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EXECUTIVE SUMMARY

Amnesty International submits this briefing to the United Nations (UN) Committee on the Elimination of Discrimination against Women in advance of the review of the eighth and ninth combined periodic reports of Sweden from 15 February to 4 March 2016.

In this submission, Amnesty International sets out its concerns about the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) by Sweden in relation to violence against women and girls.

VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS¹

Despite substantial efforts on part of the government in the last decade, including the adoption of various legislative and other measures, the level of gender-based violence against women and girls in Sweden remains high. According to an annual survey on experience of crime among the population, 7 per cent of the female population stated that they were subjected to violence in intimate relationships during the year of 2012. Of those, less than 5 percent stated that they had reported the crimes to the police.² According to The Swedish National Council for Crime Prevention, more than one in four women in Sweden have experienced violence in an intimate relationship during their lifetime.³

Although the number of assaults and other crimes against women in intimate relationships reported to the police continues to increase, the crime statistics only represents the tip of the iceberg, as most victims never report the crime to the police. Still, in 2013, 27,100 assaults against women were reported to the police, and in 17, 000 of these the crime was perpetrated by a person known to the victim. The Swedish National Council for Crime Prevention has earlier estimated that in $\frac{2}{3}$ of the assaults of women by a person known to the victim the perpetrator is a current or former partner.

Evaluations of the government's efforts in recent years conclude that increased awareness and knowledge, development of methods used in the work against violence against women and information/training materials and guidelines within relevant authorities, are among the achievements. However, it has been questioned whether the efforts have reached the aim: improvement in the work of the relevant authorities and real change in the lives of women subjected to violence.⁴

¹ An intimate relationship is defined as a person having, or having had, a partner relationship with a girlfriend, boyfriend, wife or husband, regardless of whether they have been cohabiting or not.

² Brå rapport 2014:8 Brott i nära relationer - En nationell kartläggning (in Swedish only). Based on an annual population-based survey on crime the Swedish National Council for Crime Prevention made an in-depth study on violence in intimate relationships. The offences include systematic violations and humiliations, attempts at limiting a person's freedom, threats, harassment, assault, aggravated assault, sexual offences and aggravated sexual offences.

³ Ibid.

⁴ SOU 2015:55 "Nationell strategi mot mäns våld mot kvinnor och hedersrelaterat våld och förtryck" (in

For example, significant local differences in accessibility, quality and outcome of authorities' work seem to remain. This includes healthcare and social services in municipalities. The same pattern seem to exist in the police, with significant local differences in the quality and results. These authorities and services are vital for survivors of gender-based violence.

LOCAL DIFFERENCES - THE ROLE OF THE MUNICIPALITIES

In 2004-2005 Amnesty International conducted surveys of the work of Swedish municipalities to combat men's violence against women.⁵ The surveys revealed systematic failures in many municipalities to prioritize work against violence against women and to provide adequate assistance, support and protection to women in risk of, or subjected to violence.⁶ As a result, Amnesty International called on the government to act with due diligence and carry out a review of what additional demands should be placed on the municipalities in order to speed up, strengthen and develop their work to combat violence against women and ensure that adequate assistance, support and protection is provided to survivors. Amnesty International also called for a revision of and further legal clarification of the responsibility of the municipalities in the Social Services Act, in order to safeguard the right to access to adequate assistance, support and protection of women subjected to violence - no matter where in the country they live.

Finally, after an official commission was established, the Social Services Act was revised in 2007. Years on - and despite the responsibility laid down by law - many municipalities are not doing enough to address violence in intimate relationships. Subsequent national monitoring reviews of the municipalities' work with women subjected to violence and their children, found shortcomings in most of the municipalities included in the supervision and, in some cases, some very serious gaps.⁷ There are big differences in competence, knowledge and quality of the work between different municipalities. Hence, Amnesty International is concerned that the level of assistance, support and protection offered to survivors is still determined by/dependent on their place of residence, rather than by/on the individual woman's situation and needs.

Swedish only).

⁵ "Not a priority issue" A Review of the Work of Swedish Municipalities to Combat Men's Violence against Women, first published in November 2004. An updated version was published in March 2005. (Swedish title: "Har ej prioriterat frågan". En undersökning om svenska kommuners arbete för att bekämpa mäns våld mot kvinnor). In November 2005, a follow-up survey was published (in Swedish only): "Tillfälle att prioritera frågan." Uppföljning av svenska kommuners arbete för kvinnofrid. All reports available at <http://www.amnesty.se/vad-gor-vi/kvinnors-rattigheter/vald-mot-kvinnor/rapporter/>

⁶ For example, Amnesty International's survey revealed that many municipalities lacked action plans on how to combat such violence as well as guidelines on the provision of assistance and support to women subjected to violence and their children by the social services. Information materials on where women could seek help were lacking in general and few municipalities had any information in other languages other than Swedish. Few could present any information on how big the problem was in their municipality and/or statistics on the number of women seeking help. Many municipalities also failed to provide support and protection in emergency situations and seemed to rely entirely on the non-profit women's shelters. In many cases the municipalities did not contribute financially to the work of these shelters, other than with token contributions.

⁷ "Våldsutsatta kvinnor och barn som bevittnat våld – Alla kommuners ansvar." Slutrapport från en nationell tillsyn 2008–2009, by the National Board of Health and Welfare and the County Administrative Boards (in Swedish only) and "Våldsutsatta kvinnor och barn som bevittnat våld - Slutrapport från en nationell tillsyn" 2012–2013, by the National Board of Health and Welfare and The Health and Social Care Inspectorate. Published in 2014 (in Swedish only).

RAPE

Sexual violence, including rape, is a serious societal problem in Sweden. Although boys and men are also raped, it is predominantly a crime perpetrated by men on women. In 2014, according to official crime statistics, 94% of the reported rapes involved female victims (women or girls), while 98% of the alleged perpetrators were men or boys.⁸

Rape and other forms of sexual violence are human rights violations in themselves and they also impair the enjoyment of a range of other human rights such as the rights to physical and mental integrity, physical and mental health, equality within the family and equal protection for men and women under the law. For years Amnesty International has stated that the failure to prevent rape and other forms of sexual violence, protect women and girls from such crimes and ensure justice for all rape survivors, including through effective investigation as a solid basis for prosecution and trial, is one of the most serious challenges to the protection of human rights of women and girls in Sweden.⁹

LEGISLATION

The human rights to equality and non-discrimination, and to physical and mental integrity and sexual autonomy, require that sexual acts must be consensual in order to be lawful. There should be equality in the weight given to the free, full and affirmative/active consent to sexual contact of those involved. As stated in an intervention to the European Court of Human Rights in the case of *M.C. v Bulgaria*: “Women do not walk around in a state of constant consent to sexual activity unless and until they say ‘no’, or offer resistance to anyone who targets them for sexual activity. The right to physical and sexual autonomy means that they have to affirmatively consent to sexual activity.”¹⁰ Hence, physical and mental integrity, and sexual autonomy go beyond the right of freedom from violence and coercion.

International human rights law requires that all non-consensual sexual acts are criminalized and efficiently prosecuted.¹¹ It further requires that criminal law recognizes the absence of genuine and freely given consent as the most essential element of rape.

It has been acknowledged by Swedish authorities that lack of consent is key in cases of rape.¹² However, consent is neither explicitly defined, nor mentioned in the provisions on

⁸ Brå, Kortanalys 9/2015: “Våldtäktsbrottets hantering i rättskedjan,” and Brå “Kortanalys: Gärningspersoners kön och ålder vid misshandel, rån och sexualbrott” (in Swedish only). It should be noted that men also commit more sexual crimes against other men/boys compared to women committing crimes against men.

⁹ Amnesty International, Case Closed - Rape and human Rights in the Nordic Countries, 2010, summary report, available at: <https://www.amnesty.org/en/documents/act77/001/2010/en/>; full report from 2008 available at: http://www.amnesty.no/sites/default/files/news_attaches/AMNESTY_INTERNATIONAL_Case_Closed_2008_300ppi.pdf

¹⁰ Submission of Interights to the European Court of Human Rights in the case of *M.C v Bulgaria*, 12 April 2003, para 12 used in AI:s report Rape and sexual violence: Human Rights Law and Standards in the International Criminal Court. <https://www.amnesty.org/en/documents/ior53/001/2011/en/>

¹¹ See for example CEDAW Committee, *Karen Tayag Vertido v. Philippines* (CEDAW/C/4/D/18/2008); European Court of Human Rights, application 39272/98, *M.C. v. Bulgaria*, (judgment of 4 December 2003), The European Council Convention on Preventing and Combating Violence Against Women and Domestic Violence (article 36).

¹² See for example subsequent Swedish Government Official Reports by 1998 Sexual Crimes Committee,

rape or any other provisions on crimes of sexual violence. Instead the legal definition of rape against persons aged 15 or above¹³ still links criminal liability to the ability to prove that the sexual act involved the use of violence, threat or inappropriate exploitation of a victim in a particular vulnerable situation. In the current penal code, the defining elements of rape are described as such:

“A person who by assault or other violence or by threat of a criminal act forces another person to have sexual intercourse or to undertake or endure another sexual act that, in view of the seriousness of the violation, is comparable to sexual intercourse shall be convicted of rape.

In addition, a person who engages in sexual intercourse with a person or in a sexual act which, as set out above, is comparable to sexual intercourse by inappropriately exploiting that this person, due to unconsciousness, sleep, severe fear, intoxication or other drug influence, illness, physical injury or mental disturbance or in view of the circumstances in general, is in a particularly vulnerable situation shall also be convicted of rape.”

(The Swedish Penal Code, Chapter 6 Sexual Crimes, paragraph 1)

Amnesty International is concerned that:

- The current legislation in Sweden does not effectively criminalize all non-consensual acts of sexual nature, in accordance with international law; Sweden must move from a force-based to a consent-based definition of rape.
- The current legislation does not protect the rights of all persons to physical and mental integrity and sexual autonomy in all circumstances and without discrimination.

ATTRITION

The attrition rate - the filtering process whereby alleged offences do not come to the attention of the criminal system, either because they are not reported, or because cases are dropped at various stages of the legal process - remains very high in Sweden. The pattern follows that of several other European countries: a continuous and strong increase in the number of reported rapes in recent decades, whereas the number of prosecutions and convictions has remained fairly static.¹⁴ Recent prevalence/population-based studies show that only a small proportion of rapes in Sweden are reported to the police.¹⁵

Since 2008 Amnesty International has called on the Swedish government to establish an

2010 Sexual Crimes Committee. See also a ruling from The Swedish Supreme Court, NJA 2004 s 231(in Swedish only).

¹³ The age of consent in Sweden is 15. Therefore, children between 15-18 years of age are not covered by the provision on rape of children, other than in cases where the child victim is the offspring of the perpetrator, or is under the perpetrators fosterage, or in similar circumstance where the perpetrator is responsible for the care or supervision of the child based on decision by an authority.

¹⁴ It should be noted that the number (but not the share) of cases leading to prosecution seem to somewhat have increased after the legislative reform in 2005. However, according to The Swedish National Council for Crime Prevention (Brå), there has been a tendency that more cases are dismissed by court during recent years.

¹⁵ Brå, Våldtäktsbrottets hantering i rättskedjan. Kortanalys 9/2015 (available in Swedish only).

independent monitoring mechanism to unearth the reasons why only a small proportion of reported rapes result in prosecution and conviction, in order to assess and improve the quality of investigations carried out by the police and the handling of investigations by the prosecutor.¹⁶ Therefore, the August 2014 government decision, following an initiative by the Parliamentary Committee on Justice, to establish an official commission to examine how rape investigations are dealt with by the police and justice system and analyze why so few reported rapes lead to prosecution and conviction in court, and consider further measures to improve the legal process in rape cases is a positive first step in the right direction. The commission was also tasked with the review of rape-related legislation, including considering a consent-based definition. After a decision by the newly elected government, the commission was later changed into a parliamentary commission.

RAPE INVESTIGATIONS

Although most rapes will never be reported, thousands of women and girls do take the decision to report the crimes they have been subjected to. However, their claims for justice and reparation are rarely met. For example, close to 6 700 rapes against children and against persons aged 15 or above were reported to police in 2014. In the same year a decision to prosecute was taken in 21 per cent of the cases and only 320 convictions for rape was passed by a court. The prosecution rate for rape in 2014 was lower than for sexual crimes in general (28 per cent), and all reported crimes (31 per cent).¹⁷

Concerns have been raised that there is neither a clear overall picture, nor a more in-depth analysis of how rape cases are dealt with by the police¹⁸. As a result, in 2014 the National Police Board published a pilot study on the development of methods in rape investigations. The aim of the study was to identify existing gaps and suggest measures for improvement, which in the longer term can enable increased prosecution rates. Among the most serious shortcomings identified were:

- The failure to appoint complainant's counsel. Even though support, assistance and legal aid for the victims of crime through a complainant's counsel has been identified as one of the most important factors for a successful outcome in rape cases¹⁹, the pilot study found that such appointments are not made to sufficient extent or at an early stage.²⁰ The pilot study therefore refers to and supports a proposal made by a 2004 official commission that the appointment of

¹⁶ Amnesty International Summary report, Case Closed - Rape and human Rights in the Nordic Countries, 2010, available at: <https://www.amnesty.org/en/documents/act77/001/2010/en/>

The full report from 2008 is available at:
http://www.amnesty.no/sites/default/files/news_attaches/AMNESTY_INTERNATIONAL_Case_Closed_2008_300ppi.pdf

¹⁷ Brå, Kortanalys 9/2015: Våldtäktsbrottets hantering i rättskedjan (in Swedish only).

¹⁸ Pilot study report: The development of methods in rape investigations. National Police Board 2014. (Förstudierapport: Utveckling av arbetsmetoderna vid utredning av våldtäkter. Rikspolisstyrelsen 2014, in Swedish only).

¹⁹ The Public Prosecution Authorities' Development Centre in Gothenburg.

Åklagarmyndigheten Utvecklingscentrum i Göteborg: Tvångsmedelsanvändning och beslutsfrister m.m vid vålds- och sexualbrott i nära relationer och mot barn. Rapport 2010 (in Swedish only).

²⁰ The same problem had been identified previously, in a number of joint inspections by the National Police Board and the Public Prosecution Authorities in 2005 and 2007.

complainant's counsel in rape cases should be made mandatory by law.²¹

- This report also suggests that police officers or prosecutors leading rape investigations tend to make premature assessment of the evidence which results in the failure to take all appropriate measures, often in the initial phase of the investigation. These findings can, at least to some extent, explain why initial investigation measures are not taken or why information and evidence are not collected in some cases. Most shortcomings identified in the report concerned securing of the crime scene, searching someone's house, inappropriate administering of "rape kits", failure to request legal (forensic) certificates and so on.

ASSESSMENT OF EVIDENCE

A sufficiently thorough preliminary investigation should be a prerequisite for every case, and it can enhance its chance to reach a trial stage. Rape and sexual assault should be investigated as thoroughly, efficiently and comprehensively as possible.

However, Amnesty International is concerned that a 2009 Supreme Court judgment in a test case may have resulted in prosecutors and judges adopting a more cautious attitude towards the assessment of evidence in rape cases.²² It should be noted that even before the Supreme Court judgment, supporting evidence was referred to in 94 per cent of the rape/aggravated rape charges included in a survey by the Office of the Public Prosecutor. In more than one third of the charges, written evidence documenting victim's injuries was produced. Even so, the acquittal rate is higher in rape cases than in other crimes.²³

There is not a legal requirement that a victim's testimony must be corroborated by other evidence - a practice that Amnesty International strongly opposes. However, this seems to be the case in practice.²⁴

DISCRIMINATORY ATTITUDES

Stereotypical notions about gender and sexuality and about women's availability for sex have deep roots in societies around the world, including in Sweden. Amnesty International is also concerned that existing discriminatory attitudes may constitute barriers to access to legal protection for certain groups of women.

²¹ Reporting and investigation of sexual offences. Proposals for improvement from a crime victim's perspective. Memorandum, June 2004:1. (Anmälan och utredning av sexualbrott. Förslag på förbättringar ur ett brottsofferperspektiv. Promemoria av Sexualbrottsofferutredningen Ju 2004:1, only available in Swedish).

²² The Supreme Court judgement NJA 2009 s. 447 rules that - as in other criminal cases - it is not sufficient that the complainants' testimony is more credible than the suspects'. Direct witnesses and technical evidence is often lacking in rape cases. However, that does not mean that the available evidence can't be sufficient for a conviction. One of the main tasks in such cases is to evaluate the relative credibility and reliability of the complainants' testimony. A thoroughly credible testimony from the complainant coupled with what has come to hand for the rest, may be sufficient. A reasonable requirement is that the complainants' story has been checked as far as it is possible, during the pre-trial investigation, may it be that shortcomings in this regard does not have to lead to the assessment that the charge cannot be proven.

²³ Evaluation of evidence by the law courts in cases involving sexual offences – a survey. Memorandum 2007:13, the Public Prosecution Office's Development Centre in Gothenburg.

²⁴ Amnesty International's Six-point checklist on justice for violence against women. Published in 2010, available at: <https://www.amnesty.org/en/documents/sec01/008/2010/en/>

Studies show that assessment of the credibility of the victim's version of events by the police is often influenced by prejudices and stereotypes. Such assessment include the impression of the woman's behavior at the time of filing the complaint. According to one research project²⁵ the victim's verbal skills and social status were of decisive importance in this context. Young and intoxicated women, for example, were considered less credible. Additionally, as a result of this discriminatory attitude, reported rapes within intimate relationships and "date rapes" involving teenage girls were disproportionately dismissed and generally did not lead to legal action. The researchers also identified other groups of women who faced difficulties in asserting their claims in rape investigations, for example women from Asia or Eastern Europe who had relationships with Swedish men, women in prostitution, homeless women, women suffering from substance abuse or mental illness, and women who previously had reported rape. Amnesty International is concerned about the reports that discriminatory attitudes among the police staff and prosecutors may constitute barriers to access to legal protection for certain groups of women.

YOUNG PEOPLE

A significant proportion of rape victims/survivors in Sweden are teenage girls and young women. The same is true for the alleged perpetrators: in 2014 over 25 per cent of the suspects were boys and young men between 15-20 years old. The relatively high proportion of girls within the total number of victims indicates that Sweden should take particular care to research the experiences of girls, and more particularly the identity of perpetrators, the situations in which rapes take place, and the victims' special need for medical and psychosocial support due to their age and status as children under the Convention on the Rights of the Child. Swedish authorities must undertake comprehensive preventive measures, particularly targeting young people.

"VIRGINITY TESTS"

Amnesty International is concerned about media reports revealing the application of "virginity tests". In October 2015, the current affairs television program Kalla Fakta (Hard Facts) broadcasted an investigation, which showed doctors in three private clinics offering to perform "virginity tests" on teenage girls, without their consent and at the request of parents or older relatives (re-enacted by actors). The clinics were identified after tips from young women who allegedly had been subjected to "virginity tests" against their will. One of these women testified about her experiences on the program.

All three clinics were reported to the Health and Social Care Inspectorate (IVO), the state agency for overseeing healthcare and social services. The investigations by the IVO were still ongoing at the end of 2015. The National Board of Health and Welfare was assessing the need to issue further guidance on consent and forced or intrusive physical examinations in the healthcare system or increase healthcare providers' awareness on existing prohibitions of forced or intrusive physical examinations.

Forced "virginity tests" are discriminatory, intrusive and degrading, and violate a range of women and girls' human rights including their rights to physical and mental health, privacy, information, non-discrimination and the right to be free from cruel, inhuman and degrading treatment and torture. The World Health Organization (WHO) has clearly stated that virginity

²⁵ Research project, judicial process in violation of women and children, lead by professor Christian Diesen (Faculty of Law) and associate professor Frank Lindblad (Stress research Institute).

testing has no scientific validity.²⁶ The WHO handbook also emphasizes that women and girls' rights must be respected, and that any physical exam should be conducted only with free and informed consent.²⁷ Forced "virginity tests" should be explicitly prohibited by law and women and girls who have been subjected to the practice must have recourse to justice and reparation for the violation they have suffered.

RECOMMENDATIONS

Amnesty International recommends that Sweden:

- Act with due diligence and ensure that all municipalities fulfill their legal obligation to provide adequate assistance, support and protection to women subjected to gender-based violence;
- Adopt a legal definition of rape that sees sexual violence as a violation of the physical and mental integrity and sexual autonomy of the victim, and which links the question of guilt in rape cases to the lack of affirmative, genuine, freely-given consent rather than to the use of force or violence, in line with evolving international legal standards;
- Ensure that legislation on other forms of sexual violence protects the right of all persons to physical and mental integrity and sexual autonomy in all circumstances and without discrimination;
- Strengthen the provision of assistance, support and legal aid services to rape survivors by making the appointment of complainant's counsel in rape cases mandatory by law;
- Identify and take effective measures to eliminate gender stereotypes and discriminatory attitudes and practices by law enforcement officials, which constitute barriers to access to legal protection, justice and remedy for certain groups of women;
- Research the experiences of teenage girls, particularly the identity of perpetrators, the situations in which rapes take place, and the victims' special need for medical and psychosocial assistance due to their age and status as children under the Convention on the Rights of the Child;
- Develop concrete, comprehensive, long-term preventive strategy against sexual violence, particularly targeting young people;
- Prohibit "virginity testing" by law and women and girls who have been subjected to the practice must have recourse to justice and reparation for the violation they have suffered.

²⁶ WHO, "Healthcare for women subjected to intimate partner violence or sexual violence. A clinical handbook", 2014, p. 46.

²⁷ Ibid, pp. 43-44.

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