NACIONES UNIDAS **A**

Asamblea General

Distr.
GENERAL

A/HRC/7/4/Add.2
1º de noviembre de 2007

ESPAÑOL
Original: INGLÉS

CONSEJO DE DERECHOS HUMANOS
Séptimo período ordinario de sesiones
Tema 3 de la agenda

PROMOCIÓN Y PROTECCIÓN DE TODOS LOS DERECHOS HUMANOS, CIVILES, POLÍTICOS, ECONÓMICOS, SOCIALES Y CULTURALES, INCLUIDO EL DERECHO AL DESARROLLO

Informe del Grupo de Trabajo sobre la Detención Arbitraria

Adición

MISIÓN A NORUEGA*

Resumen

El Grupo de Trabajo sobre la Detención Arbitraria visitó Noruega del 27 de abril al 2 de mayo de 2007 por invitación del Gobierno. El Grupo viajó a Oslo, Stavanger y Tromsø, donde celebró reuniones con autoridades gubernamentales y representantes de la sociedad civil. Visitó 12 centros de detención, entre otros algunas cárceles donde había condenados y personas en prisión provisional, comisarías de policía, un centro de detención de inmigrantes, un hospital psiquiátrico y un establecimiento psiquiátrico para adolescentes. El Grupo de Trabajo pudo entrevistarse en privado con 138 personas privadas de libertad elegidas al azar.

* El resumen se distribuye en todos los idiomas oficiales. El informe, que se encuentra en el anexo del resumen, y su apéndice se distribuyen únicamente en el idioma en que se presentaron.

En el presente informe se describen las distintas instituciones y leyes relacionadas con la privación de libertad y los derechos humanos en el contexto de la legislación en materia penal, de policía, de inmigración y de atención de la salud mental. El Grupo de Trabajo destaca la total cooperación del Gobierno en todos los niveles y esferas.

El Grupo de Trabajo encomia al Gobierno de Noruega por su sensibilidad a las recomendaciones de los órganos de control y tribunales nacionales e internacionales. El Grupo recibió indicaciones claras de que el Gobierno tendría plenamente en cuenta sus recomendaciones del presente informe.

En el informe, el Grupo de Trabajo señala además numerosas prácticas óptimas en los eficientes sistemas de justicia penal y penitenciario de Noruega, que disponen de mecanismos de control y equilibrio entre las instituciones independientes que protegen contra la detención arbitraria y el personal penitenciario, bien formado y muy profesional. El sistema de asistencia letrada para la defensa es ejemplar.

El Grupo de Trabajo celebra que el Gobierno esté abordando el fenómeno de la "lista de espera", que guarda relación con unos 2000 condenados que están esperando cumplir su pena de prisión. Menciona además el tradicional poder de la policía, que, sin embargo, presta grandes servicios a la sociedad noruega.

El Grupo de Trabajo elogia al Gobierno por su política destinada a evitar privar de libertad a menores de 15 a 18 años. Actualmente sólo ocho de esos menores se encuentran privados de libertad. El número de presos extranjeros también es pequeño. El Grupo de Trabajo valora que el internamiento involuntario en establecimientos psiquiátricos sea la excepción y que los pacientes puedan impugnar eficazmente las decisiones de internamiento forzado ante una comisión independiente de control y los tribunales.

El Grupo de Trabajo señala la frecuencia con que se recurre al aislamiento total o parcial durante la prisión provisional y después de la condena en Noruega. El ministerio público parece dominar el régimen de prisión provisional durante la fundamental fase de instrucción. Las estadísticas ponen de manifiesto que pocas veces los tribunales rechazan las peticiones de prisión provisional y la imposición de restricciones, ya sea porque el ministerio público sólo presenta solicitudes bien fundadas o porque la judicatura ejerce un control limitado. También se mencionan las dificultades que tienen los presos para impugnar con éxito las decisiones en materia de aislamiento adoptadas por las autoridades penitenciarias tras la condena.

El Grupo de Trabajo también plantea la cuestión de la "prisión preventiva", que se impone cuando la pena de prisión dictada se considera insuficiente para proteger a la sociedad contra los delincuentes condenados por un delito grave (violento). El Grupo de Trabajo señala la incertidumbre que tienen los reclusos respecto a la fecha de la excarcelación y que la "prisión preventiva" podría equivaler a una prisión por tiempo indeterminado. También parece difícil que las personas que se encuentran en "prisión preventiva" puedan obtener la revocación judicial de la decisión en su contra puesto que el juez se basa en la evaluación efectuada por el servicio penitenciario.

El Grupo de Trabajo señala que la base de datos nacional "infoflyt" (flujo de información) se creó para aumentar la calidad de la información sobre los presos con miras a garantizar la

seguridad en las cárceles, impedir las fugas e incrementar la protección de la sociedad. Actualmente unos 50 presos están sometidos a este sistema. Sólo pueden acceder a esta base de datos los funcionarios superiores del servicio penitenciario, los directores de las cárceles y los miembros de la dirección de la policía nacional, pero no los presos, sus abogados defensores o los jueces. El Grupo de Trabajo sostiene que el acceso a la información es fundamental para los presos que desean presentar solicitudes de excarcelación anticipada o terminación de la "prisión preventiva".

Por último, el Grupo de Trabajo se refiere a los conflictos de competencia entre el servicio penitenciario y los organismos de atención de la salud mental en lo que respecta a los presos que necesitan tratamiento psiquiátrico. No existe ningún órgano competente para tomar la decisión definitiva de si la persona debe ser transferida de una cárcel a un hospital psiquiátrico o viceversa, o bien permanecer en el establecimiento penitenciario correspondiente si los psiquiatras y las autoridades del servicio penitenciario no se ponen de acuerdo.

Basándose en sus conclusiones, el Grupo de Trabajo formula recomendaciones al Gobierno sobre las restricciones impuestas además de la privación de la libertad, como la creación de un nuevo sistema para impugnar las decisiones adoptadas por las autoridades del servicio penitenciario, y la "prisión preventiva" conexa. El Grupo alienta al Gobierno a supervisar el desarrollo de la base de datos "infoflyt" y, de ser necesario, mejorarla. Por último, invita al Gobierno a resolver los conflictos de competencia entre las autoridades del servicio penitenciario y los establecimientos psiquiátricos.

Annex

REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION ON ITS MISSION TO NORWAY (22 APRIL-2 MAY 2007)

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Appendix

I. INTRODUCTION

1. The Working Group on Arbitrary Detention, which was established pursuant to Commission on Human Rights resolution 1991/42 and whose mandate was assumed by the Human Rights Council by its decision 1/102 and extended by resolution 6/4, visited Norway from 22 April to 2 May 2007 at the invitation of the Government. The delegation was composed of Leïla Zerrougui, Chairperson-Rapporteur of the Working Group, Manuela Carmena Castrillo, member of the Working Group, the Secretary of the Working Group, another official from the Office of the United Nations High Commissioner for Human Rights and two interpreters.

2. During the entire visit and in all respects, the Working Group enjoyed the fullest cooperation of the Government and of all authorities it dealt with, and expresses its gratitude for their transparency and collaboration. It would also like to thank the representatives of Norwegian civil society it met.

II. PROGRAMME OF THE VISIT

3. The Working Group visited Oslo, Stavanger and Tromsø. It visited various institutions where persons were detained: holding cells of the police districts of Oslo, Rogaland and Troms; Stavanger prison; Åna prison; Tromsø prison; Oslo prison; Bredtveit detention and security prison for women; Ila preventive and security detention prison; Trandum police immigration detention centre; Aasgaard psychiatric hospital (Tromsø); and the Adolescent Psychiatry Emergency Unit (Oslo). In these facilities, the Working Group held private interviews with 138 detainees. A full list of the institutions visited is attached to the present report (see appendix).

4. The Working Group held meetings with the Minister and the Deputy Minister for Justice and Police and other authorities of the Ministry, including the Departments of Immigration and of Correctional Services; representatives from the Ministry of Foreign Affairs, Labour and Social Inclusion; Health and Care Services; the Director of Public Prosecutions; the National Police Commissioner; representatives from the National Police Directorate and police authorities in the cities visited; Justices of the Supreme Court of Norway; judges of the Stavanger District Court; the Chairwoman of the Standing Committee on Justice of the Norwegian Parliament; prison authorities; representatives from the National Directorate of Immigration and of the Rogaland Probation Office in Stavanger; and psychiatrists. The Working Group also held discussions with representatives from Norwegian civil society, including members of the human rights subcommittee of the Norwegian Bar Association, the Parliamentary Ombudsman and the Norwegian Centre for Human Rights, which was established as the national human rights institution on 21 September 2001. The delegation also met with members of the Faculty of Law of the University of Tromsø dealing with the rights of the Sámi people and of its Centre for Sámi Studies.

III. LEGAL AND INSTITUTIONAL FRAMEWORK

A. Institutional framework

1. Political system

5. Norway is a constitutional monarchy with a parliamentary system of Government based on pluralist democracy. Legislative powers are vested in a modified unicameral Parliament (*Storting*), whose members are elected through universal suffrage. Although the Norwegian Constitution of 1814, as amended, grants important executive powers to the King (or Queen), these are usually exercised by the Council of State on behalf of the King ("King in Council"). The Council of State comprises the Prime Minister, who is usually the leader of the majority party or the majority coalition party, and at least 7 ministers (currently 17), who are formally appointed by the King.

2. Judiciary

6. The judiciary consists of the Supreme Court (*Høyesterett*), which is the highest court in the country for all matters, including constitutional law, and consists of the Chief Justice and at least 4 other justices (currently 19), 6 courts of appeal, 71 district courts and specialized courts. Three of the Supreme Court justices serving in alternation form the Interlocutory Appeals Committee, also referred to as the "court within the court".

7. All criminal cases are dealt with in the district courts as courts of first instance. Juries and lay judges decide together with professional judges.

3. National Police and the Prosecution

8. Norway has a single police service with the National Police Directorate at the top, headed by the National Police Commissioner. The Norwegian Police acts under the constitutional responsibility of the Minister for Justice and Police. In addition to the ordinary police forces in the 27 police districts, Norway has seven special agencies organized directly under the National Police Directorate.

9. The prosecution authority is independent and may be instructed only by the King in Council. As defined in section 55 of the Criminal Procedure Act, prosecution authority is shared by the Director of Public Prosecutions and his Assistant Director, the public, deputy public and assistant public prosecutors, the chiefs and deputy chiefs of police, police prosecutors and other enumerated police officials, and the lensmen.[1]

10. The Director of Public Prosecutions leads the prosecuting authority by means of comprehensive instructions relating to investigation matters issued in the form of circulars.

[1] Lensmen are public officials in rural districts who also enjoy police powers in subordination to the district Chief of Police.

He also deals with complaints about decisions made by subordinate prosecuting authorities. The Director decides whether to issue indictments in cases concerning crimes punishable by imprisonment of up to 21 years; crimes threatening State security, the Constitution and civil rights; and incitement to criminal acts, blasphemy and breaches of the duty of secrecy (sect. 65 of the Criminal Procedure Act). Public prosecutors are competent to prosecute cases that do not fall under the superior or subordinate prosecuting authority. Public prosecutors prosecute criminal cases carrying a penalty of imprisonment of more than six years, as well as those heard in the appeals courts.

11. Prosecution may be delegated to police prosecutors; indeed, between 80 and 90 per cent of criminal cases in Norway are handled by them. The Director of Public Prosecutions may only exercise functional control over the police prosecutors, but is not competent to control their appointments or careers.

4. Penitentiary system

12. The penitentiary system is organized into three levels: at the central level, the Norwegian correctional services (*Kriminalomsorgens sentrale forvaltning*); six regional administrations; and local prisons and probation offices. The Norwegian Correctional Services is an integral part of the Correctional Services Department of the Ministry of Justice and the Police, and is responsible for carrying out remands in custody and penal sanctions.

13. Prison sentences and special penal sanctions may be served in preventive detention prisons, high-security prisons, low-security prisons, outside prisons subject to special conditions (home imprisonment), in hospitals for persons with acute mental or somatic illness, or in another appropriate institution.

14. Probation offices execute community sentences, ensure that persons released on probation comply with their terms of release, enforce conditional sentences, and monitor persons who are placed under non-custodial preventive supervision or who are serving their sentences at home.

15. Norway has 50 prisons and currently about 3,400 individuals in detention. Around 2,000 convicts are currently waiting to serve their prison terms owing to a shortage of place. As at 25 April 2007, 19.5 per cent of the prison population were pretrial detainees, 2.4 per cent of detainees who had failed to pay a fine, 5.6 per cent female prisoners, 19.3 per cent non-Norwegian citizens and 0.01 per cent (eight male) juveniles under the age of 18.

5. Other detention facilities

16. The Police Immigration Detention Centre in Trandum was established on 1 July 2004, and is run by the National Police Immigration Service under the supervision of the National Police Directorate.

B. Legal framework of detention

1. International human rights treaty obligations

17. Norway has ratified six of the core international human rights instruments in force.[2] It has entered a reservation to article 10, paragraph 2 (b) and paragraph 3 of the International Covenant on Civil and Political Rights with regard to the obligation to keep accused juvenile persons and juvenile offenders segregated from adults. However, Norway has not made a reservation to article 37 (c) of the Convention on the Rights of the Child.

2. Criminal procedure

18. The criminal justice system is dominated by the police during pretrial and trial detention and by the correctional services authorities after the final judgement of imprisonment. Both authorities are highly respected in Norwegian society for discharging their duties in a professional manner.

Detention on remand (*Varetekt*)

19. Section 171, paragraph 1 of the Criminal Procedure Act stipulates that any person who is suspected with just cause of having committed a felony punishable by more than six months' imprisonment may be arrested when: (a) there is reason to fear that that person will evade prosecution or the execution of a sentence or other precautions; (b) there is an imminent risk that that person will interfere with any evidence in the case, for example, by removing clues or influencing witnesses or accomplices; (c) it is deemed necessary in order to prevent that person from again committing a criminal act punishable by imprisonment for a term exceeding six months; or (d) that same person requests it for reasons that are found to be satisfactory.

20. Suspects of certain serious crimes as enumerated in section 172, paragraph 1 (b) of the Criminal Procedure Act may also be arrested without regard to the above-mentioned four conditions if they have made a confession or if "there are other circumstances that strengthen the suspicion to a considerable degree". When considering the matter, particular importance is attached to whether the general sense of justice is likely to be offended or insecurity will be created if the suspected person remains at liberty.

21. As a rule, a decision to arrest must be made by the prosecuting authority. According to section 176, paragraph 1 of the Criminal Procedure Act, when delay entails any risk, a police officer may make an arrest without a prior decision of the court or prosecuting authority.

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[2] The International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (which has not been ratified by Norway).

22. According to section 183 of the Criminal Procedure Act, the prosecuting authority seeking detention must bring the arrested person, as soon as possible and no later than on the third day following the arrest, before the competent district court. This section was amended by an act of 28 June 2002 No. 55 to that effect, entering into force on 1 July 2006. If an arrested person is not brought before a court on the day after the arrest, the reason shall be noted in the court record. Section 3-1 of the regulations on the use of police holding cells further stipulates that arrested persons must be transferred from a police holding cell to a prison no later than 48 hours after the arrest, unless practical circumstances make that impossible.

23. The court decides whether the person concerned should be remanded in custody or whether it would be sufficient to impose other appropriate measures (see sections 184 and 188 of the Criminal Procedure Act). The court sets a specific time limit for pretrial detention, usually not exceeding four weeks, with the possibility of extension by four weeks at a time. If the prosecuting authority applies for an extension, it has to give an account of the ongoing investigation and its envisaged conclusion.

24. Before deciding on remand, the court fully informs the person concerned about the charge and what remand in custody entails and furnishes reasons (sect. 184 (a)).

25. Prisoners on remand must be released as soon as the court or the prosecuting authority finds that the grounds for remand in custody no longer apply, or upon expiry of the time limit set (sect. 187 (a)), or if the court at any time finds that the investigation is not proceeding as quickly as it should and that a continued remand in custody is not reasonable. However, when the trial has begun, the pretrial detainee may continue to be held in custody until judgement is delivered (sect. 185).

26. The prosecuting authority may, at any stage, decide on its own account, without referring to the court, to release the person prior to the expiry of the remand period authorized by a court. The Working Group has been informed that use is indeed being made of this power by prosecuting authorities.

27. In 2006, there were 3,049 new remands in Norway, of which 2,977 were new prison entries and the remainder of them were persons who had their status in prison changed to remand. The average remand prison population was 569. The average length of stay on remand was 64 days. Until 27 April, there were 998 new remand prison intakes for 2007. The total of the pretrial detention population has remained fairly stable since 2003 (3,550; in 2004, 3,177; in 2005, 3,033). Separate statistics concerning the numbers of remand prisoners pending their appeal have not been available.

28. In 2006, the Stavanger district court held 271 remand hearings, of which 19 were related to custody decisions pursuant to the Immigration Act. The remaining were pretrial detention hearings of persons charged with criminal offences carrying a penalty of more than six months of imprisonment. Eight persons were released after the court's decision.

29. Court orders or decisions relating to remand in custody may be challenged by an interlocutory appeal to the appeals court and then to the Supreme Court, for which its Interlocutory Appeals Committee usually decides. An interlocutory appeal to the Supreme Court may only be based on allegations of procedural errors or erroneous interpretation of law in the

court *a quo*. Between 2000 and 2006, the Committee dealt with approximately 1,020 interlocutory appeals against remand orders, regarding both the initial decision to remand a person in custody and the extension of pretrial detention. About 700 of these appeals were summarily dismissed.

Isolation on remand

30. Always upon application of the police prosecutor, the court may either impose communication restrictions of various degrees on the persons in pretrial custody (partial isolation) (sect. 186), or, when there is an imminent risk that they will interfere with evidence in the case, exclude them from the company of other prisoners (complete isolation) (sect. 186 (a)). Contact with the defence counsel is declared sacred by law.

31. Isolation may only be ordered upon a prior remand decision by the competent court, which must set a relative time limit for isolation as short as possible and not exceeding two (in special circumstances, four) weeks, which may be extended for up to two (or four weeks) at a time. The absolute time limit for continuous isolation is 6 weeks, when the charge relates to a criminal act punishable by imprisonment for a term not exceeding 6 years, and, as a rule, 12 weeks for offences carrying more than 6 years. However, if compelling considerations make it necessary, the person on remand may continue to be kept in isolation for more than 12 weeks (sect. 186 (a), para. 3).

32. According to the statistics provided by the Government, of the 2,977 new prisoners on remand in 2006, 1,586 were subjected to restrictions, the most common of which being letter and visits control (applied in 580 cases). A total of 72 persons were subjected to partial isolation, and 531 to total isolation. Partial isolation never lasted longer than 90 days, in most cases less than 30 days, with an average of almost 25 days per prisoner on remand.

33. The Working Group was informed by the Government that, in accordance with section 46, paragraph 2, of the Execution of Sentences Act, in the case of restrictions on remand, efforts are made by the correctional services to increase contact with prison staff.

34. Of the approximately 1,020 cases decided by the Interlocutory Appeals Committee of the Supreme Court between 2000 and 2006, only 15 cases concerned, among other matters, detention on remand in total isolation, and 42 were related to partial isolation in pretrial detention. The Committee overturned the Court of Appeal's decision in about half of the cases of each type of isolation. These statistics have to be considered against the background that cases concerning isolation reach the Committee only upon appeal.

Isolation after sentencing

35. Section 11, paragraph 2, of the Execution of Sentences Act allows for the committal of a convicted person to an especially high-security level department; section 37 allows the correctional services to wholly or partly exclude prisoners from the company of others as a preventive measure.

36. The available statistical data on restrictions pursuant to the Execution of Sentences Act indicate that, in 2006, security cells were used on 336 occasions, an increase of 18 per cent compared to 2005, but a decrease compared to 2001 to 2004. In 2006, the Supreme Court upheld a decision of the prison authorities, taken after the final conviction, to have a convict serving his sentence in a high-security ward separated from other prison inmates owing to an alleged high risk of escape.

Preventive detention (*Forvaring*)

37. When a sentence for a specific term is deemed to be insufficient to protect society, a preventive detention sentence in a correctional services institution may be imposed instead of imprisonment, if the offender is found guilty of a serious (violent) crime as enumerated in section 39 (c) No. 1, of the General Civil Penal Code, and there is deemed to be an imminent risk that the offender will commit such a felony again. Alternatively, preventive detention may be imposed for the reoffender of a less serious crime of the same nature, provided that the risk of relapse is deemed imminent, (sect. 39 (c) No. 2).

38. This sanction is the only penalty that could potentially be imposed for an indefinite period. When passing a sentence of preventive detention, the court fixes a minimum time limit that should not exceed 15 years, and a maximum time limit of 21 years. The court may extend the fixed term by up to five years at a time. Proceedings for such an extension may be instituted in the district court no later than three months before the period of preventive detention expires (see also section 39 (e). The minimum time limit is significant when inmates can apply for release on probation. Such an application may not be filed by the convicted person until one year after the sentence of preventive detention or a judgement denying release on probation. Hearings of cases concerning release on probation must be accelerated. It is also possible to release on probation a convict without the involvement of the courts if the prosecuting authority, the prison and the probation authorities consent (sect. 39 (f)).

39. In principle, persons sentenced to preventive detention must be placed in a specially designed unit. Most male preventive detainees are placed in Ila prison, while female preventive detainees are placed in Bredtveit prison.

40. In 2006, 14 new sentences of preventive detention were passed. All convicts concerned had been on remand before sentencing. The shortest minimum term fixed by the courts was 2 years, and the longest 15 years. It has been brought to the attention of the Working Group, however, that, in isolated cases, courts have in the past ordered preventive detention for a minimum term of half a year and a maximum term of one year.

41. In 2006, the average prison population of preventive detainees was 72, of whom 4 were women, 3 were serving their sentence in some form of treatment institution or hospital, and 1 was between 18 and 20 years of age. In June 2007, there were 76 inmates in preventive detention, of whom 27 were convicted murderers, 20 convicted rapists, 7 convicted of other sexual offences, and 3 convicted of arson.

3. Detention pursuant to the Police Act

42. Section 8 of the Police Act allows for apprehension and detention for no longer than four hours in cases of disturbance of public peace and order, for identification, or if anyone is caught in the act of a crime. The police may also apprehend and take to a police station intoxicated persons accosting others or causing danger to themselves or others and detain them only until they are sober (sect. 9). Finally, the police may take into custody ill persons unable to take care of themselves and who might pose a danger for themselves or others for a period as brief as possible, and not exceeding 24 hours.

4. Juvenile justice

43. There is no separate juvenile justice system in Norway. Juveniles are tried in the same criminal courts as adults, with no comprehensive special legal regime. Some specific provisions relate to minors. The minimum age at which a person can be held criminally liable is 15 (see section 46 of the General Civil Penal Code). Persons under the age of 18 should not be arrested (section 174 of the Criminal Procedure Act) or ordered to complete isolation in pretrial detention (section 186 (a), paragraph 1, cl. 2, of the Criminal Protection Act) unless it is especially necessary. The relative time limit for isolation of juveniles under the age of 18 is two weeks at a time; the absolute time limit may never exceed eight weeks. It is the Government's policy not to take any minors breaking the law into custody at all; there are no specific detention institutions for juveniles under the age of 18. At the time of the visit of the Working Group, eight such juveniles remained in detention.

44. Pursuant to the act relating to Child Welfare Services, sections 4-24 *et seq.*, a juvenile below the age of 18 who has displayed serious behavioural problems either in the form of serious or repeated crime, or of persistent abuse of intoxicating substances, or in other ways, may, as a last resort, be compulsorily placed in an appropriate institution for up to four weeks with the possibility of one renewal up to 12 months. Placement orders are made by the County Social Welfare Board, whereby temporary orders may also be made by the head of the Child Welfare Administration and by the prosecuting authority. Such orders may only be made if the institution has the expertise and resources required to provide the child with satisfactory assistance in relation to the purpose of the placement.

5. Women in detention

45. Norway has three prisons reserved for women only. In 2006, nine more prisons accepted women, either in mixed wings or in wings temporarily assigned to female prisoners. Those who are imprisoned in mixed wings have contact with male prisoners during the day, but occupy their own single cell to enjoy privacy.

46. In 2006, 8 per cent of new remands were women; of whom four were kept in preventive detention. Approximately 200 women were held at Trandum Detention Centre, 2 of them being detained in the security wing. In November 2003, 42 per cent of the patients kept in compulsory mental health care were women.

6. Detention of aliens

47. Asylum-seekers are not taken into custody in Norway pending their applications; they are admitted to open reception centres located across the country, where they enjoy the right to freedom of movement. Asylum-seekers whose applications have been rejected and illegal immigrants liable for removal are, as a rule, not detained. At the end of March 2007, 7,220 asylum-seekers were living in reception centres, including those whose rejection decision was final.

48. According to section 37 (d) of the Immigration Act, aliens are as a rule taken into custody at a detention centre for foreign nationals, which is administered by the police (Trandum Detention Centre being the only detention facility of this type at present), or exceptionally in other detention facilities, such as prisons or police stations. Aliens may be detained on two grounds: either to establish their identity (section 37 of the Immigration Act), or to effect their removal from the country (sect. 41).

49. There have been instances of voluntary detention in the past. However, such practice has ceased following the recent amendment of section 37 (d) of the Immigration Act, entering into force on 1 July 2007, which addressed criticism from various quarters, including the Norwegian Parliamentary Ombudsman for Public Administration[3] and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[4]. The new section 37 (d) of the Immigration Act also regulates the rights of detainees and the use of force, and envisages the establishment of a supervisory board to monitor the operation of Trandum Detention Centre and treatment of foreign nationals detained therein.

50. According to section 37, paragraph 6, of the Immigration Act, the total period of custody for identification may not exceed 12 weeks unless there are special grounds. The time limit for arrest and detention pursuant to a deportation order is two weeks and may be extended for up to two weeks, no more than twice. Arrest and custody are the last resort and the court may instead impose less infringing measures (sect. 41, paras. 5-7).

51. Any arrest of foreign nationals whose identity is to be established, or who are liable to leave Norway, is ordered by the prosecuting authority. Where the authority wishes to detain the person arrested, it must, as soon as possible, and no later than the day after the arrest, bring the person before the competent court with a petition for remand in custody. Only where there is danger associated with the delay may a police officer undertake the arrest (sect. 37 (c), para. 3).

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[3] See "Special Report by the Parliamentary Ombudsman for Public Administration - The Ombudsman's investigation of the Police Immigration Detention Centre at Trandum", Document No. 4:1 (2006-2007), 15 February 2007.

[4] Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 10 October 2005, CPT/Inf (2006) 14, 11 April 2006.

52. Detention orders can be appealed in the ordinary court system. Decisions on the use of force or other treatment at the detention centre for foreign nationals are open for appeal to the National Police Directorate. Other administrative decisions regarding aliens may be appealed either to the Norwegian Directorate of Immigration or to the Immigration Appeals Board, depending on whether the police or the Directorate has taken the initial decision.

53. During proceedings, foreign nationals are entitled to legal aid in accordance with the Free Legal Aid Act, when general conditions are satisfied. When the court considers any question of custody it appoints a legal representative and orders the State to bear the costs unconditionally.

7. Deprivation of liberty on grounds of mental health

54. Persons who are psychotic, unconscious or mentally retarded to a high degree at the time of committing an offence and are, thus, not criminally liable (see also section 44 of the Criminal Procedure Act) may be arrested under the same conditions as persons taken into remand detention, if proceedings relating to committal to compulsory mental health care or compulsory care have or are likely to be instituted or a judgement ordering committal has been made (see also sections 171, paragraph 2, of the Criminal Procedure Act, and paragraphs 39 and 39 (a) of the General Civil Penal Code).

55. Proceedings aiming at the transferral to compulsory mental health care of psychotic or unconscious individuals not liable to a penalty may be instituted when it is deemed necessary for the protection of society. The decision is made by a court judgement, provided that the offender has committed, or has attempted to commit, a certain serious crime for the first time or a less serious crime repeatedly, as envisaged by section 39 of the General Civil Penal Code.
The same provisos apply in the case of mentally retarded persons to be admitted to compulsory care.

56. Both types of compulsory care may only continue if the condition relating to a risk of repetition persists (section 39 (b) of the General Civil Penal Code). The persons convicted, their next of kin, or the person professionally responsible at the treating institution may apply for remission of the sanction through the prosecuting authority to the district court (sect. 39 (b), paras. 2 and 3). Such an application may not be made until one year after the transfer judgement or a judgement denying remission is legally enforceable. However, the prosecuting authority may, at any time, decide to remit the sanction. In any event, no later than three years after the last legally enforceable judgement has been passed, the prosecuting authority decides either to remit the sanction or bring the case before the district court, which will decide whether the sanction is to be continued (sect. 39 (b), para. 4).

57. The execution of a court sentence of compulsory mental health care or compulsory care outside the criminal law context is governed by the provisions of chapter 5 of the Mental Health Care Act and the regulations enacted by the King.

IV. POSITIVE ASPECTS

A. Cooperation of the Government

58. The Working Group was the first mandate-holder to request a mission to Norway, despite a standing invitation by the Government of Norway to all United Nations special procedures mandate-holders. The Government promptly agreed to receive the Working Group. During the entire visit, the Working Group enjoyed the fullest cooperation of the Government and of all authorities it dealt with on all levels and in all spheres. The delegation was able to visit all detention facilities requested and to meet and interview all detainees it chose at random. The representatives of the authorities met were willing to discuss openly all matters raised by the Working Group, were interested in its preliminary observations and strived to provide the delegation with all the information it requested. The Working Group reiterates its gratitude for the transparency and cooperation of the Government.

59. The Government is also to be lauded for its willingness to implement pertinent recommendations and decisions from internal and international control bodies and courts, such as the Norwegian Parliamentary Ombudsman, the European Committee for the Prevention of Torture and Inhuman of Degrading Treatment or Punishment and the European Court of Human Rights.[5] The Government also gave a clear indication that it would take into consideration the findings of the Working Group in the present report.

B. Well-functioning criminal justice and penitentiary systems

60. When the Working Group requested to visit Norway, it was interested in best practices to avoid arbitrary deprivation of liberty. It was aware that there had been no major issues of arbitrary detention to be observed since independent institutions in all spheres of Government at all levels, with checks and balances that prevent them from occurring. The national criminal procedure system functions efficiently and meets international human rights standards. The duration of pretrial detention is short on average and the right of the detainee to be brought promptly before a judge within the applicable time limits is generally complied with. Detainees are able, at all stages of the criminal proceedings, to effectively challenge the lawfulness of their detention. Appeal procedures after the trial and conviction in the court of first instance are conducted rapidly.

61. Pretrial detainees enjoy the right to be assisted by a lawyer of their choice from the first stage of criminal proceedings. The Working Group notes that this right to a lawyer is respected. Irrespective of need, the State bears all costs of the defence counsel, to guarantee the same quality of criminal defence for all. The accused may even decide to change counsel; the Working Group did not meet anyone whose costs, in such a situation, the State refused to cover. This might well be an unrivalled system and truly reflects the commitment of Norwegian society to equality before the law and to the good administration of justice, the rationale being that it is the

[5] See, for example, the reports in notes 3 and 4 above.

State which puts one on trial, and which compensates the costs in return. Even bearing in mind that Norway is a wealthy country with a low crime rate, this system could serve as an example for other States, at least for those with sufficient financial resources.

62. Imprisonment means much more than just providing a place in a lock-up cell. The Working Group notes with appreciation a policy of real interest by the State in the penitentiary system as a whole that reflects the commitment of the Government and all pertinent institutions in Norway to provide prison inmates with education, health care and work in a suitable environment for rehabilitation without overcrowding cells. The Working Group is pleased to note that professional prison staff organize and conduct activities with the inmates, such as providing for work opportunities and schooling, which is obligatory for inmates serving their prison terms but is also offered to pretrial detainees. In fact, with four years of training prior to the first assignment, prison staff are very well trained. The Working Group observed that the Government takes great pride in them.

63. The Working Group also noted that, as a rule, prisoners do not have to share their cells with other inmates. It is aware that, in some Norwegian prisons, this rule cannot always be followed. At Åna prison, for example, some cells still house four inmates. However, the Working Group appreciates the fact that the Government is currently addressing this issue with a view to achieving the goal of one inmate, one cell; it should also be emphasized that, in those prisons where cells are occupied by more than one inmate, the cells have been designed for such occupancy.

64. The penitentiary policy, which is necessary to reduce the risk of detainees relapsing into delinquency after their release, has a price. Norway currently holds about 3,400 people in custody, but approximately 2,000 individuals convicted to serve a prison sentence sometimes have to wait for a significant period of time before they are able to commence their prison terms.

65. This “waiting list” phenomenon has also been fuelled by the Norwegian practice of passing rather short prison sentences for relatively minor offences in greater proportion than might have been the case in the other countries visited by the Working Group in the past. The Working Group was informed that, in some instances (for example, for certain traffic offences involving the use of intoxicating substances), prison sentences are mandatory by law, unless there are indications that the convict suffers from alcohol or drug abuse. In others, short-term prison sentences are handed down by courts following the precedents set by the Supreme Court.

66. The Working Group would like to stress that the system of sentencing appears to work well in Norway. Owing to the low crime rate in general, the number of short sentences for relatively minor crimes is limited. The incarceration rate is generally low. In a country with about 4.6 million inhabitants, there were only 3,393 persons imprisoned as at 25 April 2007.

67. Building new prisons or overcrowding cells are not appropriate alternatives to the “waiting list” and are not taken into consideration by the Government. Such solutions would undermine the efforts of the correctional services authorities to provide for proper rehabilitation of detainees. The responsibility of the State towards convicts and the standard of services provided to them renders the “waiting list” phenomenon virtually inevitable. However, the Working Group appreciates the fact that the Government has been addressing the issue through a number of suitable measures, including the consideration of early release of prisoners, if appropriate, and

the exploration of ways to increase the use of alternatives to prison sentences, for example, community sentences or home imprisonment under electronic surveillance. The Working Group noted that, according to current estimates, the "waiting list" is expected to vanish by August 2008. The Working Group would like to praise the Government of Norway for having initiated reforms to achieve this goal in a relatively short time.

68. Generally, the Working Group observed a strong role of the police and the police prosecutors, who are in practice competent to prosecute and bring to trial between 80 and 90 per cent of all criminal cases. The Working Group notes that this unique system has been in place since the 1880s and has served Norwegian society well. The professional attitude of the prosecuting authorities on all levels and of the police is also reflected in the fact that opinion polls rank the police as the most popular public authorities in Norway. Democratic values and respect for the rule of law are well entrenched in Norwegian society. Arrested persons, remand detainees and the accused face authorities in uniform throughout the entire proceedings. The Working Group would like the Government to monitor this system in order to ensure that no abuse occurs in a criminal justice system that would probably not function as well in less democratic societies.

C. Juvenile justice

69. Another positive aspect of the criminal justice system is the fact that minors breaking the law are criminally liable only from the age of 15. Detention of persons between 15 and 18 years of age is used as a last resort. Only eight currently remain imprisoned in connection with serious offences. The consequence of the Government's policy to do its utmost to prevent detention of juveniles under the age of 18 and the lack of special closed institutions entail the consequence, however, that these minors are imprisoned together with adults. The Working Group met with one 17-year-old who was detained with adults in a high-security prison (Ila prison).

70. The Working Group understands that it is a policy decision of the Government to refrain from providing for a juvenile justice system specifically tailored to the needs of minors. Although the number of detained minors at present is low in comparison, the problem persists when juveniles above the age of 15 are detained together with adults while on remand or serving their sentences. The Working Group was informed that the issue is under consideration in Parliament and that a committee established by the Government, which is expected to finish its work by 1 October 2008, will make sure that its recommendations are within the framework of international obligations, including the Convention on the Rights of the Child.

D. Low number of detained aliens

71. The Working Group appreciates the fact that asylum-seekers in Norway are not taken into custody pending their applications, nor are they subjected to administrative detention. Detention pursuant to the Immigration Act is ordered by a court within the prescribed time limit of one day after the arrest and is used only as a last resort in limited instances and for a short period on average. The Working Group understands that insufficient statutory regulations were in place for the management of the Trandum detention centre as previously raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[4] as well as by the Parliamentary Ombudsman.[3] The Group notes that the Norwegian Parliament has now filled this gap.

E. Efficient control of committal to psychiatric institutions

72. The committal of persons to psychiatric institutions is the exception, not the rule. Patients are able to effectively challenge the decision before an independent control commission, and, in case of a negative outcome, before the ordinary civil courts. The control commission, which is chaired by a lawyer (who is qualified to serve as a judge), also consists of a physician and two lay persons, one of whom has personally been under mental health care or is a close relative of a patient or has represented the interests of the patient in his or her occupation or function. This composition ensures the legality of the process of compulsory admittance to mental health-care institutions. Even after submission, any extension of compulsory treatment or the release of the patient is decided by the commission. The system takes into account the sensitivity of the issue, allowing for the participation of persons who have been affected by mental diseases themselves in one way or another. At all stages of the proceedings, patients enjoy the assistance of a lawyer of their choice and the State covers all costs. It is a system strongly recommended for imitation by other States.

V. ISSUES OF CONCERN

A. Detention within the criminal justice context

1. Isolation in pretrial detention and during imprisonment

73. The Working Group is generally concerned at the frequency of the use of isolation in detention, both in remand and after sentencing. When in remand during the ongoing investigation, defendants may find themselves in partial or complete isolation, ordered by the competent court at the request of the police and prosecutors. Total isolation entails being locked up in a cell without any contact with other prison inmates or the outside world (television, radio or newspapers), except for a lawyer.

74. The Working Group recognizes that there are different systems of investigation and that, at times, it might be necessary to isolate in order to prevent interference with evidence. Such restrictive measures, however, must be decided upon on a case by case basis, when an assessment of the facts of each case indicates the requirement for isolation, and not on the mere basis of categories of charges or offences. Isolation and restrictions imposed upon pretrial detainees can be considered severe treatment that may weaken their position at a very important stage of the investigation, when the police are gathering evidence in order to bring charges against them. Albeit ordered by a court of law, the investigating authorities appear to dominate decisions on the regime of detention, because they enjoy the power to end restrictive regimes of detention without referring to the court. There is a risk that this power could be used to obtain information or to extract confessions from remand prisoners.

75. The statistics outlined above indicate that, since 2003, between 37 and 53 per cent of all new remand prisoners were subjected to some kind of restrictions, and that between 0.02 and 3 per cent are subject to partial isolation, and between 11.62 and 17.84 per cent were subjected to total isolation. These are a comparably high numbers. In the light of an earlier visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Norway in 1999, the Director of Public Prosecutions conducted a survey on the use of restrictions in connection with remand in custody for that year. One conclusion of the

survey was that, in 53 per cent of the cases, no special grounds for applications for restrictions were given by the prosecution authorities although expressly required by criminal procedure law and reiterated in a directive issued by the Director of Public Prosecution. However, in the same period, only 7 per cent of the applications by the prosecuting authority for restrictions were rejected by the courts in full and 28 per cent in part. The survey also showed that, in 54 per cent of all cases, restrictions were applied for detainees charged with drug offences.

76. In Norway, the Working Group was able to meet with several detainees associated with the notorious NOKAS case, an armed robbery which led to the killing of a policeman in Stavanger. Many of the detainees had been isolated for several years until the first verdict was reached. At Ila prison, the delegation met with a man who had confessed to murder, but was nonetheless subjected to total isolation for more than a year. The Working Group has also been informed of cases in which the persons concerned find themselves in total isolation for two or three years.

77. The Working Group notes that statistical data for 2003 and 2007 indicate that only in rare cases do the District Courts reject an application for a person to be remanded in custody and subjected to restrictions by the (police) prosecuting authorities and that few appeals by the pretrial detainees concerned are successful. In the light of the survey conducted by the Director of Public Prosecution in 1999, two possible reasons are behind this situation: either the situation has improved and the prosecuting authorities largely present sound and well-founded applications in line with circular No. 4/2006 from the Director of Public Prosecution, indicating the reasons why detention on remand and restrictions or isolation is necessary; or the judiciary still exercises only limited control and readily adheres to the assessment of the prosecuting authorities as to whether the applicable criteria have been met. Since the Working Group lacks information on the relationship between the reasons given in the application for restrictions on remand and their acceptance or full or partial rejection by the courts, no definite answer may be provided.

78. The Working Group also met with convicted prisoners serving part of their terms in isolation on the basis of a decision of the prison authorities invoking their discretionary powers; for security or behavioural reasons; or because they belonged to certain categories of persons convicted of serious crimes. It is difficult for the detainees concerned to successfully challenge the decision taken by the prison authorities. The regional correctional services authorities seldom reverse a decision taken by the prison authorities. Outside the powerful correctional services, there is no automatic control system in place with the authority to quash decisions; convicted persons themselves have to file an application before the ordinary civil courts for revocation. The civil courts, acting in the context of review of administrative decisions rather than in one of a specific criminal law, rarely decide in favour of the applicant because the correctional services authorities are endowed with wide discretionary powers. Court proceedings are slow and cumbersome, and therefore do not provide an effective or timely remedy. The Working Group did not observe any situation in which the correctional services authorities had taken questionable decisions in this respect. However, there does not appear to be an effective, institutionalized and external control mechanism in place, as is the case in many other legal systems throughout the world.

2. Preventive detention

79. Another issue of concern for the Working Group is the situation of prisoners sentenced to preventive detention, especially with regard to the broad discretionary powers of the prison authorities attached to the system and the extent of control by the courts.

80. The system of preventive detention as it applies today was introduced in 2001 and 2002 to replace the old system. It is aimed at protecting society from serious and violent offenders when there is a high risk of repeated offence, so that an ordinary fixed prison term with subsequent unconditional release is considered to be insufficient to protect society at large. Most of the 77 prisoners sentenced to preventive detention in Norway (67) are kept at Ila prison. Their characteristics include a low level of education, no social network, psychiatric disorder and/or poor social skills, but also their vulnerability to assault or abuse by others. The average time spent in preventive detention is currently 10 years.

81. Compared to the former system, one improvement is that it is now up to the courts rather than the Ministry of Justice to decide about release on probation after the minimum preventive sentence has been served. The Working Group would also like to emphasize that it witnessed that a variety of programmes at Ila prison were implemented in order to treat preventive detainees and prepare them for release, notwithstanding the limited potential for change and improvement of many prisoners detained there. Often mental health-care institutions or ordinary prisons would not be the appropriate venue owing to security reasons.

82. The Working Group would like, however, to raise the issue of preventive detention for a number of reasons. Preventive detention could, in the extreme, amount to indefinite detention. The Working Group was informed about one former prison inmate at Ila prison who died in custody of old age. A related matter is the lack of certainty about the date of release, if any, for prisoners necessarily attached to a system of preventive detention with a minimum and a maximum period of time to be served in prison, if the maximum term can be prolonged potentially indefinitely. The Working Group is also troubled by the information it received on the case of a 17-year-old boy, charged with arson, for whom the Public Prosecutor sought and received a preventive detention sentence by the District Court, a decision which was, however, reversed on appeal. The boy had already spent six months at Ila prison. The Working Group was also informed about a case for which the court had set a minimum term of six months and a maximum of one year. It is questionable whether such preventive detention sentences foster the aim of protecting society at all and what treatment would be available for such persons in a preventive detention facility. Finally, even if the courts ultimately decide on the release, stay or extension of the maximum term, the judiciary has to rely on the assessment and information provided by the correctional services authorities. It also appears to be difficult for the prisoners concerned to have decisions to their detriment reversed on appeal.

3. “Infoflyt” system

83. “Infoflyt” (loosely translated as “information flow”) is a national database that contains classified information on certain persons in detention. The Working Group was informed that about 50 prison inmates throughout the country are currently listed in the system, most of them

were alleged political extremists, terrorists or detainees related to organized crime, and that the figures were constantly growing. The Working Group was able to interview some of these detainees during its visit.

84. The database was set up in order to raise the quality of information on prison inmates, for the purposes of maintaining prison security, preventing escapes and enhancing the protection of society. Before the establishment of "infoflyt", the information contained therein was exchanged by the police and the intelligence services and other pertinent authorities in a less systematic manner.

85. This information, however, does not only form the basis for decisions taken by the prison authorities to impose restrictions upon inmates up to the point of total isolation in order to maintain safety and security inside and outside the prison; it also becomes relevant when prisoners are, in principle, eligible for early release, usually after having served two thirds of their prison term, and for those in preventive detention.

86. Only a few high-ranking officials within the Norwegian correctional services at central level, the prison governor as head of the prison, and the National Police Directorate have access to the database. Access to the persons concerned or their lawyers may be granted in exceptional circumstances only. Norwegian courts do not have access. The Supreme Court of Norway has accepted this scheme.

87. Access to information is vital for prison inmates when they apply for early release or termination of a preventive detention term. Without disclosure of the information that the State holds against them, the persons concerned are not in a position to assess or dispute allegations, given that even the deciding judge has no access to the information.

88. The Working Group understands that the only external control mechanism in place at present is the mandate of the Parliamentary Ombudsman, who is able to consult the database, but may not disclose any information contained therein. Moreover, the Ombudsman, although his mandate allows him to receive and act upon individual complaints, is not in a position to provide for an effective remedy to the detainees, since he is answerable solely to Parliament.

89. The Working Group is by no means arguing that the database should be abolished. It serves an important purpose as far as security is concerned and increases the availability, reliability and quality of information. However, if information is also used to reject applications for release and, in certain instances, to impose restrictions or partial or total isolation upon the prisoner concerned, and the prison inmates are not aware of the information the State is holding against them, then the situation affects the right of the detainees to challenge the legality of the regime of detention.

90. In this context, the Working Group would like to emphasize that there is no right to early release on parole in international human rights law as such. However, according to principle 4 of the Body of Principles for the Protection of Persons Under any Form of Detention or Imprisonment, any form of detention and all measures affecting the human rights of the person and any form of detention or imprisonment shall be ordered by, or be subject to, the effective

control of a judicial or other authority.[6] Consequently, the Working Group, in its opinion No. 34/2000[7] stated that the extension by two years of a prison term, three times by a parole board after the minimum term had been served, despite the outstanding behavioural record of the person concerned without giving substantive reasons, and in the absence of effective judicial review, amounted to arbitrary detention. Although that case differs from the present concern of the Working Group in that all information was available in the latter, the principles developed in the Working Group's opinion apply even more so if not all pertinent information, which does not require classification, is known to the prisoner or the courts.

B. Detention outside the criminal justice context

Conflicts of competence between correctional and mental health-care services

91. During its visit, the Working Group interviewed an inmate held in an ordinary prison who was sentenced for murdering his wife and who had obviously developed deteriorating psychiatric disturbances while in detention. The prison governor believed that the inmate would receive better mental treatment in a psychiatric institution and had sought his transfer there. The external psychiatric doctors treating him in prison apparently held the opinion that he should stay and receive treatment there. For the safety of his co-inmates, the convict was put into isolation.

92. The Working Group also received information about a prisoner whom the treating psychiatric doctors would like to see admitted to a psychiatric institution with a closed wing, where the patient could, in the view of the doctors, receive more appropriate treatment. However, the prison authorities refused to agree to a transfer for fear of the prisoner absconding.

93. During its visit, the Working Group received first-hand information and discussed with the competent Norwegian authorities a case that featured prominently in the media: that of an inmate at Ila prison, who had developed an acute psychosis that required his fixation on a stretcher. Despite the prison governor urging that the prisoner be transferred to a psychiatric hospital, the mental health-care authorities initially refused to receive him for safety reasons. The inmate was transferred only after the involvement of the Minister for Justice and the Minister for Health and Care Services and after a week had passed.

94. The Working Group notes that it is the Government's policy to avoid treatment of persons with mental health problems inside psychiatric institutions as far as possible. The committal of persons to psychiatric hospitals is resorted to only when absolutely necessary and for a limited period of time. Moreover, it is the Government's position that mentally ill convicts should receive treatment in psychiatric institutions rather than in prison. While the Working Group supports that approach, however, it believes that the policy should not produce the results

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[6] General Assembly resolution 43/173.

[7] E/CN.4/2002/77/Add.1.

illustrated by the three cases described above. Apparently, there is no established body with the authority to take a final decision as to whether a person should be treated in a psychiatric hospital or remain in prison and be treated there, for example for safety reasons or to prevent an escape. At present, it appears that both services have to reach a mutual agreement. The consequence is that those who are concerned find themselves between two stools.

VI. CONCLUSIONS

95. The Working Group expresses its thanks to the Government of Norway for extending the invitation to visit the country and for providing the fullest cooperation conceivable before, during and after the visit.

96. During its mission, the Working Group observed a number of best practices in Norway designed to safeguard against arbitrary detention. They include a well-functioning criminal justice and penitentiary system in general and a remarkable legal-aid scheme, a true commitment to rehabilitation of prisoners, very few juveniles in custody, a low number of foreign nationals in detention awaiting their removal from the country and an efficient control mechanism in place with regard to committal to psychiatric institutions. The Working Group did not find any major issues of arbitrary detention.

97. The Working Group notes that the Government is well aware of the remaining areas where there is room for improvement to the system governing deprivation of liberty identified in the present report. The Working Group appreciates that those areas are being addressed.

VII. RECOMMENDATIONS

98. **On the basis of its findings, the Working Group makes the following recommendations to the Government:**

(a) The Working Group encourages the Government to continue to monitor the practice of imposing restrictions and deprivation of liberty to ensure that it is carried out on a case by case basis. In this context, it invites the Government to arrange a survey by the Director of Public Prosecution on applications for remand and restrictions and partial and complete isolation in pretrial detention to follow up on the survey conducted in 1999 on the initiative of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Working Group would like to be informed of the results;

(b) The Working Group also invites the Government to consider establishing a new system for challenging decisions taken by the correctional services authorities on restrictions or partial or total isolation imposed upon prison inmates serving their sentences. The Government might want to create an external commission to that effect following the example of the independent control commission for patients subjected to compulsory mental-health care;

(c) The Working Group supports the establishment of a working group by the Ministry of Justice mandated to evaluate the current system of preventive detention. The Working Group would like to receive its report;

(d) With respect to the "infoflyt" database, the Working Group recommends that the judiciary be granted access to the information as and when the information contained therein is relevant to decisions on the early release of a prisoner or on the release of a preventive detainee. The Working Group invites the Government to continue to monitor the development of the database and its use and to improve the system, if necessary;

(e) The Working Group recommends that the Government resolve conflicts of competence between correctional service and health-care authorities with respect to the admission of mentally ill prison inmates to psychiatric hospitals. This could be achieved by creating an independent commission in which all stakeholders are represented. The commission could also take a final decision as to whether the person transferred from a prison to a psychiatric institution will be allowed to be transferred from a closed wing to an open wing in the context of treatment.

Appendix

DETENTION FACILITIES VISITED

Oslo Police District

Trandum Police Immigration Detention Centre at Gardermoen Airport (Oslo)

Stavanger prison

Åna prison

Rogaland Police District, Stavanger

Troms Police District

Aasgaard Psychiatric Hospital, Tromsø

Tromsø prison

Adolescent Psychiatry Emergency Unit, Oslo

Bredtveit Detention and Security Prison for Women

Oslo prison

Ila Preventive and Security Detention Prison
