

Human Rights Committee

Concluding observations on the seventh periodic report of Sweden

1. The Committee considered the seventh periodic report of Sweden (CCPR/C/SWE/7) at its 3238th and 3239th meetings (CCPR/C/SR.3238 and 3239), held on 9 and 10 March 2016. At its 3258th meeting, held on 23 March 2016, it adopted the following concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the new optional procedure for submission of reports and for submitting its seventh periodic report in response to the list of issues prior to consideration of reports (CCPR/C/SWE/QPR/7), under that procedure. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures taken by the State party:

(a) The entry into force on 1 January 2011 of amendments to the Swedish Constitution (the Instrument of Government) inter alia incorporating the protection against discrimination based on sexual orientation;

(b) The launch in December 2015 of the Swedish Foreign Service Action Plan for Feminist Foreign Policy 2015-2018;

(c) The entry into force, on 1 July 2014, of legislative amendments intended to strengthen protection against forced and child marriage, including the introduction of a new offence, coercion to marry;

· Adopted by the Committee at its 116th session (7–31 March 2016).

(d) The entry into force, on 1 July 2014, of the Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes (2014:406);

(e) The adoption in December 2013 of the first comprehensive strategy for equal rights and opportunities regardless of sexual orientation, gender identity or gender expression.

C. Principal matters of concern and recommendations

The Status of the Covenant in the domestic legal order

4. The Committee notes that the Covenant has not been incorporated in the domestic legal order and, as a result: (a) certain areas in the domestic law are not fully aligned with the Covenant; (b) domestic courts, while able in principle to apply the Covenant by way of an interpretative presumption, rarely invoke its provisions. The Committee also notes that municipalities and other local governance bodies seem to lack sufficient knowledge about the Covenant (art. 2).

5. The Committee reiterates its recommendation (see CCPR/C/SWE/CO/6, para. 5) that the State party should ensure that all rights protected under the Covenant are given full effect in domestic law and, to this end, should review its domestic legislation with a view to fully aligning it with the Covenant. It should also step up efforts to raise awareness about the Covenant among judges, lawyers, prosecutors and public officials, including those working in municipalities and other local governance bodies, to ensure that its provisions are taken into account and adhered to by all branches of government.

Reservations to the Covenant

6. The Committee notes that the State party maintains its reservations to articles 10, para. 3; 14, para. 7; and 20, para. 1, of the Covenant. It also notes that a review of these reservations will be undertaken as part of the forthcoming strategy for human rights (art. 2).

7. The Committee reiterates its recommendation (see CCPR/C/SWE/CO/6, para. 6) that the State party review the justifications for, and the necessity of maintaining, its reservations to articles 10, 14 and 20 of the Covenant with a view to withdrawing them.

National Human Rights Institution

8. The Committee notes that several bodies, such as the Parliamentary Ombudsman, the Chancellor of Justice and the Equality Ombudsman have a mandate of promoting and protecting human rights; however, the scope of their authority remains restricted to specific instruments and does not include international norms, including the Covenant. Therefore the Committee, while acknowledging the State party's continued efforts towards the establishment of an independent national human rights institution, remains concerned (see CCPR/C/SWE/CO/6, para. 4) about the slow progress in this regard (art. 2).

9. The Committee reiterates its recommendation (see CCPR/C/SWE/CO/6, para. 4) that the State party establish, without undue delay, an independent national human rights institution invested with a broad human rights mandate, and provide it with adequate financial and human resources, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Anti-discrimination framework

10. While noting the legislative and institutional reforms in the area of non-discrimination, including the adoption of the 2009 Discrimination Act (2008:567) and its subsequent amendments of January 2013 and 2015, the Committee remains concerned about the limited scope of coverage and existing protection gaps owing to the fact that the existing anti-discrimination laws and regulations fail to afford protection against all status-based forms of discrimination and do not cover discrimination in all areas of public life. The Committee is further concerned: (a) that the Equality Ombudsman is not empowered to invoke international standards, including the ECHR that is part of Swedish law, and that it cannot exercise jurisdiction over cases of discrimination by some government agencies such as the police, prison service, prosecutors and courts when they exercise public authority, as such discrimination is not regulated by the Discrimination Act; (b) that qualifying criteria for legal aid may limit in practice access to judicial remedies of victims of discrimination. The Committee notes that an inquiry mandated to review the adequacy of the current anti-discrimination framework is ongoing (arts. 2, 3 and 26).

11. The State party should consider, in the framework of the current review of its anti-discrimination legislation, expanding the scope of protection against discrimination under its domestic law by inter alia introducing a prohibition of discrimination in all spheres and sectors in full compliance with the anti-discrimination provisions of the Covenant. The State party should also improve the accessibility of effective remedies against any such form of discrimination, including by considering expanding the mandate of the Equality Ombudsman to all forms of discrimination and expanding the legal aid criteria to enable victims of discrimination to pursue their cases in court where the interest of justice so require.

Rights of persons with disabilities

12. The Committee, while noting the efforts and measures taken to advance the rights of persons with disabilities, including the setting up of a new inter-departmental coordination mechanism and the work on a new disability policy to take effect in 2017, is concerned about remaining gaps, in particular with regard to equal access of persons with disabilities to employment, education, healthcare, justice and governmental services without discrimination (arts. 2 and 26).

13. The State party should strengthen the measures taken to improve equal access of persons with disabilities to employment, education, healthcare, justice and governmental services without any discrimination.

Roma

14. The Committee, while welcoming the adoption of the long-term Strategy for Roma Inclusion 2012-2032 in February 2012 and acknowledging the other measures taken to address the situation of Roma, remains concerned about reports of their limited access to education, employment, housing and health care. The vulnerable position of citizens of other EU countries of Roma origin who, because of their lack of formal residency status in the State party, have only limited access to social benefits, subsidized healthcare and education is also a matter of concern (arts. 2 and 26).

15. The State party should take all measures necessary to ensure equal access by Roma to various opportunities and services, including to education, employment, housing and health care without discrimination. It should also ensure that all individuals within its jurisdiction, including vulnerable Roma citizens of other EU countries, enjoy equal rights without discrimination and identify ways to facilitate

their access to support assistance services, including social benefits, taking into account both their de jure and de facto situation.

Racism and hate speech

16. The Committee, while acknowledging the measures taken to combat hate speech, including the creation of the Cyber Crime Center inter alia in order to investigate online hate speech, and noting the forthcoming national plan against racism and other forms of intolerance, remains concerned (see CCPR/C/SWE/CO/6, para. 19) about continued reports of hate speech, including on the Internet, racist and xenophobic violence against Muslims, Afro-Swedes, Roma and Jews, as well as chronic negative portrayal of Muslims in the media. It is also concerned about large number of incidents of religious intolerance, including physical assaults against persons belonging to religious minorities such as Muslims and Jews and attacks against their places of worship, and about under-reporting of such cases (arts. 2, 7, 18, 20 and 26).

17. The State party should redouble its efforts, both through law enforcement activities and awareness raising, to combat hate speech, including on the Internet, racist and xenophobic violence against, and negative stereotyping and portrayal of ethnic or religious minorities, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. It should, inter alia: (a) institute new awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity, and targeted at revisiting and eradicating stereotypes towards different ethnic or religious minorities; and (b) effectively implement the legal and policy frameworks to counter all manifestations of racism, hatred and xenophobia, including by thoroughly investigating such cases, prosecuting perpetrators where appropriate and, if they are convicted, punishing them and providing victims with adequate remedies.

Gender equality

18. The Committee, while acknowledging the measures taken to ensure equal rights and opportunities for women and men and the progress thereof, remains concerned (see CCPR/C/SWE/CO/6, para. 7) about the obstacles faced by women in accessing full-time employment and the persistent gender wage gap, despite its slight decrease in recent years (arts. 2, 3 and 26).

19. The State party should step up its efforts with a view to promoting women's equal access to full-time employment and to eliminating the gender wage gap by tackling vertical and horizontal segregation in employment and addressing differences in pay between men and women for the same work.

Violence against women and children

20. The Committee welcomes the measures taken to combat violence against women and children, including the appointment in April 2012 of a national coordinator against violence in close relationships and a number of legislative measures to increase criminal protection against violence, sexual crimes and harassment. It also notes that new legislation against online harassment has been recently proposed, that a strategy on men's violence is pending adoption and that the inquiry that has been appointed to review the Criminal Code provisions on rape is considering changing the elements of the crime. However, it remains concerned that domestic and sexual violence against women, including rape, and child sexual abuse, is still prevalent. It is also concerned about underreporting of such acts, in particular of cases of sexual violence against women with disabilities, and the low rate of prosecutions and convictions compared to the number of reported cases (arts. 2, 3, 7, 24 and 26).

21. The State party should redouble its efforts to prevent and combat all forms of violence against women and children in all its forms and manifestations, including by:

(a) Strengthening preventive measures, including increasing activities aimed at raising awareness of the public at large to the unacceptability and adverse impact of violence against women and children;

(b) Encouraging the reporting of such cases, inter alia, by systematically informing women and children of their rights and of the existing legal avenues through which they can receive protection;

(c) Ensuring that law enforcement authorities, as well as medical and social workers, continue to receive appropriate training to deal properly with cases of domestic violence;

(d) Consider revising the definition of rape with a view to introducing lack of genuine consent by the victim as a central element of the definition;

(e) Enforcing effectively relevant criminal provisions and ensuring that all cases of violence against women and children are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to full reparation and means of protection.

Counterterrorism

22. While acknowledging the policy principles reflected in Government Communication 2011/12:73 and Government Communication 2014/15:146 on the national counter-terrorism strategy and noting the intention of the State party to undertake a comprehensive evaluation of criminal law regulations related to terrorism, the Committee is concerned about the reported discrepancy between the number of arrests and the number of convictions under the Terrorism Act, as well as about allegations of de facto practice of “branding of persons” of a foreign and minority background, unfairly targeting Muslims in counter terrorism-related law enforcement and investigations (arts. 2, 9 and 26).

23. The State party should pursue its plans to review comprehensively the counter-terrorism legislation and ensure that any existing and future counter-terrorism legislation and practices are in full conformity with the State party’s obligations under the Covenant, including with the principle of non-discrimination and the right to liberty and security. It should inter alia ensure that the principles of necessity and proportionality are strictly observed in the application of arrest powers under the Terrorism Act, and take effective measures to prevent different treatment by law enforcement officials of criminal suspects by reason of their religion and/or ethnicity, including by providing appropriate training on cultural awareness and the inadmissibility of racial profiling.

Excessive use of force by law enforcement officers

24. The Committee is concerned about reports of excessive use of force by law enforcement officers, including as a result of use of expandable bullets. It is further concerned about apparent inadequacy in the response of the State party to such acts given the discrepancy in the number of reported incidents and the ensuing number of legal proceedings and prosecutions, and the lenient penalties, including fines, most commonly applied against perpetrators. The Committee is also concerned that the new Department of Special Investigations mandated to investigate all allegations of excessive use of force and other police misconduct may not be perceived as independent by the public at large, given its operation within the Swedish Police Authority (arts. 2, 6 and 7).

25. The State party should:

(a) Undertake regular reviews of measures employed in law enforcement operations, including types of firearms and ammunition used, with a view to ensuring the application of least harmful means in all circumstances;

(b) Ensure that law enforcement officers receive appropriate professional training, including on how to avoid excessive use of force and how to handle persons with mental disabilities;

(c) Review its position vis-à-vis the operation of the Department of Special Investigations under the administrative framework of the Swedish Police Authority to ensure that the body entrusted to investigate complaints against the police is truly independent of the police and is perceived as such;

(d) Ensure that reported cases of excessive use of force are independently and effectively investigated; that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; and that victims or their families are provided with redress, including adequate compensation.

Torture

26. The Committee, while noting that the State party is currently considering the recommendation made in September 2015 by the government-commissioned inquiry to introduce a specific crime of torture in its criminal law, is concerned that no concrete legislative proposals have been submitted to Parliament to date (art. 7).

27. The State party should take expeditious measures to include in its Criminal Code a definition of torture that is fully in line with article 7 of the Covenant and internationally established norms, including in respect of a limitation period appropriate for the grave crime of torture.

Pretrial detention

28. The Committee regrets that, despite recent reforms, including the promulgation in April 2015 of the new prosecutorial guidelines and regulations regarding remand detention and restrictive measures for persons on remand, the legal framework regulating pretrial detention is still deficient in a number of respects, including the absence of a statutory time limit on the duration of pretrial detention. It is concerned about reports (a) that access to counsel is not provided from the very outset of the deprivation of liberty; and (b) that persons on remand are subjected to strict restrictions on contact with the outside world. The Committee notes in this regard that a public inquiry has been tasked in July 2015 to consider the measures that should be taken to limit pretrial detention, including time limits for such detention, the use of restrictions and mitigation against the isolation of persons on remand (arts. 2, 7, 9 and 10).

29. The State party should bring its legislation and practices into compliance with article 9 of the Covenant, taking into account the Committee's general comment No. 35 on liberty and security of persons. Inter alia, the State party should:

(a) Establish a statutory time limit on the duration of pretrial detention and ensure that pretrial detention constitutes an exceptional measure and that, in practice, priority is given to alternative measures to detention;

(b) Ensure that all persons are afforded, in practice, the right to a counsel from the very outset of their deprivation of liberty;

(c) Ensure that all restrictions on contacts for pretrial detainees are time-bound and are justified as necessary and proportionate in the light of all the relevant circumstances; that the scope and the extent of their application is subject to constant

review and that appropriate measures to mitigate isolation are provided, in particular for young detainees.

Trafficking in human beings

30. While welcoming legislative, institutional and other measures adopted to combat trafficking in human beings, the Committee is concerned that trafficking in human beings, including sexual exploitation of children, including via cyberspace, continues to be a problem (arts. 8 and 24).

31. The State party should further strengthen its efforts to prevent and combat effectively trafficking in persons, including for purposes of sexual exploitation, inter alia, by:

(a) Monitoring the impact of the application of the amended provisions of the Criminal Code on the fight against trafficking, and strengthening international anti-trafficking cooperation;

(b) Ensuring that penalties for sexual exploitation of children (including via cyberspace) are commensurate with the gravity of such crimes;

(c) Ensuring that cases of trafficking, including sexual exploitation of children, are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to effective means of protection and assistance services as well as to full reparation, including rehabilitation and adequate compensation.

Rights of aliens, including migrants, refugees and asylum seekers

32. The Committee acknowledges the large number of migrants arriving in the territory of the State party, the challenges thereof and the great efforts made to accommodate their needs, including through the adoption of the new Act on Reception of Migrants that entered into force on 1 March 2016 and measures designed to facilitate their integration in the labour market. However, it is concerned about the limited use of alternatives to the detention of migrants and asylum seekers. The Committee is also concerned about the practical implications of designating asylum applications as “security cases” under the Aliens Act (2005:716) or “qualified security cases” under the Aliens Controls (Special Provisions) Act (1991:572) (arts. 2, 6, 7, 9, 13 and 26).

33. The State party should:

(a) Ensure that its policies and practices related to the return and expulsion of migrants and asylum seekers afford sufficient guarantees of respect for the principle of non-refoulement, in particular for those migrants and asylum seekers covered by the new temporary adjustments to the asylum legislation that are currently being drafted within the Government Offices, as well as for those designated as “security cases” or “qualified security cases”;

(b) Ensure that the detention of migrants and asylum seekers is a measure of last resort and for the shortest period of time, is necessary and proportionate in light of the circumstances, and that alternatives to detention are resorted to in practice.

Unaccompanied minors

34. The Committee notes the large number of unaccompanied minors seeking asylum in the State party and is concerned about the failure of the State party to account for a large number of unaccompanied minors who entered the State party and went missing in recent years, and about the possible trafficking in such minors (arts. 7, 13, 17, 23 and 24).

35. The State party should ensure that the principle of the best interests of the child is given primary consideration in all decisions concerning unaccompanied minors, including their reception, integration and return to the country of origin or elsewhere. It should take all measures necessary to guarantee the safety and wellbeing of unaccompanied minors, ensure their adequate placement and provide them with care and support based on an individual assessment of their circumstances. The State party should strengthen the safeguards in place against refoulement, and it should take robust measures to investigate the phenomenon of missing unaccompanied minors, address its underlining causes, and make concerted efforts to prevent such future occurrences.

Right to privacy and surveillance

36. While acknowledging a number of safeguards in place to prevent abuse in the application of the Signals Intelligence Act (2008:717), the Committee remains concerned about the limited degree of transparency with regard to the scope of these surveillance powers and the safeguards on their application. It is also concerned about the lack of sufficient safeguards against arbitrary interference with the right to privacy with regard to the sharing of raw data with other intelligence agencies (arts. 2 and 17).

37. The State party should increase the transparency of the powers of, and safeguards on the National Defence Radio Establishment (Försvarets Radioanstalt - FRA), the Foreign Intelligence Court and the Data Inspection Board by considering to make their policy guidelines and decisions public, in full or in part, subject to national security considerations and privacy interests of individuals concerned by those decisions. It should also ensure: (a) that all laws and policies regulating the intelligence-sharing of personal data are in full conformity with its obligations under the Covenant, in particular article 17, including the principles of legality, proportionality and necessity; (b) that effective and independent oversight mechanisms over intelligence-sharing of personal data are put in place; and, (c) that affected persons have proper access to effective remedies in cases of abuse.

Rights of indigenous people

38. The Committee welcomes the State party's commitment to further advance the interests of the Sami people and to realise their right to self-determination and acknowledge the new changes in the constitutional and legal framework in this regard, including amendments to the Swedish Constitution (the Instrument of Government) entered into force on 1 January 2011 whereby Sami have been explicitly recognized as a people. However, it remains concerned about: (a) the slow progress in concluding negotiations for the adoption of the Nordic Sami Convention; (b) the limited resources allocated to the Sami Parliament; (c) the scope of the duty to consult with representatives of the Sami people in connection with extractive and development projects, including those regulated under e.g. the amended Minerals Act; (d) the difficulties faced by Sami in securing rights over lands and resources, including the high burden of proof requirements on Sami claimants to demonstrate land ownership and inability of Sami villages to obtain legal aid under the Legal Aid Act, although they are the only legal entities empowered to act as litigants in land disputes in respect of Sami lands and grazing rights (arts. 1, 2, 14, 26 and 27).

39. The State party should take measures to:

(a) Contribute efficiently to the adoption without undue delay of the Nordic Sami Convention;

(b) Ensure that the Sami Parliament is provided with adequate resources to enable it to fulfill its mandate effectively;

(c) Review existing legislation, policies and practices regulating activities which may have an impact on the rights and interests of the Sami people, including development projects and extractive industries operations, with a view to guaranteeing meaningful consultation with the affected indigenous communities aimed at attempting to obtain their free, prior and informed consent;

(d) In line with the Committee's previous recommendation (see CCPR/C/SWE/CO/6, para. 21), grant adequate legal aid to Sami villages in court disputes concerning land and grazing rights and provide for a suitable burden of proof in cases regarding Sami land and grazing rights.

The Committee finally encourages the State party to initiate, as indicated, the preparatory work towards the ratification of the ILO Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries.

D. Dissemination of information relating to the Covenant

40. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, its seventh periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into its official language.

41. Pursuant to rule 71, paragraph 5, of the rules of procedure of the Committee, the State party should provide, within one year, relevant information on the implementation of the recommendations made by the Committee in paragraphs 17 (racism and hate speech) and 33 (rights of aliens, including migrants, refugees and asylum seekers) above.

42. The Committee requests the State party to submit its next periodic report by 31 March 2023 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country.

43. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course, and its replies to it will constitute the eighth periodic report of the State party. The word limit for the report is 21,200 words, in accordance with General Assembly resolution 68/268.