

## COMMITTEE AGAINST TORTURE

Follow-up procedure of the thirty-ninth session (5–23 November 2007)

### **Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Information from the Government of Norway regarding areas of particular concern identified by the Committee in paragraphs 6, 7, 8 and 9 of the Committee's Concluding Observations (CAT/C/NOR/CO/5), cf. paragraph 18.

#### **Recommendation No. 6:**

*"The Committee notes the existence of a so-called "48-hour procedure" for the rejection of asylum-seekers from countries generally regarded as safe and whose application is assessed as manifestly unfounded after an asylum interview.*

*The State party should ensure that a genuine consideration of each individual case can still be provided for under the "48-hour procedure" and keep under constant review the situation in those countries in respect of which that procedure is applied."*

1. Norway considers asylum applications according to different procedures: the 48-hour procedure, the three-week procedure, procedures for particular groups where there is a high percentage of rejections, and the regular procedure. The decision as to which procedure is applied in each case is based on lists of countries of origin. It is important to stress that these lists are not lists of safe and less safe countries as such. The 48-hour procedure list consists of countries about which the Norwegian Directorate of Immigration has sufficient information on the general security and human rights situation to assume that citizens of these countries on a general basis are not in need of international protection, neither under the 1951 Convention nor under other international or national obligations prohibiting refoulement.
2. All applications from citizens of these countries are examined individually on their merits. Applications that are assessed as not being manifestly unfounded are exempted from the 48-hour procedure. The fact that a country of origin appears on the list does not preclude any application for asylum from a citizen of that country from being granted, and the list of countries is not fixed. The Norwegian Directorate of Immigration is constantly monitoring the situation in these countries, and a country may be removed from the list on the basis of relevant information.
3. To ensure that every application processed according to the 48-hour procedure is genuinely and individually examined on its merits, the fundamental procedural safeguards that apply to any Norwegian asylum-procedure are strictly observed. The applicants are separately and individually interviewed by trained personnel assisted by a qualified interpreter who speaks a language the applicant understands. The interview is a regular status determination interview. Each case is then decided individually on its merits. The decision is in writing. If the application is rejected, the applicant is entitled to the assistance of a lawyer at the Government's expense, and has the right to appeal the decision and apply for suspension of removal. As with all other applications, appeals pursuant to the 48-hour procedure are processed by the Norwegian Immigration Appeals Board.

4. Unlike applicants registered under the regular asylum procedure, applicants under the 48-hour procedure are not entitled to write a personal declaration. This is not however considered to impede their right to due process, as their reasons for applying for asylum are thoroughly investigated during the asylum interview.

5. In 2008 Norway received a total of 49 applications for asylum that were initially examined pursuant to the 48-hour procedure. Twenty of these applications were exempted from the 48-hour procedure, for example because the applicant arrived with a spouse/partner from a country not covered by the 48-hour procedure, the applicant claimed health-related issues prohibiting the application of the procedure, or the application was considered not to be manifestly unfounded. Applicants claiming to be unaccompanied minors are in all cases exempted from this procedure.

6. The 48-hour procedure was established to ensure that case processing at first instance is completed within 48 hours of the submission of the application. This includes the asylum interview, case processing and decision making, including any decision on suspension of removal.

7. Norway seeks to constantly evaluate and review the situation in every relevant country covered by each of the three procedures. To ensure this, the Norwegian Country of Origin Information Centre (Landinfo) was established on 1 January 2005. The centre is an independent body that supplies the immigration authorities with relevant and updated country of origin information (COI).

8. Information is made available for the case workers through the centre's COI database. The database provides relevant factual country of origin information, focusing on the general security situation, the human rights situation, and the political and socioeconomic situation. The Norwegian Country of Origin Information Centre seeks to ensure that the information provided is updated, impartial and as balanced as possible. The information is acquired through various reliable sources, including various bodies of the United Nations, recognised scientific publications, governmental sources, and NGOs such as Amnesty International, Human Rights Watch and Reporters without Borders. In addition to the database, the Norwegian Country of Origin Information Centre gives lectures on relevant topics and provides further information upon request.

9. The Norwegian Country of Origin Information Centre also ensures that the necessary country of origin information is available when an application for asylum is assessed pursuant to the 48-hour procedure.

10. On the basis of the above, Norway considers the recommendations of the Committee to be fulfilled.

**Recommendation No. 7:**

*"With regard to the State party's participation in the International Security Assistance Force (ISAF) operation in Afghanistan, the Committee notes the State party's explanation that any Afghan citizens apprehended by Norwegian ISAF personnel are handed over to the Afghan authorities in accordance with a Memorandum of Understanding obliging the Afghan*

*Government to comply with relevant international standards in the treatment of any persons thus transferred.*

*In accordance with the Committee's constant view (see CAT/C/CR/33/3, paras. 4b, 4d, 5e and 5f and CAT/C/USA/CO/2, paras. 20 and 21) that article 3 of the Convention and its obligation of non-refoulement apply to a State party's military forces, wherever situated, where they exercise effective control over an individual, the State party should continue to closely monitor the compliance by the Afghan authorities with their relevant obligations in relation to the continued detention of any persons handed over by Norwegian military personnel."*

11. Norway maintains a strong focus on this issue. Our aim is to ensure that our civilian and military engagement in Afghanistan contributes effectively to the promotion of security and human rights. For this reason, we have established an understanding with the Afghan authorities in order to promote respect locally for international humanitarian law and human rights, through agreements between the States' military authorities, as well as subsequent correspondence in which our requirements have been further specified.

12. Norway makes use of established mechanisms to closely follow the Afghan authorities' practices with a view to ensuring that they fulfil their human rights and humanitarian law obligations with regard to any persons Norwegian ISAF personnel may have helped to apprehend. We have established close cooperation with the Afghan authorities on this, and the arrangement is closely monitored from our side. We are also continuously working on the further development of agreements and established arrangements, to ensure that these persons' rights are fully respected.

**Recommendation No. 8:**

*"The Committee, while noting the amendment of legislation to reduce the length of pre-trial detention and the use of solitary confinement as a preventative measure, remains concerned at the lack of adequate statistics validating the effectiveness of these measures.*

*The State party should compile detailed statistics on the application of pre-trial detention and the use of solitary confinement so as to verify the effectiveness of recent amendments to its relevant legislation in practice. The State party should also compile statistics relating to the application of recent amendments to the Immigration Act concerning the detention of foreign nationals."*

**Regarding pre-trial detention:**

13. To verify the effectiveness of recent amendments to legislation on pre-trial detention (cf. amendment of 28 June 2002 to section 183 of the Criminal Procedure Act and the regulations on police custody of 30 June 2006), the Ministry of Justice and the Police has compiled statistics and data from three different sources:

1. Official statistics from the Central Bureau of Statistics regarding the application of pre-trial detention
2. Data from the National Police Directorate regarding the use of police custody (pre-trial detention without a court order)
3. A questionnaire answered by judges, prosecuting authorities and defence counsels regarding their subjective view of the effect of the amendments

14. The period reviewed is generally too short to constitute a basis for drawing firm conclusions. However, on the basis of available statistics, the Ministry concludes that there has been an increase in the number of persons held in police custody for more than 48 hours. Furthermore, there has been a reduction in the number of persons who spend less than 15 days in pre-trial detention. The statistics also suggest that there has been a reduction in the number of pre-trial detentions lasting between 15 and 29 days that end with a release from detention, and an increase in the number of persons transferred to prison to serve a sentence. The Ministry is also of the opinion that the cases are generally better prepared when presented to the court, and that the judges, counsel for the defence and the police in particular have become more efficient in their work. The above-mentioned findings are in accordance with the contemplated effect of the recent amendments.

15. However, there appears to have been an increase in the number of pre-trial detentions lasting between 15 and 29 days. This increase is more than twice as big as the reduction in pre-trial detentions lasting less than 15 days, and this was not expected. Furthermore, the number of pre-trial detentions and days spent in pre-trial detention appears to have increased, even though the numbers are fairly stable in relation to the total number of new imprisonments and the total number of days in prison.

16. It is the Ministry's opinion that the amendments to some degree have achieved the desired results; however in certain areas the results are weaker than expected. The Ministry is particularly concerned about the increase in the total number of days spent in pre-trial detention. The Ministry will continue to review the situation in the coming years so that firmer conclusions may be drawn.

17. The statistics and data on which this analysis is based are currently only available in Norwegian. They will be translated and sent to the UN Torture Committee as soon as possible, presumably by the end of August 2009, as Appendix 1.

**Regarding the use of solitary confinement:**

18. See Appendix 2.

**Regarding statistics relating to the application of recent amendments to the Immigration Act concerning the detention of foreign nationals:**

19. The recent amendments to the Immigration Act concern the detention of foreign nationals and the use of force at Trandum Detention Centre. Paragraphs 20-21 present statistics showing the number of detainees per year, while paragraphs 22-23 present statistics concerning the use of force in accordance with the Immigration Act, section 37 d, fifth paragraph (b) and (c)).

*Detainees held in accordance with the Immigration Act*

20. The following table contains updated figures for detainees held at Trandum Detention Centre as well as in regular prisons. Data for regular prisons prior to 2007 are not available. Figures concerning detainees at Trandum have been extracted from the Centre's own compilation of statistics, while the Department of Prison, Probation and Aftercare of the Ministry of Justice has provided information on detainees held in regular prisons.

Year	Number of	Detained by	Number of	Total number of
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	detainees at Trandum	court decision	detainees in regular prisons	detainees
2003	5515	164		
2004	4365	271		
2005	2856	436		
2006	2093	376		
2007	1724	409	152	1876
2008	1882	411	147	2029
2009 January-May	955	223	89	1044

21. The second column shows the number of detainees at Trandum per year in question. The vast majority of detainees at Trandum are held in police custody, either prior to deportation or presentation before a court. The last column shows the total number of detainees, including those at both Trandum and regular prisons.

*Use of force at Trandum Detention Centre*

22. Trandum has a High Security Wing where detainees may be held in accordance with the Immigration Act, section 37 d, fifth paragraph (b) and (c).

23. The following table shows the number of cases where force has been deemed necessary along with figures showing how many detainees were subjected to force. Please note that a detainee may have been subjected to force on several different occasions.

Year	Women	Men	Total number of detainees	Total number of decisions to use force
2005, May-December	6	61	67	
2006	8	275	283	
2007	4	213	217	253
2008	6	117	123	187
2009, January-May	4	32	36	60

24. Statistics regarding the number of detainees subjected to are available from May 2005. The number of decisions to use force was added on 1 January 2007. The statistics have been extracted from those compiled by Trandum.

**Recommendation No. 9:**

*“The Committee, while welcoming the recent adoption of a legislative act to regulate the rights of persons staying at the Trandum Alien Holding Centre, notes that the supervisory board which will supervise the operation of the Centre in accordance with that act has yet to be established.*

*The State party should establish the supervisory board for the Trandum Holding Centre envisaged in recent legislation forthwith so as to ensure that the rights of persons held at the Centre are respected at all times.”*

25. In response to the Committee's criticism, priority has been given to laying down clear and precise rules concerning foreign nationals' rights while in Norway and to establishing clear guidelines for the police as regards their supervisory powers and use of force. This is why section 37 d of the Immigration was amended, with effect from 1 July 2007. It was also decided that further regulations should be drawn up for the centre. These regulations were laid down by Royal Decree of 11 April 2008, and entered into force immediately.

26. As regards supervision, a tripartite supervisory regime is being established, made up of the following: members of the detention centre staff, who are responsible for daily supervision of the foreign nationals (section 15); the head of the National Police Immigration Service, who is responsible for local supervision of the centre (section 16); and an independent supervisory board (section 17). The individual provisions read as follows:

"Section 15. Supervision of foreign nationals

Foreign nationals shall be provided with adequate supervision and accommodation so as to ensure that they are not subjected to undue harm or suffering, and that they cannot cause harm to others.

Foreign nationals' state of health shall be supervised. A physician shall be summoned immediately when necessary. Foreign nationals who are ill or under the influence of alcohol or other narcotic substance shall be checked on every half hour, unless the circumstances warrant more frequent supervision. Due regard shall be had to the foreign nationals' need for adequate sleep. The times of the various inspections and the results shall be noted in a registry.

The person in charge of the detention centre shall determine the content of each inspection on the basis of what is necessary in each individual case. The person carrying out the inspection shall assess the foreign national's situation, including whether the person concerned needs medical treatment or is in a state where he or she is in danger of harming himself/herself."

"Section 16. Local supervision

The head of the National Police Immigration Service shall see to it that the detention centre is supervised. He or she shall also ensure that the foreign nationals are informed of their rights pursuant to these regulations. The head of the National Police Immigration Service shall report in writing to the Police Directorate.

The Police Directorate shall supervise the detention centre. In connection with such supervision, inspections may be carried out as necessary.

The supervision carried out by the head of the National Police Immigration Service and the Police Directorate is intended to ensure that the detention centre is in accordance with applicable statutes, regulations, guidelines and local instructions. The purpose of such supervision is to ensure that

- a) the detention centre's premises, equipment, etc., are in accordance with applicable standards,
- b) the detention centre is operated in accordance with applicable legislation and instructions, including record-keeping, reporting, etc.
- c) any use of coercive measures is in accordance with applicable legislation,
- d) the detention centre has adequate healthcare arrangements in terms of scope, methods, records, etc."

“Section 17. Supervisory board

An external supervisory board shall ensure that foreign nationals are treated in accordance with applicable legislation.

The Ministry of Justice appoints the chair, vice-chair, members and deputy members of the supervisory board for a term of two years. The chair of the supervisory board should be a judge, or have served in such capacity. Persons who will attain the age of 70 years or more during the two-year term may not be appointed. Members should not be reappointed more than twice.

Inspections shall be carried out at least twice a year. The supervisory board shall itself plan and conduct its activities. The supervisory board may take up cases at the request of a foreign national or on its own initiative.

Inspections may be announced in advance or take place with no prior notice. Members of the supervisory board are entitled to inspect the grounds and buildings of the detention centre and the rooms where foreign nationals stay. They may request information on how the foreign nationals are treated.

Members of the supervisory board are entitled to speak with foreign nationals without a staff member of the centre present if the foreign national so requests. Members of the supervisory board are entitled to attend meetings concerning foreign nationals and may request access to the documents in the case subject to the consent of the foreign national concerned.

A record shall be kept of inspections at the detention centre, in which information concerning duration and any matters of concern the supervisory board may wish to note are entered.

An attempt shall be made to resolve cases at the detention centre. If this proves unsuccessful or the board otherwise decides for other reasons, the case may be taken up with a higher authority. At the end of each year, the supervisory authority is to submit an annual report on its activities to the National Police Immigration Service. The report is to be forwarded to the Police Directorate with any comments from the head of the National Police Immigration Service. The supervisory board shall itself see to it that its annual report is published.

The provisions of the Public Administration Act concerning the duty of confidentiality apply to activities of the supervisory board. Members of the supervisory board may not make statements about foreign nationals or any person who represents them, about any changes in treatment or about any decisions made. Nor may members of the supervisory board disclose any security measures or other circumstances of importance for preventing escape from or unauthorised entry into the detention centre.”

27. Norway has signed the Optional Protocol of 18 December 2002 to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (UN Torture Convention). It has not yet ratified the Optional Protocol. It is presumed that the establishment of an independent supervisory board fulfils the obligations undertaken by Norway under the Optional Protocol with regard to detention centres.

28. The supervisory board for the police detention centre at Trandum began its activities on 26 September 2008. The board submits an annual report in which it reports on its activities.

The supervisory board's annual report for 2008 will be translated and sent to the UN Torture Committee as soon as possible, presumably by the end of August 2009, as Appendix 3.

#### **List of appendices**

Appendix 1: Statistics and data regarding pre-trial detention (Recommendation No. 8). The appendix will be forwarded to the Committee in August.

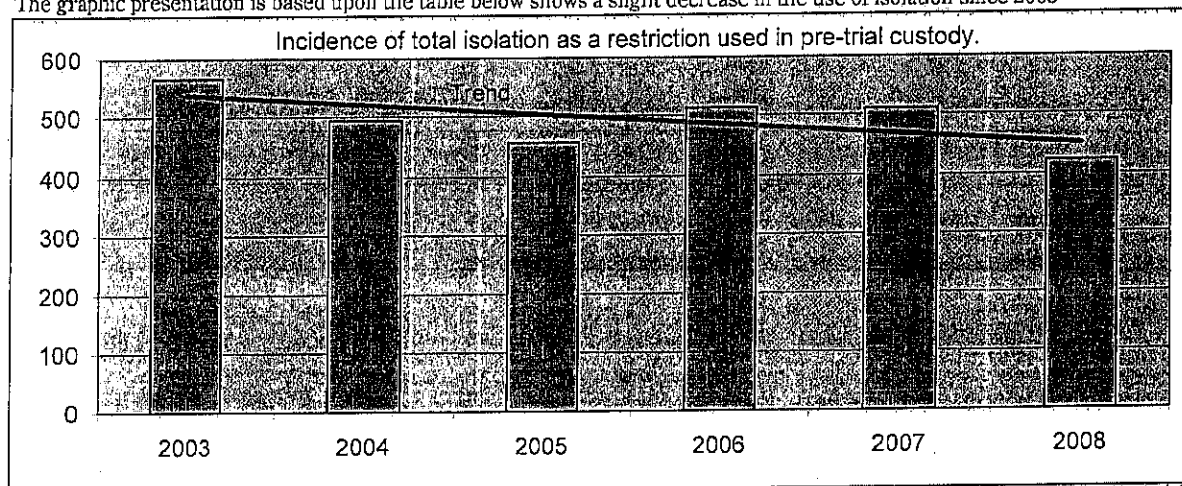
Appendix 2: Statistics regarding the use of solitary confinement (Recommendation No. 8).

Appendix 3: Annual report of the supervisory board for the police detention centre at Trandum for 2008 (Recommendation No. 9). The appendix will be forwarded to the Committee in August.



## The incidence and development of the use of isolation in connection with remands in custody

The graphic presentation is based upon the table below shows a slight decrease in the use of isolation since 2003



The following table shows an increase in the number of isolations lasting less than 30 days

	Duration of isolation in days								Total number of pre-trial remands in custody	Incidence of isolation in %
	<7	7-13	14-29	30-41	42-59	60-89	90-182	Sum		
2003 Incidence	43	94	355	25	43	5	1	566	3550	15,9 %
Percentage of total	7,6 %	16,6 %	62,7 %	4,4 %	7,6 %	0,9 %	0,2 %			
Accumulated percentage		24,2 %	86,9 %	91,3 %	98,9 %	99,8 %	100,0 %			
2004 Incidence	27	92	320	12	22	15	6	494	3198	15,4 %
Percentage of total	5,5 %	18,6 %	64,8 %	2,4 %	4,5 %	3,0 %	1,2 %			
Accumulated percentage		24,1 %	88,9 %	91,3 %	95,7 %	98,8 %	100,0 %			
2005 Incidence	40	74	297	12	29	4	1	457	3059	14,9 %
Percentage of total	8,8 %	16,2 %	65,0 %	2,6 %	6,3 %	0,9 %	0,2 %			
Accumulated percentage		24,9 %	89,9 %	92,6 %	98,9 %	99,8 %	100,0 %			
2006 Incidence	38	101	340	16	18	0	0	513	3049	16,8 %
Percentage of total	7,4 %	19,7 %	66,3 %	3,1 %	3,5 %	0,0 %	0,0 %			
Accumulated percentage		27,1 %	93,4 %	96,5 %	100,0 %	100,0 %	100,0 %			
2007 Incidence	33	64	348	9	47	8	1	510	3182	16,0 %
Percentage of total	6,5 %	12,5 %	68,2 %	1,8 %	9,2 %	1,6 %	0,2 %			
Accumulated percentage		19,0 %	87,3 %	89,0 %	98,2 %	99,8 %	100,0 %			
2008 Incidence	29	60	298	11	19	6	0	423	3237	13,1 %
Percentage of total	6,9 %	14,2 %	70,4 %	2,6 %	4,5 %	1,4 %	0,0 %			
Accumulated percentage		21,0 %	91,5 %	94,1 %	98,6 %	100,0 %	100,0 %			

Statistical reservation: The table is based upon terminated remands in the year mentioned. These figures are correlated with new remands in the same year.