

**Sweden's compliance with the International Convention on the  
Elimination of All Forms of Racial Discrimination (ICERD)**

**Submission for the Committee on the Elimination of Racial  
Discrimination's review of Sweden during its 95th session, 23 April -  
11 May 2018**

**Submitted by: CIVIL RIGHTS DEFENDERS**

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## **Introduction**

1. The following report is submitted by Civil Rights Defenders, a Sweden-based international human rights organization. The purpose is to give input to the Committee on the Elimination of Racial Discrimination (hereinafter the Committee) with respect to Sweden's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter the Convention) for the Committee's review of Sweden during its 95th session.

## **Article 2.1**

### **Racially motivated hate crimes**

2. Since the latest recommendations given to Sweden by the Committee in 2013, Sweden has developed a strategy to combat hate crime. The strategy was implemented through a project starting in June 2015 and included, *inter alia*, training of police officers in identifying and processing hate crime. In its own evaluation of the project, the Police Authority however notes that prosecutors participating in their surveys did not experience any improvement of quality in the investigations into hate crimes. Responses were received from thirteen different specialist prosecutors. Most had not perceived any effect from the level of ambition, nor an improvement in the communication between the Police Authority and the Prosecution Authority in regards to cases of hate crime.<sup>1</sup> Furthermore, a survey conducted by the National Council for Crime Prevention (hereinafter BRÅ) shows that the majority of employees at the five out of seven Police districts which had undergone education on hate crime in 2015 still experienced that they lacked the ability to detect, investigate and prosecute hate crimes.<sup>2</sup> Thus, it is clear that further efforts need to be made to properly train the staff on how to effectively investigate hate crime in order to close the gap between reported incidents and convictions thereof.

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<sup>1</sup> Swedish Police Authority, *Feedback Report to the Government concerning Hate Crimes*, 27 February 2017, p. 9.

<sup>2</sup> National Council for Crime Prevention (BRÅ), *Hatbrott 2015*, Report 2016:15, pp. 127-128.

3. The number of reported hate crime in Sweden remains high. According to BRÅ, xenophobia and racism has been the most prevailing motives for hate crimes over the last four years (2013-2016). The latest numbers indicate that approximately 145 000 individuals had experienced 225 000 hate crimes. Out of these, only 17 % were reported to the police. Additionally, an estimation of 47 000 individuals experienced 81 000 hate crimes with an anti-religious motive during the same years. However, only 26 % were reported to the police.<sup>3</sup> Out of the number of hate crime reported in 2015 and processed until January 2017, only 4 % could be tied to an identified perpetrator through an indictment, the issuance of a summary sanction order, or the issuance of a waiver of persecution. A preliminary investigation had been initiated in 49 % of all the reported cases of hate crime, whereas 47 % of the cases had been closed without the initiation of a preliminary investigation.<sup>4</sup> The Government has, in its submission to the Committee, explained these numbers with the fact that the proportion of cases of damage/graffiti reported as hate crime has risen between 2008 and 2015 and that person-based clearance for damage/graffiti is more difficult than for assault where witnesses can often provide evidence. However, the increase of damage/graffiti reported as hate crime and the decrease in assault reported as hate crime is not dramatic to the extent that it can stand as a sole explanation to the poor person-based clearance in reported cases of hate crime. According to a report published by the Swedish Police Authority, in which the authority evaluates the measures taken to combat hate crime since 2015, the staff employed at the hate crime units in the three metropolitan cities can be utilised for other investigations not related to hate crime. This prioritization has been made in light of the current workload falling on the investigation activities in respect of serious violent crimes. The result is that some cases of alleged hate crimes are left hanging in the balance.<sup>5</sup> Civil Rights Defenders welcomes the establishment of a new hate crime unit with the Police Authority of the region West. We also welcome the expansion of the existing hate crime units. However, for hate crime to be effectively combated by the mentioned units, cases of alleged hate crime must be prioritized. Furthermore, there is a need to ensure that the capacity to effectively identify and

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<sup>3</sup> National Council for Crime Prevention (BRÅ), *Hatbrott 2016*, Report 2017:11, p. 8.

<sup>4</sup> National Council for Crime Prevention (BRÅ), *Hatbrott 2016*, Report 2017:11, p. 11.

<sup>5</sup> Swedish Police Authority, *Feedback Report to the Government concerning Hate Crimes*, 27 February 2017, p. 5.

investigate hate crimes also exist outside the three areas where designated hate crime units exist.

*Hate crimes specifically targeting the Indigenous Sami People*

4. The general knowledge among the majority population in Sweden about the past and present conditions of the Indigenous Sami People and connected rights claims is extremely low. Sami individuals experience everyday discrimination, hate crime and prejudiced racist behavior by the non-Sami population. European Commission against Racism and Intolerance (ECRI) has recently recommended Sweden to conduct widespread awareness-raising activities aimed at conveying to the general public the unique value of the indigenous Sami culture as an integral part of Swedish society and cultural heritage.<sup>6</sup> However, as the Sami Parliament points out in its comments, this behavior also stems from state institutions. Civil Rights Defenders would further like to refer to the Sami Parliament's comments to the Committee (paras. 16-17 and 20-26) and the report by the UN Association of Sweden (p. 21).

***Suggested recommendations regarding hate crime***

- The Government should expand existing training programs on hate crime for police employees and make training on the legislation and implementation of legislation on hate crime mandatory in all areas of law enforcement, including the Police, prosecutors and the judiciary.
- The Government should prioritize investigations on hate crimes at existing hate crime units and allocate resources for such prioritization to effectively be made.
- The Government should, with respect to Sami free, prior and informed consent, take measures to prevent acts of hate crime, discrimination and racism directed against Sami individuals or the Indigenous Sami People as a whole. One crucial measure is, through different channels, educating the general public about the Sami past and present conditions; and the implications of their status as an Indigenous People with a distinct

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<sup>6</sup> European Commission against Racism and Intolerance, Council of Europe, *ECRI Report on Sweden (fifth monitoring cycle)*, CRI(2018)3, 27 February 2018, para. 31 and para. 8 List of Recommendations. See also paras. 30 and 40.

culture, including acknowledging the collective human rights of the Sami as part of ensuring non-discriminatory treatment.

- The Government should make further efforts in building trust with populations vulnerable to ethnically motivated hate crimes and in building their capacity to properly report hate crimes.

### **Racial profiling**

5. The Government is not actively taking measures to counteract cases of racial profiling nor is it taking measures to prevent any discrimination in the administration of justice as previously recommended by the Committee. Acts and negligence committed by actors within the judicial system still fall outside of the scope of the Swedish Discrimination Act<sup>7</sup>, making the possibility of redress for individuals exposed to racial profiling very limited.
6. While research on the phenomenon of ethnic profiling within the Swedish criminal justice system is very limited in the Swedish context, a recent academic study commissioned by Civil Rights Defenders has shown that individuals belonging to an ethnic, national and religious minority experience a disproportionate exposure to controls by the Police on the basis of their perceived ethnicity, nationality or religious belief.<sup>8</sup> The reality of being exposed to disproportionate controls on discriminatory grounds forces individuals to navigate through cities in a different way, sometimes even avoiding certain areas, in order not to attract the attention of the Police.<sup>9</sup> A proportion of the population thus experiences, to a certain extent, a limitation of their freedom of movement. Meanwhile, the Police perceives its own working methods as neutral and “color blind”.<sup>10</sup> The Police sometimes perceives racial profiling as a necessary approach in order to meet demands put on the authority by the Government. Such is the case when the Police is tasked with the assignment of performing so called

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<sup>7</sup> See Discrimination Act (diskrimineringslagen), no. 2008:567.

<sup>8</sup> Civil Rights Defenders in collaboration with Stockholm University, *Slumpvis Utvald*, December 2017, p. 5, available at: [https://www.civilrightsdefenders.org/files/CRD-5600-Rapport\\_Slumpvis-utvald\\_final.pdf](https://www.civilrightsdefenders.org/files/CRD-5600-Rapport_Slumpvis-utvald_final.pdf); National Council for Crime Prevention (BRÅ), *Report 2008:4*, pp. 57-58 and 83.

<sup>9</sup> Civil Rights Defenders in collaboration with Stockholm University, *Slumpvis Utvald*, December 2017, p. 19, available at: [https://www.civilrightsdefenders.org/files/CRD-5600-Rapport\\_Slumpvis-utvald\\_final.pdf](https://www.civilrightsdefenders.org/files/CRD-5600-Rapport_Slumpvis-utvald_final.pdf).

<sup>10</sup> Please see, for instance, Civil Rights Defenders in collaboration with Stockholm University, *Slumpvis Utvald*, December 2017, pp. 5 and 11, available at: [https://www.civilrightsdefenders.org/files/CRD-5600-Rapport\\_Slumpvis-utvald\\_final.pdf](https://www.civilrightsdefenders.org/files/CRD-5600-Rapport_Slumpvis-utvald_final.pdf).

“inner border control”, through which the Police will subject individuals in public environment to random checks in search for so called “irregular migrants”. It has been proven that these random checks especially target individuals which have appearances that do not conform with that of an “ethnic Swede”, regardless of the individual’s migration status. The Police itself has explained that this approach is natural, given the purpose of the checks.<sup>11</sup>

***Suggested recommendations regarding racial profiling***

- The Government should initiate and support studies on racial profiling in Sweden in order to increase the understanding of the mechanisms that constitute racial profiling.
- The Government should review and make efforts to transform the working methods of the Police, with the aim of effectively eradicating methods that constitute racial profiling.
- The Government should develop the use of social justice markers within the judicial system, in order to monitor disparate outcomes for ethnic, national and religious minorities within the judicial system and counteract racial profiling.
- The Government should extend the scope of the Discrimination Act to also include the judicial system or otherwise create possibility for redress in cases of racial profiling so that religious, national and ethnic minorities can exercise their right to a fair trial and their rights to an effective remedy on equal terms.

**Article 4 (a)**

**Hate speech**

7. The Committee, in its most recent concluding observations on Sweden, recommended the Government to take effective measures to combat hate speech in the media and on the internet, including by prosecuting the perpetrators. 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. However, there are still clear obstacles that prevent the effective prosecution of hate speech. Hate speech manifested in printed and verbally

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<sup>11</sup> Civil Rights Defenders in collaboration with Stockholm University, *Slumpvis Utvald*, December 2017, p. 30, available at: [https://www.civilrightsdefenders.org/files/CRD-5600-Rapport\\_Slumpvis-utvald\\_final.pdf](https://www.civilrightsdefenders.org/files/CRD-5600-Rapport_Slumpvis-utvald_final.pdf).

recorded media or any other constitutionally protected media can only be brought to prosecution by the Attorney General.<sup>12</sup> The most recent annual report by the Chancellor of Justice shows that only 12 cases related to freedom of speech and press out of a total of 263 reported cases resulted in the opening of a preliminary inquiry. Out of the 12 cases, 5 concerned agitation against nationality or a certain ethnic group. Only 4 of these were further brought to prosecution.<sup>13</sup>

8. As the UN Association of Sweden has pointed out in their submission to the Committee, there has been an increase in activities conducted by extreme far-right organizations on the streets and on the internet. The most prominent extreme far-right organization, The Nordic Resistance Movement, has performed a large number of marches and manifestations in several Swedish cities over the past few years. During these marches, the participants wear symbols that were used by Waffen-SS in Nazi-Germany, perform variations of the infamous “Hitler salute” and chant white supremacist slogans. Reactions from the authorities have so far been meek, with a relatively low number of interferences against acts which are within the scope of what characterizes as agitation against racial, ethnic and national minorities under the Swedish penal code. According to the jurisprudence of the Swedish Supreme Court and the Swedish Court of Appeal, nonverbal expressions such as symbols and attire that make reference to ideologies promoting racial discrimination and racial superiority may be determined as acts of agitation under the law. The authorities seem to be leaning towards a rather narrow interpretation of the law and the courts’ jurisprudence. While it is likely that the Police would intervene if an individual wears attire adorned with a swastika, it is unwilling to take action when more contemporary expressions making reference to racial superiority and racial discrimination are being used. Thus, members of organizations such as the Nordic Resistance Movement, known to the broader public as a national socialist organization, may march on the streets in uniform attire and shields adorned with the symbol of the organization without the interference of the Police. In addition, the Police Authority claims that the Law on Public Order does not allow for banning demonstrations that promote and incite racial discrimination. The result of the

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<sup>12</sup> Fundamental Law on Freedom of Expression (yttrandefrihetsgrundlag), no. 1991:1469, Chapter 7, 1 §; Freedom of Press Act (tryckfrihetsförordning), no. 1949:105, Chapter 9, § 2; and Swedish Government Official Reports, *Ny yttrandefrihetsgrundlag?*, SOU 2010:68, p. 48.

<sup>13</sup> Chancellor of Justice, *Annual Report 2016*, 31 December 2016, p. 20.

authorities' inaction is that far-right and Nazi organizations can engage in propaganda activities unpunished, in violation with the Convention.

9. It should further be noted that the UN Human Rights Committee expressed criticism towards Sweden in its most recent concluding observations on Sweden for continuous cases of reported hate speech, including on the internet, against ethnic, national and religious minorities.<sup>14</sup>

***Suggested recommendations regarding hate speech***

- The Government should investigate and analyze the barriers to legal action in cases involving hate speech. In particular, the Government should evaluate the role of the Chancellor of Justice as the sole prosecutor in cases involving agitation against religious, national and ethnic minorities in constitutionally protected media and consider other means for handling such cases.
- The Government should make efforts to ensure that acts of agitation against ethnic, religious and national minorities are investigated and brought to prosecution.
- The Government should make efforts to ensure that organizations promoting racial superiority and racial discrimination may not arrange and participate in demonstrations, manifestations and other propaganda activities that promote such ideas.
- The Government should make efforts to properly enforce the legislation prohibiting agitation against racial, religious and ethnic minorities and to adapt its interpretation of the legislation in a way that conforms with the modern-day situation.

**Article 5**

**Roma EU-citizens**

10. Since the most recent concluding remarks by the Committee, there has been an increased presence of Roma EU-citizens in Sweden. Many live in destitute in Sweden and support themselves through panhandling. The stance of the Government is that this

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<sup>14</sup> UN Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of Sweden*, UN doc. CCPR/C/SWE/CO/7, 28 April 2016, para. 16.



group does not have a right to subsidized healthcare at the same level as others present in Sweden and that their children are not entitled to education in Sweden.<sup>15</sup>

11. Homelessness is widespread amongst individuals belonging to the group, and many have previously resided in temporary settlements in the outskirts of Swedish cities.<sup>16</sup> Many municipalities have refused to provide these settlements with water and sanitation facilities, giving rise to unsanitary living conditions. During the past years, the authorities have made efforts to routinely and forcibly evict Roma EU-citizens from their temporary settlements.<sup>17</sup> No alternative housing is offered to those evicted. The evictions have been criticized by the former UN Special Rapporteur on minority issues.<sup>18</sup> Although individuals belonging to the group have proven to be especially vulnerable to hate crimes<sup>19</sup>, the authorities make no efforts to protect them from such attacks.
  
12. The Government has consistently avoided its responsibility to grant the group with its core rights under international human rights law, and has instead adopted a repressive approach. Several municipalities have recently proposed legislation that bans panhandling within their municipalities,<sup>20</sup> effectively limiting the freedom of speech and freedom of movement of individuals belonging to the group in question. A national prohibition on panhandling has previously been considered by representatives from the Government<sup>21</sup>, without concrete measures being taken towards the making of such legislation. However, national elections are being held in September 2018. With two of

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<sup>15</sup> National Coordinator for Vulnerable EU-citizens, Ministry of Health and Social Affairs, *Framtid sökes - slutredovisning från den nationella samordnaren för utsatta EU-medborgare*, SOU 2016:6, February 2016.

<sup>16</sup> National Board of Health and Welfare (Socialstyrelsen), *Homelessness 2017 - Extent and Nature*, 2017, p. 72.

<sup>17</sup> See i.e. Sydsvenskan, *Nu rivs Sorgenfrilägret*, 3 November 2015, available at: <https://www.sydsvenskan.se/2015-11-03/nu-rivs-sorgenfrilagret>.

<sup>18</sup> Sydsvenskan, *FN-rapportör kritiserar avhysningen av EU-migranter*, 1 November 2015, available at: <https://www.sydsvenskan.se/2015-11-01/-fn-rapportor-kritiserar-avhysningen-av-eu-migranter>.

<sup>19</sup> Police Authority, *Nationell lägesbild - Brottslighet med koppling till tiggeri och utsatta EU-medborgare i Sverige*, Report 2015; Commission against antiziganism, *Studie om hatbrott och andra allvarliga kränkningar riktade mot utsatta romska EU-medborgare*, October 2015.

<sup>20</sup> See i.e. Sydsvenskan, *Vellinges politiker gav grönt ljus för tiggeriförbud*, 20 September 2017, available at: <https://www.sydsvenskan.se/2017-09-20/vellinges-politiker-gav-gront-ljus-for-tiggeriforbud>; SVT Nyheter, *Eskilstuna vill införa krav på tillstånd för tiggeri*, 30 January 2018, available at:

<https://www.svt.se/nyheter/lokalt/sormland/majoriteten-vill-infora-tiggeriforbud-i-eskilstuna>.

<sup>21</sup> See i.e. SVT Nyheter, *Regeringen öppnar för tiggeriförbud*, 18 August 2016, available at: <https://www.svt.se/nyheter/inrikes/regeringen-oppar-for-tiggeriforbud>.

the biggest political parties actively promoting such a prohibition in their political platforms<sup>22</sup>, a national prohibition on panhandling is possible within the near future.

13. It should be noted that the UN Human Rights Committee, in its most recent concluding remarks on Sweden, recommended that the Government take all measures necessary to ensure equal access by Roma to education, employment, housing and health care and that all individuals within its jurisdiction, including Roma EU-citizens, enjoy equal rights without discrimination.<sup>23</sup> The Government has, so far, not taken any measures in this regard.

***Suggested recommendations regarding Roma EU-citizens***

- 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.
- The Government should further refrain from imposing legislation that prohibits panhandling and should take measures to counteract that such legislation is imposed locally on a municipal level.

## **Articles 5 and 6**

### **The Indigenous Sami People**

14. Throughout the last decade, Sweden has received severe criticism at international and regional level for not safeguarding core Sami Indigenous rights, hence not sufficiently securing long term Sami cultural survival and well-being.<sup>24</sup> Since the latest

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<sup>22</sup> Moderaterna, *Problemet med tiggeri*, acquired 6 March 2018, available at: <https://moderaterna.se/problematiken-med-tiggeri>; Sverigedemokraterna, *Kriminalpolitiskt inriktningsprogram 2015*, acquired 6 March 2018, available at: [https://sd.se/wp-content/uploads/2015/01/Kriminalprogram\\_2015-10-26.pdf](https://sd.se/wp-content/uploads/2015/01/Kriminalprogram_2015-10-26.pdf).

<sup>23</sup> UN Human Rights Committee, *Concluding observations on the seventh periodic report of Sweden*, UN doc. CCPR/C/SWE/CO/7, 28 April 2016, para. 15.

<sup>24</sup> Except earlier recommendations made by the Committee, please see statements and recommendations made by, for instance, **regional bodies** such as Committee of Ministers, Council of Europe, *Resolution CM/ResCMN(2013)2 on the implementation of the Framework Convention for the Protection of National Minorities by Sweden*, 11 June 2013; Advisory Committee on the Framework Convention for the Protection of National Minorities, Council of Europe, *Fourth Opinion on Sweden – adopted on 22 June 2017*, ACFC/PO/IV(2017)004, 16 October 2017; European Commission against Racism and Intolerance, Council of Europe, *ECRI Report on Sweden (fifth monitoring cycle)*, CRI(2018)3, 27 February 2018; and **international bodies** such as UN Committee on Economic,

recommendations of the Committee in 2013 the Government has taken steps to improve the Sami situation such as initiating inquiries on Sami influence in decision-making processes connected to matters that concern them and their language rights.<sup>25</sup> The efforts have so far not lead to any concrete improvements in the everyday lives of the Indigenous Sami People. Since the Government is not showing any serious signs of addressing the Sami situation and revising Swedish law in light of existing international standards on Indigenous rights, providing for the possibility of adoption of special measures to promote equal opportunities or addressing structural discrimination, the human rights situation of the Indigenous Sami still is far below Sweden's international obligations.

15. The background to present human rights violations experienced by the Sami People and the lacking belief in the future of many Sami individuals is multifaceted. To begin with, the Government is still avoiding any concrete measure in full consultation and cooperation with the Sami to ensure that historical state oppression and human rights violations of the Sami People are investigated and addressed. This behavior goes contrary to the wishes of the Sami Parliament and state behavior of other so-called settler societies with democratic institutions such as New Zealand and Canada.<sup>26</sup>
16. No national policies or legislation exist that offer protection for Sami tangible or intangible cultural heritage from being used by non-Sami actors without Sami control and consent. Consequently, the Sami People witness their cultural heritage, for instance Sami names, craft and arts craft (*duodji*) being stereotyped, copied and otherwise

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Social and Cultural Rights (CESCR Committee), *Concluding observations on the sixth periodic report of Sweden*, UN doc. E/C.12/SWE/CO/6, 14 July 2016; UN Human Rights Committee, *Concluding observations on the seventh periodic report of Sweden*, UN doc. CCPR/C/SWE/CO/7, 28 April 2016; and two UN Special Rapporteurs on the Rights of Indigenous Peoples, James Anaya, *The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, UN doc. A/HRC/18/35/Add.2, 6 June 2011, and Victoria Tauli-Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, UN doc. A/HRC/33/42/Add.3, 9 August 2016.

<sup>25</sup> Regarding Sami influence in decision-making processes, please see Ministry Publication Series, *Konsultation i frågor som rör det samiska folket*, Ds 2017:43; and, regarding language rights, see Swedish Government Official Reports, *Nästa steg? Del 2, Förslag för en stärkt minoritetspolitik*, SOU 2017:88.

<sup>26</sup> During its latest report on Sweden's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) the CESCR Committee recommended Sweden to "follow up on the decision voted by the Sami Parliament in 2014 on establishing a truth commission on the treatment of the Sami People throughout the history of Sweden." CESCR Committee, UN doc. E/C.12/SWE/CO/6, 14 July 2016, para. 16.

exploited by non-Sami state and private actors including for commercial purposes without compensation to the Sami People.<sup>27</sup>

17. Regarding Sami Indigenous land rights and connected core Indigenous rights such as self-determination and the right to free prior and informed consent, reference is made to the Sami Parliament's comments to the Committee (paras. 4-17).<sup>28</sup> Civil Rights Defenders would like to add the following to the comments of the Sami Parliament.
18. Self-determination, to determine one's political status and one's economic, social and cultural development is, as for most Indigenous Peoples around the globe, absolutely core for the Indigenous Sami rights claim. The double nature of the Sami Parliament, it being both an elected, representational assembly among the Sami and a state agency commissioned with the task to implement state policies on Sami matters, its lacking influence on decision-making processes on all state levels and limited state funding hinder the Sami Parliament, the foremost representative of the Sami People, from *de facto* representing and safeguarding Sami rights, interests and perspectives. The deficiencies of the Sami Parliament for which the Government bears sole responsibility, have recently been pointed out by the CESCR and Human Rights Committees, and the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz.<sup>29</sup>
19. Despite a storm of criticism from human rights bodies, the Government is not taking any concrete measures to investigate the implications of Sami land rights claims based on Swedish customary law of immemorial use and international law such as the Declaration on the Rights of Indigenous Peoples of 2007.<sup>30</sup> Contrary to customary

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<sup>27</sup> Please see Saami Council, *The Rovaniemi declaration of the Saami Conference*, 29-31 October 2008, paras. 13-25, available at:

[http://www.saamicouncil.net/fileadmin/user\\_upload/Documents/Julgg%C3%A1%C5%A1tusat/SR\\_mall-Rovaniemi\\_Declaration.pdf](http://www.saamicouncil.net/fileadmin/user_upload/Documents/Julgg%C3%A1%C5%A1tusat/SR_mall-Rovaniemi_Declaration.pdf).

<sup>28</sup> Sami Parliament, *Comments of the Swedish Sami Parliament regarding Sweden's 22nd and 23rd Periodic report to the Committee on the Elimination of Racial Discrimination*, 14 November 2017, available at:

<https://www.sametinget.se/117554>.

<sup>29</sup> See CESCR Committee, UN doc. E/C.12/SWE/CO/6, 14 July 2016, paras. 15-16; Human Rights Committee, UN doc. CCPR/C/SWE/CO/7, 28 April 2016, paras. 38-39; and UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3, 9 August 2016, para. 37.

<sup>30</sup> See CESCR Committee, UN doc. E/C.12/SWE/CO/6, 14 July 2016, paras. 13-14; Human Rights Committee, UN doc. CCPR/C/SWE/CO/7, 28 April 2016, paras. 38-39; the former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN doc. A/HRC/18/35/Add.2, 6 June 2011, especially paras. 47, 50 and 55; and

international law and treaty obligations Sweden has yet to adopt national legislation in accordance with established principles per the Indigenous right to lands, territories and resources. At this moment, the legislator treats Sami land rights as an exclusive right for members of Sami reindeer herding districts to conduct their livelihood, with a correlating *usufruct* right to lands for reindeer herding, hunting and fishing that runs parallel to individual property rights.<sup>31</sup> In practice, the *usufruct* rights often yield to other interests such as natural resource investments and other land exploitation projects.<sup>32</sup> As a consequence, the reindeer herding districts are forced to engage in lengthy and extremely costly court proceedings as the only way to have their rights recognized. The Government recognizes no property or usage rights of lands based on Indigenous status for Sami individuals that stand outside of reindeer herding districts. Therefore, the majority of Sami individuals is denied legal standing based on its Indigenous status and is otherwise generally excluded in mining prospecting and other land exploitation processes that affect the everyday situation.<sup>33</sup> The Government is aggravating the situation by allowing natural resources extraction and other activities that exploit and limit the access to Sami traditional and ancestral lands and waters. The widespread and systematic exploitation of land and water threatens not only the Sami's livelihoods but also their culture, environment, physical and mental health, food supply, and ability to exercise their spirituality. For instance, the UN Special Rapporteur on the rights of Indigenous Peoples, Victoria Tauli-Corpuz, has confirmed that "a balancing of interests as foreseen by the Environmental Code, where traditional Sami livelihoods are weighed against possible economic gain only, is not in line with the international

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current Special Rapporteur, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3, 9 August 2016, especially paras. 6-10 and 38-47.

<sup>31</sup> Reindeer Husbandry Act (rennäringslagen), no. 1971:437.

<sup>32</sup> See UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3, paras. 38-47, although regarding the balancing of interests made in decision-making processes connected to larger land exploitation activities see especially paras. 42 and 44-46.

<sup>33</sup> See comments and recommendations made by the CESCR Committee, UN doc. E/C.12/SWE/CO/6, para. 14; and the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/PO/IV(2017)004, 16 October 2017, p. 7, para. 11.

human rights obligations and commitments that the State has assumed with respect to Indigenous Peoples.”<sup>34</sup>

20. As mentioned in its twenty-second and twenty-third periodic report to the Committee, the Government has commissioned an inquiry regarding a general consultation system for the Sami People. In September 2017 a ministry memorandum was presented by the commissioner, which was then circulated for consultation.<sup>35</sup> Initiating an inquiry on the issue of Sami participation and influence on decisions that can affect them is a step in the right direction in order to assure the Sami People their basic human rights. It is further positive, as the ministry memorandum suggests, to make possible for Sami reindeer herding communities and Sami organizations to represent Sami rights and interests.
21. It is clear, however, that there is a wide gap between the principles laid out in the ministry memorandum and the international standard on Indigenous participatory rights. There are no procedural or substantive guarantees comprised in the memorandum to ensure good faith consultation and cooperation with the Sami People in order to obtain their free, prior and informed consent in matters that concern them, especially relating to projects affecting their lands or territories and other resources. In fact, the principle of free, prior and informed consent, despite the recent international recommendations that Sweden has received, is not even treated in the ministry memorandum.<sup>36</sup> The memorandum has been criticized by Sami representatives and other Swedish society actors, among them Civil Rights Defenders, for being too weak and not in line with binding international human rights law.<sup>37</sup> Still the ministry memorandum is seen as controversial by the natural resource industry, and there are

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<sup>34</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3, para. 46. Please also see her comments made specifically on natural resource investments in Sápmi, paras. 6-10. See also the Environmental Code (miljöbalken), no. 1998:808.

<sup>35</sup> Ministry Publication Series, *Konsultation i frågor som rör det samiska folket*, Ds 2017:43.

<sup>36</sup> See recommendations made by the CESCR Committee, UN doc. E/C.12/SWE/CO/6, para. 14; and the Human Rights Committee, UN doc. CCPR/C/SWE/CO/7, para. 39.

<sup>37</sup> Jörgen Heikki, *Samisk kritik mot konsultationsordning* and *Tummen ner till förslaget om konsultationsordning*, Samedion och SVT Sápmi, 29 November 2017, available at: <http://sverigesradio.se/sida/artikel.aspx?programid=2327&artikel=6832052>.

concerns that the Government prioritizes meeting the demands of the industry rather than its human rights obligations.<sup>38</sup>

22. Combining lacking participatory rights, insufficient legal safeguards for Sami collective property, the lack of a state body with the mandate to safeguard Sami Indigenous rights and perspectives including cumulative effects of different permits on land exploitation<sup>39</sup> and the aim of the Swedish Government to double the number of mines by 2020 and triple them by 2030,<sup>40</sup> there are concrete signs to believe that Sami access to their traditional lands, territories and resources will further aggravate if no measures are taken immediately.
  
23. In legal proceedings on land rights the burden of proof lies with the Sami party, regardless of whether the Sami party has initiated the legal process. In 2016 the Human Rights Committee expressed concerns about the difficulties faced by Sami in securing rights over lands and resources, including the high burden of proof requirements on Sami claimants to demonstrate land ownership, and the inability of Sami reindeer herding districts to obtain legal aid under the Legal Aid Act, despite the fact that they are the only legal entities empowered to act as litigants in land disputes in respect of Sami lands and grazing rights.<sup>41</sup> This is not the only time Sweden has received international criticism for putting the Sami People in a disadvantaged position compared to the majority population in the context of proving property rights in court.<sup>42</sup> However, no measures have been taken by the Government to amend the Swedish system in this regard.

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<sup>38</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3. para 35, see also paras 40-47; and former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN doc. A/HRC/18/35/Add.2, para. 55.

<sup>39</sup> Regarding the issue of cumulative effects, see UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3. para 42.

<sup>40</sup> Government Offices of Sweden, *Sweden's Minerals Strategy*, updated 17 May 2015, p. 11, available at: <http://www.government.se/49b757/contentassets/78bb6c6324bf43158d7c153ebf2a4611/swedens-minerals-strategy.-for-sustainable-use-of-swedens-mineral-resources-that-creates-growth-throughout-the-country-complete-version>.

<sup>41</sup> Human Rights Committee, UN doc. CCPR/C/SWE/CO/7, para. 38.

<sup>42</sup> See, for instance, former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN doc. A/HRC/18/35/Add.2, paras. 51 and 82; UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3, para. 39; and CESCR Committee, UN doc. E/C.12/SWE/CO/6, para. 14.

24. Another topic relating to the human rights situation of the Sami People is the state categorization between the minority of reindeer herding Sami and the Sami majority. In this regard Civil Rights Defenders would like to refer to the Sami Parliament's comments (para. 14). It is solely the Government that bears the responsibility for the division that the Sami People is experiencing legally, socially and politically. The Sami reindeer herding districts are the only Sami communities with some (albeit extremely limited) recognized rights regarding land use based on their Indigenous status. At the same time the Sami reindeer herding districts are under an immense pressure from exploitation projects, predators and climate changes since reindeer herding requires access to vast lands.<sup>43</sup> It is absolutely crucial that no state measures lead to worsened conditions for any Sami group or increases the division among the Sami People.
25. The Committee noted in 2013 the problem of inadequate compensation by Sweden for damages due to killings of reindeer of Sami by predators protected under the Swedish wildlife policy. Civil Rights Defenders would in this context like to refer to the Sami Parliament's comments (paras. 18-19), adding that the Government's response to the Committee regarding the 10 % tolerance level demonstrates that no measures have been taken to heed the Committee's recommendations in this regard.
26. The Indigenous Sami are disadvantaged compared to the majority population in Sweden concerning their language use. For instance, many Sami children are prevented from education in and on Sami languages in school and there are obstacles for Sami using their languages when dealing with state agencies such as health services.<sup>44</sup> The Government officially categorizes the language rights of the Sami People as minority rights and not as Indigenous rights.<sup>45</sup> Civil Rights Defenders would further like to refer to the comments of the Sami Parliament (paras. 27-30).

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<sup>43</sup> See comments and recommendations made by the CESCR Committee, UN doc. E/C.12/SWE/CO/6, para. 14 (a); and the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/PO/IV(2017)004, 2017, p. 7, para. 11.

<sup>44</sup> See (in Swedish) Sami Parliament, *Action Plan on Sami languages*, adopted May-June 2016, available at: [https://www.sametinget.se/handlingsprogram\\_sprak](https://www.sametinget.se/handlingsprogram_sprak); and Saami Council, *The Rovaniemi declaration of the Saami Conference*, paras. 24-25, available at: [http://www.saamicouncil.net/fileadmin/user\\_upload/Documents/Julgg%C3%A1%C5%A1tusat/SR\\_mall-Rovaniemi\\_Declaration.pdf](http://www.saamicouncil.net/fileadmin/user_upload/Documents/Julgg%C3%A1%C5%A1tusat/SR_mall-Rovaniemi_Declaration.pdf).

<sup>45</sup> Ibid. See, for instance, Swedish Government Official Reports, *Nästa steg? Del 2, Förslag för en stärkt minoritetspolitik*, SOU 2017:88.



27. Sweden's ratification of the ILO Convention No. 169 has been a lingering issue for decades. Noting the comments made by the Government in its report to the Committee, Civil Rights Defenders welcomes a concrete strategy on how the Government intends on ratifying the ILO Convention No. 169.
28. Government and Sami negotiations on the Nordic Sami Convention have now stopped and a draft convention is currently under Sami review. Civil Rights Defenders would like to express concerns about the fact that parts of the Nordic Sami Convention, if ratified at this moment, suffer a risk of not being in line with the international standard on Indigenous rights.<sup>46</sup> For instance, the principle of free, prior and informed consent is absent in the draft convention text. Furthermore, as pointed out by the Sami Parliament in its comments to the Committee (para. 3), the Indigenous right to lands, territories and resources is watered down in the draft convention.

***Suggested recommendations regarding the Indigenous Sami People***

- The Government should, in full consultation and cooperation with the Sami, establish a truth commission to investigate and address the treatment of the Sami People throughout Sweden's history.
- The Government should take urgent measures to give protection to Sami tangible and intangible cultural heritage such as ensuring that elements of the Sami culture are not used without the free, prior and informed consent of the Sami People; prevent Sami culture from being portrayed in a stereotype or misappropriate manner; share benefits with the Sami People from commercial activities that include elements of Sami culture; ensure that Sami cultural heritage is exclusively administered by the Sami Parliament and Sami institutions which the Sami themselves have chosen with adequate resources allocated;
- The Government should strengthen Sami self-determination as a People, by ensuring Sami control over who will represent them in matters that concern them; ensuring that additional responsibilities are given to the Sami Parliament; take steps to ensure that the Sami Parliament is able to effectively influence decision-making processes on all levels and in all areas affecting the Sami People in line with established human rights principles; continue increasing the resources allocated to the Sami Parliament to ensure

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<sup>46</sup> See comments of the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN doc. A/HRC/33/42/Add.3, para. 14.

that the Parliament is provided with adequate resources to enable it to fulfil its mandate effectively.

- The Government should take concrete measures, in full consultation and cooperation with the Sami People, to fulfil and protect Sami access and rights to traditional lands, territories and resources, by investigating the implications of Sami land rights claims based on customary principles of immemorial use, historical ownership, and international law such as the Declaration on the Rights of Indigenous Peoples of 2007; and revise Swedish law accordingly.
- The Government should ensure an absolute right to free, prior and informed consent to any matters that may affect the Sami People, its traditional livelihoods and cultural expressions, including land exploitation and other use of natural resources in Sápmi, as per the right to self-determination, property and culture established by binding customary international human rights principles and treaties to which Sweden is a party.
- The Government should, in full consultation and cooperation with the Sami People, adopt legislation to revise the high burden of proof required to establish traditional Sami rights to land in court proceedings and adopt a flexible Indigenous compatible solution to the burden of proof issue; and to provide Sami parties with legal aid in such proceedings.
- The Government should take measures, in full consultation and cooperation with the Sami People, to resolve the legal division between different Sami groups that is embedded in today's legislation. The Government has a responsibility to ensure the full enjoyment of Indigenous rights for all Sami, both members of Sami reindeer herding districts and Sami that stand outside the reindeer herding communities, without infringing the rights of any Sami group or further increasing the division among the Sami People as a whole.
- The Government should, in full consultation and cooperation with the Sami, effectively implement the Government's predator policy and find ways to adequately compensate the Sami reindeer herding communities for damages caused to them by predators.
- The Government should, in full consultation and cooperation with the Sami People, as a prerequisite for Sami cultural heritage, eliminate any obstacle to Sami preservation, development and use of Sami languages, including ensuring competent teachers and other resources within the educational system and making possible for communication with authorities and other actors in Sami languages in the whole territory of Sápmi.

- The Government should ratify ILO Convention No. 169 as a matter of urgency and review all laws and policies to place them in accordance with current standards of international Indigenous rights law.
- The Government should ensure the timely good faith negotiation and adoption of a Nordic Sami Convention in line with Sami perspectives and well-established principles on the rights of Indigenous Peoples and treaties to which Sweden is a party.