

# DEN NORSKE HELSINGFORSKOMITÉ

The Norwegian Helsinki Committee  
Member of the International Helsinki Federation for Human Rights

**AFRICAN RIGHTS**

*Working for Justice*

**REDRESS**

*Seeking Reparation for Torture Survivors*



The Norwegian Parliament

- Members of the Standing Committee on Justice and
- Members of the Standing Committee on Foreign Affairs

Karl Johans gate 22  
N-0026 Oslo

Oslo, London, Kigali 26 September 2007

Dear Madams and Sirs,

We are writing on behalf of four non-governmental human rights organizations engaged in promoting accountability mechanisms for 'core' international crimes, both at the international and at the national level: REDRESS; African Rights; Amnesty International Norway and The Norwegian Helsinki Committee. We are writing to raise several important issues related to Norway's contribution to fight impunity for such crimes, i.e. genocide, crimes against humanity and war crimes.

Firstly, we want to underline that Norway has played an important role in supporting the establishment of the two international ad hoc tribunals (the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)), the International Criminal Court (ICC), and also some of the hybrid courts now operating at different places around the world. These courts, and in particular the ICC, are among the most important recent achievements in strengthening protection for human rights and humanitarian law. We see these institutions as important mechanisms to ensure that perpetrators of the most heinous crimes do not go unpunished and that victims obtain justice and redress.

A cornerstone of the system of justice established by the Rome Statute is the so-called principle of complementarity (article 1), which underlines that states have the primary responsibility to investigate and prosecute cases of international criminal law. The ICC may only prosecute a case when national authorities are “unwilling or unable genuinely to carry out the investigation or prosecution” (article 17). As a state party to the Rome Statute, Norway must ensure that it has proper domestic legislation that reflects its obligations under the Rome Statute and sufficient capacity to implement such legislation in practice.

### **(1) National capacity**

We welcome that Norway decided to establish the ‘National Authority for Prosecution of Organized and Other Serious crime’, including core international crimes, in 2005. In addition, a Special Investigative Unit for international crimes was established the same year within the national police office for investigating organized crime (KRIPOS). These are important steps to break the cycle of impunity. However, we are concerned that both the National Authority and the Special Investigative Unit are seriously understaffed. At the moment the National Authority has three prosecutors, while the Special Investigative Unit has eight staff. This gives one team of four investigators, one leader of investigation, one administrative staff and two legal experts.

With the current level of resources, the expected out put will be one finished case a year. Before the establishment of these ‘special units’ in 2005, hardly any investigations of international crimes cases were undertaken in Norway, resulting in a large backlog of cases involving alleged perpetrators of genocide, war crimes, and crimes against humanity or torture.<sup>1</sup>

Another negative side effect of the current situation is that important investigations may be deemed too demanding. In a disappointing decision of 20 September 2007, the National Authority refers to lack of resources as one of the reasons for not initiating investigations in an important case brought against a Norwegian company (Aker Kvaerner ASA), which have

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<sup>1</sup> Based on available information through media reports, the Norwegian Helsinki Committee estimates that there is a backlog of more than 50 cases. *Apollon: Forskningsmagasin fra Universitetet i Oslo*, 1/2007, page 10-11-12.

been operating extensive services at Guantanamo Bay. It specifically states that using limited resources in this case, may weaken efforts to deal with genocide cases.<sup>2</sup>

According to a list submitted by Rwandan authorities to Norway, at least 15 Rwandan genocide suspects are currently residing in Norway. Norwegian media revealed the identity of some of these suspects.<sup>3</sup> We believe that Norwegian authorities would be in a position to make clearer progress on these cases if more resources – financial and personnel – were accorded to them.

**Merknad [J1]:** Would you have a reference for that? Rakiya mentioned that she is aware that media reported on cases of *François Burasa and his former wife, Marie-Goretti Burasa.*

Canadian, Danish, Dutch and Belgian authorities for instance established similar specialized ‘war crimes units’ and dedicate substantial resources into the investigation of genocide suspects present in their country.<sup>4</sup> Several perpetrators have been prosecuted in Belgium, with trials ongoing in Canada and The Netherlands.<sup>5</sup>

- We urge the Norwegian Parliament to earmark substantial increased resources for authorities dealing with investigation and prosecution of core international crimes. There should *at least* be two operational investigative teams in the Special Investigative Unit, doubling the current capacity to investigate cases. There is also a need to increase the staff of the National Authority with two or more prosecutors.
- In order to help to deal with the backlog of cases, temporary measures should be considered. The ‘special units’ could be invited to present a plan in order to finish the backlog, including stipulations of required personnel and other costs.

<sup>2</sup> Cf. National Authority, [“Dismissal of the complaint against Aker Kværner ASA for its activities on Guantanamo, Cuba”](#), Press Release of 20 September 2007.

<sup>3</sup> Aftenposten, Nettavisen, NRK and TV2 have in several reports revealed the identity of Francois Burasa (See: <http://www.aftenposten.no/nyheter/iriks/article996044.ece>; <http://www.nettavisen.no/innenriks/article999544.ece>; <http://www.nrk.no/nyheter/innenriks/5726660.html>; <http://pub.tv2.no/TV2/sok/?query=burasa>). TV2 and Nettavisen have in a documentary (“Safe haven for war criminals”, broadcasted 30 April 2007) and follow up reports on war crimes investigations in Norway revealed the identity of Vincent Ndikumana and Pierre Célestin Ruhumuliza.

<sup>4</sup> The Danish Special International Crimes Office for instance has a permanent staff of 17 – see [www.sico.ankl.dk](http://www.sico.ankl.dk); the Dutch ‘war crimes unit’ is composed of 27 investigators, prosecutors, experts and administrative staff; Sweden recently established a ‘war crimes unit’ within its national police, composed of 10 experienced investigators, see “Swedish police to launch new war crimes unit”, 11.09.07, at <http://www.thelocal.se/8454/20070911/>.

<sup>5</sup> For an overview of ongoing proceedings against alleged perpetrators of serious international crimes in Europe see “EU Update on Serious International Crimes- July 2007, available at <http://www.redress.org/publications/EU%20Report%20Vol%203%20July%202007.pdf>.

By increasing capacity along these lines, Norwegian authorities will demonstrate that they have an ambitious and pro-active approach at the national level, being willing to direct the necessary resources.

## **(2) Implementing legislation**

Secondly, we very much welcome the 3 April 2007 draft proposal by the Norwegian Ministry of Justice on introducing a new chapter in the Penal Code on international crimes. Both Amnesty International Norway and The Norwegian Helsinki Committee presented positive evaluations of the draft proposal, and we urge the Norwegian Parliament to adopt the proposal at the earliest possible occasion. The new legislation will send a strong signal that Norway commits itself to fight impunity for international crimes effectively in its own courts.

A very important issue is whether these provisions could be given retroactive effect. It is an important human rights and constitutional principle that no one can be convicted except according to a law which existed at the time the crime, was committed. The principle of legality is also enshrined in paragraph 96 of the Norwegian Constitution. However, according to Article 15 of the International Covenant on Civil and Political Rights, the principle must be seen in the context of both national and international law, including international customary law. It states in its first paragraph, “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.” According to the second paragraph of article 15, “Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”<sup>6</sup>

Core international crimes have been part of international law since late 1940s. The UN has repeatedly characterized them as crimes of such a grave nature that they concern all of mankind.

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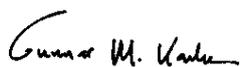
<sup>6</sup> International Covenant on Civil and Political Rights, GA res. 2200A (XXI) of 16 December 1976, entry into force 23 March 1976, ratified by Norway 23 March 1976,

It would therefore not be in breach of Norway's human rights obligations to give the new provisions retroactive effect. Indeed, there are strong human rights arguments in favor of retroactive effect of the proposed legislation:

- Consistent with their standing as crimes under international law, crimes covered by the proposal which predate the coming into force of the legislation would not be subject to the limitation periods applicable to common crimes. Similar cases will be treated equally regardless of whether they took place before or after the new legislation enters into effect.
  - Norway will be able to assist in the completion strategies of the existing ad hoc tribunals (cf the Bagaragaza-transfer case), and cooperate with ICC and other international or hybrid courts in dealing with past crimes
- On this background, we urge the Norwegian Parliament to ensure that the provisions of the new legislation on core international crimes do have retroactive effect.

We thank you for your attention on these important issues. We are committed to working in partnership with the Parliament of Norway to address these issues and would welcome the opportunity to discuss these issues further.

Sincerely yours



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