

Sweden's compliance with the International Covenant on Civil and Political Rights (ICCPR)

**Joint NGO submission for the UN Human Rights Committee's review
of Sweden during its 116th session, 7-31 March 2016**

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Introduction

1. The following report is submitted by Civil Rights Defenders, a Sweden-based international human rights organization, with contribution from 18 civil society organizations and human rights activists in Sweden. The purpose is to give input to the UN Human Rights Committee (the Committee) with respect to Sweden's compliance with the International Covenant on Civil and Political Rights, for the Committee's review of Sweden during its 116th session in March 2016.

General observations

2. The situation for civil and political rights in Sweden is generally good in comparison with many other countries. There are, for example, oversight mechanisms to safeguard the freedom of opinion, assembly, speech and religion, as well as protection for due process and legal certainty. At the same time there are significant human rights concerns in Sweden, in particular in regard to the rights protection for minority populations and other vulnerable groups. This report aims at pointing the Committee's attention to some of these concerns. The report does not claim to be exhaustive. As such, Civil Rights Defenders and the undersigned organizations (the signatory organizations) do not contend that the issues addressed below describe all human rights concerns under the Covenant in Sweden. The issues addressed in this report have been selected because these are areas where the signatory organizations possess specific expertise.
3. The signatory organizations would like to point the Committee's attention to the fact that the Government in its state report only addresses measures taken, including legislative measures, but not effects or the long-term impact. This is a standard approach in Swedish governmental human rights reporting. With this approach, it is virtually impossible to know from the Government's report whether the human rights situation actually has improved since last reporting to the Committee. Civil society groups have on a number of occasions highlighted this shortcoming and have called for more results-based reporting from the Government, but so far to no avail.

General information on the national human rights situation

Question 1(a):

4. The signatory organizations confirm that the Government is working on a proposal for a new human rights strategy. The civil society has been invited to

give general input, but without directions or specific questions to address, it is difficult for civil society to contribute substantively and adequately to the process. It is vital that the civil society should be involved at all stages of the process to develop, implement and follow up the strategy. In order for the strategy to be an effective tool for human rights implementation, it must include concrete and measurable human rights indicators, stipulating the division of labor between relevant Government agencies, and establishing clear mechanisms for follow-up and evaluation.

5. There are many supervisory bodies in Sweden, monitoring the work of national and regional agencies. Each of them must regularly report on developments and activities within their area of responsibility. Our experience is that those reports seldom include an analysis from a human rights perspective or in relation to the recommendations Sweden has received from UN treaty bodies. The signatory organizations would welcome an explicit obligation for all supervisory bodies to analyze activities and developments from a human rights perspective.
6. As has been observed by several treaty bodies, the current system of human rights indicators established in Sweden is insufficient.¹ Existing indicators do not cover broadly all of the rights areas guaranteed by the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant). The reporting system is voluntarily based at municipal level, even though Sweden has not made any reservation in this respect. The signatory organizations reiterate that Sweden must develop adequate indicators at national as well as local level in relation to all human rights, including a compulsory system for monitoring and evaluation.
7. The signatory organizations confirm that the Parliamentary Ombudsman has been entrusted the task of examining the situation for individuals deprived of their liberty according to the Optional Protocol to the Convention against Torture. We welcome the important work by the Ombudsman in this regard. However, as can be concluded from the outcomes of the Ombudsman's investigations, there are unfortunately major shortcomings in Swedish closed institutions from a human rights point of view. It is therefore concerning that

¹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden, adopted by the Committee at its eighty-third session (12–30 August 2013)*, CERD/C/SWE/CO/19-21, 23 September 2013, para 7; Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Sweden*, CRPD/C/SWE/CO/1, 12 May 2014, para 5.

there are neither systematic follow-ups of the Ombudsman's investigations, nor reports of whether and how the shortcomings have been addressed by the institutions. As such, civil society cannot know if the observed rights violations that have been identified by the Ombudsman will also be adequately addressed.

8. In its report, the Government claims that the Covenant is applied and adhered to in Swedish court proceedings. As an example, the Government mentions a case from 2010, in which the Land and Environmental Court found that a permit for planned wind turbines would violate Article 27 and that the permit therefore was denied. However, the Government fails to mention that upon appeal, the Appeals Court found that the application of relevant national law indeed was consistent with Article 27 and therefore overturned the lower court's decision and granted the permit.² It is disingenuous of the Government not to mention that the decision was overturned upon appeal, as it creates a false impression of the real outcome of the case in question.

Question 1(c):

9. The Covenant has not been incorporated into Swedish law. Instead, as mentioned in the Government's report, national laws should be interpreted in conformity with the Covenant. However, a report from the Government-commissioned Delegation for Human Rights in 2010 showed that agencies and courts tend to presume that standard interpretation of national law is in harmony with Sweden's international commitments. They therefore tend not to conduct an independent assessment of whether this interpretation is indeed aligned with Sweden's international obligations.³ Authorities' and courts' lack of knowledge about the Covenant and other binding human rights instruments, as well as ignorance of their obligations to interpret national legislation in light of these provisions, are significant reasons for why individuals do not enjoy the rights protection they are entitled to.

10. A proposal for a new Municipal Law, planned to enter into force on 1st of January 2018, was recently submitted to the Government.⁴ The proposal presents a number of measures to ensure that Swedish municipal law align with EU law. However, it lacks any reference to how Swedish municipalities

² Land and Environment Court of Appeal, Case no 824-11, 23 November 2011.

³ Ministry of Culture, *Ny struktur för skydd av mänskliga rättigheter*, ID no SOU 2010:70, final report from the Delegation of Human Rights in Sweden, Stockholm 2010, p. 130.

⁴ Ministry of Finance, *En kommunallag för framtiden*, ID no SOU 2015:24, final report of the investigation on a new municipal law, Stockholm 2015.

should ensure that international human rights obligations be taken into account and adhered to at municipal level. There are significant discrepancies between Swedish municipalities in regard to how they address human rights of various kinds. As such, the failure to regulate this issue is a serious shortcoming in the proposal for a new Municipal Law. The UN Committee on the Rights of Persons with Disabilities (CRPD Committee) has observed that “there is a serious gap between policies followed by the State party and those followed by the municipalities with respect to the implementation of human rights”.⁵ The signatory organizations emphasize that a municipality should never be able to evade its human rights responsibilities by referring to the local self-government.

Suggested recommendations, Question 1:

- The Government should involve civil society in the development and implementation of the new human rights strategy and ensure that it contains concrete and measurable human rights indicators, division of labor between relevant Government agencies, and clear mechanisms for follow-up and evaluation;
- The Government should ensure that national and regional supervisory bodies in their scrutiny of relevant agencies analyze activities and developments in relation to the international human rights conventions to which Sweden is a party. This analysis should form an integral part of the annual reporting to the Government conducted by each supervisory body;
- The Government should undertake necessary measures to ensure that all national, regional and municipal agencies as well as all courts interpret national legislation in light of the international human rights conventions to which Sweden is a party;
- The Government should review the current system for human rights indicators to ensure that it covers all rights under the Covenant and that agencies and municipalities monitor and follow up on its implementation. The indicators must be developed in close cooperation with civil society;
- The Government should establish a system for obligatory follow-up on the shortcomings identified by the Parliamentary Ombudsman (OPCAT unit) in

⁵ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Sweden*, CRPD/C/SWE/CO/1, 12 May 2014, para 7.

closed institutions in Sweden and ensure accountability for non-compliance with its recommendations.

Constitutional and legal framework

Question 3(a):

11. For comments and suggested recommendations concerning the Equality Ombudsman, see below under Question 12, paragraph 64ff.

Question 3(b):

12. In July 2015, the Government announced that it would propose the Parliament to establish an independent institution for the protection of human rights in Sweden. The signatory organizations welcome this initiative and support the proposal that the institution should be subordinated to the Parliament, not the Government. However, it is concerning that the Government has announced that the institution should form part of an already existing agency. The two relevant agencies currently subordinated to the Parliament—the Parliamentary Ombudsman and the Swedish National Audit Office—lack relevant expertise and experience in human rights law and do not address structural rights problems in ways that would be required for an independent human rights institution to operate effectively. Therefore, Swedish civil society organizations have expressed that it is vital that a *new* institution will be founded under the Parliament, with relevant expertise and resources for the task at hand. So far, the Government has not addressed the concerns expressed by Swedish civil society in this regard. Additionally, the Government has neither addressed the questions related to how sufficient financial resources for the new institution will be secured in the long term, nor how it envisions that civil society will be guaranteed transparency and influence.

Suggested recommendations, Question 3:

- In its proposal to the Parliament about a National Human Rights Institution, the Government should emphasize that the institution be established as a new agency directly subordinated to the Parliament and that it be granted relevant financial and staff resources that correspond with a broad mandate to promote and protect human rights in Sweden;
- The Government should further emphasize that for the institution to operate effectively, civil society must be guaranteed transparency and influence.

Counter-terrorism measures

Question 4:

13. It is difficult to obtain a comprehensive picture of how the Government handles recommendations that Sweden receives from various treaty monitoring bodies. Information about the Government's work to implement recommendations is not described or presented in a way that enables civil society and the public to monitor whether the recommendations are in fact complied with. The Government does not even publish concluding observations from all treaty bodies on its homepage; it only publishes a few. It makes it difficult, especially for individuals and organizations that are not familiar with the human rights system, to find and monitor all concluding observations directed to Sweden.

Suggested recommendation, Question 4:

- The Government should establish a system by which civil society actors easily can find and monitor the implementation of concluding observations from the Committee and other human rights monitoring bodies.

Question 5(a):

14. In its report, the Government sets out legal safeguards in place to guarantee the rights under Article 9 and 14 of the Covenant of all suspects of criminal activity. The Government does not, however, explain to what extent the counter-terrorism legislation is in conformity with the provisions of the Covenant. During the past few years, the Government has taken a number of steps to amend legislation and introduce new laws to make the legal framework to combat terrorism increasingly more far-reaching and effective. The signatory organizations are concerned about the large number of laws that constitute the counter-terrorism legislation, making it difficult to get a good overview and understanding of the actions criminalized and to what extent the legislation conforms with human rights standards.

15. In December 2015, amendments to the existing counter-terrorism legislation were proposed that, if adopted by the Parliament, would introduce new crimes that aim at preventing individuals from, for example, joining or supporting terrorist groups or receiving training with the intention of committing serious crime, including terrorist crimes.⁶ According to the Government, the proposed legislation would ensure that the Swedish legislation complies with UN

⁶ Ministry of Justice, *Ett särskilt straffansvar för resor i terrorismsyfte*, Governmental bill 2015:16/17, Stockholm 17 December 2015.

resolution 2178 (2014) and recommendation 5 of the Financial Action Task Forces (FATF).

16. The signatory organizations are concerned that the proposed legislation has come about hastily, without a thorough analysis of the implications on fundamental human rights protected under the Covenant. While we see a need for effective ways to combat terrorism, measures taken must conform to international human rights standards. We are concerned that the proposed legislation instead of criminalizing acts that are harmful, criminalizes the intention behind everyday activities such as travelling, giving or receiving gifts, and also in situations where these intentions and actions may not result in harmful acts. We are concerned that the proposed legislation infringes human rights, such as the freedom of thought, the freedom of movement, the freedom of expression and the freedom of association.
17. Civil Rights Defenders, other civil society organizations, and Government agencies have expressed concern that the proposed legislation would be difficult to apply in practice and that the new provisions will have limited effect on its expressed aim: to fight terrorism.⁷ Concern has also been expressed that the proposed legislation is not sufficiently clear and precise to comply with international standards. It is concerning that the Government has made no effort to assess whether the proposed legislation will achieve the desired effect to prevent people from joining terrorist groups. Without such analysis, it is not possible to establish whether the human rights limitations that result from these measures will be proportionate or not.
18. Civil society groups have also expressed concern that these measures may further stigmatize Swedish Muslims in general and that, in order for the police to identify perpetrators of these new crimes, Muslims would become the target of both ethnic profiling and secret surveillance.
19. In its own report, the Government makes no effort to respond to the Committee's question about the implementation of the legal safeguards in relation to people suspected of terrorist crime, and measures taken to ensure not only that the legislative framework but also its implementation are in full conformity with the requirements of the Covenant.

⁷ Ministry of Justice, *Ett särskilt straffansvar för resor i terrorismsyfte*, Governmental bill 2015:16/17, Stockholm 17 December 2015.

20. The signatory organizations do not have access to information that would allow us to make a thorough analysis of the implementation of the counter-terrorism legislation and assess to what extent actions taken by law enforcement agencies fully respect the rights of people suspected of terrorist crime. However, there are cases that indicate serious problems. In a case pursued by Civil Rights Defenders, where three individuals were suspected of planning a terrorist attack in Gothenburg in 2010, actions were taken by the police and prosecutor that violated the rights of the suspects protected under the Covenant. The actions by the police and the prosecutor were examined by the Parliamentary Ombudsman who concluded in 2014 that major errors were committed by the authorities.⁸ The Ombudsman identified serious flaws in the investigation and weaknesses in the evidence upon which the authorities acted. The Ombudsman concluded that as a result of the flaws, three innocent people were arrested and detained, and their families were subjected to violent police interventions in their homes. The Ombudsman also criticized the police for their decision to forcefully enter the home of a witness.

21. While in detention, the suspects were interrogated without the presence of legal counsel and the prosecutor made no assessment of whether the situation merited the suspects to have a lawyer present. A special prosecutor responsible for internal investigations also examined the case and came to the same conclusion as the Ombudsman in regard to the flaws during the investigation and the consequences thereof.⁹ The prosecutor further identified that the police had gathered evidence illegally and that a witness was wrongfully treated as a suspect of terrorist crime. Despite the errors identified and the severe consequences for the affected individuals, no official has been held accountable.

22. In a more recent case, the police and the security service in November 2015 suspected a 25-year old man for planning a terrorist attack in Sweden. The suspicion led the authorities to raise the terrorism threat level and police across the country were engaged in a manhunt to locate and arrest the young man. His name and photo were distributed broadly and published in print and broadcast media. The man was eventually identified and arrested under violent forms by heavily armed police. However, only a few days after the arrest, the man was released and no suspicions remained. It soon turned out that the man

⁸ Parliamentary Ombudsmen, decision no 2978-2012, 13 June 2014.

⁹ Decision on preliminary investigation 2011-04-07 (1400-K175348-10, K177357-10, K175362-10, K185730-10, K176006-10, K185725-10, K184565-10).

had been living openly in Sweden, registered with the migration authorities, staying in an apartment with his name on the door and with a Facebook account in his name. These facts suggest that the man could have been located and questioned without being subjected to public exposure and a violent arrest, had the police conducted a more thorough investigation and had they taken seriously his rights to privacy and procedural safeguards. The man has now demanded compensation from the state amounting to 1 000 000 SEK for the consequences he suffered because of the police's actions and that his name and photo were made public.¹⁰

23. These two cases indicate that legal safeguards to ensure due process and protection of the rights under the Covenant are insufficient in situations where people are suspected of terrorist crime. The cases indicate that law enforcement agencies act upon intelligence that provide weak evidence, and that they tend to use more force than justified or called for. While it is understandable that law enforcement agencies see a need to take suspicions of terrorist crime seriously and act accordingly, it is vital that safeguards and standards that apply generally in criminal investigations, also apply in these cases.

Question 5(b):

24. The signatory organizations note that the Government does not present any statistics in relation to the number of arrests and the number of convictions under the Terrorism Act. Nor does it make any real attempt to provide an explanation for the discrepancy between these numbers. The signatory organizations do not have access to statistics or facts to make an in-depth analysis of the reasons for the discrepancy between these numbers. However, the two cases described under 5(a) indicate that law enforcement agencies in cases where there is a suspicion of terrorist crime act based on limited information and weak evidence, which may contribute to a situation where the number of investigations and arrests is disproportionate in relation to prosecutions and convictions.

Question 5(c):

25. While the signatory organizations cannot provide a comprehensive picture of the effects of the Terrorism Act on minority communities, it can be noted that

¹⁰ Emelie Rosén, *Tidigare terrormisstänkt kräver skadestånd*, Swedish National Broadcast, 22 January 2015.

counter-terrorism legislation is almost exclusively debated and applied in the context of Muslims and Islamist terrorism.

26. The Equality Ombudsman issued a report in 2015 that examines the representation of Muslims in Swedish news media.¹¹ While the report does not say anything specifically about whether or how the application of the counter-terrorism legislation play a role in shaping the representation of Muslims in news media, it is interesting in this context to note the conclusions of the report. It concludes that stereotypical representations of Muslims are highly present in Swedish news media and that Muslims are mentioned primarily in connection to themes such as security, terrorism or military action. In such instances, Muslims are most often represented as offenders and rarely as victims or agents of change.

27. Actions by law enforcement agencies in cases such as those outlined under Question 5(a) risk having a negative impact on Muslims more generally, in particular since they get extensive media coverage. In the first of the two cases presented above, there are also circumstances that suggest that the suspicion by the police was raised because of the individuals' ethnicity. Representatives of Muslim communities also testify that Muslims experience ethnic profiling by the police. The experience of being specifically targeted by the police and news media will likely have the effect of decreased trust in Government agencies and the Swedish society in general among the Swedish Muslim population.

Suggested recommendations, Question 5:

- The Government should ensure that the counter-terrorism legislation and its implementation are comprehensively reviewed from a rights perspective and that an assessment is made of the combined effects on rights, protected under the Covenant, of individuals suspected of terrorism-related crime. Until a review is conducted, further legislation, including the now proposed legislation, should not be put in place;
- The Government should take steps to ensure that the counter-terrorism legislation does not have an adverse effect on minority communities in terms of, for example, ethnic profiling or stigmatization;

¹¹ Equality Ombudsman, *Representation, stereotyper och nyhetsvärdering. Rapport från medieanalys av representationen av Muslimer i svenska nyheter*, report 2015:1.

- The Government should assess the effectiveness of the legislation in its aim to combat terrorism and make a thorough analysis of the reasons behind any discrepancy between the number of arrests and the number of convictions.

Question 6:

28. Through the 2010 UPR process, Sweden received recommendations “to closely monitor the interpretation and application of the 2008 Surveillance Act to prevent any interference with the right to privacy”. Accepting these recommendations, Sweden noted in its own report that “[t]he combined effect of all secret investigative measures... must be weighed against the consequences that the measures taken together will have for privacy and the rule of law.” Recommendations to review, monitor and reform Swedish surveillance laws and to bring them in compliance with international obligations were submitted in the second cycle of the UPR review process as well.¹²

29. Despite this, Sweden continues to conduct signals intelligence operations in a manner that fails to balance security objectives with individual privacy, integrity and the rule of law. All mass surveillance programs constitute an interference with the right to privacy, yet Sweden has been implicated in the Five Eyes international surveillance network and the use of technology to facilitate data processing in bulk.¹³ Swedish surveillance practices discriminate arbitrarily on the basis of nationality and location, having disparate and adverse effects for non-Swedish persons. In 2014, the European Parliament called on Sweden to clarify these allegations regarding “untargeted” “mass surveillance of cross border telecommunications.”¹⁴

30. The National Defence Radio Establishment (FRA) has participated in this international cooperation in a manner that is arbitrary and based on sweeping and secret regulations and interpretations of law.¹⁵ Although the 2008 Surveillance Act only expressly mandates passive intelligence collection from ether-bound communications sources and transnational telecommunications

¹² See the recommendations of Slovenia and the Netherlands at the UN 2015 Universal Periodic Review. (n.d.). *Database of UPR Recommendations: Sweden: Second Cycle: Surveillance*.

¹³ Office of the United Nations High Commissioner for Human Rights (OHCHR), *The right to privacy in the digital age*, Doc no A/HRC/27/37, 30 June 2014; Magnus Sandelin, *Läs dokumenten om Sverige från Edward Snowden*, Svenska Dagbladet, 11 December 2013; National Defence Radio Establishment (FRA), *Visit Précis: SWEDUSA 2013 Strategic Planning Conference*, NSA/CSSM, April 2013.

¹⁴ European Parliament, Directorate-General for Internal Policies, *National Programmes for Mass Surveillance of Personal Data in EU Member States and their Compatibility with EU Law*, October 2013.

¹⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), *The right to privacy in the digital age*, Doc no A/HRC/27/37, 30 June 2014, para 21; Human Rights Committee General Comment No 16, Doc no <http://HRI/GEN/1/Rev.1>, April 1994.

cables, the FRA has covertly developed intrusive and offensive means of collection through Computer Network Exploitation (CNE).¹⁶ We are very concerned that, while Sweden has yet to review or even confirm the current use of CNE, it considers extending these powers to the Security Service's, Police's and Customs' domestic investigations.¹⁷

31. To date, the Swedish Government has shown no interest in rectifying the situation or responding to these allegations. While mass surveillance has been reviewed and struck down in court elsewhere, Sweden has neither conducted exhaustive reviews nor looked into any specific accusations derived from the disclosures.¹⁸ This brings us to seriously question the competence and will of the current oversight structures in ensuring democratic accountability and control of these far-reaching powers.

Suggested recommendations, Question 6:

- The Government should take all necessary measures to ensure that its surveillance activities, both within and outside Sweden, conform to its obligations under the Covenant, including article 17, and the principles of legality, proportionality and necessity;
- The Government should review and reform the Surveillance Act to ensure that any interference with the right to privacy is authorized by laws that: (i) are publicly accessible; (ii) adhere to legitimate aims; (iii) are sufficiently precise and specify the circumstances permitting interferences, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance, and the procedures for the collection, use, and storage of data; and (iv) provide for effective safeguards against abuse;
- The Government should reform the current systems of oversight and review of surveillance activities to ensure its effectiveness, and that access to effective remedies are in place for affected persons in cases of abuse.

¹⁶ National Defence Radio Establishment (FRA), *Visit Précis: SWEDUSA 2013 Strategic Planning Conference*, NSA/CSSM, April 2013.

¹⁷ Ministry of Justice, *Straffrättsliga åtgärder mot terrorismresor*, ID no SOU 2015:63, p. 181.

¹⁸ Ministry of Defense, *Integritetsskydd vid Signalspaning i Försvarsunderrättelseverksamhet*, Official letter no 2015/16:70, 10 December 2015.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty

Question 8:

32. The signatory organizations welcome efforts to include a national criminal provision against torture, as previously requested by treaty monitoring bodies. However, an analysis on discrimination on various grounds, as reason for and purpose of torture, as well as gender-specific forms of torture is still lacking. Such analysis would contribute to a better protection of particularly vulnerable groups, for example women, children and LGBTI persons, constituting the most frequent victims of torture.

Suggested recommendation, Question 8:

- The Government should include an in-depth analysis of gender-specific forms of torture in the preparatory works to the proposal of law criminalizing torture, as a means for ensuring better legal protection to frequent victims of torture.

Question 9(a):

33. There is no upper limit for how long an individual can be placed in pre-trial detention. The court decides on pre-trial detention after request from a prosecutor. If the court decides on pre-trial detention, the public prosecutor must decide on indictment within two weeks. The court may decide that the prosecution will be postponed by extension of the detention. The media has reported about cases where individuals have stayed in pre-trial detention for more than four years.¹⁹ In these cases, the detention is lawful under national legislation but the law itself creates a risk of detention being longer than what can be considered compatible with Sweden's international obligations, for instance, Article 9(3) of the Covenant and Article 5 of the ECHR, which provide that the individual should be entitled to trial within a reasonable time. The Committee Against Torture (CAT) has criticized Sweden for the absence of a maximum time limit for pre-trial detention, but still no legislative changes concerning time limits have been proposed or adopted.²⁰

34. The annual report 2014 published by the Swedish National Quality registries, a system of national registries for health and medical services, shows that 13 percent of patients in forensic psychiatric care were ready to be discharged by

¹⁹ Hannes Delling, *Ny FN-kritik väntas mot häktstider*, Svenska Dagbladet, 15 October 2014.

²⁰ Committee against Torture, Concluding observations on the sixth and seventh periodic reports of Sweden, CAT/C/SR.1272, 18 November 2014, para 9.

their doctors but remained in detention.²¹ The share appears to have increased from 10% in 2010. The report specifies the reasons for why those persons continued to be detained, such as lack of housing and lack of cooperation/agreements between the county council and the municipality about payment for outpatients. How long the patient usually is detained after he or she should be discharged by a doctor differs. One example is a patient who was detained at Karsudden, an institution for forensic psychiatric care in Sörmland, for four years while awaiting another accommodation.²² In these cases, initial detention complies with the law, but reasons for the subsequent detention is incompatible with both Swedish and international law.

35. As regards immigration detention, statistics are missing. The public investigation SOU 2011:17 about detention noted that there are no reliable statistics on how many foreigners have been placed in immigration detention, and there is also a lack of information as to the reasons for detention.²³

36. At times, the regulations in relation to psychiatric care are in accordance with human rights standards, but the application violates these standards. One example is the Compulsory Psychiatric Care Act, which, on several occasions, has been used to detain persons with disabilities into psychiatric compulsory care, only because of their disability.²⁴ Individuals who have contacted the signatory organizations testify that they have been locked up for years, sometimes with year-long solitary confinement, even though the only diagnosis was a psychiatric or neuropsychiatric disability. Of course, people with different disabilities may have additional psychiatric problems and can therefore be subjected to and helped by psychiatric treatment. However, when the behavior that led to compulsory treatment is solely due to a disability and resulting from lack of support, the deprivation of liberty is undoubtedly inconsistent with Article 9 of the Covenant and Article 14 of the Convention on the Rights of Persons with Disabilities (CRPD). Sweden has received criticism from the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) on the use of compulsory psychiatric care.²⁵

37. As discussed above, the courts' and authorities' interpretation of domestic law is one reason for why the detention may be incompatible with international law.

²¹ Nationellt Rättspsykiatriskt Kvalitetsregister, *RättspsyK*, Annual report 2014, 2015, p. 25.

²² Per Sternbeck, *Henry var färdigbehandlad*, RFHL/Oberoende, April 2011, p. 4.

²³ Ministry of Justice, *Förvar*, ID no SOU 2011:17, Stockholm 2011.

²⁴ Law (1991:1128) on compulsory psychiatric care.

²⁵ Committee on the Rights of Persons with Disabilities, *supra note 5*, para 35 and 36.

Access to public counsel is therefore critical to ensure that detentions are lawful but also that they comply with Sweden's international obligations. Sweden must undertake measures to guarantee that individuals have access to legal aid when they are detained, but also proactively when they run the risk of being deprived of their liberty.

38. With regard to Sweden's obligation to minimize the use of coercive measures and detention, the signatory organizations would like to highlight the lack of access to psychiatric care. According to research, the denial of psychiatric treatment increases the risk by four times that a mentally disturbed person will subject others to violence within the next few days after having been denied treatment.²⁶ This indicates that the lack of psychiatric care increases the risk for individuals to commit crimes and consequently to be deprived of their liberty. Sweden's deficiency in terms of psychiatric care has caught the attention of the CRPD Committee.²⁷

39. A 2015 review of the Swedish Prison and Probation Service conducted by the National Audit Office illustrates that the number of former offenders who commit new offences has remained unchanged for a long time.²⁸ The review shows different causes for recidivism. Among other things, it explains that the efforts to reduce recidivism are too few in relation to the needs, and that measures are taken too late and are often uncoordinated. The report shows that long waiting times, both in health care and social services, minimizes effectiveness.

40. The National Audit Office emphasizes that if some decisive action is delayed or absent, especially during the critical period immediately after release or at the beginning of a non-custodial sanction, there is a major risk for individuals to relapse in crime or abuse. The report also shows that the system is far from equal as the clients' ability to receive support and care from society actors varies depending on where in the country they live. The signatory organizations urge the Government to undertake measures to minimize the risk for individuals do relapse in crime.

²⁶ *Ulrika Haggård-Grann, Violence among mentally disordered offenders: Risk and protective factors, Karolinska Institute, Department of Clinical Neuroscience, June 2005.*

²⁷ Committee on the Rights of Persons with Disabilities, *supra note 5*, paras 17, 35 and 36.

²⁸ Swedish National Audit Office, *Återfall i brott - Hur kan samhällets samlade resurser användas bättre?*, RIR 2015:4, Stockholm 2015.

41. The opportunity for medication-assisted rehabilitation for opiate dependence is deficient in most sites of detention in Sweden. Persons who may have been enrolled in treatment for several years may abruptly be cut off from treatment when deprived of their liberty. Usually they have to reapply to the county council's rehabilitation center after they have served the sentence. It is also common that there are long waiting times to access treatment. This tends to result in people relapsing in both heroin addiction and crime after serving their sentence.
42. Signatory organizations have repeatedly been approached by people who have been deprived of their liberty in ways that are incompatible with Article 9 of the Covenant. Risk areas for illegal detention are group homes for people with intellectual or mental disabilities and the elderly. Such accommodation arrangements are voluntary, but individuals are often locked down during evenings and nights without support in law. This must be recognized and stopped immediately.
43. According to the law on Public Counsel, the State only compensates the legal counsel for investigation that is reasonably warranted and if the investigation cannot be obtained through the court or the authority dealing with the case. In practice, this means that the investigation often is insufficiently thorough and tends not to take the individual's views fully into account. In cases concerning compulsory care, it is a senior consultant or the responsible physician who writes the application for the compulsory care, and attaches the care plan. In other words, it is the patient's adversary who is responsible for the investigation.
44. In relation to matters of forensic compulsory treatment, the counsel receives compensation for about only 1,5 hour work. A thorough investigation into the conditions described in the care plan can in most cases not be conducted in such limited time. This results in a practice where the public attorney meets the patient only briefly and asks about his or her view on the care plan, primarily to learn if the patient accepts or opposes it. Consequently, many individuals deprived of their liberty are not provided the fundamental legal safeguards as required by the Covenant.
45. When a person is first taken into custody, he or she shall, according to Article 14 of the Covenant and Article 5 of the ECHR, be informed of the reasons for custody. The information should be provided both orally and in writing, and the

written information should be available in a language and format the individual can understand.²⁹ A National Council for Crime Prevention survey from 2015, “Young Inmates in Custody,” shows that a fifth of the respondents thought the information was difficult to understand.³⁰ The respondents said they had either difficulties understanding Swedish, had poor or no information in their own language, or that the information was too complicated. There is no information on what support is provided to inmates with different disabilities to ensure that they receive adequate information.

46. In 2015, the Government assigned three investigations related to pre-trial detention.³¹ We welcome this, but unfortunately the investigations still do not look into issues specifically related to detainees with disabilities. Civil Rights Defenders has addressed the Government and the investigator in charge, requesting that an assessment of what support and information inmates with different disabilities or mental illnesses are given must be included in these investigations. The Ministry of the Interior confirms that these questions are important, but the directives have not been revised.

Question 9(b):

47. The possibility to appeal against a court decision, including the introduction of restrictions, was introduced in the Custody Law in 2011. The Custody Ordinance (2010:2011) also contains rules on the prosecutor's obligations related to information and documentation. According to the Ordinance, the investigator or prosecutor shall immediately inform the inmate and the authority responsible for the detention on the decision of restrictions under the Custody Law. The circumstances giving rise to a decision on restrictions must also be documented. The inmate should be able to see the documentation to the extent it can be done without jeopardizing the criminal investigation. The signatory organizations welcome this regulation.

48. During the period 2002-2012, 74 people committed suicide within the Swedish penitentiary system. During the same period, 702 self-destructive actions and suicide attempts were reported.³² A report from 2009 shows, amongst other

²⁹ Convention on the Rights of Persons with Disabilities, Articles 2 and 9.

³⁰ Nadja Bogestam, *Unga i häkte*, Swedish National Council for Crime Prevention, Stockholm 2015.

³¹ Minister of Justice, *Uppdrag till Brottsförebyggande rådet att genomföra en kartläggning av situationen i häkte*, Ref no Ju2015/05662/KRIM, July 2015; Uppdrag till Statskontoret att granska hanteringen av forensiska undersökningar i ärenden med häktade personer, Ref no Ju2015/05664/Å, July 2015.

³² Jörgen Filipsson, *Själv mord och självskadebeteende: En studie om självmord och självskadebeteende inom svensk kriminalvård 2002-2012*, Kristianstad University, 2013.

things, that the risk of suicide is nine times higher for inmates placed in isolation rather than those placed in shared cells.³³

49. The National Council for Crime Prevention survey from 2015, “Young Inmates in Custody,” shows it is common to use restrictions on young inmates.³⁴ 85 percent of the respondents had experienced restrictions during their pre-trial detention. The restrictions mostly consist of a combination of measures, for example not being allowed to receive visits, phone calls, letters or other consignments without prior examination by prosecutors. In most cases, those restrictions are also combined with a prohibition to sit together with another inmate or a prohibition to spend time in common areas with other inmates. Restrictions against young inmates in Sweden have been criticized by, among others, the UN Committee on the Rights of the Child.³⁵

50. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has at a number of occasions pointed out and criticized the Swedish Correctional System regarding solitary confinement of inmates and the extremely long detention periods.³⁶ According to the Swedish Prison and Probation Service, inmates in pre-trial detention should as far as possible meet other people (detainees or staff) for at least two hours per day.³⁷ However, not even a third of the respondents in the study on young inmates said they were able to interact with other people for two hours a day. Furthermore, all inmates under the age of 21 years must according to the Swedish Prison and Probation Service have contact with the prison officer, guidance counselor and a careers officer within ten days of detention. However, 21 percent of the respondents said they had not had contact with the youth guidance counselor and 24 percent said they have not had contact with the careers officer during their time in custody.

51. All inmates under the age of 21 years should, according to the Swedish Prison and Probation Service, be allowed to have contact with other professionals as well while in custody. It can be a teacher, psychologist, lawyer, a priest, imam

³³ Swedish Prison and Probation Service, The Nursing inspection’s final report, *the nursing report on the country’s detention centers*, 2009, p. 7.

³⁴ Nadja Bogestam, *supra note 30*.

³⁵ Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of Sweden*, CRC/C/SWE/CO/5, 6 March 2015, para 25.

³⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Swedish Government, Visit 09/06/2009-18/06/2009, 11 December 2009.

³⁷ Swedish Prison and Probation Service, *Restrictions on Demand*, <http://www.kriminalvarden.se/swedish-prison-and-probation-service/remand/restrictions-on-remand/>.

or another representative of a religious community, or similar. The inmates said that they primarily wanted contact with psychologists, staff from social services or NGO's, but around 70 percent responded that this was not materialized.

52. The above-mentioned statements of the Prison and Probation Service are expressed as goals related to persons under 21 years of age. For older inmates, these goals are expressed as ambitions. The signatory organizations emphasize that these goals should be the same for all inmates, regardless of age.

Question 9(c):

53. The Government has proposed that a new regulatory authority for the Police and the Prison and Probation Service should be formed. The signatory organizations welcome the proposal but are concerned since the preparatory works have failed to address Sweden's international obligations and the relevant recommendations Sweden has received from treaty monitoring bodies. These recommendations conclude, among other things, that Sweden should "ensure prompt, impartial and effective investigations by an independent body of all allegations of ill-treatment and excessive use of force by law-enforcement agencies," such as the police.³⁸

Suggested recommendations, Question 9:

- The Government should ensure that relevant authorities provide reliable statistics on how many foreigners have been placed in immigration detentions, including information on the grounds for detention in each individual case;
- The Government should ensure that no deprivation of liberty occurs without due process and clearly specified lawful grounds, also in cases of migration custody and compulsory psychiatric care;
- The Government should ensure that when the legal ground for deprivation of liberty no longer is present, the individual must immediately be released. The Government must also ensure that after their release, individuals receive adequate support to reintegrate into society;

³⁸ Committee against Torture, Concluding observations on the sixth and seventh periodic reports of Sweden, CAT/C/SR.1272, 18 November 2014, para 14.

- The Government should ensure that all persons deprived of their liberty be granted information about their rights and obligations while in custody, in a language and by means that they can understand;
- The Government should drastically work towards the reduction of the use of solitary confinement and ensure that all inmates have contact with others for at least two hours per day. Further, a system must be put in place to monitor the use of solitary confinement in all closed institutions;
- The Government should introduce a maximum time limit for how long people can be detained in a pre-trial detention. An investigation of how long the sunset clause should be in relation to the reasons for detention must be introduced without delay;
- The Government should ensure prompt, impartial and effective monitoring of the Prison and Probation Service by an independent body. The new authority must have the mandate to investigate and analyze all aspects of the Prison and Probation Service from a human rights perspective, including in relation to recommendations Sweden receives from various international treaty bodies.

Question 10:

54. The last couple of years have witnessed a dramatic increase in deaths following various forms of police interventions in Sweden. Between January 2013 and May 2014, interventions ended in the deaths of seven persons because of the use of firearms by the police. This must be contrasted with the fact that in the previous ten years, a maximum of one person per year died under similar circumstances.³⁹ Persons who had problems with mental health illnesses have constituted at least half of the total number of victims of fatal police shootings since 1995.⁴⁰

55. There is only one instance of fatal police shootings since 2000 that has resulted in liability for the police officer responsible for the death.⁴¹ All others to date have resulted in acquittals. The signatory organizations are concerned that the accountability mechanisms are ineffective. The basis for acquittal has in all cases been the provision regulating the general right to self-defense under the

³⁹ Ossi Carp, *Rekordmånga polis-skjutningar – "inget mönster"*, Dagens Nyheter, 13 November 2013.

⁴⁰ Conclusion drawn from media analysis carried out by Civil Rights Defenders.

⁴¹ Andreas Alfredsson, *Polisman döms till fängelse för dödsskjutning*, Aftonbladet, 30 October 2000; Fanny Petersson, *År domstolar ovilliga att fälla polismän?*, LL.M thesis, Lunds Universitet, Faculty of Law, 2013.

Swedish Penal Code. Given the police's duty to protect the society and the law enforcement's monopoly on the use of violence, a higher standard of care regarding self-defense should apply to the police than to other citizens. Nevertheless, the Government has so far failed to heed calls for a separate regulation of self-defense for law enforcement personnel.

56. Civil Rights Defenders will in February 2016 submit an individual complaint to the Committee against Sweden regarding the fatal shooting of Daniel Franklert Murne in 2005. The parents of Daniel, who suffered from an acute psychosis, had called the police, pleading that he be taken to the hospital for medical care. Instead of receiving help, his parents had to witness how Daniel was shot dead on the stairs of their home. Despite the fact that Daniel did not constitute a danger to anybody, the policemen drew and cocked their guns immediately upon arriving to the scene and shot within minutes, instead of trying alternative and less intrusive methods. The sequence of events in this case is remarkable but not unique. It points to serious flaws within the police in relation to their dealing with individuals suffering from mental illness.

57. According to a recent poll administrated by the National Police Union, three out of four police officers feel insufficiently prepared to deal with mentally instable persons.⁴² The report shows for instance that police regularly deal with psychiatrically ill persons without adequate training or preparation. This leads to a high risk of disproportionate use of force when the police encounter a person who suffers from a temporary psychological ailment or a psychological or intellectual disability.

58. A recent example of disproportionate use of force is the case with the 28-year-old engineer Sinthu Selvarajah, who got a temporary psychosis in December 2014.⁴³ At the psychiatric hospital where he was taken to compulsory care, the staff locked him down and contacted the police for help. Even though Sinthu had already calmed down by the time the police arrived, the policemen used three cans of pepper spray on Sinthu, despite the fact that the police guidelines state that pepper spray must be used with caution.⁴⁴ The police also pushed a plastic bag onto Sintu's mouth and a policeman pushed his knee and body

⁴² The Swedish Police Union, *Har Polisen rätt förutsättningar att bemöta psykiskt sjuka? - En undersökning bland 2024 poliser*, Exquiro Market Research, 2009.

⁴³ Bo-Göran Bodin and Daniel Velasco, *Död i slutet rum*, P1 Documentary, Swedish National Broadcast, 29 November 2015.

⁴⁴ National Police Board, *Rikspolisstyrelsens föreskrifter och allmänna råd om OC-spray (pepparspray)*, RPSFS 2011:17 FAP 104-4, 10 January 2012.

weight between Sintu's shoulder blades, when Sinthu was lying on his stomach. This method is sometimes referred to as the death grip and has since the infamous Osmo Vallo case in the 90s been prohibited in Sweden. This prohibition is included in Police Academy's handbook on intervention and self-defense techniques.⁴⁵

59. When the police left the room about ten minutes later, Sinthu Selvarajah had stopped breathing and was declared dead shortly thereafter. The police did not only go into direct confrontation with him—a person suffering from acute psychosis—but they also used disproportionate violence and methods that are prohibited due to their dangers to life. The positive obligations under the Covenant indicate that Sweden has a responsibility to ensure that no one, regardless of mental health issues, should risk severe harm or death while in contact with the police.

60. To avoid that more people are unnecessarily killed or subjected to excessive force by the police, it is necessary that all police officers must receive training on how to handle encounters with persons with mental illness.

61. Swedish police officers are always armed, and the ammunition used is expanding bullets (so-called dum dum bullets); ammunition whose usage has been banned in wartime since 1899 under international law because of the unjustifiable suffering it causes.⁴⁶ According to a memorandum from the Swedish Defence Research Agency, before the introduction of expanding bullets as obligatory ammunition for the police in 2002, its use significantly increases the risk for serious bodily injury and death compared to other ammunition. The memorandum also concluded that the harm caused by this ammunition is likely to be harder to treat.⁴⁷

Suggested recommendations, Question 10:

- The Government should establish an independent mechanism for follow-up, investigation and accountability in cases of police violence;

⁴⁵ The Police Academy, *Konflikthantering/självskydd: handbok i ingripande- och självförvarsteknik för Polisen*, 2006; Ekot, *Fakta: Här är polisens farliga grepp*, Swedish National Broadcast, 26 November 2015.

⁴⁶ Declaration on the Use of Bullets Which Expand or Flatten Easily in the Human Body, IV, 3, Hague July 29 1899 (1899 Hague Convention IV,3).

⁴⁷ Swedish Defence Research Agency (FOI), *Sårballistisk undersökning av 9 mm tjänsteammunition*, FOI Memo, April 2002.

- The Government should ensure that the education of the police includes training on how to handle persons with mental illness, including from a rights perspective, and that this training involves learning about mental health problems from persons who have experience of mental ill-health themselves;
- The Government should ensure that the pre-conditions and mechanisms are in place so that the police can handle persons who suffer from a mental health condition, including supplementary training, tutorial and guiding support in case of judicial assistance;
- The Government should revise the legal framework regulating the use of firearms and self-defense in order for it to adhere to relevant human rights standards.

Question 11:

62. Some reporting on the use of electro-convulsive treatments (ECT) in Sweden is already in place but lack in effectiveness. An investigation conducted by the National Board of Health and Welfare shows that only half of the ECT are registered and the report system as such lacks in accuracy.⁴⁸ One of the most common critiques of the use of ECT is the lack of information about the treatment and the consequences thereof, and the lack of informed consent for the individual on whether to participate in the therapy or not.

63. In regard to the monitoring of treatment of persons in psychiatric care in general, a wider range of indicators must be developed. It is necessary not only to include health-related indicators but also other indicators related to whether the individual's human rights are safeguarded. In this way, potential abuse can be properly monitored, remedied and prevented.

Suggested recommendations, Question 11:

- The Government should ensure that individuals are only subjected to electro-convulsive treatments (ECT) with their informed consent and that, if treatment is imposed without informed consent, those responsible are held accountable;
- The Government should urgently act to implement measures for the proper monitoring of the use of ECT in all psychiatric institutions;

⁴⁸ National Board of Health and Welfare, *Rapportering av ECT-behandling till patientregistret – en kvalitetsstudie*, Article no 2013-3-5, March 2013.

- The Government should develop adequate human rights-based indicators to monitor the situation and treatment of persons in institutions for psychiatric compulsory care.

Non-discrimination and the rights of non-citizens

Question 12(a):

64. The Equality Ombudsman (DO) has a broad mandate to promote equal rights and opportunities in society. In addition, the DO has a specific mandate to enforce the Discrimination Act (2008:567) and the power to litigate cases of discrimination in court. Individuals subjected to discrimination can file a complaint with the Ombudsman's office, which can then decide to investigate the case and pursue it in court, without any cost for the individual.

65. The DO does, however, not have the power to pursue cases of discrimination on the basis of the European Convention of Human Rights (ECHR), which also constitutes Swedish law. This is concerning since the Discrimination Act does not impose a general prohibition on discrimination in society and does not cover many of the rights guaranteed by the Covenant and the ECHR.

66. The DO plays an important role in the efforts to combat discrimination and promote equal rights and opportunities. Limited resources in combination with a broad mandate mean that the DO can only pursue a limited number of cases. Currently, the DO investigates strategic cases that will have a wider impact. During 2014, the DO received 1949 complaints but took only 25 cases to court.⁴⁹

67. In Sweden, there are also 15 local bureaus working to combat discrimination and to promote equality. These civil society organisations, operating on funding from the state and local governments, offer free legal advice, information and education in regard to discrimination. Unfortunately these bureaus often, due to the lack of financial resources, find themselves unable to grant all individuals who seek their services legal support. Many of them also lack the capacity to bring cases to court. Individuals who have been subject to discrimination can also engage a private lawyer, but it is difficult to receive legal aid in these cases. In practice, opportunities for individuals to pursue cases of discrimination are limited and only very few cases end up in court. Many victims of discrimination therefore find themselves without a legal remedy and redress

⁴⁹ Equality Ombudsman, *Diskrimineringsombudsmannens årsredovisning 2014*, Case 2015/72, Document 1, 19 February 2015.

for the violation they have suffered while perpetrators of discrimination in most cases go unpunished. The situation undermines the effectiveness of the Discrimination Act.

68. The signatory organizations welcome the bill on discrimination adopted in 2009, but are critical of the fact that the Government has not introduced a general prohibition of discrimination in Swedish legislation. Instead, Sweden has actively chosen not to ratify Protocol 12 of the ECHR. As the Government mentions in its report, there are currently no initiatives towards that end.

69. Discrimination on the basis of ethnicity, religion, sex, gender identity, sexual orientation, age and disability occurs frequently in Sweden. It has negative effects both on affected individuals and the society at large.⁵⁰ While the Discrimination Act covers a wide range of discrimination grounds and in that regard meets international standards, its scope is limited. It only covers some societal areas, for example, the labor market, the educational system, access to goods and services in the private sphere, social services and the healthcare sector. Strikingly, the law does not cover police operations and practices, or other parts of the legal sector such as the court system and the prosecution service. This means that discrimination expressing itself, for example, as registration based on ethnicity or ethnic profiling on behalf of the police, prosecutors, or courts, cannot be addressed under the Discrimination Act and fall thus outside of the mandate of the Equality Ombudsman. As such, the Discrimination Act does not include all societal areas where discrimination may occur and can therefore not be said to be fully aligned with Articles 2.1 and 26 of the Covenant and Article 14 of the ECHR.

70. The Discrimination Act classifies the denial of reasonable accommodation as discrimination on the basis of disability. Nevertheless, the signatory organizations are critical of the fact that denial of reasonable accommodation is not considered to be of general application throughout the legal framework, and also that the bill exempts companies with fewer than 10 employees. The UN Committee on the Rights of Persons with Disabilities urges Sweden to review the bill, but so far the Government has taken no initiative in this regard.

⁵⁰ Equality Ombudsman, *Delar av mönster - en analys av upplevelser av diskriminering och diskriminerande processer*, Article no R6 2014, Report 2014:1, 2014.

Question 12(b):

71. In relation to rights of non-citizens, authoritative Government sources routinely claim that non-citizens present in Sweden are not entitled to the same rights and protection as citizens. The most obvious example is the official Government discourse on the group of people referred to as “EU migrants” or “vulnerable EU citizens” – persons from other EU countries, many of whom are Roma, who live in destitution in Sweden and often support themselves by begging. The Government’s position on this group is that they, at a maximum, have the right to emergency social assistance, that children in this group do not have the right to go to school in Sweden, and that they do not have a right to subsidized healthcare on the same level as others present in Sweden.⁵¹ In December 2015, Civil Rights Defenders published a report on the rights of destitute EU citizens in Sweden, in which we highlighted the rights of non-citizens under international human rights law.⁵² In response, the government-appointed coordinator dismissed the legal argumentation by claiming that Civil Rights Defenders had “not conducted a proper cost analysis.”⁵³ [On violation of rights of destitute EU citizens of Roma origin in Sweden: see further below under Question 13: Roma rights]

72. The government-commissioned report on Afrophobia published in 2014 shows that the Afro-Swedish population in Sweden suffers discrimination in virtually every sector of the Swedish society, such as education, healthcare, housing, and employment. More specifically, the report states:

As for housing, it is evident that experiences of everyday racism are more widespread in areas dominated by the white majority population. On the labor market, Afro-Swedes suffer from the lowest educational payback, and the risk of being unemployed is significantly higher among university-educated Afro-Swedes. Afro-Swedes born in Africa are also highly overrepresented among the low-income groups. Stereotypes about Africa and people of African descent that date back to colonialism are still predominant in Swedish culture, and to date, still affect the everyday lives of many Afro-Swedes. The Swedish attitude to race, which says that race is non-existing in Sweden, is an obstacle for constructive discussions about the

⁵¹ Martin Valfridsson and Åsa Regnér, *Skänk till organisationer på plats i hemländerna*, Dagens Nyheter, 11 September 2015.

⁵² Civil Rights Defenders, *Utsatta Unionsmedborgare i Sverige: Statens skyldigheter enligt internationella människorättsnormer, EU-rätt och svensk rätt*, December 2015.

⁵³ Johanna Sjövall, Regeringens samordnare avfärdar kritiken om EU-migranterna, Swedish National Broadcast, Ekot, 10 December 2015.

effects of racial discrimination, and an obstacle for Afro-Swedes when coming to terms with experiences of everyday racism.⁵⁴

73. For instance, the report concluded that men in Sweden born in the Horn of Africa region have on average 19 per cent lower income than men born in Sweden, with the same level of education.⁵⁵ Swedish citizens born in Africa are significantly overrepresented among the 10 per cent of people with the lowest income in Sweden. According to official statistics, 20 per cent of Swedes born in Africa were poor in 2010, compared to 3,7 per cent of the native Swedes.⁵⁶ In regard to health, statistics show that it is twice as common for persons born in sub-Saharan Africa to suffer from psychosis than for other Swedes. In between 1994 and 1998, women born in sub-Saharan Africa constituted the group who were second most likely to be treated in psychiatric care, after women born in Finland.⁵⁷

74. The report on Afrophobia thus identified that structural discrimination and racism against Afro-Swedes is widespread, resulting in significant negative effects on the rights enjoyment and quality of life of persons in this group. It also included a number of specific recommendations for actions needed to be taken in order to come to terms with these structural shortcomings. Nevertheless, neither the Government that commissioned the report, nor the current Government, has taken any significant steps to implement these recommendations. Afro-Swedish spokespersons have expressed dismay over the inaction on behalf of the Government and demanded urgent constructive measures that address the widespread discrimination of Afro-Swedes.⁵⁸

75. Studies and reports show that discrimination against Muslims remains widespread in the Swedish society.⁵⁹ Muslims repeatedly report discrimination in the legal sector, for example, that they are less likely than other groups to benefit from the fundamental principal of presumption of innocence until proven guilty. This has shown to be particularly evident in cases related to crimes against women, relating to the stereotype that Muslims in general are more

⁵⁴ Multi-Cultural Center, *Afrofobi: En kunskapsöversikt över afrosvenskars situation i dagens Sverige*, on behalf of Ministry of Justice, 2014, p. 7.

⁵⁵ *Ibid.*, p. 50.

⁵⁶ *Ibid.*, p. 51.

⁵⁷ *Ibid.*, p. 52.

⁵⁸ *Afrofobirapporten – vad hände sen*, Tidskriften Mana, 2 August 2015.

⁵⁹ Oxford Research AB, *Forskning om utsatthet hos förmodade muslimer och islamofobi i Sverige*, DO, 2013; Mattias Gardell, *Islamofobi*, Leopard Förlag, October 2010; EXPO, *Stängda dörrar*, November 2015.

misogynist than others and therefore more likely to commit such crimes.⁶⁰ These and other prejudices affect the whole legal process, and result, among other things, in Muslims being sentenced to prison more often than others.⁶¹

76. There is a lack of both qualitative and quantitative research on discrimination against Muslims in the welfare sector. Reports and anecdotal evidence, nevertheless, show that Muslims repeatedly meet stereotypical views and suspicion in their contacts with social services.⁶² Individuals contacting Civil Rights Defenders and professionals assessing complaints about discrimination claim that Muslims are overrepresented in cases where children have been taken into public care and removed from their families, suggesting special treatment of this group based on prejudices related to family practices and religion.⁶³ Questioning of parental ability appears to be particularly critical when the women are both Muslim and of African origin.⁶⁴ Studies suggest that these practices can result in some Muslims refraining from seeking support from social services, due to fear that they then will run the risk of losing custody of their children.⁶⁵

Suggested recommendations, Question 12:

- The Government should ensure that individuals who experience discrimination can obtain legal aid and access to justice for redress and compensation;
- The Government should immediately initiate the process of ratifying Optional Protocol 12 of the ECHR and work towards its implementation;
- The Government should initiate a process to expand the scope of the Anti-Discrimination legislation for it to be aligned with the anti-discrimination provisions in the Covenant and the ECHR in order for it to cover, among other societal instances, the Police, the prosecutorial services and the judiciary, and to ensure that denial of reasonable accommodation is classified as discrimination throughout the legal framework in accordance with recommendations by the CRPD Committee;

⁶⁰ Swedish National Council for Crime Prevention, *Diskriminering i rättsprocessen - Om missgynnande av personer med utländsk bakgrund*, Report 2008:4, 2008, para 34 and 68.

⁶¹ Ibid.

⁶² Oxford Research AB, *Forskning om utsatthet hos förmodade muslimer och islamofobi i Sverige*, DO, 2013, p. 27-28; private communications to Civil Rights Defenders for support.

⁶³ Private communications to Civil Rights Defenders; Esteban A. Calderón, *Kommuner tvångsvårdar muslimska barn*, Swedish Television Debate (SVT Debatt), 12 February 2011.

⁶⁴ EXPO, *Stängda dörrar*, November 2015, para 39.

⁶⁵ Ibid.

- The Government should expand the mandate of the Equality Ombudsman to also include other relevant legislation, including the ECHR;
- The Government should take action against discrimination and racism against Afro-Swedes in line with the recommendations identified in the Afrophobia report;
- The Government should commission research to analyze discrimination against Muslims, with specific focus on discrimination affecting this group in the legal and welfare sectors, and propose redress for victims of discrimination in this group;
- The Government should as a matter of urgency ensure implementation of the Committee's General Comment 15: On the position of aliens under the Covenant (1986).

Question 13:

77. The current Government has decided to continue the strategy for Roma inclusion, initiated by the former Government, and has increased its budget.⁶⁶ This is a positive sign, even though the strategy can be criticized for being too vague and lacking in concrete objectives and strategies. For example, it includes concrete measures only in five Swedish municipalities (the so-called pilot municipalities).⁶⁷ It is clear that the strategy alone will not remove the deep patterns of discrimination, exclusion and harassment that Roma in Sweden face on a daily basis, none of which the Government mentions in its own report to the Committee. For example, a 2014 analysis by the National Housing Authority (Boverket) shows that Roma routinely are discriminated against and harassed in regard to access to housing by being denied to rent apartment or subject to harassment by neighbors and landlords.⁶⁸

78. This analysis only assesses Roma access to housing in the five pilot municipalities, included in the strategy – suggesting that the problems are even more severe in other parts of Sweden where active measures for inclusion

⁶⁶ Ministry of Culture, *Regeringen satsar 52 miljoner på romers inkludering*, Government Offices, 8 April 2015.

⁶⁷ County Administrative Board, *Pilotkommuner*, see: <http://www.romskinkludering.se/Sv/pilotkommuner/Pages/default.aspx>.

⁶⁸ National Board of Housing, Building and Planning, *Uppföljning av de prestationsbaserade stimulansmedlen – delrapport 1*, Report 2014:17, March 2014.

have not been undertaken. Further, a recent report on the health and living conditions of Roma girls and women by the Swedish Public Health Agency concludes that Roma girls and women in Sweden have considerably worse health outcomes and living conditions than girls and women in the population at large.⁶⁹ It shows that Roma girls and women in general feel that they receive more negative treatment by public officials than other women and that they distrust societal institutions more. Further, Roma girls and women have poorer economic conditions than other girls and women, and are more often subjected to violence or threats.

79. According to statistics from the Swedish Board of Crime Prevention, hate crimes against persons of Roma origin are on the rise—or at least the number of reports of hate crimes against this group has increased considerably over the past five years. At the same time, anti-Roma hate crimes are those that have the lowest clarification rate, as illustrated by the fact that by May 2015, individual perpetrators had been identified in only 3 per cent of hate crimes committed against Roma that were reported in 2013.⁷⁰ Another feature of hate crimes committed against Roma is that an unusually large proportion of these take place in close vicinity to the victim's home, and that in over a quarter of the cases, the perpetrator was reported to be a neighbour or service provider. These features illustrate that hate crimes against Roma may involve violations of privacy and security of the home to a larger extent than other hate crimes, exacerbating the suffering and trauma for those affected.⁷¹

80. Over the past five years, Sweden has witnessed an increasing presence of EU citizens of Roma origin from countries in Eastern Europe, mostly Romania and Bulgaria. Many of them have fled structural discrimination and societal exclusion in their home countries and have come to Sweden to make a living for themselves and their families. However once here, many of the Roma EU migrants find themselves in deplorable living conditions, begging for money on the street and sleeping in tents or temporary settlements on the outskirts of the cities. Many of them live in extreme poverty; a far cry from the standard of living that most Swedish residents enjoy. It is well documented that vulnerable EU citizens of Roma origin routinely are victims of violent attacks with hate crime

⁶⁹ Public Health Agency of Sweden, *Folkhälsomyndighetens återrapportering av regeringsuppdrag angående fördjupad studie om romska flickors och kvinnors livssituation och hälsa*, 30 October 2015.

⁷⁰ Swedish National Council for Crime Prevention, *Hatbrott 2014*, Report 2015:13, August 2015, p. 68-

71.

⁷¹ Ibid.

motives—crimes that tend to result in absolute impunity.⁷² As such, while many EU citizens in Sweden are in a vulnerable position, the Roma suffer double discrimination due to both general anti-poverty hostility in Sweden and widespread anti-Gypsyism.

81. The authorities fail to ensure the rights of the vulnerable Roma EU citizens and to protect them against attacks, increasing their exposure to hate crimes and discrimination. Vulnerable Roma EU citizens also routinely face forced evictions. Over the past three years, the speed by which state authorities evict Roma EU migrants from their temporary settlements has accelerated dramatically. Reasons for evictions tend to be public order, health and sanitary concerns. No alternative housing tends to be offered to those evicted and their belongings are routinely destroyed by bulldozers.
82. Most of the Roma EU citizens are in Sweden legally, taking advantage of the freedom of movement they are entitled to as EU citizens. According to binding EU law, EU citizens can spend up to three months in another EU state with no other obligations than carrying a valid ID. After three months, they can stay if they have the means by which to support themselves and a valid health insurance from their home country. Most of the vulnerable Roma EU migrants do not, due to discrimination and exclusion in their home countries, have health insurance and they typically lack the means to support themselves.
83. The public commitment to secure Roma rights and counter anti-Gypsyism, as elaborated upon in the Government's report to the Committee, does not expand to Roma from other European countries. Indeed, authorities show unwillingness to see that what has brought this group to Sweden as well as the harassment affecting them here are also clear expressions of anti-Gypsyism. In particular, the Government has so far been unwilling to accept that Sweden's human rights obligations—according to the Covenant as well as other binding human rights instruments—apply to this group. Instead, in public discourse and concrete policy, the Government focuses almost exclusively on the responsibility of the states the Roma originate from, primarily Romania. In most Swedish municipalities they are denied subsidized healthcare, primary education, and social services. As such, this group enjoys even weaker rights

⁷² Police Authority, *Nationell lägesbild - Brottslighet med koppling till tiggeri och utsatta EU-medborgare i Sverige*, Report 2015; Tiberiu Lacatus, *Studie om hatbrott och andra allvarliga kränkningar riktade mot utsatta romska EU-medborgare*, Commission against antiziganism, October 2015.

protection than so-called undocumented migrants in Sweden, who have the right to emergency healthcare and primary education.⁷³

84. In its report to the Committee, the Government merely mentions the vulnerable Roma EU citizens in one paragraph, explaining that it has appointed a national coordinator whose task it is to support public bodies and NGOs who work with this group.

85. The signatory organizations welcomed this initiative at first, since municipalities and other stakeholders have expressed a great need for guidance on how to address this group. However the report, published on 2 February 2016, fails to address Sweden's human rights obligations and takes a repressive, rather than rights-based, approach to the vulnerable EU citizens present in Sweden.⁷⁴ For example, the report recommends that children of vulnerable EU citizens should not be granted the right to primary education, in violation of Sweden's obligations under the UN Convention on the Rights of the Child and the ECHR. It discourages municipalities from appointing special camping sites where members of this group can park their caravans or put up their tents while also suggesting speedier means by which to evict illegal settlements. The report, furthermore, explicitly discourages individuals from giving vulnerable EU citizens monetary support under the presumption that such generosity will attract more members of this group to come to Sweden. As such, the report uniquely dissuades members of the public from providing humanitarian aid to fellow human beings in need. The report fails to address the fact that human rights obligations expand to all individuals present in the territory of the State party, as detailed in the Committee's General Comment 15: On the position of aliens under the Covenant (1986).

86. In December 2015, Civil Rights Defenders launched a report in which the organization outlines Sweden's human rights responsibilities toward vulnerable EU citizens according to Swedish law, EU law, and international human rights law.⁷⁵ The report explores the right to protection from hate crime and forced evictions, the rights to health care services, primary education and social services, and the right to labor market support, concluding that Sweden has far-

⁷³ Law (2013:407) on healthcare to some foreigners who reside in Sweden without necessary permits; Law (2010:800) on education, ch. 7 para 2, and ch. 29 para 2.

⁷⁴ National Coordinator for Vulnerable EU citizens, *Framtid sökes – Slutredovisning från den nationella samordnaren för utsatta EU-medborgare*, ID no SOU 2016:6, Ministry of Health and Social Affairs, February 2016.

⁷⁵ Civil Rights Defenders, *Utsatta Unionsmedborgare i Sverige: Statens skyldigheter enligt internationella människorättsnormer, EU-rätt och svensk rätt*, December 2015.

reaching responsibilities towards this group, most of which are blatantly ignored by the state, regional and municipal authorities. The Government-appointed coordinator mentioned above, as well as in the Government's own report to the Committee, reacted negatively on Civil Rights Defenders' findings, stressing that the bulk of responsibility rests with the home countries and that Sweden for financial reasons cannot guarantee the rights of individuals in this group present in Sweden.⁷⁶

Suggested recommendations, Question 13:

- The Government should introduce positive measures, including affirmative action, to combat structural discrimination against Roma in daily life, in Swedish municipalities more generally and not only in the five pilot municipalities;
- The Government should take forceful actions to prevent, investigate and punish anti-Roma hate crimes and provide redress to victims;
- The Government should ensure that vulnerable EU citizens are granted their fundamental rights to health care, primary education, social services and protection against hate crime and forced evictions.

Protection of minority groups

Question 22:

87. Swedish law prohibits hate speech, and defines it as publicly making statements that threaten or express disrespect for an ethnic group or similar group in relation to race, skin color, national or ethnic origin, faith or sexual orientation. Five years after the ratification of the CRPD, Swedish law still does not prohibit hate speech on the basis of disability.

88. Further, there are clear procedural obstacles that prevent the effective prosecution of hate speech. Hate speech in written form can only be brought by the Chancellor of Justice, who has shown a documented unwillingness to bring those responsible to justice, other than in the most serious cases.⁷⁷

89. In its review of Sweden in 2013, the UN Committee on the Elimination of Racial Discrimination expressed concern at the "reported discrepancy between increased reports to the police of hate crimes and the decrease in the number

⁷⁶ Johanna Sjövall, *Regeringens samordnare avfärdar kritiken om EU-migranterna*, Swedish National Broadcast, Ekot, 10 December 2015.

⁷⁷ Civil Rights Defenders, *Hatets Språk - om gränsen mellan hatpropaganda och yttrande frihet*, 2003.

of preliminary investigations and convictions." The Committee also noted that measures against hate crimes are only applied in some parts of the country, and urged Sweden to "extend to all parts of the country the training given to the police, prosecutors and judges to effectively investigate, prosecute and punish hate crimes, in order to close the gap between reported incidents and convictions."⁷⁸

90. According to the Crime Prevention Board only 5 percent of all hate crimes that had been reported in 2013 had led to legal action as of April 2015. Furthermore, many hate crimes remain unreported or are not categorized as such.⁷⁹ Sweden has justified its decision not to criminalize racist organizations, as mandated under CERD, with the argument that it has a comprehensive hate crime legislation and a functioning system to address hate crimes in practice. However, the information above shows that this strategy has serious shortcomings in practice.

Suggested recommendations, Question 22:

- The Government should initiate a law reform with the aim to include disability as a ground in the current hate speech legislation;
- The Government should investigate and analyze the barriers to legal action in criminal cases involving hate motives, including hate speech, and remedy the identified flaws.

Indigenous rights

Question 24(a):

91. Sweden has received massive criticism from other international and regional bodies relating to its failure to safeguard the rights of the Sami.⁸⁰ Instead of heeding calls for action, the Government has taken measures that further aggravate the situation, in particular by allowing the acceleration of exploitation

⁷⁸ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden, adopted by the Committee at its eighty-third session (12–30 August 2013)*, CERD/C/SWE/CO/19-21, 23 September 2013, para 11.

⁷⁹ Swedish National Council for Crime Prevention, *Hatbrott 2014*, Report 2015:13, August 2015, p. 35, 46-48.

⁸⁰ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, *The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, UN Human Rights Council, A/HRC/18/35/Add.2, 6 June 2011; Committee on the Elimination of Racial Discrimination, *supra note* 78, paras 17-19; Council of Europe: European Commission Against Racism and Intolerance (ECRI), *ECRI Report on Sweden (fourth monitoring cycle): Adopted on 19 June 2012*, Doc no CRI(2012)46, 25 September 2015.

of natural resources in the North of Sweden. Large-scale prospecting and mining due to lenient mining legislation and policies in the Sami territory have had devastating consequences on Sami rights over the past five years. The right of the Sami to influence matters that concern them has been blatantly ignored in these processes, contrary both to domestic and international law.⁸¹

92. In its report to the Committee, the Government mentions the Law on national minorities and minority languages (para. 166). However, it fails to mention that while this law was intended as an implementation of the Council of Europe Framework Convention on Protection of Minority Rights, its scope and implementation are in fact significantly weaker than the Council of Europe Convention. For example, the law provides that the national minorities, in general, should be given possibility to influence matters that concern them “as far as possible.” The Convention, granting broader rights of participation and influence, provides that *persons* from the national minorities should be granted *effective participation* in cultural, social and economic life and public affairs, *in particular in matters of concern to them*. Furthermore, the implementation of the Minority Law leaves much to be desired. For example, according to a 2014 study conducted by the Sami Parliament and the County Administrative Board of Stockholm, the implementation of the law varies dramatically between different municipalities, and that in almost two thirds of municipalities no measures are taken to support national minorities at all.⁸²

93. In February 2013, the Swedish Government presented a new strategy for extraction of minerals.⁸³ According to this strategy, the Government aims for a doubling of the number of mines by 2020 and a tripling by 2030.⁸⁴ The new strategy was met with widespread protests from the Sami community and civil society, but to no avail. In fact, as pointed out by the Swedish Sami Parliament and echoed by the Swedish Equality Ombudsman, the mineral extraction policy and the application of the Swedish mineral law go contrary to well-established principles of respect and protection of the rights of indigenous peoples, the right to self-determination over matters that concern them, and the right to free, prior

⁸¹ Law (2009:724) on national minorities, Article 5; UN International Covenant on Civil and Political Rights, Article 1.1; UN International Covenant on Economic, Social and Cultural Rights, Article 1.1.

⁸² County Administrative Board of Stockholm and the Sami Parliament, *Nationella minoriteter: Rapport om tillämpningen av lagen om nationella minoriteter och minoritetsspråk år 2013*, 2014.

⁸³ Ministry of Enterprise, Energy and Communications, *Sveriges mineralstrategi: För ett hållbart nyttjande av Sveriges mineraltillgångar som skapar tillväxt i hela landet*, February 2013.

⁸⁴ Ibid, p. 11 and p.14; Kenneth P. Green, *Fraser Institute: Sweden Top Jurisdiction in Annual Global Mining Survey, Alberta Top Ranked Canadian Province*, Reuters, 3 March 2014.

and informed consent (FPIC).⁸⁵ The Equality Ombudsman recently called the situation for Sami rights in relation to extractive industries “alarming” and urged the Government to put an end to all discriminatory practices against the Sami.⁸⁶

94. One major problem is the application of the “balancing of interests,” called for by the law, where different national interests at stake should be weighed against each other prior to permission being granted to exploit natural resources. According to the Swedish Environmental Code, when interests collide the State shall give precedence to the interest that best promotes long-term sustainable use of land and water and the assessment must take ecological, social, culture and economic factors into account.⁸⁷ In practice, relevant state bodies routinely assess relevant interests from a purely macroeconomic perspective, prioritizing opportunities for job creation and so-called local development over the rights of the Sami to their culture and their traditional lands to which they have established property rights under Swedish and international law. For example, reindeer herding, a traditional livelihood of the indigenous Sami people, is routinely assessed exclusively from an economic perspective and balanced against the state’s interest in job creation and state revenue from mining activities.⁸⁸ Other parts of Sami culture and livelihood are also neglected in the process. One example is the recent approval to a mining corporation to initiate nickel mining in Rönnbäck, Västerbotten, in August 2013. In its decision to grant concessions, the State explicitly prioritised the national interest of extraction of minerals over reindeer herding and other Sami rights and interests, de facto only giving regard to socio-economic concerns.⁸⁹

95. The widespread and systematic exploitation of land and water threatens not only the Sami’s livelihood but also their culture, environment, physical and mental health, food supply, and ability to exercise their spirituality. Access and

⁸⁵ Declaration by the 4th Sami Parliamentary Conference held on 20 February 2014 in Umeå for Sami commissioners from Finnish, Swedish and Norwegian Sami Parliaments and with participation by Russian Sami representatives; Sami Parliament, *Sametinget har enats om en gemensam gruvpolitik*, statement adopted on 20 May 2014; Equality Ombudsman Agneta Broberg, *Stoppa diskrimineringen av samer med ny urfolkspolitik*, Dagens Nyheter, 16 September 2013.

⁸⁶ Equality Ombudsman Agneta Broberg, *Stoppa diskrimineringen av samer med ny urfolkspolitik*, Dagens Nyheter, 16 September 2013.

⁸⁷ Swedish Environmental Code (1998:808), ch. 3-4.

⁸⁸ Equality Ombudsman Agneta Broberg, *Stoppa diskrimineringen av samer med ny urfolkspolitik*, Dagens Nyheter, 16 September 2013.

⁸⁹ Regeringsbeslut (*Decision of the Government*) N2012/1637/FIN, N2012/2776/FIN, N2012/5276/FIN, 2013-08-22, ”Överklaganden av bergmästarens beslut om bearbetningskoncessioner för områdena Rönnbäcken K nr 1 och Rönnbäcken K nr 2 samt Rönnbäcken K nr 3 i Storumans kommun, Västerbottens län”.

use of land is critical for the Sami not only for reindeer herding, but also for fishing, hunting, handicraft, herbs, food security, art, tourism, design, etc. The Sami culture is so strongly connected with the use of land and water that one cannot be disconnected from the other. Accordingly, the widespread exploitation of natural resources in the Sami territory per definition jeopardises the existence of the Sami as a people.⁹⁰ The government routinely ignores these critical elements in addressing applications from private mining corporations seeking exploration licences in traditional Sami territories.

Question 24(b):

96. For almost 20 years, the Governments of Sweden, Norway, Finland, and the Sami Parliaments in the three countries have discussed and negotiated a Nordic Sami Convention. The purposes of the convention are to strengthen domestic norms for indigenous rights in accordance with international standards and to harmonise legislation in the three countries. In 2005 a draft text was presented, but negotiations have dragged on and the Governments have still not agreed on a final text. Sami representatives express concern over the significant delays and the perceived lack of interest and commitment from the governments, and call for the closure of negotiations and adoption of the Convention no later than 2016.⁹¹

97. The Swedish Government has failed to investigate and remedy the historical discrimination and repression of the Sami. In May 2014, the Sami Parliament voted to support the establishment of a truth commission on the treatment of the Sami people throughout Sweden's history.⁹² Such a commission would be an important contribution to the recognition of historic and current structural violations of the human rights of the Sami.

Question 24(c):

98. As pointed out by former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Swedish courts place the burden of proof on Sami claimants to demonstrate land ownership in proceedings related to exploitation of land in traditional Sami territory.⁹³ This creates a significant obstacle faced by the Sami in securing rights over lands and resources. The Committee recommended Sweden in 2009 to grant adequate legal aid to Sami villages in

⁹⁰ Sami Parliament, *Sametingets syn på gruvor och mineraler i Sápmi*, 2014.

⁹¹ Declaration from the Sami Parliament's Conference on the Nordic Sami Convention adopted in Umeå 2014.

⁹² Swedish Sami Parliament motion adopted on May 21 2014, Records from Sami Parliament plenary session in Åre 2014.

⁹³ James Anaya, *supra note* 80, para 51.

court disputes concerning land and grazing rights, introduce legislation providing for a flexible burden of proof, and to consider other means of settling land disputes.⁹⁴ However, no measures have been taken to heed the Committee's recommendations in this regard, which is also apparent from the response to question 24(c) in the Government's own report.

99. In addition to the urgency in relation to the extraction of natural resources in Sami territories, there are also inherent discriminatory elements of the historic state categorisation and colonisation of the Sami. The Reindeer Grazing Act⁹⁵ provides for certain protections in regard to land use but the implementation of this law distinguishes reindeer-herding Sami from those who are not, thus granting rights based on property and profession and unnecessarily causing divisions within the Sami people. No land or water rights are granted to the non-reindeer herding Sami population, effectively denying the Sami the broader rights linked to land and water, both as a livelihood and in relation to rights to culture, health, and dignity as a people. As a consequence, non-reindeer-herding Sami are excluded completely in the mining prospecting processes, even when mining projects are of concern for the larger Sami community. In the case of Rönnebäck, the majority of the local Sami population has been denied standing in the process.

Suggested recommendations, Question 24:

- Sweden should ratify ILO Convention No. 169 as a matter of urgency and review all laws and policies to place them in accordance with the Convention;
- The Government should ensure the timely negotiation and adoption of a Nordic Sami Convention in line with well-established principles on the rights of indigenous peoples;
- The Government should initiate legislation to ensure an absolute right to free, prior and informed consent to any exploitation of natural resources in traditional Sami territory, as per the right to self-determination established by international human rights treaties to which Sweden is a party;
- The Government should establish a truth commission on the treatment of the Sami people throughout Sweden's history and establish procedures for redress

⁹⁴ UN Human Rights Committee, *Concluding observations of the Human Rights Committee*, Doc no CCPR/C/SWE/CO/6, 7 May 2009, para. 21.

⁹⁵ Law (1971:437) on reindeer grazing.

and compensation for historic and present human rights violations of the Sami people.

Rights of persons with disabilities

Question 25:

100. In relation to the rights of persons with disabilities, Sweden has received sharp criticism from several UN treaty bodies. We will specifically refer to the recommendations from the CRPD Committee.⁹⁶ As an overarching comment, it is of concern that Sweden has failed to develop a comprehensive approach aiming at the realization of the concluding observations from the CRPD committee.

101. The Government assigned the Swedish Agency for Participation with the task to increase awareness among the general population, the employees in the public sector and persons with disabilities about the CRPD, but also about the prohibition in the Discrimination Act with regard to lack of accessibility.⁹⁷ The mission began with an examination of the needs of awareness-raising. The Agency's first interim report was submitted on 1st of December 2015.⁹⁸ The signatory organizations are critical of how the assignment is formulated and implemented. For instance, the disability movement has been invited to comment on the assignment as such, but their views on the assignment and proposed amendments were not taken into account. This is in itself inconsistent with Article 4.3 of the CRPD, which provides for the right of persons with disabilities to participate in the development and implementation of legislation and policies that concern them. The involvement of the disability rights movement is critical to ensure that the Agency's efforts are adequate. The interim report also shows very little progress despite the fact that the recommendation from the UN calls for a long-term strategy and continuous actions.⁹⁹

102. The CRPD Committee urges Sweden to ensure that the CRPD is properly incorporated into Swedish legislation in order for it to be directly applicable. The Swedish Agency for Participation has recently made a legal analysis of the

⁹⁶ Committee on the Rights of Persons with Disabilities, *supra note 5*.

⁹⁷ Ministry of Health and Social Affairs, *Uppdrag om kommunikationssatsning om rättigheter för personer med funktionsnedsättning*, Government Decision S2015/2415/FST, 1 April 2015.

⁹⁸ The Swedish Agency for participation, *Kommunikationssatsning om rättigheter för personer med funktionsnedsättning*, Article no 2015:15, 2015.

⁹⁹ Committee on the Rights of Persons with Disabilities, *supra note 5*, para 22.

legislation, but only within certain strategic areas.¹⁰⁰ It is concerning that the Government chooses neither to fully implement the recommendations of the Committee nor to work with the Convention as a whole.

103. As regards access to effective remedies, see paragraphs 64-68 on discrimination and paragraphs 36-37 above on the situation for people in closed institutions. When it comes to other areas of rights, we would like to refer to the Swedish disability movement's alternative reports to different UN treaty bodies.¹⁰¹ The reports show that the knowledge about disability and human rights is often insufficient within the judiciary. See also paragraph 9 concerning failure within courts and state agencies to interpret national legislation in light of international human rights standards. This situation and the failure to understand what consequences various disabilities may have on the individual, lead to weaker opportunities for people with disabilities than others to access efficient legal remedies, in violation of the rights in the Covenant and the CRPD.

104. Furthermore, the Crime Victim Compensation and Support Authority made an investigation in 2015 on the judicial responses to children with neuropsychiatric disabilities who were victims of crime.¹⁰² The investigation takes a holistic approach to all stages of the process, from pre-trial to judgment, and noted that the number of prosecutions was significantly lower in respect of cases where the victim had a neuropsychiatric disability. This remained true even when the suspect confessed, and even when there were witnesses and clear evidence of the crime. The study looked at the reasons for the low rate of prosecution and found that the notifications of crime when the victim had a neuropsychiatric disability, in general, was treated differently than other notifications. For example, the study concluded that children with neuropsychiatric disabilities were not heard to the same extent as other children. Additionally, information about the child's disability was usually included in the investigation after the child had already been heard, instead of before or during the hearing of the child. Both of these observations are in themselves inconsistent with Article 14 of the Covenant, Article 12 of the Child

¹⁰⁰ HandelsConsulting AB, *Att leva med funktionsnedsättning – på lika villkor? - En sammanställning av regelverk berörande funktionshinderpolitiken med utgångspunkt i de strategiskt viktigaste områdena*, Swedish Agency for Participation, December 2015.

¹⁰¹ The Swedish Disability Movement, available at: www.handikappforbunden.se/Material/Projektet-Manskliga-rattigheter/Publications-in-English/.

¹⁰² Katrin Lainpelto, *Sämre rättstrygghet för barn med funktionsnedsättning*, Crime Victim Compensation and Support Authority, 15 September 2015.

Rights Convention and Article 7 of the CRPD. Sweden has received criticism from both the Child Rights Committee and the CRPD Committee for the lack of implementation of these two articles.¹⁰³

105. Due to the described shortcomings, access to legal aid is critical for individuals with disabilities. To enable persons to pursue cases in courts, some may receive legal aid. The Legal Aid Act, which forms part of the social protective legislation, regulates this and aims to help persons who cannot find legal assistance elsewhere. Legal aid normally covers disputes in general courts. However, it usually does not cover administrative disputes. This means that, for example, cases concerning access to personal assistance or decisions concerning an administrator or a trustee do not entitle an individual to legal aid. This can result in people with disabilities in need of legal assistance not being able to afford taking their cases to court. This situation is not compliant with Article 2 and 14 of the Covenant.

106. The CEDAW Committee has on several occasions urged Sweden to allocate sufficient funds for women's shelters.¹⁰⁴ The CEDAW Committee also expresses concerns about the weaknesses that have emerged regarding the protection of women with special needs, such as women with disabilities. Some local authorities have granted project funding to train staff, politicians and other key actors on men's violence against women with disabilities. These projects, however, rarely form part of the ordinary activities of municipalities and when the projects end, the work tends to end as well. The signatory organizations are concerned that women and girls with disabilities who experience various forms of abuse do not get the support they need.

107. The National Board of Health and Welfare's Open comparisons for 2015 show that there are clear differences in the possibilities to receive service and support depending on gender, both for elderly and for persons with disabilities.¹⁰⁵ The comparisons also show that a significant portion of the staff in group-livings lack knowledge about human rights of persons with disabilities and relevant guidelines from the National Board of Health and Welfare in relation to these two groups. In light of these knowledge gaps, the Government

¹⁰³ Committee on the Rights of Persons with Disabilities, *supra note* 5, para 19.

¹⁰⁴ Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Sweden*, CEDAW/C/SWE/CO/7, 8 April 2008, Para 28.

¹⁰⁵ National Board of Health and Welfare, *Öppna jämförelser 2015 stöd till personer med funktionsnedsättning*, 2015.

gave the Board an assignment to increase knowledge about relevant human rights among personnel within elderly and disability care.¹⁰⁶ We welcome this initiative, but are at the same time critical that no other measures have been taken in relation to the CRPD Committee recommendations concerning personal assistance and community-based outpatient services.¹⁰⁷ Access to personal support and service is a requirement for individuals with disabilities to be able to participate in society on equal terms. This support is in many cases not provided. One examples is the journalist who for many years worked at the Swedish National Radio who in the autumn 2015 had her guide withdrawn by the municipality. Because of this, she was forced to quit her job.¹⁰⁸

108. As has been observed by the CRPD Committee, there is little knowledge about discrimination based on gender of women with disabilities. The CRPD Committee is also concerned that studies, policies and plans of actions concerning persons with disabilities often do not include a gender perspective.¹⁰⁹ The signatory organizations are convinced that regular follow-ups with an intersectional perspective would facilitate for the authorities and other public bodies to realize the full enjoyment of human rights for persons with disabilities. Gender, age and ethnicity must always be taken into account when addressing persons with disabilities, in all areas of rights. The global and intersectional perspectives of the CRPD and the concept of “universal design” must permeate all decision-making processes.

109. As has been observed by several treaty bodies the indicators established by the State party to monitor the implementation of the disability rights policy does not broadly cover all of the rights areas under the CRPD.¹¹⁰ It is further concerning that the reporting system in place is voluntarily based at the municipal level, even though the State Party had not made a reservation in this respect when ratifying any of the conventions.

110. For comments concerning the lack of accessibility, see replies in paragraph 70. As for private schools’ ability to refuse students with disabilities a place in the school, no further steps have been taken by the Government.

¹⁰⁶ Ministry of Health and Social Affairs, *Regleringsbrev för budgetåret 2016 avseende anslag 4:5*, Government Decision S2015/08135/RS, 17 December 2015.

¹⁰⁷ Committee on the Rights of Persons with Disabilities, *supra note 5*, para 35-36 and 43-44.

¹⁰⁸ Andreas Hansson, *Sveriges Radio-profilen tvingas sluta arbeta*, Aftonbladet, 28 October 2015.

¹⁰⁹ Committee on the Rights of Persons with Disabilities, *supra note 5*, para 13 and 14.

¹¹⁰ *Ibid*, para 5.

Suggested recommendations, Question 25:

- The Government should take immediate action to implement all the recommendations from the CRPD Committee;
- The Government should ensure that the Government itself, as well as national, regional and local authorities, closely consult with and actively involve persons with disabilities in the development and implementation of legislation and policies, as well as in other decision-making processes that concern persons with disabilities;
- The Government should examine the appropriateness of the current structure used to deal with situations of intersectional discrimination, including disability;
- The Government should ensure that individuals with disabilities have access to legal aid in relation to all human rights. The Government must therefore urgently undertake a comprehensive investigation of the shortcomings of the existing legislation on legal aid and its implementation, in particular with regard to difficulties for people with disabilities to obtain legal protection;
- The Government should review the system of indicators under the Disability Policy in order to ensure its coverage of all areas of the Covenant, and also design measures to encourage municipalities to monitor its implementation. The indicators must be developed in close cooperation with civil society.