



**Submission to the Committee on the Rights of Persons with Disabilities**

**List of issues prior to reporting for Sweden to be adopted during the 20th  
Session of the Committee on the Rights of Persons with Disabilities**

**Submitted by: CIVIL RIGHTS DEFENDERS**

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CIVIL RIGHTS DEFENDERS IS AN INDEPENDENT EXPERT ORGANISATION FOUNDED IN 1982 IN SWEDEN, WITH THE MISSION  
TO DEFEND PEOPLE'S CIVIL AND POLITICAL RIGHTS AND EMPOWER HUMAN RIGHTS DEFENDERS AT RISK WORLDWIDE.

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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 the Swedish Disability Rights Federation. The purpose is to give input to the UN Committee on the rights of persons with disabilities Committee with respect to Sweden's compliance with the International Convention on the rights of persons with disabilities, for the Committee's pre session of Sweden during its 20th session in August 2018.
2. This document complements the submission from the Swedish disability federation and consists of brief updates on Sweden's compliance with Article 13, 14 and 15 in the Convention, starting with follow up on recommendations from 2014, with suggested review questions complementing the simplified reporting procedure (CRPD/C/16/3).

## Article 13 – Access to justice

3. Civil Rights Defenders fully agree about the facts and circumstances which are described in the submission from the Swedish disability federation but would like to add the following aspects: A precondition to be able to ensure procedural rights of suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to their mental or physical condition or disabilities is knowledge in such a disability exist and support is needed. Following its visit to Sweden in 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated in its report to the Swedish government that "The procedure for screening newly arrived persons at police detention facilities continue to leave much to be desired." No further actions have been taken to establish methods to identify if a person need special support.<sup>i</sup>
4. An initial safety assessment should be carried out when a person is detained in police custody. Another will take place when the accused arrive to the pretrial detention.<sup>ii</sup> The initial security assessment in police custody and pretrial detention is however only a basic and routinely procedure which leads up to identifying more acute health conditions, not to identify if the person need special support in relation to the criminal procedure.
5. From the beginning of 2017, routinely screenings for ADHD of convicted prisoners will be carried out.<sup>iii</sup> The examination of these target groups may be more thorough than in general cases, and enough to identify need of support, but such screenings only take place when a person already has been convicted.
6. The shortcomings in the system to identify vulnerabilities became clear in the case JO 2015/16 s. 260, where the Swedish Parliamentary Ombudsman criticized the treatment of a, later discovered, demented elderly woman. After being taken into custody by the Prison and Probation Service, with assistance from the police, it was concluded that the woman was in need of frequent observation but no health care staff was consulted. A nurse was consulted first the following day and since the judgement was already final she was transported to the prison the same day. Two days after being detained it was necessary to urgently take her to the hospital. She was later put in a private nursing home. The Parliamentary Ombudsman criticized the initial decision to not consult a nurse or physician and for not informing the prison about her health condition.

7. The case clearly shows the effects of a system without sufficient identification of persons who are in a need of health care, service or support before the criminal proceedings. It also pinpoints the insufficiency with authority staff making the crucial initial identification of if a disability exists and if support is needed. Civil Rights Defenders is currently pursuing a case related to a man having senile dementia and, according to the forensic psychiatric investigation, a psychological disorder of unspecified type. The man has been the subject of a lawsuit in which his cognitive disabilities were not taken into account. He was not granted appropriate assistance related to his disabilities. This case shows that even if there is an observation of the detained person has a disability, it does not relate to the criminal procedure.<sup>iv</sup>
8. The report Judiciary treatment of children with neuropsychiatric disabilities, from the law faculty of Stockholm University, 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.
9. The Convention has not been incorporated into Swedish law. Instead national laws should be interpreted in conformity with the Convention. However, a report from 2018, from the Uppsala University shows that in practice, the method to use convention conform interpretation is limited to the European Convention.<sup>v</sup>
10. Authorities' and courts' ignorance of their obligations to interpret national legislation as well as the European convention, in the light of the CRPD and other binding human rights instruments, are significant reasons for why individuals with disabilities do not enjoy the rights protection they are entitled to (see the submission from the Swedish Disability federation).

### ***Proposals for question Article 13***

- *What steps do the Swedish government plan to take to ensure a method to identify if there is a need of support due to a disability for suspects, accused and victims as well as parties in administrative cases?*
- *What steps do the Swedish government plan to take to ensure that persons identified as being in a need of support, related to the court procedure, are granted access to justice to the same extent as people without disabilities?*
- *Provide separate statistics on crimes against people with disabilities.*
- *What further actions do the government plan to take to incorporate the CRPD into national law, and, in the meantime, ensure the national law will be interpreted in the light of the convention?*

## Article 14 – Freedom of liberty

11. The regulations in relation to psychiatric care do not allow persons to be detained only because they have a disability, but as the committee has observed the application violates the human rights standards. Despite the criticism from the committee, no further actions have been taken to prevent deprivation of freedom of liberty of persons with psychosocial or neuropsychiatric disabilities.
12. The annual report 2016 published by the Swedish National Quality registries, a system of national registries for health and medical services, shows that 11 percent of patients in forensic psychiatric care were ready to be discharged by their doctors but remained in detention. 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.
13. As human rights are often realized on the municipal level it is important that the municipalities adhere to their responsibility to fulfil these rights. It is equally important that the Government, being ultimately responsible for the realization of the rights in the Convention, does not fail to take that responsibility. However, due to local self-government the Government is often unwilling to take, or prevented from taking, direct action if a municipality is neglecting human rights. This severely hinders the full realization of the rights in the convention.
14. An aggravating factor is that it is hard to appeal against the compulsory care and the institutionalization. The individual has a right to public counsel. However, the public counsel is just appointed to the particular negotiation, not throughout the compulsory period and often without sufficient time, which put the individual in a vulnerable situation. 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 ICCPR or CRPD.
15. In 2017, Civil Rights Defenders conducted a study to investigate to what extent the administrative courts would perform an independent assessment of a patient's need for further compulsory psychiatric care and for the transfer from a closed to open compulsory care. The study was conducted on 501 verdicts from three administrative courts spread over the country over a three-month period. The results of the study show that the courts are very reluctant to rule against the assessment made by the chief medical officer. In only 2 out of 220 cases concerning compulsory forensic psychiatric care, did the chief medical officer and the court's medical expert express different opinions. The same pattern is shown in the study made on non-forensic compulsory psychiatric care. In only 5 out of 281 cases did the chief medical officer and the medical expert present different opinions. In every instance, the Court would rule in line with the assessment made by the chief medical officer expect rather than the medical expert. Furthermore, the study showed that all three courts would regularly use standard formulations in their decision. The formulations would often refer to the assessment made by the chief medical officer or to the

medical material presented to the court by the chief medical officer, without further reasoning on the circumstances of the case. Thus, it was often not clear on what grounds the court made their decision.

16. With regard to Sweden's obligation to minimize the use of 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. 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. Civil Rights Defenders welcomes that Sweden has allocated further resources for the school health services, but insists that more resources must be designated to the psychiatric care.

#### ***Proposed questions article 14***

- *What measures has the Swedish government taken to ensure that no one is detained against their will in any medical facility on the basis of actual or perceived disability?*
- *May the government provide data on how many individuals that are deprived of their liberty only due to their disability? If not, what steps do the Swedish government plan to take to ensure that data on how many individuals that are deprived of their liberty only due to their disability is provided?*
- *What steps do the Swedish government plan to take to ensure that patients in forensic psychiatric care who are ready to be discharged by their doctors do not remain in detention, when the municipalities do not provide adequate support?*
- *What steps do the Swedish government plan to take to improve the access to psychiatric care?*

#### **Article 15 Prohibition of torture and cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty**

17. Statistics show that women are more likely to be subjected to forced actions during compulsory care such as forced medication, ECT (electro-convulsive treatment) and isolation.<sup>vi</sup> The use of forced actions against women is even more common when it comes to minors (in 2016, 84 % were against girls).<sup>vii</sup> When it comes to ECT-treatment 62% out of the patients registered 2017 were female.<sup>viii</sup> Yet little or nothing has been done to stop the culture that enables women to become more subjected to forced actions.
18. 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. 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. The Patient Act (2014:821), which aims to strengthen the position of the patient, does require health care services to ensure that patients are involved in decisions and able to give a free and informed consent regarding their care.<sup>ix</sup> However, a written informed consent is still not always sought for before resorting to ECT-

treatment in Sweden. This was criticized by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2015.<sup>x</sup>

19. Furthermore, a report from the Swedish Agency for Health and Care Services Analysis (2017:2) clearly shows that the Patient Act has not improved the patients involvement or use of informed consent in relation to treatment.<sup>xi</sup>
20. The signatory organizations welcome efforts to include a national criminal provision against torture, as previously requested by treaty monitoring bodies. However, despite years of international criticism and the fact that the inquiry presented its proposal on criminalization of torture to the Government in 2015, no such legislation is in place.
21. The signatory organizations welcome the appointment of a commission of inquiry (SOU 2017:111), assessing the need of legislative changes in the Compulsory Psychiatric Care Act with regard to children. The inquiry proposes a number of legislative changes, aiming at reducing the use of coercive measures against children and strengthening the rights of children in compulsory psychiatric care. Although the legal prerequisites for using coercive measures against children are proposed to become stricter, further steps must be taken. The proposal does not legally prohibit the use of straps or belts or of seclusion against children, as urged by the Committee and the Committee on the Rights of the Child (CRC).<sup>xii</sup> Moreover, the right to appeal decisions regarding coercive measures to the court is not proposed to be extended. Consequently, children subjected to disproportionate coercion will still be left without access to redress.
22. Furthermore, many of the proposals aimed at reducing the use of coercive measures against children are relevant to introduce for adult patients, which should be considered by the government.
23. 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 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.
24. 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.

**Proposed question article 15:**

- *What steps does the Swedish government plan to take to stop the culture that enables women to become more subjected to forced actions?*
- *What steps has the Swedish government taken, since the inquiry committees response was presented, to incorporate the crime of torture in Swedish penal law?*

- *What steps has the Swedish government taken to ensure training to medical professionals and personnel in care and other similar institutions on the prevention of torture, cruel, inhuman or degrading treatment or punishment, including the use of coercive measures?*
- *What steps does the Swedish government plan to take include human rights indicators with regard to the monitoring of treatment of persons in psychiatric care?*
- *What steps does the Swedish government plan to take to ensure that patients in compulsive psychiatric care have access to redress if subjected to disproportionate coercion?*

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<sup>i</sup> Committee for the Prevention of Torture (CPT), *Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 to 28 May 2015*, page 5.

<sup>ii</sup> Regulations and general advice on Police Detention Facilities (PMFS 2015:7, FAP 102-1) (Chapter 1, Paragraph 6), as well as the Swedish Prison and Probation Service's regulations and general advice on detention (KVFS 2011:2).

<sup>iii</sup> Dagens Nyheter (DN), *Intagna ska undersökas för ADHD-diagnos*, 28 July 2016.

<sup>iv</sup> Scania and Blekinge Court of Appeal, case no. B 1343-15, judgement of 2 February 2016, Malmö.

<sup>v</sup> Patrik Bremdal, Maria Grahn Farley, Jane Reichel,

Principen om fördragskonform tolkning förhållande till Sveriges konventionsåtaganden om mänskliga rättigheter, Uppsala Universitet, 2017

<sup>vi</sup> Socialstyrelsen (The National Board on Health and Welfare), *Statistik om psykiatrisk tvångsvård enligt lagen om psykiatrisk tvångsvård (LPT) år 2013*, available at: <https://www.socialstyrelsen.se/SiteCollectionDocuments/statistik-om-psykiatrisk-tvangsvard-enligt-lpt-2013.pdf> and Socialstyrelsen, *Bättre vård – mindre tvång?*, 2013, available at: <https://www.socialstyrelsen.se/publikationer2013/2013-11-27>

<sup>vii</sup> SOU 2017:111, p. 113.

<sup>viii</sup> Kvalitetsregistret ECT, *Årsrapport 2017*, available at: <https://registercentrum.blob.core.windows.net/ect/r/ECT-A-rsrapport-2017-Utan-data-fr-n-patientregistret-HJeI-MAQGm.pdf>

<sup>ix</sup> The Patient Act (2014:821) (Chapter 4 Paragraph 2 and Chapter 5).

<sup>x</sup> CPT/Inf (2016) 1 para. 110.

<sup>xi</sup> Vårdanalys, *Lag utan genomslag, Utvärdering av patientlagen 2014-2017*, available at: <https://www.vardanalys.se/rapporter/lag-utan-genomslag/>

<sup>xii</sup> CRPD/C/SWE/CO/1 p. 39-40 and CRC/C/SWE/CO/5 p. 26.