to an assumed cisgender recipient. As a result, the only available categories are ‘men’ and ‘women’ – leaving out other genders... As a result, we have no access to statistics concerning sexual violence and rape of transgender persons in Denmark.”

Nico Miskow Friborg of TransAktion, an organization providing support to transgender people in Denmark³⁴³

³³³ Laura Deen, Kathrine Bindsbøl Holm Johansen, Sanne Pagh Møller, Bjarne Laursen, ‘Violence and sexual abuse’, 2018, p. 52, www.sdu.dk/da/sif/rapporter/2018/vold_og_seksuelle_kraenkelser. The study was based on the Danish National Health survey, as well as qualitative research and data gathered from 12,615 women and girls above the age of 16.

³³⁴ Anne-Julie Boesen Pedersen, Britta Kyvsgaard and Flemming Balvig, Ministry of Justice, University of Copenhagen, Crime Prevention Council and Director of Public Prosecutions, ‘Victims studies survey 2005-2016’, p. 88, www.dkr.dk/media/12899/offerrapport_2016.pdf

³³⁵ European Institute for Gender Equality (EIGE), *Gender Equality Index 2017. Measuring gender equality in the European Union 2005-2015*, p. 3, www.eige.europa.eu/rdc/eige-publications/gender-equality-index-2017-measuring-gender-equality-european-union-2005-2015-report

³³⁶ EIGE, *Gender Equality Index 2017. Measurement framework of violence against women*, Figure 6, pp. 32-33, www.eige.europa.eu/rdc/eige-publications/gender-equality-index-2017-measurement-framework-of-violence-against-women.

³³⁷ National Statistics Office, www.dst.dk/en/Statistik/emner/levevilkaar/kriminalitet/domme

³³⁸ National Statistics Office, www.statbank.dk/STRAF10

³³⁹ Fundamental Rights Agency, *Violence against women: an EU-wide survey. Main results report*, 2014 www.fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report

³⁴⁰ GREVIO report, p. 51.

³⁴¹ Concluding Observations, UN Committee against Torture: Denmark, UN Doc. CAT/C/DNK/CO/6-7 (2016) para. 45.

³⁴² See, for instance, National Statistics Office, www.dst.dk/en/Statistik/emner/levevilkaar/kriminalitet/domme; www.statbank.dk/STRAF10.

³⁴³ Interview with Nico Miskow Friborg, Co-founder and Chair, TransAktion, Copenhagen, 15 November 2018.

In its report on Denmark, GREVIO expressed concern that despite gaps in data disaggregation, policy choices are being made – such as placing increased emphasis on violence experienced by men and so-called “bi-directional violence” – that rely on limited information about prevalence and without a statistical basis.³⁴⁴ It warned that “a non-gendered approach to data collection, on the assumption that gender equality is already achieved, may easily mask the prevalence of violence against women”.³⁴⁵ GREVIO strongly encouraged Denmark to put more focus on women victims of gender-based violence in its policies and funding choices.³⁴⁶

In 2015, the CEDAW Committee recommended that the Danish authorities legislate for the collection of data disaggregated by age, ethnicity, nationality and relationship between the victim and the perpetrator, on all forms of violence against women.³⁴⁷ It also urged Denmark to assess the potentially negative implications of gender-neutral legislation and policy on funding for women-focused initiatives.³⁴⁸ In 2017, GREVIO also strongly encouraged the Danish authorities to introduce this type of data collection, as well as ensure that the information it provides is effectively used in the prevention, protection and prosecution of gender-based violence.³⁴⁹

The Danish authorities should address these gaps in data collection on sexual violence to enable informed policy making and decisions about resource allocation that would support effective strategies to address and prevent it.

4.3 BARRIERS TO JUSTICE: THE LAW

Despite being one of the first states to ratify the Istanbul Convention in 2014,³⁵⁰ Denmark has not revised its legal definition of rape to bring it in line with the Convention. As GREVIO pointed out in its 2017 assessment of Denmark, the absence of consent, is “a central element in the way the Istanbul Convention frames sexual violence”.³⁵¹ In its recommendations, it strongly encouraged the Danish authorities to amend the legal definition of rape so that it is based on the notion of freely given consent.³⁵²

As this chapter shows, Denmark’s legislation and practice fall short of international standards in a number of ways with serious consequences for survivors and for efforts to end impunity for the perpetrators of sexual violence, ensure justice for victims and prevent rape.

4.3.1 THE DEFINITION OF RAPE IN LAW

“The law is a symbol of what we in our society consider to be right and wrong. And the law should reflect what we think is wrong and what we think is right. So, even though we don’t know if more people would be convicted... the important thing is that we have said that we think that every time you have sex without consent that it’s rape. And I think that it will be reflected in our culture. And I think that’s actually the most important thing.”

“Anne”³⁵³

³⁴⁴ GREVIO report, p. 14. The Ministry of Equality’s Action Plan for Equality 2018 refers to violence in relationships instead of violence against women, stressing that young men also experience violence in relationships. This view is supported in a study by the University of Southern Denmark, commissioned by the Ministry of Equality, which argues that there is mutual violence in many relationships, hence men and women are equally perpetrators of violence. Sarah Bøgelund Dokkedahl and Ask Elklit, “Examination of mutual violence”, University of Southern Denmark, 2018, www.um.dk/da/ligestilling/nyheder/newsdisplaypage/?newsID=45E71E47-6D96-433D-A0EC-7EB47AE41DA8. Several women’s rights organizations, such as Danner, have been critical of the study’s assertions: www.danner.dk/blog/nej-kvinder-er-ikke-mere-voldelige-end-m-and

³⁴⁵ GREVIO report, p. 21.

³⁴⁶ GREVIO report, p. 61. Ministry of Equality, Perspective and Action plan for Equality 2018,

www.um.dk/da/ligestilling/nyheder/newsdisplaypage/?newsID=E0B7C790-19A6-48D2-AE2A-4B8EF1CBA2E5

³⁴⁷ Concluding Observations, UN Committee on the Elimination of Discrimination against Women: Denmark, UN Doc. CEDAW/C/DNK/CO/8 (2015) para. 18.

³⁴⁸ Concluding Observations, UN Committee on the Elimination of Discrimination against Women: Denmark, UN Doc. CEDAW/C/DNK/CO/8 (2015) para. 40.

³⁴⁹ GREVIO report, p. 62.

³⁵⁰ CHART OF SIGNATURES AND RATIFICATIONS OF TREATY 210, ISTANBUL CONVENTION, WWW.COE.INT/EN/WEB/CONVENTIONS/FULL-LIST/-/CONVENTIONS/TREATY/210/SIGNATURES

³⁵¹ GREVIO report, p. 45.

³⁵² GREVIO report, p. 46.

³⁵³ Interview with “Anne”, Aarhus, 30 May 2018. (Name has been changed to respect the interviewee’s privacy.)

The current definition of rape in the Danish Criminal Code was adopted in 2013 following years of campaigning by civil society organizations. The 2013 changes included a number of progressive steps, for example, that the sentence imposed for rape could no longer be reduced or annulled if the perpetrator and the victim of rape were to marry or were married.

Nevertheless, the current law still falls short of international standards. The flaw which was of greatest concern to those interviewed by Amnesty International was the failure to incorporate a consent-based definition of rape. Article 216 of the Danish Criminal Code states:

“A penalty of imprisonment for a term not exceeding eight years for rape is imposed on any person who (i) uses violence or threats of violence to have sexual intercourse; or (ii) engages in sexual intercourse by duress as defined in section 260 or with a person who is in a state or situation in which the person is incapable of resisting the act.”³⁵⁴

This definition captures only a limited set of circumstances in which rape may occur.

“Instead of introducing the notion that sexual violence is a violation of a woman’s right to bodily integrity and sexual autonomy and that consent must be given voluntarily as the result of the woman’s free will and assessed in the context of the surrounding circumstances, it criminalises only those acts of a sexual nature in which the circumstances of the case or the characteristics of those involved already lead to an imbalance of power and necessarily negate consent.”

GREVIO³⁵⁵

By focusing on sexual intercourse “with a person who is in a state or situation in which the person is incapable of resisting the act”³⁵⁶ the law places emphasis on the victim’s capacity to oppose the assault as opposed to on a range of circumstances under which it would be impossible by definition for a person to consent freely.

Survivors interviewed by Amnesty International stressed how important it was to them that the definition of rape in Danish law is changed to a consent-based one. This was echoed by some professionals, campaigners and other experts interviewed. Kirstine, who reported rape in 2017, explained the impact on access to justice of a law that focuses on evidence of physical violence, and thus indirectly on the victim’s resistance, rather than consent: **“I said ‘no’ many times, ‘stop’, ‘leave me alone’... It should be enough for me to say ‘no’. I should not have to fight him.”** Kirstine described how during the legal process she was asked by the police and in court whether she had resisted. Crucially, the justice officials focused their questions on seeking physical evidence that she did: **“I was never asked if I consented. Of course, I didn’t.”³⁵⁷**

The current legal definition of rape fosters an approach where evidence of physical violence is key to whether the police and the justice system pursue rape charges and, by extension, on whether women report rape. For example, Isabel told Amnesty International that one of the reasons why she did not report the rape to the police was that there were no witnesses to the crime and she did not believe there was evidence of physical violence: **“When he grabbed me, he didn’t do it hard enough to make bruises”³⁵⁸** Through her involvement in gender equality activism, Isabel said she was aware of how difficult it is to get justice for rape, even in cases where there is physical evidence or witnesses are present. **“So, I thought to myself that it would just be like rubbing salt into the wound.”³⁵⁹**

Professor Trine Baumbach of the Law Faculty at the University of Copenhagen also believes that a consent-based legal definition of rape would “enable courts to interrogate whether the accused, in the given circumstances, had reason to believe that the other party had consented”. She clarifies, however, that “the burden would still lie with the prosecution to prove the crime beyond reasonable doubt. A consent-based definition does not jeopardize the accused’s fair trial rights”.³⁶⁰

³⁵⁴ Danish Criminal Code, Consolidated Act No. 977 (2017), Article 216.

³⁵⁵ GREVIO report, p 46.

³⁵⁶ Danish Criminal Code, Consolidated Act No. 977 (2017), Article 216.

³⁵⁷ Interview with Kirstine, Fredericia, 15 March 2018.

³⁵⁸ Interview with Isabel, Aarhus, 30 May 2018.

³⁵⁹ Interview with Isabel, Aarhus, 30 May 2018.

³⁶⁰ Interview with Trine Baumbach, Associate Professor of Law, University of Copenhagen, Faculty of Law, Copenhagen, 16 March 2018.

Helle Hald, lawyer and victim’s counsel, told Amnesty International that she believed access to justice for rape could be improved not through legislative change but by improving the practice and implementation of the law, for instance through ensuring prompt and thorough police investigations (interview with Helle Hald, Copenhagen, 13 March 2018).

The law's focus on resistance and violence rather than on consent has an impact not only on reporting of rape but also on social awareness of sexual violence, both of which are key aspects of overcoming impunity for these crimes and preventing them from happening.

“Now, a man can say: ‘she did not say ‘no’.’ But the question should be whether she said ‘yes’. There must be a mindset change.”

Hanne Baden Nielsen, Head Nurse, Centre for Victims of Sexual Assault at Rigshospitalet in Copenhagen³⁶¹

Several of the professionals, campaigners and survivors interviewed emphasized that changing the legal definition of rape to one based on sexual autonomy and consent has significant potential to bring about broad, systemic societal change and prevent rape in the long-term, especially if accompanied by adequate sexuality education and awareness-raising from a young age.

Some of the survivors interviewed by Amnesty International whose stories are cited in this report expressed a belief that if the definition made clear that sex without consent is rape, they would perhaps never have been raped in the first place.

“Maybe it wouldn't have happened if the law was different. The law has a lot to do with exactly why I didn't realize it was rape. It's such a fragile situation, and a situation where you're so ashamed, so if the law tells you that it's not a rape if there's no violence... I think it's a question about the definition. And so it's not up to you to feel that it was rape but you can look at these definitions and say ‘yes, that happened, that happened, that happened’.”

Liva, who was raped by a man she knew at a music festival in 2017³⁶²

In practice, the current definition of rape in Danish law means that rape cases where physical force, its threat or proof of inability to resist are not shown, often fall through the cracks in the legal system. Cases where no violence occurred rarely make it to court. Prosecution decisions to close cases analysed by Amnesty International show a strong emphasis on the victim's resistance. Amnesty International has analysed 353 decisions to close cases from December 2017 to May 2018 and these show that prosecutors do indeed focus on whether the complaint falls within the law's narrow definition requiring proof of physical violence.

Similarly, in 55 of the convictions for sexual offences handed down between 1 May 2017 and 1 May 2018 by Danish district courts analysed by Amnesty International, proof of physical violence was key to the conviction. Court judgments analysed by Amnesty International show that some judges place strong emphasis on the victim's physical and verbal resistance as an indicator of lack of consent. For example, the District Court of Viborg reasoned when acquitting three men of rape: “Even if after the explanations it can be concluded that the claimant during the episode on the toilet said ‘No, I cannot do this’, she did not take the initiative to leave the toilet or shout for help, or in any other way resist.”³⁶³

Despite the expectation that a “model” rape victim will fight her attacker back, “freezing” when confronted with a sexual attack has been recognized as a common physiological and psychological response, leaving the person unable to oppose the assault, often to the point of immobility. For example, a 2017 Swedish clinical study found that 70% of the 298 women rape survivors assessed experienced “involuntary paralysis” during the assault.³⁶⁴

Women interviewed by Amnesty International also noted how perceptions of how one “should” behave when sexually assaulted influenced their own thinking about what they had experienced. “Sofia”³⁶⁵ told Amnesty International: **“no one had told me why I did freeze when he assaulted me instead of fighting because I always thought of myself as strong, as a fighter. I was raised that way, it's such a huge part of my identity, when I couldn't [fight], it just ruined everything I thought I was. I thought I was weak, and, not necessarily that it was my fault but that I could have done more.”**³⁶⁶

³⁶¹ Interview with Hanne Baden Nielsen, Copenhagen, 14 March 2018.

³⁶² Interview with Liva, Copenhagen, 29 May 2018.

³⁶³ Decision 4333/2017, District court of Viborg, p. 21. The dissenting judge in this connection pointed out: “the episode took place in a little trailer toilet, where two of the accused had placed themselves nearest the locked door, so that the claimant was unable to leave the toilet unless the two accused moved and opened the door”, p. 22, 9 May 2018.

³⁶⁴ Anna Möller, Hans Peter Söndergaard and Lotti Helström, “Tonic immobility during sexual assault – a common reaction predicting post-traumatic stress disorder and severe depression”, *Acta Obstetrica et Gynecologica Scandinavica* 96 (2017), www.obgyn.onlinelibrary.wiley.com/doi/abs/10.1111/aogs.13174

³⁶⁵ Name has been changed to respect the interviewee's privacy.

³⁶⁶ Interview with “Sofia”, Copenhagen, 26 June 2018.

International human rights law provides that there should be no assumption in law or in practice that a victim consents because they do not physically resist the unwanted sexual conduct.³⁶⁷ As a state party to the European Convention of Human Rights since 1953, Denmark should amend its legal definition of rape to be based on the lack of consent as opposed to focusing on the victim's capacity to resist.

4.3.2 PENALTIES AND AGGRAVATING CIRCUMSTANCES

Articles 218-220 of the Criminal Code criminalize sexual intercourse in situations where a person exploits another person's mental disability or their dependency, for instance in situations of deprivation of liberty, in institutions such as youth institutions or psychiatric wards.³⁶⁸ Article 221 of the Criminal Code criminalizes obtaining sexual intercourse through deception.³⁶⁹ The Criminal Code does not explicitly state that these offences constitute rape and they carry lesser penalties than crimes defined as rape.

The Criminal Code provides that penalties for rape can be determined on the basis of the presence or absence of broadly defined aggravating circumstances, which include if the offence was committed "in a particularly dangerous manner",³⁷⁰ caused "particular degradation",³⁷¹ if the victim was trafficked to the country,³⁷² or if the perpetrator had a relevant prior conviction.³⁷³ When the victim is under the age of 15, it is an aggravating circumstance if the perpetrator took advantage of their physical or mental superiority.³⁷⁴ The guidelines for prosecutors investigating sex crimes also refer to "common aggravating factors", such as if the rape was committed by more than one person or if the perpetrator was unknown to the victim.³⁷⁵

By posing unknown attackers as an aggravating factor, the law also suggests that if the attacker is known to the victim, it is a lesser crime. Several of the women interviewed by Amnesty International raised this as a concern related to how they were treated by the justice system and indeed how they responded themselves.

This "stranger myth" affects how rapes committed by partners or other perpetrators known to victims are perceived and treated by the legal system. However, it is a myth with little basis in fact. Research from 2017 shows that 37% of rapes in Denmark were perpetrated by a current or former husband or other intimate partner.³⁷⁶ Nevertheless, the power of such entrenched myths means that when the attacker is a friend or an acquaintance, victims sometimes do not immediately perceive rape to be rape.

Cathrine, who had experienced domestic violence including rape at the hands of a former boyfriend, told Amnesty International how, for a period of time, she did not consider what had happened to her as rape due to the image of rapes as only being committed by a stranger who "pulls you behind a bush" and not by partners. She also noted that the "stranger myth" creates a perception that if the crime is committed by a partner or another person known to the victim, it is not "as bad".³⁷⁷ Cathrine is now involved in raising awareness about sexual violence in Denmark with Bryd Tavsheden (Break the Silence), an organization working with young people. She said that she hears the same myth repeated by the young people she works with.³⁷⁸

In its 2017 assessment of Denmark's compliance with the Istanbul Convention, GREVIO noted the difference in the length of penalties for the offences of sexual violence which are not explicitly defined as rape in the Criminal Code: "it seems inappropriate to issue a lesser sentence... for sexual intercourse following the exploitation of a 'mental illness/disability' compared to sexual intercourse with an intoxicated woman incapable of consenting to the act, which currently carries a maximum prison term of eight years. This creates a hierarchy of victims of sexual violence which would run counter to the prohibition of discrimination on the basis of health." It strongly encouraged the Danish authorities to bring the penalties for the offences defined in Articles 218-220 of the Criminal Code into line with those for rape (Article 216).³⁷⁹

³⁶⁷ *M.C. v. Bulgaria* (2003) ECHR 651.

³⁶⁸ Danish Criminal Code, Consolidated Act No. 977 (2017), Articles 218-220.

³⁶⁹ Danish Criminal Code, Consolidated Act No. 977 (2017), Article 221.

³⁷⁰ Danish Criminal Code, Consolidated Act No. 977 (2017), Article 216(3).

³⁷¹ Danish Criminal Code, Consolidated Act No. 977 (2017), Article 216(4).

³⁷² Danish Criminal Code, Consolidated Act No. 977 (2017), Article 216(5).

³⁷³ Danish Criminal Code, Consolidated Act No. 977 (2017), Article 81(1).

³⁷⁴ Danish Criminal Code, Consolidated Act No. 977 (2017), Article 222.

³⁷⁵ Danish Prosecution Guidelines for prosecutors investigating sex crimes, April 2018, Section 5.1.5.

³⁷⁶ www.vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/a47861d0-4490-461c-aec7-da2aa4151928

³⁷⁷ Marie Bruvik Heinskou, Laura Marie Schierff, Peter Ejbye - Ernst, Camilla Bank Friis, Lasse Suonperä Liebst, "Sexual Violations in Denmark, Scope and Character", p. 23, October 2017, www.dkr.dk/media/12694/seksuelle_kraenkelser.pdf

³⁷⁸ Interview with Cathrine, Copenhagen, 31 May 2018.

³⁷⁹ GREVIO report, p. 46; Istanbul Convention, Article 4(3).

The Istanbul Convention requires situations in which the perpetrator abused their authority, as well as those where the offence was committed against a person made vulnerable, to be considered as aggravating circumstances.³⁸⁰ The fact that the offences covered by Articles 218-220 of the Danish Criminal Code carry lower criminal sanctions than rape as defined by Article 216 indicates that they are in fact considered mitigating factors.

GREVIO recommended that the Danish authorities take measures to ensure application of all the aggravating factors specified under Article 46 of the Istanbul Convention, including improving the awareness of the judiciary. It stressed that judges should be made aware that “lenient sentences in domestic violence cases and other forms of violence against women do not serve the principle of ensuring justice for victims and ending impunity of perpetrators”.³⁸¹

Amnesty International believes that the Danish Criminal Code should be revised to make sexual violence against a current or former partner an aggravating circumstance. It also believes that, as required by the Istanbul Convention, the offences covered by Articles 218-220 should be considered aggravating circumstances, reflecting the seriousness of the offence and that punishment should correspond to the gravity of the crime.

4.4 BARRIERS TO REPORTING RAPE

“If you follow the news just a little bit, you will see that the most obvious cases are being dismissed again and again and again, and all they have to say is that they thought she wanted it, that she likes it rough or something like that and it will be dropped even if there were massive injuries... The chance of actually winning a case, it is so slim that it feels so futile to even try.”

“Maya”³⁸²

The vast majority of rapes committed in Denmark are not reported to the police. The reasons why women and girls do not report rape are complex, but often include the fear of not being believed, self-blame and lack of trust in the justice system.³⁸³

In recent years, the Danish authorities have made some welcome efforts to investigate the high number of rape cases that never reach the courts. Reviews conducted in 2015, 2016 and 2017 by the State Prosecutor’s Offices for Copenhagen and Viborg into the police handling of reported rapes revealed that, among other things, practices varied and that police officers were not following the same procedures consistently.

This prompted the then Minister of Justice to launch an action plan called “Respect for Victims of Rape” (*Handlingsplan Respekt for ofre for voldtægt*) in January 2016.³⁸⁴ The plan included six measures aimed at improving law enforcement agencies’ responses to rape, namely: the creation of National Police Guidelines on handling rape and rape-related cases; further training for the police and prosecution services in interviewing vulnerable witnesses; improving victims’ access to legal counsel through the introduction of lists of legal aid lawyers; a campaign encouraging people to report rape to the police; the creation of an advisory group to the police and prosecution service consisting of practitioners and experts in the field which would convene twice a year; and a survey on the profile of perpetrators to be conducted by the Ministry of Justice. The action plan did not provide a timeframe for evaluation, review or revision.

Nevertheless, the experiences of many interviewees indicate that current police practice remains inconsistent and often falls short of both the National Guidelines and international standards and that this continues to be a serious barrier to the reporting of rape.

³⁸⁰ Istanbul Convention, Articles 46(a) and (c).

³⁸¹ GREVIO report, p. 47.

³⁸² Interview with “Maya”, Copenhagen, 28 May 2018. (Name has been changed to respect the interviewee’s privacy.)

³⁸³ The 2013 “Barometer on rape” compiled by the European Women’s Lobby noted that low levels of reporting are a wide-spread phenomenon across the region.

³⁸⁴ Ministry of Justice of Denmark, “Respect for Victims of Rape” Action Plan, 27 January 2016, www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2016/Respekt%20for%20voldt%C3%A6gtsofre.pdf

4.4.1 LACK OF CONFIDENCE IN THE POLICE

Women survivors and experts working with rape victims interviewed by Amnesty International said that the fear of not being believed or even being blamed and shamed by police and justice officials were among the primary reasons for not reporting rape.

“I was in a relationship at that point, so I told my boyfriend. And he told me to report it, and my first thought was that I won’t report it because it doesn’t matter, because I know him, it was at my own home, there will be no legal process at all, they will just laugh at me when I tell them.”

Kirstine Marie, who was raped by a friend who stayed at her flat³⁸⁵

For some women, the fear of not being believed is compounded by their circumstances, such as uncertain immigration status. “Letitia”³⁸⁶, who is a lesbian woman from Uganda and now has recognized refugee status, initially came to Denmark to work as an au pair. When her male employer raped her, “Letitia” was at a complete loss as to where to go or who to seek help from:

“I didn’t have anyone. I didn’t know anybody... I would think of reporting him a thousand times... He told me, which used to make me feel afraid, that he’s Danish and they won’t listen to a black person... And after he told me that, it made me feel small. It made me feel not worthy.”

“Letitia”³⁸⁷

Bwalya Sørensen, spokesperson for Black Lives Matter Denmark, told Amnesty International: “It is very difficult for black women to report rape by a white man to the police. This is where intersectionality comes into play... When black women report white men to the police for rape, the men know the system from within and that they will be listened to... It doesn’t matter what she says, because it is his word that is prioritized.”³⁸⁸

Therese Christensen, a Consultant for South-East Asian Women with Danner, has come across cases of migrant women in Denmark who did not report rape to the police for fear of their immigration status being questioned or their immigration permission applications being denied. She recalled: “I came into contact with a Filipino au pair who rented a room from a Danish man after her employment contract with the family she was working for was terminated. After the man spiked her wine and raped her for the first time, she did not report it to the police as she believed her immigration permission was no longer valid since the first work contract was no longer in place. She ended up staying with the man for some time and being raped and physically abused repeatedly.”³⁸⁹

According to Nico Miskow Friberg from TransAktion, most transgender people also have very little faith in the system and systemic discriminatory attitudes towards them also puts them at increased risk of sexual violence: “the known lack of access to rights and justice for transgender people makes them ‘easy victims’”. There are no surveys or research on the scope or impact of rape on transgender people in Denmark. But from transgender persons’ accounts we do know that the situation in Denmark is similar to other countries. From our work counselling transgender people in TransAktion, we know that transphobia and trans exclusion are serious barriers when accessing services in the public system – both generally and specifically, in relation to sexual violence.”³⁹⁰

4.4.2 POLICE RESPONSES TO REPORTS OF RAPE

In its 2017 assessment of Denmark, GREVIO noted that experts from the Centre for Sexual Assault Victims at Rigshospitalet found that the 2016 Ministry of Justice “Respect for Victims of Rape” action plan contributed to a fall (from 7% to 5% in 2017) in the number of women in Copenhagen who tried to report a rape but felt discouraged.³⁹¹

³⁸⁵ Interview with Kirstine Marie, Copenhagen, 26 June 2018.

³⁸⁶ Name has been changed to respect the interviewee’s privacy.

³⁸⁷ Interview with “Letitia”, Copenhagen, 27 June 2018.

³⁸⁸ Interview with Bwalya Sørensen, Spokesperson, Black Lives Matter Denmark, Copenhagen, 15 November 2018.

³⁸⁹ Interview with Therese Christensen, Consultant for South-East Asian Women, Danner, Copenhagen, 27 June 2018.

³⁹⁰ Interview with Nico Miskow Friberg, Co-founder and Chair, TransAktion, Copenhagen, 15 November 2018. Media coverage of Fernanda Milan’s story, Politiken, 12 August 2012, www.politiken.dk/indland/art5406377/Transk%C3%B8nnede-Fernanda-Jeg-blev-voldtaget-ikke-bare-af-%C3%A9n-mand-men-af-mange

³⁹¹ GREVIO report, p. 49; Data collected by the Centre for Victims of Sexual Assault at Rigshospitalet Copenhagen.

As part of this plan, in 2017, the Danish National Police rolled out a campaign encouraging women to report rape called “Even though it started out well, it can still be rape”.³⁹² The campaign targeted 14 to 25-year-olds who had experienced sexual assault by someone they knew. A representative of the National Police told Amnesty International that the campaign videos were seen almost 600,000 times on social media and a live Facebook chat had an audience of 26,000. Since the campaign, the police state that they have seen a rise in reports.³⁹³

Survivors interviewed for this report had varying opinions about this initiative. Some reported positive experiences and victims’ counsel lawyer Helle Hald and Hanne Baden Nielsen from the Victims of Sexual Assault in Copenhagen also welcomed the initiative.³⁹⁴ However, the experiences of other victims show that the action plan is not being implemented fully and consistently and that distressing experiences in reporting to the police persist. The response by the police and justice officials to victims is crucial. It can either reaffirm the pre-existing shame and blame many victims feel, particularly when the perpetrator is known to them, or challenge it and support survivors in seeking justice.

4.4.3 LACK OF PRIVACY WHEN REPORTING

Kirstine Marie decided to report the rape to the police three days after it happened. She spent over an hour sitting in an open area of the Central Police Train Station in Copenhagen being approached and questioned by several different officers. This was after officers informed her that the report had to be made at a station closer to the crime scene but that they could do an initial log of her case, after which she would have to wait for a phone call from another station in Copenhagen, inviting her to attend and give her statement.³⁹⁵

International human rights standards require states to take all necessary measures to protect the rights and interests of the victims, including their special needs as witnesses, at all stages of investigation and legal proceedings.³⁹⁶ The Danish National Police Guidelines on handling rape and rape-related cases acknowledge the need for the reporting of rape to take place in private and that requests from the complainant for one-to-one discussion in “a suitable room” should be accommodated.³⁹⁷ However, testimonies of women interviewed by Amnesty International show that this need for privacy is not always ensured by police officers across the board and that treatment varies even within the same station.

4.4.4 POLICE TREATMENT OF VICTIMS DURING INTERVIEW

The National Police Guidelines on handling rape and rape-related cases clearly recognize the need to treat rape complainants with empathy, stating that: “the police should be aware that the complainant is in an especially vulnerable position. It is important that the police display understanding and provide support for the complainant.”³⁹⁸ They stress the importance of those reporting rape being interviewed by specially trained and experienced officers as far as possible and of accommodating requests to be interviewed by an officer of the same gender whenever possible.³⁹⁹ They also provide direction on best interviewing practices. Alcohol and drugs intake (which could possibly point towards drug rape) are among the facts that the Guidelines require officers to establish.⁴⁰⁰ They state clearly, however, that while officers can ask the complainant about details such as their clothing and behaviour in order to obtain all relevant details, they should explain the reasons for asking such questions. This is to be done “in order to prevent the complainant feeling that the police’s questions are accusatory or blaming”.⁴⁰¹

Several of the women interviewed by Amnesty International had positive experiences when being interviewed by the police and described practices that were in line with international human rights standards and the police Guidelines. However, others received a very different response. In their cases, the Guidelines were not

³⁹² Danish National Police campaign, www.anmeldvoldtaegt.dk.

³⁹³ Email from Steen Hansen, Special consultant, National Center of Investigation, National Police, 28 November 2018.

³⁹⁴ Interviews with Helle Hald, lawyer and victim’s counsel, Copenhagen, 13 March 2018, and Hanne Baden Nielsen, Head Nurse, Centre for Victims of Sexual Assault, *Rigshospitalet*, Copenhagen, 14 March 2018.

³⁹⁵ Interview with Kirstine Marie, Copenhagen, 26 June 2018.

³⁹⁶ UN Handbook for Legislation on Violence against Women, 2012, p. 37. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Resolution 60/147, 16 December 2005, UN Doc. A/RES/60/147 92006.

³⁹⁷ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 2.

³⁹⁸ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 2.

³⁹⁹ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 6. In its 2017 report, GREVIO noted that the low number of women law enforcement officers in Denmark (15%) makes it difficult to ensure that a complainant can be interviewed by a female officer within a reasonable period of time (GREVIO report, p. 50).

⁴⁰⁰ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 5.

⁴⁰¹ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 6.

followed and officers did not explain to them why they were asking about details such as their dress, their behaviour or their alcohol intake, leaving them feeling as if they were being blamed for the rape.⁴⁰²

For example, 19-year-old Dyveke told Amnesty International that the police officer told her that it looked like she was lying after having questioned the two suspects and their testimonies not matching hers. Dyveke recalled being told that: “these three stories clearly do not match, there are only two of them that are right. So it is now time to tell the truth about what happened that night. And then I panicked because I had told her everything that I could possibly remember and everything that happened. So then I completely broke down because I suddenly felt that it was an attack on me. And it wasn’t especially nice to be doubted because I was feeling very low at that time.”⁴⁰³

“I felt that I was almost going to jail for something that I was recommended to do. She said directly to me that if I did not tell the truth then in court it would be me who would be prosecuted.”

Dyveke⁴⁰⁴

In its 2017 assessment of Denmark, GREVIO welcomed the “Respect for Victims of Rape” plan and noted its overall positive assessment on the part of specialist support centre staff.⁴⁰⁵ While the measures proposed in the action plan are positive and promising, Amnesty International’s research found that, three years on, survivors’ experiences of the legal process varied throughout the country⁴⁰⁶ and that the authorities still have a long way to go to improve access to justice for rape survivors.

4.5 BARRIERS TO JUSTICE: THE LEGAL PROCESS

4.5.1 LIMITED ACCESS TO EXPERIENCED VICTIM’S LEGAL COUNSEL

Denmark is one of the few countries in Europe that provide free legal counsel for victims of crime, including rape survivors, in certain circumstances. Under the Administration of Justice Act 2018, victims are entitled to a state-funded and appointed victim’s counsel lawyer (*bistandsadvokat*)⁴⁰⁷ or can choose to appoint a lawyer themselves – this will also be paid for by the state.⁴⁰⁸ The role of victim’s counsel is among other things, to provide guidance and direction to the injured party.⁴⁰⁹ However, in practice, police do not always provide information about this right and in some cases, no lawyer is available. The level of experience of victim’s counsel lawyers in the area of sexual violence also varies.

The National Police Guidelines on handling rape and rape-related cases instruct officers that they should inform the person reporting a rape of the possibility of having a victim’s counsel lawyer appointed before or immediately after making the report, that is preferably before their first interview, in line with the Administration of Justice Act.⁴¹⁰ The police should also provide the person making the report with information about the role of victim’s counsel and give them the opportunity to talk to their lawyer before the first interview.⁴¹¹

However, in practice, women rape survivors in Denmark are not always provided with information about their right to access a victim’s counsel lawyer and in some cases, no lawyer is available.⁴¹² Sara Parding from the Centre for Victims of Sexual Assault in Aarhus told Amnesty International that: “while access to lawyers has generally been improving for victims, it remains an issue when a report is made during the weekend, late at night or takes place in a small village.”⁴¹³ The 2017 review of closed rape reports by the State Prosecutor’s Office for Copenhagen noted that several police districts reported difficulties in accessing legal counsel when

⁴⁰² Interview with Stine, Aarhus, 30 May 2018; Interview with Kirstine Marie, Copenhagen, 26 June 2018.

⁴⁰³ Interview with Dyveke, Aarhus, 29 May 2018.

⁴⁰⁴ Interview with Dyveke, Aarhus, 29 May 2018.

⁴⁰⁵ GREVIO report, p. 49.

⁴⁰⁶ A similar finding has been made by GREVIO, p. 49.

⁴⁰⁷ Administration of Justice Act, Consolidated Act No.1284 (2018), Article 741(a)(1).

⁴⁰⁸ Administration of Justice Act, Consolidated Act No.1284 (2018), Article 741(a)(2).

⁴⁰⁹ Administration of Justice Act, Consolidated Act No.1284 (2018), Article 741(c).

⁴¹⁰ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 3; Administration of Justice Act, Consolidated Act No.1284 (2018), Article 741(b)(1).

⁴¹¹ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 3; Decree on the duty of the police and prosecutor to guide and inform injured persons in criminal cases and to appoint a contact person for injured persons no. 1108, 2007, www.retsinformation.dk/Forms/R0710.aspx?id=2866

⁴¹² Interviews with Kirstine, Fredericia, 15 March 2018; “Maya”, Copenhagen, 28 May 2018; Stine, Aarhus, 30 May 2018; Cathrine, Copenhagen, 31 May 2018; “Lene”, Aarhus, 25 June 2018; and Kirstine Marie, Copenhagen, 26 June 2018.

⁴¹³ Interview with Sara Parding, Head of Campaigns, Centre for Victims of Sexual Assault, Aarhus, 15 March 2018.

the report is made outside office hours and referred to a proposal to put in place an out-of-hours system to address this.⁴¹⁴

Søren Ravn-Nielsen, Deputy Police Inspector from Sydsjællands and Lollands-Falsters District Police told Amnesty International: “There are big differences in the quality of the lawyers, and the level of interest they put into the case.”⁴¹⁵ Anne Birgitte Styrup, former senior prosecutor at the State Prosecutor’s Office for Copenhagen, also told Amnesty International she believed that the quality of the work of victim’s lawyers varies. In her opinion, good victim’s counsel make a big difference and can ensure that survivors are ready to go to court, for instance by bringing them to the courtroom earlier to prepare. She told Amnesty International: “I also found it terrible that when I questioned a victim and she broke down in court, I then had to say goodbye. I was also unable to call them before to tell them I thought they should bring a friend or their mum with them. All those things I was unable to do, as I could then be seen as influencing the process, the victim’s counsel can do.”⁴¹⁶

Emil Folker, senior prosecutor at the State Prosecutor’s Office for Copenhagen, told Amnesty International that he believes that the presence of victim’s counsel improves the standard of police interviews and that the fact that a victim has this access to a professional who is fully and solely representing the victim is positive.⁴¹⁷ After her interview with the police, Kirstine Marie felt that it would have made a difference to have a lawyer present:

“I was just one 21-year-old woman, sitting there with two guys looking at me, saying, ‘are you sure you want to report this?’ So, if there had been a lawyer with me, they would probably have said, ‘yes, she is, that’s why we are here’ in a way that I didn’t have the authority to do because I was just a young girl, ‘claiming’ to have been raped.”⁴¹⁸

The women interviewed who did have a lawyer’s assistance had varying experiences. For example, 20-year-old Emilie’s experiences with two different lawyers were positive, with one especially engaging with her and communicating well.⁴¹⁹ However, expertise in the area of sexual violence was not always a given; a real estate lawyer was assigned to Kirstine, for example, forcing her to find other counsel.⁴²⁰ Between reporting the rape to the police and the case going through different court hearings, Kathrine was assigned three different lawyers. She said having to tell her story to a different person time after time was one of the most difficult aspects of this part of the process.⁴²¹

4.5.2 FLAWED INVESTIGATIONS

Women’s access to justice for rape depends on, among other things, the quality of police and prosecution investigations. The Danish National Police Guidelines on handling rape and rape-related cases outline the various investigative steps that the police must undertake when investigating sexual crimes. These include securing the crime scene; ensuring that a personal forensic examination of the complainant is carried out by relevant medical professionals; securing evidence, such as clothing, bed sheets and mobile phones; and identifying witnesses.⁴²²

The experiences of women Amnesty International spoke to varied greatly with regard to how their cases were investigated by the Danish police. Some were marked by a catalogue of failures. For example, the police informed Kirstine that some of the case documents were lost in the post when the file was passed on to Copenhagen police and during the court proceedings it came to light that the officers committed errors in collecting vital evidence. During the court hearing, it became apparent that the prosecutor did not have the forensic analysis of the clothing Kirstine was wearing on the night in question. In their response to Kirstine’s complaint, the police explained that they did not consider this necessary because during the police interview, the accused had admitted intercourse and did not contest that his semen may have been on the clothes. However, during the trial, he changed his version of events and claimed that they were naked. The evidence that would have countered this statement was never collected. This was a clear breach of the

⁴¹⁴ State Prosecutor’s Office for Copenhagen, reviews of rape cases 2015, 2016 and 2017.

⁴¹⁵ Interview with Søren Ravn-Nielsen, Deputy Police Inspector, Sydsjællands and Lolland-Falsters District Police, Greater Copenhagen, 11 October 2018.

⁴¹⁶ Interview with Anne Birgitte Styrup, former senior prosecutor, State Prosecutor’s Office for Copenhagen, Copenhagen, 8 October 2018.

⁴¹⁷ Interview with Emil Folker, senior prosecutor, State Prosecutor’s Office for Copenhagen, Copenhagen, 5 November 2018.

⁴¹⁸ Interview with Kirstine Marie, Copenhagen, 26 June 2018.

⁴¹⁹ Interview with Emilie, Aarhus, 25 June 2018.

⁴²⁰ Interview with Kirstine, Fredericia, 15 March 2018.

⁴²¹ Interview with Kathrine, Copenhagen, 27 June 2018.

⁴²² National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 5.

National Police Guidelines, which state that officers should secure the complainant's clothing as soon as possible.⁴²³

In a response to Kirstine's complaint, the police acknowledged that: "Any technical statement about this would have been able to substantiate your explanation in the national court as more credible than the explanations of declarations that were changing."⁴²⁴ However, the Director of Public Prosecutions did not find that this was a sufficient ground for appealing the judgment acquitting the man.⁴²⁵ Kirstine also found out that the police had never visited the crime scene and interviewed the suspect almost a month after she had made the report. Her report to the police that she suspected the man was under the influence of alcohol or drugs was also never investigated.⁴²⁶

Failure to secure the crime scene is contrary to international human rights standards, as well as the National Police's own Guidelines.⁴²⁷ Making a decision about questioning or arresting the suspect is also among the steps that the Guidelines urge officers to carry out "as soon as possible",⁴²⁸ and the month's delay in Kirstine's case points to a breach of this protocol.

4.5.3 ACCESS TO INFORMATION AND COMMUNICATION WITH SURVIVORS

In Denmark, general information about the legal process in rape cases and victims' rights is available, including online.⁴²⁹ In its 2017 Baseline Evaluation of Denmark, GREVIO noted that information about support for people who experience sexual violence is also widely available.⁴³⁰

According to the National Police Guidelines, the person reporting rape should be appointed a contact point within the police force or the prosecution service "if the complainant is expected to give evidence as a witness in court, and if the complainant is regarded, depending on the nature and seriousness of the case, as being in need of support and guidance from the police/prosecution".⁴³¹ The police or prosecution service are also expected to provide victims with information on the progress of their case. In cases where the person reporting was appointed a victim's counsel lawyer, communication about the progress of their case should be conducted through them.⁴³²

Several of the women interviewed by Amnesty International said they were never assigned a contact person or experienced a complete lack of communication from the police or the prosecution until an email with a decision to close their case was sent to them through a so-called "e-box", a communication system between individuals and the Danish authorities. Interviewees said that not having a contact person to ask about the progress of their case added to their anxiety and uncertainty. Those with assigned victim's counsel lawyers also found communication non-existent or poor at times.

For example, Kathrine told Amnesty International that she was ready to celebrate a conviction when the two-week deadline for appealing the verdict had passed since she had not heard from her lawyer and assumed that the accused had not appealed. She decided to call her lawyer just in case and found out that the defence had in fact lodged an appeal.⁴³³ Kathrine said she found the lack of information about the progress of her case and constantly having to follow up with lawyers herself extremely frustrating: "It should be our right, to be the first person you inform about the process as there is no doubt about who this is the hardest on."⁴³⁴

In Kirstine's case, neither the police nor her lawyer explained what would happen between the reporting and the potential court hearing. The police officer in Copenhagen only told her that if she received no news at all, without an indication of the relevant time period, this meant that the prosecution was not going ahead. Kirstine said she felt that this significantly impeded her healing process. After making the report, she said she did not leave the house for weeks. Without a timeframe, she felt that she had to be in a state of

⁴²³ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 5.

⁴²⁴ Copenhagen Police response to Kirstine's complaint, dated 2 May 2018, on file with Amnesty International.

⁴²⁵ Copenhagen Police response to Kirstine's complaint, dated 2 May 2018, on file with Amnesty International.

⁴²⁶ Interview with Kirstine, Fredericia, 15 March 2018.

⁴²⁷ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 5.

⁴²⁸ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 5.

⁴²⁹ Guidance for Complainants, 16 July 2014, www.vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/b72c9454-34bb-47fd-ab19-50adf64b3908, www.politi.dk/anmeld/sekstualforbrydelser/voldtaegt-og-seksuelle-overgreb

⁴³⁰ GREVIO report, p. 32.

⁴³¹ National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 3.4.

⁴³² National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, p. 3.5.

⁴³³ Interview with Kathrine, Copenhagen, 27 June 2018.

⁴³⁴ Interview with Kathrine, Copenhagen, 27 June 2018.

permanent readiness to recall all the details of what had happened to her in case she was asked further questions by the police.

No one contacted Kirstine to inform her that the court had decided to acquit the accused. The prosecution also never contacted her or her lawyer to inform them that they had decided not to appeal the decision, or to explain their decision. Kirstine only found out after a friend called and informed her that the man had posted a Facebook update saying that the day when the deadline for appeals had passed was a fantastic day.⁴³⁵ One of the practical changes she would like to see in Denmark is improved communication and access to information for survivors. She told Amnesty International: “I would like rape victims to have more information about the process, not just to sit and wait for what happens next.”⁴³⁶

Positive guidance and procedures are in place, but the Danish authorities need to ensure that they are implemented, and that police and victim’s lawyers provide survivors with contact details and regular information about the progress of their case. Delivering such information in a sensitive manner would also ensure that victims are treated with respect and dignity throughout the process.

4.5.4 LENGTHY LEGAL PROCESS

Excessively long proceedings can be extremely frustrating for rape survivors as it can mean months if not years of uncertainty and having to be ready to relive the experience. The Istanbul Convention addresses this and states that investigations and judicial proceedings should be carried out without undue delay.⁴³⁷ The National Police Guidelines on handling rape and rape-related cases strive to ensure that such international human rights standards are fulfilled. They stress that “it is crucial that all reports of rape are handled as quickly as possible” and refer to the objective of bringing rape cases to court within 60 days from charging the suspect.⁴³⁸

In practice, survivors’ experiences with case processing times vary. Helle Hald, lawyer and victim’s counsel in sexual violence cases, told Amnesty International that often there is a long delay between the report to the police and the case reaching court.⁴³⁹ This was echoed by survivors. For example, it took 18 months from Kathrine’s rape report to her receiving the final court judgment.⁴⁴⁰ Dyveke found the months of waiting for the case to progress a particularly difficult time: “it was just a couple of really hard months where I tried to get back, to be alright again but it resulted in the end with me not being able to sleep, I didn’t sleep for four days in a row once, because I just continued to build up the anxiety.”⁴⁴¹

4.5.5 GAPS IN TRAINING OF PROFESSIONALS

Under the Istanbul Convention, state parties have an obligation to provide initial and continuous training to professionals working on various forms of violence against women.⁴⁴² Such training should include prevention and detection, gender equality, victims’ needs and rights, as well as prevention of secondary victimization. The professional groups who should receive such training include police and other law enforcement officials, prosecutors, judges and educational staff.⁴⁴³

CEDAW has recommended that states: “Ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women.”⁴⁴⁴

In its 2017 report, GREVIO found that these requirements were met to varying degrees in Denmark. It noted that staff providing specialist support, for example at centres for sexual assault victims, had a high level of training and expertise. However, with regard to law enforcement officials, it observed that there were

⁴³⁵ Interview with Kirstine, Fredericia, 15 March 2018.

⁴³⁶ Interview with Kirstine, Fredericia, 15 March 2018.

⁴³⁷ Istanbul Convention, Article 49(1).

⁴³⁸ Four months in cases that require the suspect’s psychological evaluation. National Police Guidelines on handling rape and rape-related cases, Version 1, April 2016, s. 14; Memorandum of the Director of Public Prosecutions no. 11/2008 regarding objectives for case handling times for cases involving violence, rape and weapons and reporting of these to the Director of Public Prosecutions, p. 4.

⁴³⁹ Interview with Helle Hald, lawyer and victim’s counsel, Copenhagen, 13 March 2018.

⁴⁴⁰ Interview with Kathrine, Copenhagen, 27 June 2018.

⁴⁴¹ Interview with Dyveke, Aarhus, 29 May 2018.

⁴⁴² Istanbul Convention, Article 15, and Explanatory Report, para. 99.

⁴⁴³ Explanatory Report, para. 100.

⁴⁴⁴ *Vertido v. The Philippines*, para. 8.9(b).

significant gaps in training and that while some training on violence generally was mandatory and provided at the Danish Police Academy, specific training on sexual violence was not included.⁴⁴⁵ GREVIO recommended that the Danish authorities introduce mandatory initial training for law enforcement officials covering all forms of violence against women and ensure that continuous professional training is also provided. It stressed that all such training should be reinforced by protocols and guidelines for staff.⁴⁴⁶

The Police Academy curriculum, as well as information obtained by Amnesty International from a report submitted to the Ministry of Justice in 2018 by the Director of Public Prosecutions and the National Police, show that such training is limited. Police officers undergo modules in questioning vulnerable people during their training at the Police Academy. During the final semester, students are taught about sexual offences, relevant legislation, investigative methods and case processing in sexual violence cases. The report to the Ministry of Justice provides that the Academy also offers five training modules to officers who meet rape victims in their daily case work, covering topics such as prejudices, including notions about who is exposed to rape and how rape victims react and the questioning of rape victims. However, this is not reflected in the publicly available Police Academy curriculum.⁴⁴⁷

The Ministry of Justice's 2016 action plan envisaged further training on interviewing vulnerable witnesses for the police and prosecution services.⁴⁴⁸ The Centre for Victims of Sexual Assault at Rigshospitalet in Copenhagen currently provides a two-hour training module on sexual violence and working sensitively with rape survivors. The fact that specialized professionals from centres such as this one provide training to others was positively assessed by GREVIO.⁴⁴⁹

Prosecutors in Denmark do not receive mandatory training on sexual violence. During their training, they receive a general introduction by a psychologist to the subject of witness memory, as well as training on questioning vulnerable witnesses who have experienced trauma. As part of their continuous professional education, further training in questioning vulnerable witnesses, for example with a focus on court hearings, is possible.⁴⁵⁰ The onus, however, is on the individual prosecutor to educate themselves and apply for relevant courses. Anne Birgitte Styrup, former senior prosecutor, told Amnesty International: "It is the individual [prosecutor] who decides... We don't get any training in sexual violence. If there is a course offered, you can apply to go."⁴⁵¹

Senior prosecutor Emil Folker specifically underlined the importance of officials in the legal system not having stereotypical notions of how a victim should behave after, before or during a rape.⁴⁵² Judges' basic training does not cover modules on sexual violence and further training is not mandatory.⁴⁵³ Lise Leth-Nissen, judge at the Roskilde District Court, told Amnesty that training on sexual violence is voluntary and that judges can choose which courses to attend, as well as attend the Court Academy twice a year, which in 2018 offered a half-day course on rape and victims.⁴⁵⁴

Representatives of Danner (an organisation and shelter fighting domestic violence) told Amnesty International that they noted that "frontline staff, such as police officers or social workers, are often unable to recognize that a woman who they know is in danger, for instance in domestic violence situations, and cannot decode what is going on".⁴⁵⁵

⁴⁴⁵ GREVIO report, p. 27.

⁴⁴⁶ GREVIO report, p. 28.

⁴⁴⁷ Director of Public Prosecutions and National Police, Report to the Ministry of Justice on the Investigation and prosecution of rape cases, 17 December 2018, pp. 11-17. This document is not public and was shared on Amnesty International's request, Police Academy curriculum, 15 January 2018, www.politi.dk/-/media/mediefiler/pdf/rigspolitiet/uddannelser-i-politiet/politiskolen/politibetjent/studieordning2018.pdf?la=da&hash=D74826806EA1E6434CDEAFB1B3EC6BD2096DEEC3

⁴⁴⁸ Ministry of Justice, "Respect for Victims of Rape" Action Plan, 27 January 2016.

⁴⁴⁹ GREVIO report, p. 27.

⁴⁵⁰ Director of Public Prosecutions and National Police, Report to the Ministry of Justice on Investigation and prosecution of rape cases, 17 December 2018, pp. 11-17, Prosecution Service, "Basic prosecutors' training", www.anklagemyndigheden.dk/sites/default/files/inline-files/Grunduddannelse%20som%20anklager.pdf, "Training 2018/2019", www.anklagemyndigheden.dk/sites/default/files/Uddannelseskatalog_2018.pdf

⁴⁵¹ Interview with Anne Birgitte Styrup, former senior prosecutor, State Prosecutor's Office for Copenhagen, Copenhagen, 8 October 2018.

⁴⁵² Interview with Emil Folker, State Prosecutor's Office for Copenhagen, Copenhagen, 5 November 2018.

⁴⁵³ Danish Courts Administration, "Judge at the court", www.domstol.dk/om/jobdanmarksdomstole/jobtyper/fuldmaegtig/domstolene/Pages/default.aspx, "Strategic Competence Development, www.domstol.dk/om/publikationer/HtmlPublikationer/Retten%20Rundt/Retten%20Rundt%2022/kap01.html, European Commission, "Judicial training structures in the EU. Denmark" 2012, www.e-justice.europa.eu/content_national_training_structures_for_the_judiciary-406-en.do

⁴⁵⁴ Interview with Lise Leth-Nissen, judge at Roskilde District Court, Roskilde, 11 October 2018.

⁴⁵⁵ Interview with Mette Marie Yde, Head of Communication and Knowledge and Henriette Winther, Senior Communications Adviser, Danner, Copenhagen, 13 March 2018.

GREVIO observed that the level and nature of training received by these professionals does not ensure adequate awareness of the gendered nature of violence against women and thus impacts on their responses to victims.⁴⁵⁶

4.5.6 SURVIVORS' EXPERIENCES IN COURT



EMILIE

“It was like an assault all over again... It was really hard to go through it all, and the way you were interrogated... You really felt that they thought you were just sitting there lying... I also think that even though of course no innocent person should be convicted, and of course they have to ask questions, I think there has to be a limit to how much you can push a victim. Because for me, my reaction was that I completely froze, in utter shock, so it was really hard afterwards for me to accept my way of dealing with it. So when they sit there and really push me in court, it is almost like experiencing it all over again, and then you end up feeling worse about yourself, feeling like ‘it’s my fault, it was me who did something wrong’..”

Emilie, recalling her experience of being questioned during an appeal hearing, which took around two hours.⁴⁵⁷

Emilie told Amnesty International that after the defendant was acquitted, she felt that not only did the justice system not help her but that the experience made everything worse and that if she were ever to be raped in the future, she would absolutely not report it.⁴⁵⁸

In Denmark the legal process affords survivors a number of protections that comply with some, though not all, international standards. For example, rape survivors have the right to request that the general public be excluded during their testimony to prevent re-victimization.⁴⁵⁹ The court can also decide that the case cannot be referred to publicly until after the end of the trial, or that certain people’s names (for example, that of the victim or the accused) cannot be referred to in written and oral communications about the trial, to protect their right to privacy.⁴⁶⁰

Rape victims can also request that the defendant leaves the courtroom during their testimony if the presence of the accused would mean that the witness would not be able to give an unreserved testimony. The court has the authority to decide whether or not the defendant should leave the courtroom.⁴⁶¹ The victim can stay and attend the remainder of the hearing after giving the testimony or choose to leave. Their legal counsel can also be present during the victim’s testimony and ask them additional questions.

However, in criminal cases, video testimony in court is only permissible in Denmark for children and adults with significant mental disorders or disabilities.⁴⁶² Louise Varberg, Legal Advisor at the National Centre of Investigations, told Amnesty International that in her opinion, video testimony could be potentially problematic: “Judges use the reactions from the victim to form an impression of the person among other things about credibility,” she said.⁴⁶³ Nevertheless, enabling survivors to testify in court remotely, for instance through video technology, is required under international human rights standards, including the Istanbul Convention.⁴⁶⁴

International human rights standards provide that evidence relating to past sexual history and conduct of the victim shall be permitted, in both civil and criminal proceedings, only when it is relevant and necessary.⁴⁶⁵ In Denmark, the victim’s counsel lawyer and the judge have the right to object to the use of evidence regarding the victim’s previous sexual behaviour. Such evidence can only be allowed by application to the judge if it is

⁴⁵⁶ GREVIO report, p. 8.

⁴⁵⁷ Interview with Emilie, Aarhus, 25 June 2018.

⁴⁵⁸ Interview with Emilie, Aarhus, 25 June 2018.

⁴⁵⁹ Administration of Justice Act, Consolidated Act No. 1284 (2018) Article 29(a).

⁴⁶⁰ Administration of Justice Act, Consolidated Act No. 1284 (2018) Article 30-31(a).

⁴⁶¹ Administration of Justice Act, Consolidated Act No. 1284 (2018) Articles 845, 856 (1).

⁴⁶² Administration of Justice Act, Consolidated Act No. 1284 (2018) Article 745 e(1).

⁴⁶³ Interview with Louise Varberg, Legal Advisor, National Center of Investigation, National Police, 11 October 2018.

⁴⁶⁴ Istanbul Convention, Article 56.

⁴⁶⁵ UN Handbook for Legislation on Violence against Women, p. 42; Istanbul Convention, Article 54; and Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly under its resolution 65/228 (2010), para. 15(e).

considered to be of significant importance to the case.⁴⁶⁶ However, the practice is not always consistent with the regulations. In Kirstine's case, the defence lawyer brought up the fact that seven years earlier, when Kirstine and her husband had broken up, she had seen other men. The defence lawyer suggested that this was evidence of her "promiscuous behaviour".⁴⁶⁷ Kirstine's lawyer objected to this being brought up during the hearing, but the court allowed the questions. Kirstine told Amnesty International that she felt that this made her seem like she was not trustworthy and that the questions should not have been allowed. "What does it even matter what sexual experiences I had seven years ago?" she said.⁴⁶⁸

In its 2017 assessment of Denmark, GREVIO welcomed the availability of victim protection measures but noted that the authorities provided very little information on their use. It encouraged the authorities to ensure that all such measures are implemented in practice and noted that in order for this to be properly assessed, the authorities should regularly collect data and carry out research into this area, including from victims' perspectives.⁴⁶⁹

4.6 BARRIERS TO JUSTICE: RAPE MYTHS AND GENDER STEREOTYPES

Rape survivors' experiences with the justice system in Denmark reveal attitudes and perceptions among law enforcement officials that are heavily influenced by rape myths rooted in gender stereotypes. These myths influence the treatment of survivors, as well as decision making at all stages of the legal process. Despite some efforts on the part of the Danish authorities to raise awareness of rape myths in recent years, such as the 2017 campaign by the National Police, more remains to be done to counter them and eradicate the way in which they hinder victims' access to justice.

The myth that only certain "types" of women or those behaving or dressing in certain ways are raped is a persistent one encountered by survivors. It is closely linked to the perception that male perpetrators were simply not able to "help themselves" when encountering women dressed or behaving in a certain way. These perceptions stem from deep-rooted stereotypes about male and female sexuality. Kirstine Marie, for example, recalled how the man who raped her said afterwards: "He told me at the apartment, before I kicked him out, that it was because I was just too hot to handle, he couldn't keep his fingers off me. And then he actually smacked me on the butt while saying that."⁴⁷⁰

"Bolette" from Copenhagen recalled how a police officer asked about her sexual preferences during an interview: "What does this have to do with anything at all? This was not sex, this was violence."⁴⁷¹ In fact, her victim's counsel advised her not to be too honest about her sexuality.

To "Bolette", she felt she was expected to be a "model" survivor:

"to say that 'oh, I close my eyes and think of God or of the Queen and the father country and endure this.' No, I enjoy sex but this had nothing at all to do with sex. And that they make that conclusion too, that a woman expresses that she has a sex life, an active sex life and enjoys that, and therefore sort of accepts a violent attack, that really made me angry. There's absolutely no connection between these two things."

"Bolette"⁴⁷²

Several prosecution decisions to close cases analysed by Amnesty International refer to past history between the complainant and the accused. Many describe the woman's behaviour prior to the alleged rape. For example, in a case from Midt-og Vestjyllands police, the decision states: "there is consensus that...as you were to sleep at his place, you voluntarily went into his bedroom."⁴⁷³ Given the limited information on the prosecution's reasoning available in these decisions, it is not always possible to conclude that such factors are the primary reasons for closing the investigation. However, the victim's behaviour prior to the rape and any intimate relationship with the perpetrator in the past should never be taken as a justification for rape.

⁴⁶⁶ Administration of Justice Act Consolidated Act No.1284 (2018), Articles 741(c)(1), 185(2).

⁴⁶⁷ Interview with Kirstine, Fredericia, 15 March 2018.

⁴⁶⁸ Interview with Kirstine, Fredericia, 15 March 2018.

⁴⁶⁹ GREVIO report, p. 54.

⁴⁷⁰ Interview with Kirstine Marie, Copenhagen, 26 June 2018.

⁴⁷¹ Interview with "Bolette", Copenhagen, 26 June 2018. (Name has been changed to protect the interviewee's privacy.)

⁴⁷² Interview with "Bolette", Copenhagen, 26 June 2018.

⁴⁷³ Midt- og Vestjyllands Police: 4100-72303-00001-18.

Amnesty International also came across examples of judgments where the victim's behaviour prior to the rape, for instance where there was a prior sexual relationship with the accused, was interpreted as a mitigating circumstance. For example, the District Court of Odense explained its reasoning for handing down a three-year sentence to two men for rape and attempted rape as follows: "the court has taken into account the fact that she had earlier had a sexual relationship with one of the accused and the limited amount of violence that she was subjected to."⁴⁷⁴

Hanne Baden Nielsen from the Centre for Victims of Sexual Assault at Rigshospitalet in Copenhagen highlighted the fact that men are largely granted societal permission with regard to rape. She pointed out that awareness-raising and rape prevention usually centres on women and girls, their behaviour and what to wear or not to wear in order not to be raped. "Men are excused by their gender," she told Amnesty International. "It's 'I'm sorry, it's because I'm a man!' And I think the time has come where parents must start talking to their boys about how they should behave... It's time to talk to men, let women be."⁴⁷⁵

4.7 RECOMMENDATIONS

TO PARLIAMENT:

1. Amend the definition of rape in the Criminal Code so that it is based on the absence of consent, bringing it in line with international human rights standards, such as the Istanbul Convention, as per GREVIO's recommendation to Denmark in its 2017 Baseline Evaluation Report.
2. Amend the Criminal Code and the Guidelines for Prosecutors Investigating Sex Crimes in order to comprehensively include a range of aggravating circumstances as per Article 46 of the Istanbul Convention, including sexual violence committed against a current or former partner and by perpetrators abusing their authority over the victim (reflected in Articles 218-220 of the Criminal Code - sexual intercourse in situations where a person exploits another person's mental disability; their dependency, for instance in situations of deprivation of liberty, in institutions such as youth institutions or psychiatric wards; as well as through deception). Take appropriate measures to ensure the understanding and application of all types of aggravating factors listed in Article 46 of the Istanbul Convention in the legal process by improving the awareness of law enforcement officials, prosecutors and the judiciary.

TO THE MINISTER OF JUSTICE:

3. Propose legislation to amend the definition of rape in the Criminal Code so that it is based on the absence of consent, bringing it in line with international human rights standards, such as the Istanbul Convention, as per GREVIO's recommendation to Denmark in its 2017 Baseline Evaluation Report.
4. Propose legislation to amend the Administration of Justice Act to include the possibility of testifying remotely in court, for instance via video, for victims in rape trials.

TO THE MINISTER OF EDUCATION AND THE MINISTER FOR EQUAL OPPORTUNITIES:

5. Provide mandatory, comprehensive, age-appropriate, gender-sensitive, evidence-based and unbiased sexuality and relationships education to pupils and students of all genders at all levels of education and outside the education system. These should include education about consent, bodily and sexual autonomy and the right to bodily integrity.
6. Promote changes in the social and cultural patterns of behaviour of people of all genders with a view to eradicating harmful gender stereotypes and myths around sexual violence, for instance through informed awareness-raising campaigns owned by and directed at everyone in Danish society, including people of all genders.

⁴⁷⁴ Decision 3-1479/2018, District court of Odense, p. 16, 23 March 2018.

⁴⁷⁵ Interview with Hanne Baden Nielsen, Head Nurse, Centre for Victims of Sexual Assault, *Rigshospitalet*, Copenhagen, 14 March 2018.

5. RAPE AND HUMAN RIGHTS IN SWEDEN

5.1 EXECUTIVE SUMMARY

“It’s part of the healing. You feel: At last! At last they believe you, the system believes you... But I still don’t trust the system that much, I think I am one of few who got justice. I do have hopes though, and the experience I had [of the law enforcement authorities] is what I want for everyone else. To get a police investigator that was so determined to find the witnesses, who was pushing, asking the right questions to the right persons. I wish everyone would get such a committed investigator.”

Zarah⁴⁷⁶

In 2018 Sweden took a significant step forward in addressing rape and other sexual violence by adopting a new law on sexual crimes which makes sex with someone who does not voluntarily participate a criminal offence. It also introduced the new offence of negligent rape. Amnesty International welcomed the new consent-based law which brings Swedish law into line with the international human rights law and standards.

Nevertheless, despite a political commitment to prevent and eradicate gender-based violence against women, rape remains pervasive in the Swedish society and the number of rapes reported has continued to increase over the past decade.

In 2017, the Swedish police received 5,236 reports of rape involving people aged 15 or over: 95% of victims were women or girls.⁴⁷⁷ The preliminary statistics for 2018 show 5,593 reports of rape of which 96% of victims were women or girls.⁴⁷⁸ However, under-reporting of rape and other sexual crimes means that these figures do not give a realistic picture of the scale of the problem. In a 2017 study, 1.4% of the population stated they had been subjected to rape or sexual abuse, corresponding to approximately 112,000 people.⁴⁷⁹

The vast majority of rape victims will never report the crime to the police. Of those who do, few will see their case heard in court. In 2017, prosecutions were initiated in 11% of cases involving children aged between 15 and 17 and in 6% of cases involving adults.⁴⁸⁰

⁴⁷⁶ Interview with Zarah, 29 November 2018, at Amnesty International's office in Stockholm, Sweden.

⁴⁷⁷ Anmälda brott, Brå, www.bra.se/statistik/kriminalstatistik/anmalda-brott.html

⁴⁷⁸ Anmälda brott, Brå, www.bra.se/statistik/kriminalstatistik/anmalda-brott.html The official criminal statistics is disaggregated by male and female gender only.

⁴⁷⁹ Nationella trygghetsundersökningen 2018, Brå Rapport 2019:1,

⁴⁸⁰ Handlagda brott, Brå www.bra.se/statistik/kriminalstatistik/handlagda-brott.html

While several of the professionals that Amnesty International interviewed stated that the treatment of rape victims by the police has generally improved in recent years, many of the flaws identified by Amnesty International stem from the police's handling of rape cases.

The Prosecution and Police Authority jointly developed a best practice working method for investigations of sexual offences against adults. However, the model is not always implemented, and this has a negative impact on the quality of the investigations, hampering prosecution. Interviews of suspects are sometimes held after a long delay, or not at all. The quality of the interrogation also varies. The excessively long waiting times for the results of DNA analyses of up to nine months at the National Forensic Centre also impacts on rape investigations, a systemic problem identified several years ago, by both the Swedish Agency for Public Management (Statskontoret) and Swedish National Audit Office (Riksrevisionen), but still unresolved.

The low prosecution rate affects confidence in the will and ability of the authorities to prosecute these serious crimes, both among rape survivors and the public, further exacerbating impunity for sexual violence in Sweden. The urgent need to significantly reinforce the investigative capabilities of law enforcement authorities to ensure prompt and appropriate investigations in cases of rape was also raised by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the body responsible for monitoring the implementation of the Istanbul Convention, in its 2019 Baseline Evaluation Report on Sweden.⁴⁸¹

Some positive initiatives have been taken to improve the knowledge, skills and working methods of the police. A two-week training module on rape outside intimate relationships has been developed and rolled out in 2018 and 2019. Given the various shortcomings there is a strong need for continuous high-quality training of all police who investigate rape.

In 2018 legal reforms further clarified the law guaranteeing the right to free legal aid and the assistance of complainant's counsel for victims of serious sexual crimes. A request for such counsel should be made to the court immediately after an investigation is initiated or reopened. Survivors' access to complainant counsel has been identified as one of the most important factors for successful prosecution in cases of rape.

However other support to victims of rape lag behind. Many victims experience severe trauma, which hampers their ability to immediately seek justice. Some of the survivors interviewed by Amnesty International said that they had not received any trauma treatment at all, or had to struggle for their right to get help from the psychiatric services.

It is still too early to judge what the impact of the recent changes to the law will be. However, the positive potential is being compromised by flaws in the investigation, prosecution and judicial processes described to Amnesty International. These need to be addressed if Sweden is to make serious strides in tackling the prevalence of sexual violence and in ensuring that rape survivors feel confident that when they report they will receive an informed, supportive and prompt response and their right to justice will be respected.

5.2 INTRODUCTION

On 1 July 2018, a new law on sexual crimes came into force in Sweden which makes sex with someone who does not voluntarily participate a criminal offence.⁴⁸² It also introduced the new offence of negligent rape.⁴⁸³ Amnesty International welcomed the new law which brings Swedish law into line with the Istanbul Convention.

Removing discriminatory, harmful myths and gender stereotypes from the law and its implementation is crucial to ensuring justice, impartiality and equality before the law. Evolving social norms have informed the development of the law on rape in Sweden, while at the same time new legislation has contributed to a shift in social norms. All major reforms or important amendments to rape legislation made since the 1960s reflect changes in social attitudes and were often driven by women's organizations and LGBTI activists and individuals who exposed and rejected discriminatory notions about gender roles and sexuality in the law and

⁴⁸¹ GREVIO Baseline Evaluation Report Sweden, 2019, pp. 51-52, <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686>

⁴⁸² Penal Code, Chapter 6, 1 §, available in Swedish at <https://lagen.nu/1962:700#K6>

⁴⁸³ Penal Code, Chapter 6, 1 §, available in Swedish at <https://lagen.nu/1962:700#K6>

in its implementation.⁴⁸⁴ The new rape legislation of 2018 can be seen as a continuation of an evolving understanding of what rape is and builds on previous reforms.⁴⁸⁵

Preventing and eradicating gender based violence against women, including rape and other sexual crimes, has long been a key goal of government policy on gender equality. For example, in 2016 the government adopted a new policy, the Feminist Policy for Gender Equality,⁴⁸⁶ with the stated aim of moving from a reactive to proactive approach and promoting effective preventive measures. The policy included a 10-year “National strategy to prevent and combat men’s violence against women”.⁴⁸⁷ The government stated that the strategy reflected its obligations under the Istanbul Convention.

5.2.1 THE SCALE OF THE PROBLEM

Nevertheless, despite these positive efforts, recent prevalence surveys reveal high levels of sexual violence, including rape, in Sweden and the percentage of the population who state that they have been subjected to sexual crimes is on the rise (see Table 1). The annual survey on exposure to and fear of crime in the adult population carried out by the Swedish National Council for Crime Prevention (Brottsförebyggande rådet, Brå) includes questions about exposure to sexual crimes, which cover a wide range of offences such as offensive sexual comments, sexual molestation and rape. Specific questions about the most serious sexual offences, equivalent to the (pre-2018) legal definitions of rape and sexual abuse, are also included.⁴⁸⁸

In 2017, 6.4% of people surveyed aged between 16 and 84 stated that they had experienced sexual crime during the year. Exposure to sexual crimes varies considerably according to gender and age: over a third of women aged 16-24 said they had experienced sexual crimes in 2017. Many people experienced repeated sexual crimes: of those who had experienced sexual ‘violence’, over 60% had done so more than once.

⁴⁸⁴ In 2013 Sweden saw a new, powerful grassroots movement - *FATTA!* (Get it!) - which set out to advocate for legal recognition that sex without consent is rape. *FATTA!* started as a reaction to a rape case that was extensively covered by national media in which a district court acquitted three young men accused of raping a 15-year-old girl with a wine bottle until she bled. The verdict stated: “People involved in sexual activities do things naturally to each other’s body in a spontaneous way, without asking for consent.” The court’s ruling—and their suggestion that the girl’s refusal to open her legs might have been a sign of “shyness”—was a catalyst for widespread protests.

⁴⁸⁵ Previous reforms include the criminalisation of rape within marriage in 1965, although classified as a less serious form of rape, until 1984, when repealed. From then on, the relationship between the perpetrator and victim was no longer considered a mitigating circumstance. Also in 1984 “sexual acts comparable to intercourse” was criminalised as rape. This meant in practice that the legislation was made gender neutral as acts other than vaginal penetration with a penis were considered to be rape. Comparable sexual acts include oral and anal penetration with a penis or inserting any body part or object in the victim’s vagina or anal opening. The 2005 reform reduced the level of violence required for an act to be considered rape. The rape definition was broadened to include acts carried out through “improperly taking advantage of a person in a helpless state”. Unconsciousness, sleep, intoxication, illness, bodily injury and mental disturbance exemplified circumstances that may render the victim helpless. In such cases, no force or threat was needed, and consent did not relieve the perpetrator from criminal liability. Additional amendments entered into force in 2013, reflecting a growing knowledge of frozen fright reactions among rape victims. Taking advantage of a person in a “helpless state” was replaced by “particularly vulnerable situation”. Severe fear was added to the non-exhaustive list of circumstances that may cause a person to be in a particularly vulnerable situation.

⁴⁸⁶ *Makt, mål och myndighet - feministisk politik för en jämställd framtid*. Regeringens skrivelse 2016/17:10, www.regeringen.se/rattsliga-dokument/skrivelse/2016/11/skr.-20161710/

⁴⁸⁷ En nationell strategi för att förebygga och bekämpa mäns våld mot kvinnor, www.regeringen.se/49d3d6/globalassets/regeringen/dokument/socialdepartementet/jamstalldhet/en-nationell-strategi-for-att-forebygga-och-bekampa-mans-vald-mot-kvinnor_utdrag-ur-skr.-2016_17_10.pdf

During the first implementation period (2017-2020) the government action focuses on four political goals: expanded and effective preventive work against gender-based violence, improved detection of such violence and stronger protection and support for women and children exposed to violence, more effective law enforcement and improved knowledge and development of methods. The goal of more effective law enforcement encompasses specific goals on rape and other sexual crimes, including more rape cases to be resolved, adequate and professional support from a complainant’s counsel early in the process and to address the under-reporting that is particularly high in cases of sexual crimes. According to the Baseline report, submitted by Sweden pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, a total of SEK 600 million SEK (about €59 million) was allocated to the four goals in 2017-2020. See Baseline report, 7 September 2017. <https://rm.coe.int/state-report-on-sweden/168073fff6>

⁴⁸⁸ Nationella trygghetsundersökningen 2018, Brå Rapport 2019:1, p. 55, available in Swedish at: www.bra.se/download/18.62c6cfa2166eca5d70e22d3/1548248345315/2019_1_Nationella_trygghetsundersokningen_2018.pdf.

This survey has been conducted since 2006, although the methodology has changed over the years. The latest survey, published in January 2019 was based on data collected from a stratified unbound randomized sample of the population in 2017 and was conducted mainly via questionnaires sent by post and internet questionnaires. About 74,000 people aged between 16 and 84, responded, Brå then extrapolated these results to the equivalent proportion of the population. The question asked in the survey reads as follows: Were you sexually molested, forced or attacked by someone during last year (2017)? This can, for example, include sexually offensive comments in speech or writing or that someone touched you, forced you into a sexual act or raped you. It may have happened at home, in school, in the workplace, on the Internet or at another place. The specific questions on exposure of serious sexual crime read as follows: Did the event or any of the events include someone forcing or trying to force you into a sexual act by threatening, holding or hurting you in some way? Did the event or any of the events mean that someone sexually exploited you when you were asleep or so intoxicated that you could not defend yourself?

Also, 1.4% of the population stated they had been subjected to rape or sexual abuse, corresponding to approximately 112,000 people (estimated number by Brå).⁴⁸⁹

TABLE 7: EXPOSURE TO SEXUAL CRIMES AMONG PEOPLE AGED 16 TO 84 IN SWEDEN

| Year | Exposure to any sexual crime, % of population | Exposure to any sexual crime, % of women | Exposure to any sexual crime, % of men | Exposure to rape/sexual abuse, % of population | Exposure to rape /sexual abuse, % of women | Exposure to rape /sexual abuse, % of men |
|------|---|--|--|--|--|--|
| 2017 | 6.4 | 10.7 | 1.6 | 1.4 | 2.3 | 0.4 |
| 2016 | 4.7 | 8 | 1 | 1.1 | 1.7 | 0.3 |
| 2015 | 3.4 | 5.8 | 0.7 | - | - | - |
| 2014 | 2 | 3.4 | 0.5 | - | - | - |

5.2.2 REPORTING TO THE POLICE

Between 2008 and 2017 reported rapes increased by 35%.⁴⁹⁰ According to Brå, the main reasons for this increase were changes in the law about what constitutes rape and a rise in the tendency to report such crimes. However, rape remains an underreported crime. While the national survey estimated that 112,000 people aged 16 or over were raped or sexually abused in 2017, only 5,236 reports of rape of people aged 16 or over were received by police; 95% of victims were women or girls. In 2018, according to the preliminary crime statistics, 5593 acts of rape against a person 15 years or older were reported and 16 acts of negligent rape.

TABLE 8: REPORTED ACTS OF RAPE AGAINST PEOPLE AGED 15 OR ABOVE BY GENDER

| Year | Reported acts of rape against girls aged 15-17 | Reported acts of rape against boys aged 15-17 | Reported acts of rape against women | Reported acts of rape against men | Total reported acts of rape against people over 15 |
|-------|--|---|-------------------------------------|-----------------------------------|--|
| 2018* | 1,135 | 34 | 4,231 | 193 | 5,593 |
| 2017 | 933 | 55 | 4,041 | 207 | 5,236 |
| 2016 | 765 | 78 | 3,559 | 147 | 4,549 |
| 2015 | 644 | 49 | 3,333 | 141 | 4,167 |
| 2014 | 872 | 29 | 3,395 | 130 | 4,426 |

*Preliminary statistics

Source: The Swedish National Council for Crime Prevention, Brå.⁴⁹¹

In 2017 a preliminary investigation was initiated in 93% of reported rape cases. Regarding the 7% immediately dismissed by police,⁴⁹² the most common reason given was that “the information in the case does not give reason to believe that a crime subject to public prosecution has been committed”. According to Brå, these cases involved mentally ill people with a history of reporting⁴⁹³ and cases where the statute of

⁴⁸⁹ Nationella trygghetsundersökningen 2018, Brå Rapport 2019:1.

⁴⁹⁰ Anmällda våldtäkter, Brå www.bra.se/statistik/statistik-utifran-brottstyper/valdtakt-och-sexualbrott.html

⁴⁹¹ The official criminal statistics is disaggregated by male and female gender only.

⁴⁹² Handlagda brott, Brå, www.bra.se/statistik/kriminalstatistik/handlagda-brott.html

⁴⁹³ Information received by Amnesty International from Lars Lewenhagen, investigator at Brå, email dated 9 January 2019.

limitations had expired.⁴⁹⁴ A less common reason given was that it was “obvious that the crime cannot be investigated”. This included rapes committed a long time ago or abroad where key evidence was not available to the Swedish police.

5.2.3 PROSECUTION AND CONVICTION

Of the almost 4,900 rapes investigated in 2017, prosecutions were initiated in 11% of cases involving children aged between 15 and 17 and in 6% of cases involving adults.⁴⁹⁵

A 2012 Prosecution Authority assessment of criminal investigations into cases of rape of adults found that in 98% of the audit sample, the investigations led by a prosecutor were closed. In 80% of these cases the stated reason was insufficient evidence.⁴⁹⁶

In 2017, 190 people were convicted of rape, including aggravated rape. All but one were men or boys. Most perpetrators (146) received a prison sentence; the remainder were sentenced to juvenile care, psychiatric care or other sanctions.

TABLE 9: RAPE CRIMES: NUMBER OF REPORTS, INVESTIGATIONS, PROSECUTIONS AND CONVICTIONS

| Year | Reported acts of rape against people aged 15 or over | Number of investigations | Number of cases brought to trial | Number of convictions | Number of people convicted of rape |
|------|--|--------------------------|----------------------------------|-----------------------|------------------------------------|
| 2017 | 5,236 | 4,881 | 346 | 236 | 190 |
| 2016 | 4,549 | 4,237 | 359 | 194 | 171 |
| 2015 | 4,167 | 4,207 | 403 | 224 | 176 |

Source: Brå statistics.⁴⁹⁷ Figures for 2018 were not available at the time of writing.

5.2.4 LACK OF TRANSPARENT DATA

It is not possible to determine from the official statistics how many rape survivors see their cases tried in court or how many of the reported rapes end in a conviction.⁴⁹⁸ This is because, while Swedish crime statistics on reported rape cover acts of rape, the statistics on prosecutions involve criminal cases, each of which may include multiple acts of rape and/or multiple perpetrators. The statistics on convictions reflect the number of people convicted of rape or the number of criminal cases. A person may have been convicted of several rapes and several perpetrators may have been convicted of rape of the same person. In addition, a rape may be reported one year while the investigation and/or the decision to prosecute and/or the court decision are taken the year after. It is not possible to determine from the official statistics how many rape victims see their case tried by a court, or how many of the reported rapes end with a conviction.

Amnesty International considers this to be a serious shortcoming of the data collection systems. The same concern was raised by the organization over a decade ago.⁴⁹⁹ In 2019, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the mechanism that monitors states' compliance with the Istanbul Convention, expressed similar concerns.⁵⁰⁰ According to Brå, a system of data flow is currently being developed which would allow information of a rape case to be followed throughout the criminal justice system and enable the identification of trends and developments over time.⁵⁰¹

⁴⁹⁴ The statute of limitations is 15 years for aggravated rape and 10 years for rape and “less serious” rape, calculated from the date the crime was committed, Penal Code, Chapter 35, <https://lagen.nu/1962:700#K35>

⁴⁹⁵ Handlagda brott, Brå, www.bra.se/statistik/kriminalstatistik/handlagda-brott.html

⁴⁹⁶ Våldtäkt mot vuxen – Kvaliteten i den brottsutredande verksamheten. Tillsynsrapport 2012:4 ÅM-A 2012/0821, www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport_2012_04_valdtakt_mot_vuxen.pdf

⁴⁹⁷ Brå provides databases with statistics covering reported crimes, investigated crimes, prosecuted crimes and number of conviction, www.bra.se/statistik.html. The statistics in the table were also discussed with Lars Lewenhagen, investigator at Brå, by email, dated 28 January 2019.

⁴⁹⁸ Phone conversation with Charlotta Lindström, statistician at Brå, 7 December 2018.

⁴⁹⁹ *Case Closed - Rape and human rights in the Nordic countries*, 2008, p. 63, <https://amnesty.dk/media/1557/case-closed.pdf>

⁵⁰⁰ GREVIO Baseline Evaluation Report Sweden, 2019, pp. 51-52, <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686>

⁵⁰¹ Phone conversation with Charlotta Lindström, statistician at Brå, 7 December 2018.

5.3 THE 2018 LAW ON SEXUAL CRIMES

Chapter 6 of the Swedish Penal Code, “On sexual crimes”, deals with a range of unlawful acts, including rape, negligent rape, sexual abuse and negligent sexual abuse.⁵⁰²

The 2018 legislation is based on the notion that sex must be mutually agreed and voluntary in order to be legal. The defining element of rape is lack of voluntary participation.⁵⁰³ Violence, threats or improperly taking advantage of a person in a vulnerable situation are now among the circumstances under which a person cannot be considered to have participated voluntarily. Additional circumstances that negate voluntary participation were also added, including abuse of a person’s dependency on the perpetrator.

The decision to engage in sexual activity can be withdrawn at any time. There is no legal requirement that a person express verbally or otherwise their willingness to participate, but when assessing whether participation is voluntary or not special consideration should be given to whether it was expressed through words or actions or in other ways. According to the preparatory works, passivity on part of the victim cannot be understood as voluntary participation.⁵⁰⁴ This means that the focus on the perpetrator may increase somewhat as “the court would want to know what made the accused believe that the sexual act was desired by the counterpart”.⁵⁰⁵

Rape of people aged 15 or over is divided into three categories that carry different sanctions: rape, which is punishable by between two and six years’ imprisonment; aggravated rape, which is punishable by between five and 10 years’ imprisonment; and “less severe rape”, which is punishable by up to four years’ imprisonment. Attempted rape is also a crime.

The 2018 law introduced the new offence of negligent rape.⁵⁰⁶ This deals with situations where someone does not realize, but should have realized, that the other party was not participating voluntarily. Generally in Swedish law, criminal liability is established through intent. For the crime of rape this means that it needs to be proven beyond reasonable doubt that the perpetrator was aware that the other person did not participate voluntarily but continued anyway. The new provision on rape by negligence establishes that anyone who commits rape and is grossly negligent regarding the fact that the other person is not participating voluntarily will be held liable. It applies in situations where the perpetrator realized the risk of the other person not participating voluntarily, but went ahead despite this. Negligent rape is punishable by up to four years’ imprisonment.

Chapter 6 of the Penal Code also includes the crimes of sexual abuse and (since 2018) sexual abuse by negligence. This provision covers sexual acts other than rape with someone who does not participate voluntarily. These offences carry lesser sentences than rape.⁵⁰⁷

5.3.1 IMPACT OF THE NEW LAW

Women’s rights organisations and activists as well as Amnesty International campaigned for the new consent law for more than a decade. Amnesty International welcomed the new law when it was passed in Parliament in May 2018 because it clearly protects the right to bodily integrity and sexual autonomy of all, and means that more rape cases can be prosecuted.

The Swedish Bar Association was among those who were critical of the law before it was passed, arguing that it would not lead to more convictions and pointing out that the difficulties in proving rape would remain the same.⁵⁰⁸ They also warned that it would lead to more questions violating the privacy and integrity of the

⁵⁰² Penal Code, Chapter 6, 1 §, available in Swedish at <https://lagen.nu/1962:700#K6>

⁵⁰³ Penal Code, Chapter 6, 1 §, available in Swedish at <https://lagen.nu/1962:700#K6> and Fact Sheet in English, available www.government.se/4ab7a8/contentassets/ee1de9e9781046afb784f034565f32e9/consentthe-basic-requirement-of-new-sexual-offences-legislation

⁵⁰⁴ The preparatory works of the laws, especially the law proposal given to parliament, are important sources of additional legal instruction to the courts.

⁵⁰⁵ Regeringens proposition 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet (in Swedish only), www.regeringen.se/4950e9/contentassets/20977a5e47ab41bd89e4ff609208bfa8/en-ny-sexualbrottslagstiftning-byggd-pa-frivillighet-prop.-201718177

⁵⁰⁶ Penal Code, Chapter 6, 1 §, available in Swedish at <https://lagen.nu/1962:700#K6>

⁵⁰⁷ The punishment for sexual abuse a maximum of 2 years’ imprisonment; for aggravated sexual abuse the penalty is between six months and six years; and negligent sexual abuse is punishable by up to four years in prison Penal Code, Chapter 6, 2 § and 3 §, available in Swedish at <https://lagen.nu/1962:700#K6>

⁵⁰⁸ See, for example, Advokatsamfundet: “En samtyckeslag kommer inte leda till fler fällande domar”, www.svt.se/nyheter/inrikes/regeringen-lovar-samtyckeslag-advokatsamfundet-varnar-for-populism

complainant and that the burden of proof would be affected as the accused would have a certain burden of explanation.⁵⁰⁹

However, most of the experts interviewed by Amnesty International welcomed the new legislation. Specialist Public Prosecutor Christina Voigt, who prosecuted one of the first cases under the new law, described it as a “game changer”.⁵¹⁰ She told Amnesty International that her initial reservations faded once she started to apply the law and that she believed the new law would lead to more acts being considered as rape and that it would result in more convictions.⁵¹¹ Silvia Ingolfssdóttir Åkermark, who acts as a lawyer for the complainant, considered that the new legislation could empower women and girls by clearly making the perpetrator responsible for their actions. She also believed that the law could help survivors deal with and recover from feelings of shame and guilt.⁵¹²

It is too early to assess whether the new law will lead to more victims reporting, higher rates of prosecutions and more convictions. However, the Director of the Prosecution Authority’s Development Centre in Göteborg told Amnesty International that the Centre is monitoring the development of court practice in implementing the new law.⁵¹³

Amnesty International has reviewed 30 judgments in rape cases from district courts under the 2018 legislation; 28 ended in convictions and two in acquittals.⁵¹⁴ Violence and/or threats or taking advantage of a victim in a particularly vulnerable situation, circumstances that negate voluntary participation, were involved in 26 of these cases, including the two acquittals. In these cases, the district courts often concluded that the 2018 reform implied that rape is seen as a more serious crime than before and that the use of violence or other means that negate consent should result in a slightly harsher punishment than cases where no such means were used. As a result, more differentiated punishments seem to have been imposed, although at the lower end of the scale. The minimum sentence for rape is imprisonment for two years and the district courts have typically imposed between 27 and 30 months in prison in such cases.

Most district court judgments (25 out of 30), including the two acquittals, were appealed. As of 1 March 2019, judgments have been issued in 20 of the 25 appeal cases. The appeal court upheld the sentence in nine, raised the sentence in five cases and lowered the sentence in six.

A small number of the sample involved acts that were not considered to be rape before 2018. As of 1 March 2019, a petition to appeal to the Supreme Court had been lodged in three cases of the sample; however, no leave to appeal had been granted. To Amnesty International’s knowledge only one charge of negligent rape had been brought at the time of writing.

5.4 BARRIERS TO JUSTICE: THE LEGAL PROCESS

5.4.1 MYTHS ABOUT RAPE AND GENDER STEREOTYPES

Harmful rape myths can have a negative impact on rape survivors, both in their daily lives and in their fight for justice. The 2016 European Commission’s Eurobarometer survey on gender-based violence, including sexual violence, showed that victim blaming and rape myths, although less widespread than in other parts of Europe, are still in evidence in Swedish society. For example, it found that almost one in 10 people in Sweden agreed that gender-based violence against women is often provoked by the victim herself.⁵¹⁵ Several women interviewed by Amnesty International described their experience of this.

⁵⁰⁹ “Risken uppenbar för ännu mer integritetskränkande frågor”. Dagens Juridik 2017-09-08 <http://www.dagensjuridik.se/2017/09/risken-uppenbar-annu-mer-integritetskrankande-fragor-hor-anne-ramberg-om-samtyckeslagen>

⁵¹⁰ Samtyckeslag har haft effekt, Swedish Radio, 8 November 2018, <https://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=7084923>

⁵¹¹ Interview with Christina Voigt, 20 November 2018.

⁵¹² Interview with Silvia Ingolfssdóttir Åkermark, 30 November 2018.

⁵¹³ Interview with Marianne Ny, Director of the Public Prosecution Authority at the Development Centre in Göteborg and public prosecutor Karin Lundström-Kron, Public Prosecution Authority at the Development Centre in Göteborg, 4 October 2018.

⁵¹⁴ There is an overlap as the previous law still applies to rape crimes committed before the new legislation entered into force on 1 July 2018. Nevertheless, it is highly likely that more judgments from district courts and appeal courts exist than Amnesty International was able to gather. Amnesty International received a list of relevant court cases on request from the Prosecution Authorities’ Development Centre which is monitoring the development of court practice in implementing the new law. By contacting the 48 district courts Amnesty International found additional cases. Amnesty International traced all 30 cases and gathered information on whether they had been appealed. It then requested the judgments from the regional courts of appeal.

⁵¹⁵ Special Eurobarometer 449: Gender-based violence, available at:

<http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2115>

The survey was carried out by the TNS Opinion & Social network in the 28 Member States of the European Union between 4 and 13 June 2016. Face-to-face interviews were held with 27.818 EU citizens from different social and demographic categories in their native language, including 1.109 citizens of Sweden.

38-year old Zarah has been subjected to rape several times in her life.⁵¹⁶ She told Amnesty International:

“It’s something you get to hear if you have been subjected [to rape]: ... ‘If you have been abused that much it must be something YOU do? It must be something about you, or else you wouldn’t be subjected?’ (...) I’ve had those remarks several times by people. I even got that comment from my mother (...) Then, I just snapped and said, ‘How do you have the nerve?’ [and she said] ‘I have always tried to teach you how to dress, how to talk’ and I just went: ‘IT DOESN’T MATTER!!!!’”

41-year old Erika told Amnesty International that she was raped, threatened and assaulted by her former partner in her home in June 2015. She called the police who immediately arrested the man. Erika recalled: **“I got messages from all kinds of people, telling me that I was horrible, having done this to him, from his friends.”**⁵¹⁷

According to providers of victim support interviewed by Amnesty International, feelings of guilt and shame are common among survivors. Rape myths and victim blaming may further exacerbate their suffering and influence their own understanding of whether or not what they experienced was rape.

“Lena” told Amnesty International that she was raped when she was 18 while on holiday abroad. Many years later she was raped by her partner. She did not report the rape to the police. She said she took a number of issues into consideration:

“Going to the police after the first rape was totally out of question... I was stuck in this way of thinking that I was to blame. After the second rape I hesitated... it is difficult when it happens within a relationship. How would I explain that a couple of hours earlier, we had consensual sex and then a couple of hours later, it is a rape? Who would believe me?”⁵¹⁸

Erika who was raped by her former partner said she only realized that she had been raped after the police officer told her so following her providing details of what had happened:

“I didn’t know it was a rape. I thought then that rape was a fully consummated intercourse and nothing else but that was not the case (...) It wasn’t me who reported it, or wanted to... they [the police] came, that’s it. And it was they who decided to bring him in, and they told me ‘You have been raped, we will bring him in now.’ It was their call.”⁵¹⁹

Zarah who has been subjected to rape several times in her life told Amnesty International about what made her decide to file a report to the police on the last occasion in April 2018:

“The thing is that this specific rape... it became so obvious, because the other times, I blamed myself much more, I’ve punished myself. Now it was more like... I had been walking around vomiting! I mean it should be obvious to anyone that I was not interested in having sex.”

21-year old Malin was raped by an older student when she was in secondary school. She didn’t tell anyone, but her friend noticed something was wrong. The friend then took her to the headmaster. Malin eventually told her parents and reported the rape to the police. She told Amnesty International that she found it shocking to hear others say that she had been raped:

“Was I making this up or was it really as serious as Catharina [my friend] said? Because she told the headmaster that so and so has raped Malin... And then I thought ‘God, what are you saying!’... And after the interview [the police] said ‘I will classify this as rape’ and I thought ‘My God, was it really...?’ That was a big thing to me, I didn’t understand it was [rape].”⁵²⁰

5.4.2 INITIAL POLICE REPORT

Although most rapes are not reported, thousands of women and girls and hundreds of men and boys do take the decision to report rape to the police. Some survivors will report immediately; others need time to think

⁵¹⁶ Interview with Zarah, 29 November 2018, at Amnesty International’s office in Stockholm.

⁵¹⁷ Interview with Erika, 23 October 2018, at Amnesty International’s office in Göteborg.

⁵¹⁸ Interview with “Lena”, 30 November 2018 in hotel room in Stockholm. (Name has been changed to protect the interviewee’s privacy.)

⁵¹⁹ Interview with Erika, 23 October 2018 at Amnesty International’s office in Göteborg.

⁵²⁰ Interview with Malin, 11 December 2018, at her home in a city in the south east of Sweden.

through what steps to take, especially if the perpetrator is someone with whom they have a close relationship. A 2019 report by the Prosecution Authority's Development Centre in Göteborg and the Police Authority's Development Centre West found that among the sample cases of sexual crimes, reporting to the police took place within two days in 44% of cases and after two months in 25%.⁵²¹

Rape may be reported to the police by telephone through a Contact Call Centre, to the 24-hour on duty officers or to the officer on duty at a local police station or by email. In some cases, the police are alerted by the Emergency Call Centre and patrol police officers are sent to the crime scene. The victim makes an initial statement to the police, which is the basis for the police's decision on whether to start an investigation or not.

The initial response and treatment from the police can have decisive impact on the willingness and ability of survivors to go through the legal process.



ZARAH

Zarah made a report to the police by phone in April 2018. She described to Amnesty International how she felt supported by the police officers in a very difficult situation:

"I thought that I would report it quickly while my son was out playing... they asked, 'Have you showered?' Basically, I had done everything right. I hadn't showered, I had just brushed my teeth and washed my face and that 'cause I was so out of it. It was the same bed sheets, everything was right there. The only thing I remember doing was that I had taken my panties off and put them in a plastic bag, just in case. It didn't take 15 minutes, and [the police] said 'Are you at home? Wait there, we'll send a car right away'. And it was like five more minutes until the police arrived, so it was really fast... I had explained what had happened briefly by phone, but I had to tell it briefly again when they arrived... Then it came back... everything, all things [the rapes] I had been through before... so I was very affected by it. I know I was shaking, and they saw that. They were so nice, the police who were there, completely wonderful, it was a woman and a guy... They tried to cover it up [for my son], I don't remember what excuses they made up... because they were taking everything out, it was the bedsheets, that are actually still with the police because I haven't dared collect them. But it was sheets, clothes, underwear, everything. They had like ten bags because everything needs to go into different bags."⁵²²

Zarah went on to describe how the police helped her out of her apartment to take her to the Emergency Clinic for Rape Victims for the necessary tests:

"Then, it was also [the issue of] how to get me out, because it was really hard with all the neighbours. It was in the middle of the day, it was a bank holiday and wonderful weather, so everyone was outside, and the kids were surrounding the police car. So she [the officer] drove a bit further down and they went down with all these bags (...) And I was so shaky that I had some difficulties walking. We went through the basement and out on the side [of the building] to avoid [the neighbours] and she reversed so I could just get into the car... The day after, the police contacted me, those who were there, asking about how it went [at the Emergency Clinic for Rape Victims]."

⁵²¹ Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning.

Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1,

Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, p. 28, available in Swedish at

www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

The thematic inspection was made by the Prosecution Authority Development Centre in Göteborg jointly with the Police Authorities' Development Centre West and covered six prosecution offices and equivalent police areas in different parts of Sweden. The study covered randomized sample of 664 cases of sexual crimes against adults and violence in intimate relationships that had either been closed or led to a prosecution decision between 1 October 2017 and 31 March 2018. The sample included 266 cases of sexual crimes of which the majority, 199 cases, involved rape, (*Våldtäkt - tvångsmedelsanvändning vid misstanke om våldtäkt*. Åklagarmyndigheten (ÅM2017-919) Förstudie, Tillsynsrapport 2017:2, Utvecklingscentrum Göteborg, November 2017).

⁵²² Interview with Zarah, 29 November 2018, at Amnesty International's office in Stockholm.



ERIKA

Erika told Amnesty International that she had been raped, threatened and assaulted by her former partner in her home in June 2015. She managed to escape from the house to call the police and then returned home because she was concerned about the children. Erika recalled the police arriving:

“It was two of them, a man and a woman, and they were really, really great...and I remember that the woman sat down with me in the kitchen, and said ‘Could you tell more in detail, what happened there on the sofa?’... ‘Yes, he did it here’, ‘How did he do it?’ And then she started asking more, and she went: ‘You know what, you have been raped and we will take him in now’. If she hadn’t sat down and asked those questions, they might have just left the scene and made him leave.”⁵²³

5.4.3 ACCESS TO LEGAL AID

A 2010 study by the Public Prosecution Authority identified survivors’ access to complainant’s counsel as one of the most important factors for successful prosecutions in cases of rape and violence in intimate relationships. According to the study, the appointment of complainant’s counsel increases the likelihood of prosecution eight-fold compared to cases where the victim had no legal aid.⁵²⁴ However, complainant’s counsels have sometimes come in at a late stage of the rape investigation, if at all.⁵²⁵

The law guaranteeing the right to free legal aid and the assistance of a complainant’s counsel for victims of serious crimes was first introduced in 1988 and has been amended on several occasions since.⁵²⁶ Following the 2018 legal reforms, a request for complainant’s counsel should be made to the court immediately after a preliminary investigation of sexual crimes is initiated or reopened, unless it is obvious that the complainant does not need one.⁵²⁷ The investigating officer should immediately inform the victim about their right to counsel of their choice, free of charge.

Complainant’s counsel Rebecca Lagh described her work to Amnesty International:

“What I see as our most important role, is to make the person feel safe and prepare her for what is going to happen. Build trust so that she first dares to tell me. And then we go through everything, really thoroughly, what is important to tell, and what is perhaps not as important for the police, so that when she is [interviewed by the police], she knows what to talk about ... To explain how it works. Always focus on her feeling safe and assured. Because if she doesn’t feel safe with me, then she will never be safe with the police. So it is a lot of work we do during the process. And possibly several meetings [to] structure it up. Many times it leads to a better police investigation. You know, if they go there, as many do, and just talk... then the police will not bear to listen and then the quality of the investigation will suffer.”⁵²⁸

The police officers and prosecutors interviewed by Amnesty International all stressed the importance of promptly appointing complainant’s counsel to help relieve some of the stress and strain on survivors. They also believed that it can improve the quality of investigations, which in turn can lead to more prosecutions

⁵²³ Interview with Erika, 23 October 2018 at Amnesty International’s office in Göteborg.

⁵²⁴ Åklagarmyndigheten: Tvångsmedelsanvändning och beslutsfrister m.m vid vålds- och sexualbrott i nära relation och mot barn, Rapport, Utvecklingscentrum Göteborg, Februari 2010, p. 57, available in Swedish at <https://docplayer.se/6159430-Tvangsmedelsanvandning-och-beslutsfrister-m-m-vid-valds-och-sexualbrott-i-nara-relation-och-mot-barn-rapport.html>

The study, conducted by the Prosecution Authority Development Centre in Göteborg, covered a randomized sample of 575 cases of violence in intimate relationships and sexual crimes in close relationships and against children from six prosecution offices in different parts of Sweden, registered in 2008. An analysis what had the greatest impact on the possibility of prosecution in such crimes found that four factors had a statistically significant effect on the prosecution rate: the appointment of complainant’s counsel, detention of the suspect, a short processing time and reporting the crime to the police shortly after it was committed.

⁵²⁵ Åklagarmyndigheten: Tvångsmedelsanvändning och beslutsfrister m.m vid vålds- och sexualbrott i nära relation och mot barn, Rapport, Utvecklingscentrum Göteborg, Februari 2010, p. 57, available in Swedish at <https://docplayer.se/6159430-Tvangsmedelsanvandning-och-beslutsfrister-m-m-vid-valds-och-sexualbrott-i-nara-relation-och-mot-barn-rapport.html>

⁵²⁶ The right to complainant’s counsel applies to victims of sexual crimes (Chapter 6 of the Penal Code) as well as crimes against life and health (Chapter 3 of the Penal Code) and crimes against the individuals’ freedom and peace (Chapter 4 of the Penal Code) which carry a prison sentence.

⁵²⁷ Lag (1988:609) om målsägandebiträde, available in Swedish at www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1988609-om-malsagandebitrade_sfs-1988-609

⁵²⁸ Interview with Rebecca Lagh, 8 November 2018, in Stockholm.

and convictions for rape.⁵²⁹ Amnesty International also interviewed four people who act as complainant's counsel and all confirmed that they are appointed at an early stage and, as a rule, are present at the first police interview with the complainant after the police report has been filed.⁵³⁰

The competence, experience and suitability of the complainant's counsel were also raised in interviews with Amnesty International. For example, Ellinor, who was only 16 years old when she was raped, told Amnesty International: "I wasn't of age, so mom helped out and we had heard of one [complainant's counsel] who was good at this [type of case]. But then when the interview came up, it wasn't her who showed up, but someone else from the same law firm. I hadn't talked to her before, I knew nothing. I think we had half an hour before the [police] interview".⁵³¹

Following the 2018 reform, complainants counsel should be an attorney, an assistant lawyer at law firm or any other person who has completed the required test for eligibility for employment as a judge. Only a person with the right expertise and experience and who is otherwise particularly suitable for the assignment may be appointed.⁵³²

5.4.4 THE INVESTIGATION

"Then there were times when they would call and hold an interview over the phone... I just got a call from a hidden number. If I had had a time [agreed in advance] I would have made sure to be at home so that I could talk openly... The police would ask: 'Is it ok if we ask a few questions?' But when you are 16-17 you don't really know...it's the police calling, right. I had no idea about my rights, so you just agree to it... The police would ask: 'We found another film of you, do you remember this occasion?' which I didn't... I was so shocked and confused about not remembering. I hadn't been drinking on any of those occasions [when I was raped and abused]. And then they would hang up and I wasn't at home, so it was really hard because I was so sad. I remember that I called both my mom and my dad."⁵³³

Ellinor was repeatedly raped and abused by four young men over several months when she was 16. She told Amnesty International that the perpetrators had filmed her and threatened to spread the films on social media.

The quality of the criminal investigation is crucial to ensure survivors' right to access to justice. Marianne Ny, Director of the Prosecution Authority at the Development Centre in Göteborg, told Amnesty International that in 2010-2012 the Prosecution Authority and the police developed a joint best practice working model for investigating sexual crimes and violence in intimate relationships to ensure nationally uniform investigations of high quality.⁵³⁴ The working model included a set of templates, routines and checklists and other working tools to support implementation. The model was reviewed in 2016, resulting in what is known as "A developed best working model", and then again as part of the 2018 legal reforms. A 2019 joint thematic inspection found that the quality of rape investigations varied in different parts of the country and was better where this structured working model was fully implemented. Higher prosecution rates were also noted in districts that used the model.⁵³⁵ According to the Police Authority, these findings will form the basis for further concrete measures to improve investigations of sexual crimes.⁵³⁶

A 2014 Parliamentary Commission on Sexual Crimes was tasked with evaluating how the police and the judiciary deal with rape investigations and why so few reported rapes result in prosecution and conviction.⁵³⁷ The Commission concluded that, while the knowledge and methods relevant to rape investigations are present in the Police Authority, implementation varies.

⁵²⁹ Interviews with Anna Lindqvist and Hanna Karlsson, 21 September 2018, Christina Voigt, 20 November 2018, Marianne Ny and Karin Lundström-Kron, 4 October 2018.

⁵³⁰ Interviews with Ulrika Rogland, 18 September 2018, Rebecca Lagh and Linnea Sveds, 8 November 2018 and Silvia Ingolfssdottir Åkermark, 30 November 2018.

⁵³¹ Interview with Ellinor, 28 November 2018, at Amnesty International's office in Stockholm.

⁵³² Lag (1988:609) om målsägandebiträde, available in Swedish at www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1988609-om-malsagandebitrade_sfs-1988-609

⁵³³ Interview with Ellinor, 28 November 2018, at Amnesty International's office in Stockholm.

⁵³⁴ Interview with Marianne Ny, 4 October 2018, in Göteborg. The Prosecution Authority Development Centre in Göteborg is responsible for legal supervision, the development of methodology and knowledge within the Public Prosecution Authority nationwide as well as information and cooperation with other authorities on sexual crimes.

⁵³⁵ Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning. Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1, Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, p. 28, available in Swedish at www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

⁵³⁶ Amnesty International sought written feedback from the National Police Commissioner, Anders Thornberg by email on 15 March 2019. A written response was received by e-mail on 21 March from Per Ottosson and Anna Lindström on behalf of the Swedish Police Authority.

⁵³⁷ *Ett starkare skydd för den sexuella integriteten*. Betänkande av 2014 års Sexualbrottskommitté, SOU 2016:60

It also concluded that police investigators sometimes make their own assessments of evidence early on in rape cases and no further investigation is carried out.⁵³⁸

The survivor's testimony is a key part of the evidence and often allows other evidence to be identified, such as the crime scene and possible witnesses. There may also be forensic evidence on her body, which is perishable. It is therefore crucial that interviews with the victim, the suspect and witnesses are held promptly.

Complainant's counsel told Amnesty International that the treatment of rape victims has generally improved in recent years, but still largely depends on the individual police investigator.'

According to the Preliminary Investigation Decree, interviews should be held at a time and in a place that involves as little inconvenience for the person as possible, unless it obstructs the work of the police or prosecutor.⁵³⁹

Hanna Karlsson, a police investigator specializing in sexual crimes, told Amnesty International that the treatment of rape victims by the police is sometimes "poor".⁵⁴⁰ She said it was crucial that the police investigator "emphasize the context", confirming that she/he understand that it is a difficult situation for the victim, that the investigator has met many others in the same situation and that the survivor can ask to take a break whenever needed.

According to Marianne Ny, Director of the Public Prosecutions, it is important to improve the quality of all rape interviews, including those held with suspects. A professional approach as well as good interview techniques and video documentation are vital in rape investigations.⁵⁴¹ However, the 2019 joint thematic inspection showed that video recording of the initial interview with the complainant was only used in 7.5% of the sample cases. There were video or sound recordings of only 17% of the interviews with the suspect and in 26% of the sample the suspect was not interrogated at all.⁵⁴² While several of these cases related to situations where there was no reason to believe that a crime had been committed, the inspection concluded that the prosecutor also had refrained from interrogating identified suspects in cases where it was reasonable to suspect that a crime had been committed.

5.4.5 SECURING THE EVIDENCE

In a court case from October 2018, the court acquitted the accused of charges of physical abuse, unlawful threats and rape in part because of "significant shortcomings in the investigation".⁵⁴³ For example, fingerprints were not secured or DNA samples taken from all the items of evidence. In addition, a legal certificate was issued based on photos of the woman's injuries. However, some of the photos were of such poor quality that the medical forensic doctor could not form an opinion on how some of the injuries had been incurred. The court concluded that: "This affects the indictment because the prosecutor is responsible for conducting the preliminary investigation and the burden of proof in the case". The court decision in this case was under appeal at the time of writing.

The case illustrates the importance of securing robust and comprehensive evidence as thoroughly as possible. Marianne Ny, Director of the Public Prosecutions, told Amnesty International that the police need a better understanding of what constitutes important evidence and training in securing such evidence. She stressed the importance of securing as many different types of independent evidence as possible at the earliest stages of the investigation.⁵⁴⁴

According to the Code of Criminal Procedure, as soon as the police have identified a suspect, the rape investigation should be led by a prosecutor. However, this does not always happen in practice.⁵⁴⁵ In addition, Ulrika Rogland, a former judge and prosecutor who currently works as complainant's counsel, told Amnesty

⁵³⁸ *Ett starkare skydd för den sexuella integriteten*. Betänkande av 2014 års Sexualbrottskommitté, SOU 2016:60, pp. 381-388, www.regeringen.se/contentassets/8216d40ecc814613bccb394b4b1dfa38/ett-starkare-skydd-for-den-sexuella-integriteten-sou-2016-60.pdf

⁵³⁹ Förundersökningskungörelsen (The Preliminary Investigation Decree,) 5 §, <https://lagen.nu/1947:948>

⁵⁴⁰ Interview with Hanna Karlsson, 21 September 2018, in Göteborg.

⁵⁴¹ Interview with Marianne Ny, 4 October 2018, in Göteborg.

⁵⁴² Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning.

Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1, Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, page 28. Available in Swedish at:

www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

⁵⁴³ Hudiksvalls tingsrätt, case B-1697-18

⁵⁴⁴ Interview with Marianne Ny, 4 October 2018.

⁵⁴⁵ Interview with Marianne Ny, 4 October 2018.

International that in cases where a suspect has not been identified, the police often focus entirely on finding the suspect and fail to take other measures to secure evidence.⁵⁴⁶

According to Prosecutor Karin Lundström-Kron, the police are using the standardized sexual assault evidence collection kits ("rape kits") to secure evidence on the victim and suspect more frequently than before.⁵⁴⁷ In addition, health-care providers can also collect such evidence. However, Amnesty International was told by staff at the Emergency Clinic for Rape Victims in Stockholm AV that the police do not always collect the rape kits from the health-care providers.⁵⁴⁸ This was also raised by the 2014 Sexual Crimes Commission.⁵⁴⁹

Legal certificates⁵⁵⁰ issued by the National Board of Forensic Medicine and health providers can be important pieces of evidence in rape cases. However, the police sometimes request medical records instead of certificates, which have less value as evidence in a legal process.

Amnesty International is also deeply concerned about the extremely long time it takes to get the results of forensic DNA analysis: up to nine months.⁵⁵¹ Christina Voigt, a prosecutor specializing in sexual crimes and violence in close relationships, described the situation as "a real catastrophe".⁵⁵² She told Amnesty International:

"You cannot hold anyone arrested for so long, it is not proportionate, so either you prosecute without [the results of the analysis] and keep your fingers crossed that it will work and that [the results] may come in time for the court of appeal, if dismissed [in the district court]. Or you let them [the perpetrators] go and you wait. And that has happened many times..."

Just recently I had to release [a suspect] from detention [rather than bringing charges], because I felt that this analysis was so important... So he was on the loose for about half a year. But then came the analysis and I can say that I am glad that I didn't bring charges [earlier] for it was clear as crystal. They found stuff ... It has also happened that I brought charges for attempted rape and then maybe it turned out that there was sperm in her vagina. Then of course you adjust [the classification of the crime] to the court of appeal, to consummated rape.... But sometimes you cannot let [the suspects] out because when it is an intimate relationship, they can affect too much... no, clearly it's not good."

Christina Voigt also highlighted similar problems relating to mobile phones, which are normally searched by police. She told Amnesty International that it may take up to six months to receive the results of a search to extract data from a mobile phone.

"Then you have to try to invent new ways to document (...) Let's say that you have some important text messages, then you simply photograph them, take screenshots or photograph them directly from the person's phone, what is written there. You don't get any other information, just exactly what you see on the screen."

All DNA analysis related to crimes is conducted at the National Forensic Centre (NFC) in the city of Linköping. According to Siw Sullivan, Group Manager at the NFC Biology Section who deals with the most serious crimes, the number of requested DNA analyses in sexual crimes increased by 40% between 2015 and 2017 and the NFC now receives about 1,400 cases related to sexual crimes annually.⁵⁵³ She told Amnesty International that, ideally, trained crime scene investigators/forensic specialists should go through the materials before sending them to the NFC with clear requests for the type of analysis required, what to search for, the type of crime and other important case data, including whether the case is a priority or not.⁵⁵⁴ However, in some cases, the materials are sent to the NFC at a very early stage of the investigation with scant instructions and information. The information must then be supplemented before initiating the analysis. In addition, the NFC is not always notified by the police or a prosecutor when a case is closed, wasting resources.

⁵⁴⁶ Interview with Ulrika Rogland, 18 September 2018 in Malmö.

⁵⁴⁷ Interview with Karin Lundström-Kron, 4 October 2018 in Göteborg.

⁵⁴⁸ Interview with Lisa Nordlund, at the Emergency Clinic for Rape Victims in Stockholm, 30 November 2018.

⁵⁴⁹ Ett starkare skydd för den sexuella integriteten. Betänkande av 2014 års Sexualbrottskommitté, SOU 2016:60, p. 377, www.regeringen.se/contentassets/8216d40ecc814613bccb394b4b1dfa38/ett-starkare-skydd-for-den-sexuella-integriteten-sou-2016-60.pdf

⁵⁵⁰ A legal certificate is a written medical statement by a doctor, obtained by the Police Authority or the Public Prosecutor's Office for use in criminal investigations or as evidence in a criminal case

⁵⁵¹ Interview with Hanna Karlsson, 21 September 2018, at the Development Centre of the Police in Göteborg.

⁵⁵² Interview with Christina Voigt, 20 November 2018, in Stockholm.

⁵⁵³ Interview with Siw Sullivan, 11 December 2018, at the National Forensic Centre in Linköping.

⁵⁵⁴ Cases involving minors and cases where the suspect is detained are prioritized. The police, not the NFC, decides which cases are prioritized.

Siw Sullivan told Amnesty International:

"We have too long processing time, yes. I think everyone agrees on that. There's no doubt. We want to be able to answer within periods of remand for example, but it is not possible. So in that way we create a bottleneck. But I also think that if we had a joint [approach] all the way, one thinks of more forensic specialists within the police perhaps, but if we think of the whole [chain] so that the work is optimized all the way, then we may not need to be as much of a bottleneck."

However, the situation is not new. In 2016 the Swedish Agency for Public Management (Statskontoret) presented an evaluation of forensic analysis in cases involving people held on remand⁵⁵⁵ which found that forensic investigations occurred in 40% of such cases.⁵⁵⁶ It concluded that the ordering of forensic analysis by the police and prosecutors was one of two "critical moments" in the process. Many orders were incomplete, which meant that employees at NFC had to contact the police or prosecutor in order to get additional information, slowing down the process. The second delaying factor was that all orders were not relevant and consequently, the resources at NFC are not used efficiently. Lack of forensic competence regarding what should be investigated and the fact that the police and prosecutors often failed to revoke orders that were no longer needed was pointed out as one of the main reasons. Statskontoret recommended that prosecutors take a more active role in requesting forensic investigations to ensure that orders to the NFC are relevant and that a case management system be developed to facilitate the work of the prosecutors. Recommendations also included improved order forms and the establishment of a forensic support function within the police authority. In addition, the review also pointed out ineffective work processes at the NFC and recommended particular attention be paid to streamlining the search and analysis of DNA trace – the most common analysis requested in investigations of sexual and violent crimes.

Similar recommendations were made by the Swedish National Audit Office (Riksrevisionen) in 2017. It stated that the forensic analysis made by the NFC and the crime scene investigators within the police was of high quality, while crime scene investigations by police who lack forensic specialist competence were often inadequate. Riksrevisionsverket also pointed to the need to review the case management systems within the police and prosecution authorities.⁵⁵⁷

According to Siw Sullivan, the NFC has hired additional staff and is testing new routines/approaches to speed up DNA analysis in rape cases. She told Amnesty International that during the autumn of 2018, priority was being given to the backlog of sexual crimes, but the waiting time in non-priority cases was about between eight and nine months and three to four months for priority cases.⁵⁵⁸

5.4.6 PRE-TRIAL DETENTION

Rape carries a minimum sentence of two years in prison and a suspect may be held on remand, unless there is an obvious reason why they should not be remanded and "the reasons for the measure outweigh the infringement or harm that it entails for the suspect".⁵⁵⁹ According to the Prosecution Authority, pre-trial detention may be required to secure evidence and to reduce the suspect's ability to influence the complainant or destroy evidence. Also, detention may be vital for the protection of the victim.⁵⁶⁰

A 2010 report by the Prosecution Authority found that the probability of rape investigations leading to prosecution increased sevenfold when the suspect was remanded compared with investigations where the suspect was not detained. One reason cited was that remand led to these cases being prioritized and all necessary investigations being carried out more promptly. However, the same report concluded that many suspects in rape cases in close relationships were not arrested or even brought in for questioning.⁵⁶¹ The 2019 joint inspection by the police and Prosecution Authority found that only 12.6% of those suspected of

⁵⁵⁵ Statskontoret is the government's organization for analyses and evaluations of state and state-funded activities. The review, Häktningstider och forensiska undersökningar Förslag för en snabbare forensisk process, 2016:2, available at www.statskontoret.se/globalassets/publikationer/2016/201602.pdf

⁵⁵⁶ The review did not focus on specific crimes.

⁵⁵⁷ Från spår till bevis - Polisens forensiska organisation. Riksrevisionen, RIR 2017:6, available in Swedish at www.riksrevisionen.se/download/18.78ae827d1605526e94b2daf6/1518435495349/RIR_2017_16_POLISEN_FORENSIK_ANPASSAD.pdf

⁵⁵⁸ Interview with Siw Sullivan, 11 December 2018, at the NFC in Linköping.

⁵⁵⁹ Rättegångsbalken (Procedural Code) Chapter 24, 1 §, available at <https://lagen.nu/1942:740#K24>

⁵⁶⁰ Åklagarmyndigheten: Tvångsmedelsanvändning och beslutsfrister m.m vid vålds- och sexualbrott i nära relation och mot barn, Rapport, Utvecklingscentrum Göteborg, Februari 2010, available in Swedish at <https://docplayer.se/6159430-Tvangsmedelsanvandning-och-beslutsfrister-m-m-vid-valds-och-sexualbrott-i-nara-relation-och-mot-barn-rapport.html>

⁵⁶¹ Åklagarmyndigheten: Tvångsmedelsanvändning och beslutsfrister m.m vid vålds- och sexualbrott i nära relation och mot barn, Rapport, Utvecklingscentrum Göteborg, Februari 2010.

sexual crimes in the sample were remanded.⁵⁶² The inspection considered the number low, given that there is a presumption of remand in rape cases.

5.4.7 LENGTHY PROCEEDINGS

Prolonged processing times may have significant negative consequences both on the survivor's motivation and well-being and on the possibilities to bring charges in rape cases. According to the Prosecutor's Office, the processing time for rape crime should not exceed six months.⁵⁶³

During the first five months of 2017, police closed on average 13 rape cases per day, according to the major daily newspaper *Svenska Dagbladet*.⁵⁶⁴ The then National Chief of Police reportedly promised to devote more resources within the police to rape investigations⁵⁶⁵ and in its spring 2018 budget, the government allocated extra funds of about €20 million to improve the capability to investigate sexual crimes, among other things.⁵⁶⁶ It is too early to assess what the impact of this will be.

The issue of inadequate resourcing for and/or prioritization of rape crimes and other sexual crimes was raised in some of the interviews conducted by Amnesty International for this report. According to the former judge and prosecutor Ulrika Rogland, resources within the police are often transferred from rape investigations to other serious crimes investigations such as murder and gang crime.⁵⁶⁷ In her experience, it is common for police investigators to change during the course of an investigation, with the new investigator needing to familiarize themselves with the case, and most cases that involve protracted investigations are eventually closed.

The review of the 2014 Sexual Crimes Committee concluded that there was a real risk that rape investigations were not sufficiently prioritized by police. It highlighted the importance of adequate resourcing along with the need to clarify organizational structures and responsibility in the police for investigating this type of crime.⁵⁶⁸ The 2019 joint inspection by the Prosecution Authority and police found that, although sexual crimes should be investigated by the "serious crimes" units or units working with violence in intimate relationships, a third of such crimes in the sample were in fact investigated by local police without the necessary experience or expertise due to lack of resources or, in some cases, geographical distance.⁵⁶⁹ According to the inspection report, representatives from both the police and Prosecution Authority expressed concern that "serious crimes" units deprioritized sexual crimes for other types of crimes.

In its Baseline Evaluation Report on Sweden, GREVIO pointed to the "urgent need to significantly reinforce the investigative capabilities of law enforcement authorities to ensure prompt and appropriate investigations" in cases of rape.⁵⁷⁰

⁵⁶² Of the 214 sample cases, 199 involved rape. Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning. Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1, Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, p. 28, available in Swedish at www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

⁵⁶³ Utredning av brott mot barn, våld i nära relation och sexualbrott mot vuxna. Promemoria om ett utvecklat bästa arbetssätt. Åklagarmyndigheten, Utvecklingscentrum Göteborg Polismyndigheten, Utvecklingscentrum Väst, Uppdaterad juni 2018.

⁵⁶⁴ Polisens facit: 13 nedlagda våldtäktsärenden - per dag. Svenska Dagbladet 16 June 2017, www.svd.se/polisens-facit-13-nedlagda-valdtaktsarenden--per-dag

⁵⁶⁵ Dan Eliasson lovar större resurser till att utreda våldtäkter, Dagens Nyheter, 22 September 2017, www.dn.se/nyheter/sverige/dan-eliason-lovar-storre-resurser-till-att-utreda-valdtakter

See also Eliasson: Brist på resurser är orsak till färre våldtäktsutredningar, Swedish Radio, 18 September 2017, <https://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6780106>

⁵⁶⁶ Polisen tillförs ytterligare 200 miljoner kronor. Nyheter från polisen, 3 April 2018, available at: <https://polisen.se/aktuellt/nyheter/2018/april/polisen-tillfors-ytterligare-200-miljoner-kronor/>

⁵⁶⁷ Interview with Ulrika Rogland, 18 September 2018 in Malmö.

⁵⁶⁸ Interviews with Marianne Ny, and Karin Lundström-Kron, 4 October 2018, Anna Lindström, and Helena Karlsson 21 September 2018, Christina Voigt 20 November 2018. See also: Ett starkare skydd för den sexuella integriteten. Betänkande av 2014 års Sexualbrottskommitté, SOU 2016:60, pp. 345 and 382, www.regeringen.se/contentassets/8216d40ecc814613bccb394b4b1dfa38/ett-starkare-skydd-for-den-sexuella-integriteten-sou-2016-60.pdf

⁵⁶⁹ Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning. Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1, Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, p. 30, available in Swedish at www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

⁵⁷⁰ GREVIO Baseline Evaluation Report Sweden, 2019, p. 8., <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686>

5.4.8 CLOSED CASES

The vast majority of rape investigations are closed by prosecutors. The 2019 joint inspection mentions that prosecutors are sometimes “noticeably cautious” in their decision to bring charges.⁵⁷¹

The decision not to prosecute can be appealed to the Director of the Prosecution Authority's Development Centre in Göteborg. In 2018 such appeals were made in 185 cases of rape. The Director decided to resume investigations in 17% of these. Similarly, in 2017 appeals were made in 124 cases of rape, of which 16% were resumed.⁵⁷²



KARINA

“It feels like they didn’t do their job properly. If they had done it properly from the start, I would have had justice today... All those hopes for justice and redress, and in the end - nothing. It was just another police report. I don’t believe in the justice system today. I don’t think it works the way it should. Maybe I’m blaming the police because it was the only face I saw. I can’t blame other people or the government because they were not the ones to receive my report. But I think the whole society has a responsibility and a duty. For a society to work, there must be a functional justice system. If not, why do we even have one?”

Karina lives in a small town in Sweden. She told Amnesty International that her former partner had continued to harass and abuse her after she left him in 2012. Karina said that he raped her on two occasions in August 2015 and April 2016 and that he assaulted her in May 2016. On another occasion the same month he tried to rape her. In June 2016 she went to a nearby city to report these crimes to the police, who opened a criminal investigation. Complainant's counsel was appointed to her case and was present during most of the police interviews.

Karina said the police repeatedly told her that they would soon bring in the suspect for questioning. Meanwhile, the police asked her not to tell him that she had filed a report but to “pretend like nothing has happened”. According to Karina, they explained it would be better if they could take him by surprise. This went on for weeks and caused her a great deal of anxiety; at one point she had a severe anxiety attack and was taken to a psychiatric clinic. Then, the police investigator went on holiday and the investigation was stalled. It was not until October, more than four months after Karina reported the rapes, that the police finally questioned the suspect. He was questioned again in January 2017.

Meanwhile, Karina had been asked to go to the police station to translate two sound files in Spanish that she had given the police containing recordings of threats and physical violence that she had been subjected to on two of the reported occasions. No professional transcript was made of these recordings, but a police officer who spoke the language made some notes of the content. The police had documented an injury on Karina's hand at the time of reporting, but the photo was lost.

In January 2017, the prosecutor closed the case, due to lack of evidence. Karina appealed the decision to the Vice Director of the Public Prosecution Authority in Göteborg, but her appeal was rejected in April 2017.⁵⁷³ Her stepfather then paid for an authorized translation of the sound files and she appealed again. Her appeal also included information about additional incidents of crimes that previously had not been investigated, including assault and harassment. In November 2017, the Vice Director of Public Prosecution Authority confirmed his earlier decision not to reopen the investigation into the reported rapes and assault but said these additional crimes should be investigated. The case was referred to the local public prosecution office.

⁵⁷¹ Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning.

Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1, Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, p. 30, available in Swedish at www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

⁵⁷² Information received from the Prosecution Authority's Development Center in Göteborg by email on 18 February 2019.

⁵⁷³ A complainant has the right to a review of the decision to not open an investigation, to close an investigation or not to institute a prosecution. Reviews in cases involving sexual offences are carried out by the Public Prosecution Authority Development Centre in Göteborg, where the Director of the Public Prosecution Authority reviews the case and decides whether the 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 allocated to another investigator. In rare cases the decision of the Director of the Public Prosecution Authority can also be reviewed by the office of the Prosecutor-General.

Several months later, in May 2018, Karina was notified by the prosecutor that the investigation was closed as the statute of limitation for these crimes had expired or would soon expire. Almost two years had passed since Karina first contacted the police.

(Amnesty International was given access to all documents in the case by Karina)

5.4.9 TRAININGS OF POLICE AND PROSECUTORS

Following the 2018 law reform, some positive initiatives have been taken to improve the knowledge, skills and working methods of the police. For example, a two-week training module on rape outside intimate relationships has been developed for police. Police Inspector Anna Lindström, who is responsible for developing police operations related to sexual crimes at the National Operations Police Department (Development Center West), told Amnesty International that the training aims to raise the status of working with sexual crimes and provide an opportunity for specialization. No such comprehensive training on rape has been held before.⁵⁷⁴ The first pilot course, with 26 participants, was held in 2018 and two additional courses are planned for early 2019.⁵⁷⁵

Given the various shortcomings in rape investigations mapped and identified in this report Amnesty International believes that there is a strong need for continuous training and calls on the authorities to provide all police that investigate rape and other sexual crimes with relevant high-quality training.

5.5 SUPPORTING SURVIVORS

Access to comprehensive support is crucial to enable survivors to participate with confidence throughout the legal process. This includes support of various kinds, such as legal aid, medical care and psychosocial support.

5.5.1 ACCESS TO INFORMATION

According to the EU Victims' Rights Directive,⁵⁷⁶ which was incorporated into Swedish law in 2015,⁵⁷⁷ and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,⁵⁷⁸ victims of crimes should receive information about available support and assistance provided by the authorities and not-for-profit organizations.

In Sweden victim support is often provided via not-for-profit civil society organizations, some of which are partly state funded, such as local women's shelters and Victim Support Sweden (Brottsofferjouren, BOJ). Many of those who seek support from BOJ are referred there by the Police Coordinator for Victims of Crime.⁵⁷⁹ A 2018 analysis by Brå showed that victims of sexual crimes who made a report to the police were 10 times more likely to be offered support and assistance from a not-for-profit organization than those who did not.⁵⁸⁰ The police therefore play an important role in providing information about support. Indeed, according to the Crime Investigation Regulation, the police are responsible for providing victims with such information "as soon as possible".⁵⁸¹

⁵⁷⁴ Interview with Anna Lindström, Police inspector & Operations Developer at the National Operations Police Department, Development Center West, in Göteborg and Hanna Karlsson, police investigator on sexual crimes, 21 September 2018.

⁵⁷⁵ Information received from Anna Lindström, by e-mail, 12 February 2019.

⁵⁷⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, para. (21), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

⁵⁷⁷ Regeringens proposition 2014/15:77 Genomförande av brottsofferdirektivet, <https://data.riksdagen.se/fil/CE92372B-D994-4978-AF4B-8DEBA2AEF8F9>

⁵⁷⁸ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para 15, www.un.org/documents/ga/res/40/a40r034.htm

⁵⁷⁹ The Coordinator for Crime Victims at the police sends out the contact details of the victims who ask for victim support to the 72 local victim support centres around the country, run by Victim Support Sweden, BOJ.

⁵⁸⁰ Stöd till brottsoffer Brå .Kortanalys 7/ 2018

https://www.bra.se/download/18.62c6cfa2166eca5d70eef/1543847572859/2018_Stod_till_brottsoffer.pdf

⁵⁸¹ Förundersökningskungörelsen, 13 a §, <https://lagen.nu/1947:948#R1>

However, according to Heléne Karlsson, whose work at BOJ focuses on violence in intimate relationships, the organization has noted a sharp drop in the number of victims seeking support despite the increase in the number of reported crimes, including rape.⁵⁸² She believes that the new crime report registration system used by the police is the main reason for this discrepancy. Whereas the previous system obliged police to address the issue of victims' support, this is no longer mandatory in the new system.

5.5.2 ACCESS TO HEALTH CARE

Medical staff are often a rape survivor's first point of contact. Many survivors are in shock or traumatized and in need of comprehensive care and treatment, including counselling, which should be provided by experienced and specially trained staff in a safe and suitable environment. Also, health-care services are an important link in securing evidence that can be used in the legal process if and when the rape survivor decides to file a report.

In 2010 the National Centre for Knowledge on Men's Violence Against Women (NCK) produced a handbook and guidelines on providing care and collecting evidence after rape.⁵⁸³ This was developed at the request of the Ministry of Justice to ensure quality care for victims of sexual crimes and better procedures for evidence collection and documentation.⁵⁸⁴ However, a recent report from the National Board of Health and Welfare highlighted the need to investigate and possibly clarify in law the obligation of health-care facilities to collect and secure evidence.⁵⁸⁵ Health-care facilities are required to collect evidence at the request of the police, but according to the National Board of Health analysis, the obligation to gather and secure evidence is not interpreted consistently when there is no request from the police.

In its Baseline Evaluation Report on Sweden, GREVIO warned that the collection of evidence from a rape victim is a lengthy process which can be traumatizing and invasive if carried out by medical staff who are not properly trained, including in crisis intervention.⁵⁸⁶ However, only a few cities, including Stockholm, have specialized clinics for rape victims. Where there is no specialist clinic, survivors are referred to regular emergency clinics, women's clinics, youth clinics or local health centres. Male rape survivors may face particular obstacles in seeking help from health centres.⁵⁸⁷ According to Carina Wrangébo who works at the support centre of the National Association for the Rights of LGBTQ People (Riksförbundet för homoseksuellas, bisexuellas, transpersoners och queeras rättigheter, RFSL) transgender people also face difficulties.⁵⁸⁸

The Emergency Clinic for Rape Victims in Stockholm (Akutmottagningen för våldtagna, AV) offers comprehensive support to people of all genders within 30 days of the rape. According to Lisa Nordlund, a psychologist at AV, about 60 % of the people they see report the crime to the police.

However, many victims experience severe trauma, which hampers their ability to immediately seek justice. In fact, according to representatives of one of the biggest emergency hospitals in Stockholm, rape and sexual abuse are the most common reasons why women in Sweden develop post-traumatic stress disorder (PTSD).⁵⁸⁹ Some survivors will only report after receiving adequate counselling or trauma treatment. AV can offer short-term crisis counselling but for long-term treatment patients are referred to other psychiatric services. According to Lisa Nordlund, the treatment provided by these psychiatric services varies and does not always meet the needs of the individual, as knowledge of interpersonal violence is sometimes lacking.⁵⁹⁰

According to Josefin Grände, a psychotherapist working with victims of sexual crimes, the response and treatment provided by the public health-care system and psychiatric services is inadequate. She told Amnesty International that rape survivors with different symptoms are often "shuffled around in the system"

⁵⁸² Interview with Heléne Karlsson, 22 October 2018, in Stockholm.

⁵⁸³ Handbok. Nationellt handlingsprogram för hälso- och sjukvårdens omhändertagande av offer för sexuella övergrepp. NCK [http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/483/nck-handbok-nationellt-handlingsprogram-sexuella-overgrepp-2008-rev2010.pdf#utma=1.1066386890.1548798371.1548798374.1549216348.3&utmb=1.1.10.1549216348&utmc=1&utmx=-&utmz=1.1549216348.3.2.utmcsrc=googleutmccn=\(organic\)utmcmd=organicutmctr=\(not%20provided\)&utmvl=-&utmik=266637326](http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/483/nck-handbok-nationellt-handlingsprogram-sexuella-overgrepp-2008-rev2010.pdf#utma=1.1066386890.1548798371.1548798374.1549216348.3&utmb=1.1.10.1549216348&utmc=1&utmx=-&utmz=1.1549216348.3.2.utmcsrc=googleutmccn=(organic)utmcmd=organicutmctr=(not%20provided)&utmvl=-&utmik=266637326)

⁵⁸⁴ Ett starkare skydd för den sexuella integriteten. Betänkande av 2014 års Sexualbrottskommitté, SOU 2016:60 <https://www.regeringen.se/contentassets/8216d40ecc814613bccb394b4b1dfa38/ett-starkare-skydd-for-den-sexuella-integriteten-sou-2016-60.pdf>

⁵⁸⁵ Hälso- och sjukvårdens spårskring vid sexualbrott. Redovisning av regeringsuppdrag. Socialstyrelsen, september 2018, p. 29, available in Swedish at www.socialstyrelsen.se/publikationer2018/2018-9-1

⁵⁸⁶ GREVIO Baseline Evaluation Report Sweden, 2019 available at: <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686>

⁵⁸⁷ Hälso- och sjukvårdens spårskring vid sexualbrott. Redovisning av regeringsuppdrag. Socialstyrelsen, September 2018, p. 29, available in Swedish at www.socialstyrelsen.se/publikationer2018/2018-9-1

⁵⁸⁸ Interview with Carina Wrangébo by phone, 1 February 2019.

⁵⁸⁹ DN Debatt: Dubbelt så många unga söker till SöS våldtåktsmottagning, Dagen Nyheter 2017-12-21, www.dn.se/debatt/dubbelt-sa-manga-unga-soker-till-sos-valdtaktsmottagning/

⁵⁹⁰ Interview with Lisa Nordlund, 30 November 2018..

without being asked about their experience of sexual violence or receiving any specialized treatment because of the limited appropriate long-term trauma treatment available.⁵⁹¹

GREVIO has expressed concern that “mid- and long-term psychological counselling, psychosocial support trauma care and other services needed to provide holistic support for rape victims” are not generally available across the country and strongly recommended that the Swedish authorities ensure that sexual violence counselling services are available to all victims.⁵⁹² This resonates with the need for mid and long-term psychological counselling highlighted in Amnesty International’s interviews with rape survivors.

“Lena” told Amnesty International of her struggle to receive the help she needed:

“After a long struggle, I got to see a fantastic counsellor at the psychiatric services. The problem is that the psychiatry is so overburdened that you have to be suicidal to get help, and I was unfortunate to meet a doctor at the local health centre who just wanted to prescribe pills. And I said, ‘I don’t just want medicine, I want counselling too’... Then, I guess I was fortunate, because those pills actually made me suicidal. And then I met this fantastic person... Without her I wouldn’t be alive today.”

Ellinor’s experience of rape at 16 still affects her today, five years later. She told Amnesty International that she received no treatment for trauma at all.

“You think about it sometimes, it’s not something you can completely forget. It has affected some of my relationships at times and it’s been hard because you try to tell a new partner... It has affected me in the sense that I protect myself. Because after all, I’ve experienced situations where they [the rapists] wrestled me down and held a knife to my throat, you know. And those things you still carry with you. I have like a trauma that I haven’t received any help for. So in some situations... everything turns black for me. When people get close and start arguing with me, and get too close, I just push them [away], because I can’t handle to be close in such situations, because... I don’t know, it’s stuck in my head.”

Some of the not-for-profit organizations that provide support for victims of sexual violence, such as Association Big Sister (Föreningen Storasyster) and Association Together (Föreningen Tillsammans), were founded by people who had experienced sexual violence themselves.⁵⁹³ They provide individual counselling in person or on-line and group counselling. Operational manager at Association Big Sister, Cecilia Bødker Pedersen, told Amnesty International:

“I’m thinking about those who seek our support (...) they come to us because they can’t get help anywhere else. Often they may have contact with the psychiatry but there is... I don’t know if I can say apophobias, but it is difficult to talk about sexual violence. There is no space within the psychiatry services to talk about exposure [to sexual violence].”⁵⁹⁴

Another staff member pointed to the need for support when a rape case is closed:

“We work to strengthen someone to dare to report and then to rebuild that person again when the case is closed. We don’t want to tell people ‘don’t report’, of course we encourage them to, but we also know that it can go either way. It shouldn’t depend on us referring them to a police station where we know the police officers are good.”⁵⁹⁵

5.6 PREVENTION: THE ROLE OF SCHOOLS

States not only have a duty to address the needs and ensure justice for rape survivors, they also have an obligation to prevent rape and other sexual violence from occurring in Sweden.

⁵⁹¹ Interview with Josefin Grände, 7 November 2018.

⁵⁹² GREVIO Baseline Evaluation Report Sweden, 2019, p. 39, <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686>

⁵⁹³ Interview with Cecilia Bødker, Linnea Hall and Malin Junker Englund, Föreningen Storasyster 12 October 2018 and interview with Julia Östfeldt, Föreningen Tillsammans, 7 November 2018.

⁵⁹⁴ Intervju med Cecilia Bødker at Föreningen Storasyster, 12 October 2018.

⁵⁹⁵ Interview with Malin Junker Englund at Föreningen Storasyster, 12 October 2018

Many rape victims and perpetrators in Sweden are young. In a 2017 national survey on sexuality and health among young people, 18% of girls between 16 and 29 said that they had experienced vaginal intercourse against their will; over 13% responded they had experienced oral sex and 7% anal sex against their will.⁵⁹⁶

Rape and sexual violence take place in school settings and schools are obliged to immediately report suspected crimes against children to the Social Services. In cases of rape against a person younger than 18, the school can also report to the police.⁵⁹⁷ The 2019 report by the Prosecution Authority and the Police found that a third of the sample cases involved youth between 15-17-years, but concluded that school staff were rarely among those who reported rape or sexual abuse.⁵⁹⁸

Malin, who lives in a medium-sized city, told Amnesty International that at the age of 16 she was raped by another student in a study room at her school.⁵⁹⁹ The headmaster told her he would “talk to the boy” once he was told about the rape. Malin recalled:

“It was a crime committed on their premises. But the weeks passed, and it was a small school, less than 100 pupils... and they said they hadn’t had time to talk with him ... So the weeks went by. But they did change the doors to these study rooms for doors with small windows and without any lock.”

Some weeks later the headmaster told Malin that he had spoken to the boy, and said the boy regretted his actions and wanted to apologize. Malin told Amnesty International that the school did not report the crime to the Social Services or to the police, but that she herself finally told her parents and went with them to report to the police. An investigation was initiated, and the headmaster was heard as a witness, but the investigation was closed within weeks due to lack of evidence. Attempts to relocate the boy to another school were unsuccessful.

5.6.1 SEXUALITY EDUCATION

Schools play an important role in preventing rape and sexual violence among young people. The CEDAW Committee has highlighted the obligation of states to provide “age appropriate, evidence-based and scientifically accurate comprehensive sexuality education for girls and boys”.⁶⁰⁰ This should “target stereotyped gender roles and promote values of gender equality and non-discrimination, including non-violent masculinities” through “integration of gender equality content into curricula at all levels of education both public and private from the early childhood on and in education programmes with a human rights approach”.⁶⁰¹

While sexuality education has been compulsory in Swedish schools since 1955, its quality and content have been questioned.⁶⁰² A 2018 study by the Swedish Schools Inspectorate of sexuality and relationship education in a selection of elementary and upper secondary schools found it was of variable quality and identified a significant need to develop tools and improve the competence of teachers, who often felt uncomfortable with the subject. The review found that some teachers postponed sexuality education because they felt their pupils were not mature enough and only one in four of headteachers regularly monitored that their teachers had the necessary skills and knowledge and offer relevant capacity building where needed. Many of the students interviewed said they wanted to talk about sex earlier and more often than they had the opportunity to.⁶⁰³

⁵⁹⁶ Survey made by the Public Health Agency of Sweden in 2015. The survey included a stratified Simple Random Sample of 29,950 persons between 16-29 years of which 7,865 persons responded either to a postal or online survey. Data was collected by the survey unit at Statistics Sweden (SCB). Available in English at

<https://www.folkhalsomyndigheten.se/contentassets/ebe239903fd346cba9cb12bfb83e0bfd/sexuality-health-young-people-sweden.pdf>

⁵⁹⁷ Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning.

Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1,

Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, p. 28, available in Swedish at

www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

⁵⁹⁸ Våldsbrott i nära relationer och sexualbrott mot vuxna - En gemensam granskning av polisens och åklagarens handläggning.

Granskningsrapport 2019, dnr A252.474/2018, Polismyndigheten, NOA, Utvecklingscentrum Väst, Tillsynsrapport 2019:1,

Åklagarmyndigheten, Utvecklingscentrum Göteborg, Februari 2019, p. 28, available in Swedish at

www.aklagare.se/globalassets/dokument/rapporter/tillsynsrapporter/tillsynsrapport-2019-1.pdf

⁵⁹⁹ Interview with Malin, 11 December 2018.

⁶⁰⁰ CEDAW General Recommendation No. 35, para. 35 (a), UN Doc. CEDAW/C/GC/35 (2017)

⁶⁰¹ CEDAW General Recommendation No. 35, para. 35 (a), UN Doc. CEDAW/C/GC/35 (2017)

⁶⁰² Sexuality education is included in the curriculum for both elementary and secondary school and should be integrated in a number of subjects such as history, religion, natural science, art. Gender equality, norms, gender roles, gender patterns, sexual orientation, emotions, body image, life issues, living conditions, identity, reproduction, puberty, love and responsibility are example of issues that should be brought up in the first 6 years of elementary school.

⁶⁰³ Sex- och samlevnadsundervisning Skolinspektionen, Tematisk kvalitetsgranskning 2018, Diarienummer: 400-2016:11445, available in Swedish at www.skolinspektionen.se/globalassets/publikationssok/granskningsrapporter/kvalitetsgranskningar/2018/sex-och-samlevnad/sex-och-samlevnadsundervisning-rapport-feb-2018.pdf

The survey also included elementary and upper secondary schools for students with learning disabilities.

The Swedish Association for Sexuality Education (RFSU) has advocated for many years for sexuality education to be included as a compulsory element in teacher training; Amnesty International Sweden has supported their call since 2008.⁶⁰⁴ According to RFSU Chairperson Hans Linde, the access to quality sexuality education varies and the state needs to ensure access to comprehensive sexuality education for all, in line with international human rights standards.⁶⁰⁵

The non-for-profit organization *FATTA!* has called for the concept of consent to be incorporated in sexuality education at all levels. According to *FATTA!* Chairperson Elin Sundin, introducing the concept of consent in all curriculums at all levels of the education system is important to ensure that all young people understand the difference between sex and abuse.

In July 2018 the government commissioned the Swedish National Agency for Education to review the elementary school curriculum and, in particular, analyse how issues such as consent, “honour”-related violence and pornography can be included in it. The Agency is due to report back to the Ministry of Education by May 2019.⁶⁰⁶

5.7 RECOMMENDATIONS

TO THE SWEDISH GOVERNMENT:

1. Give firm, long-term political priority to combatting widespread sexual violence and provide adequate, sustainable resourcing to ensure that the police and Prosecution Authority have the capacity to conduct thorough, timely investigations of high quality into all cases of rape.
2. Intensify efforts to analyse and address the cause of underreporting of rape, as outlined in the National Strategy to Prevent and Combat Men’s Violence Against Women.
3. Promote changes in the social and cultural patterns of behaviour of people of all genders with a view to eradicating harmful gender stereotypes and myths around sexual violence.
4. Providing comprehensive, age-appropriate, gender-sensitive, evidence-based and unbiased sexuality and relationships education for pupils and students of all genders, including education about consent, bodily and sexual autonomy and the right to physical integrity.
5. Introducing without delay the case management systems currently under development that would enable cases of rape and other crimes to be tracked from reporting to indictment and beyond, and that would enable statistical comparisons.

TO THE SWEDISH POLICE AUTHORITY:

4. Ensure rape and other serious sexual crimes are prioritized by allocating sufficient resources, both human and financial, to address these crimes.
5. Evaluate and further develop comprehensive training modules for the police, including on sensitive treatment of victims, the impact of trauma on survivors, evidence collection, interview techniques and other important skills and methods that contribute to improving the quality of rape investigations and rebut harmful myths and stereotypes around rape and rape victims. Ensure police receive such training on a regular basis.
6. Ensure that “A developed best working model” is fully implemented and used by all police investigating rape and other sexual crimes in order to ensure nationally uniform investigations of high quality of all such crimes.
7. As a matter of urgency, address the systematic failure regarding waiting times for results of DNA analysis carried out by the National Forensic Centre, including by reviewing case management systems.

⁶⁰⁴ Var går gränsen? En attitydundersökning om våldtäkt, Amnesty International Sweden, April 2018, www.amnesty.se/vara-rattighetsfragor/kvinnors-rattigheter/vald-mot-kvinnor/

⁶⁰⁵ Interview with Hans Linde by phone on 13 January 2019.

⁶⁰⁶ Skolverket får i uppdrag att se över läroplanerna för en bättre sex- och samlevnadsundervisning, www.regeringen.se/pressmeddelanden/2018/07/skolverket-far-i-uppdrag-att-se-over-laroplanerna-for-en-battare-sex-och-samlevnadsundervisning/

8. Address any backlog in rape cases that may create unacceptable barriers for rape survivors' access to justice.
9. Ensure that the routines for police to provide rape survivors with information about available support to rape survivors are fully functional and operate everywhere.

TO THE MINISTER OF SOCIAL AFFAIRS:

10. Ensure access to comprehensive support to all survivors of sexual violence throughout the country, including to those who do not report the crime to police.
11. Ensure that mid and long-term psychological counselling, psychosocial support trauma care and other necessary services are available to provide comprehensive support to all rape survivors, regardless of age, gender, sexual orientation, ethnicity or social background.
12. Ensure that such services are affordable, available and accessible to all survivors of rape, irrespective of whether they have reported the crime to police or not and regardless of where in the country they live.
13. Clarify in law the obligation of the health services to collect evidence at the request of any victim of rape or sexual abuse, regardless of age, gender, sexual orientation, ethnicity and social background.
14. Clarify in law the obligation of the health services to collect evidence at the request of any victim of rape or sexual abuse, regardless of age, gender, sexual orientation, ethnicity and social background

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TIME FOR CHANGE

JUSTICE FOR RAPE SURVIVORS IN THE NORDIC COUNTRIES

Women in the Nordic countries (Denmark, Finland, Norway and Sweden) encounter multiple barriers in accessing justice for rape and sexual violence. High levels of rape and widespread impunity stand in stark contrast to the high scores the region has achieved in gender equality in many areas of life. The situation facing survivors of rape is not uniform across the four countries but there are disturbing parallels among them. Most rapes do not come to the attention of the criminal justice system as women and girls do not report them. When they do, they only have a small chance of having their case tried by a court as cases are often dropped at various stages of the legal process, with alleged perpetrators never being prosecuted or convicted and never held to account for their crimes.

A first step towards protecting women and girls from rape is to adopt and effectively implement consent-based laws on sexual violence as required by international human rights law, including the Istanbul Convention. So far, Sweden is the only one of the four Nordic countries to have passed legislation that defines rape on the basis of absent of consent as opposed to physical force or resistance. Amnesty International calls on the authorities in Denmark, Finland and Norway to change the legal definition of rape to one based on sexual autonomy and consent. While changing laws will not solve everything it is a crucial step that can positively impact not only on the reporting but also on wider awareness of sexual violence, both of which are key aspects in preventing rape and tackling impunity.

In addition to legislative changes, authorities Denmark, Finland, Norway and Sweden should improve the quality of the police investigations and take decisive steps to address widespread harmful myths and gender stereotypes across various stages of the legal process. Despite some welcoming efforts in that area in the four countries, several survivors of rape told Amnesty International about dismissive attitudes and victim blaming, resulting in traumatising and stressful experiences that in turn reinforce a pattern of mistrust in the judicial system.

For many survivors of rape, it is a huge step to talk about their own experiences, overcoming the stigma still attached to rape, public shaming and threats. Testimonies presented in this report should drive the message home to decision-makers that more needs to be done in law and practice to end impunity for rape in the four countries.