THE SWEDISH FOUNDATION
FOR HUMAN RIGHTS

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Contributors: Civil Rights Defenders • Doctors of the World • Equally Unique* • É Romani Glinda • Independent Living Institute • Iranska Flyktingars Riksorganisation • Iranian Women's Liberation • Network for Peace in the Horn of Africa • Ordfront • Save the Children Sweden • Shahmama and Salsal National Association (SASNA) • The Swedish Disability Federation (HSO)* • The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL) • The Swedish Federation for Social and Mental Health (RSMH) • The Swedish Women's Lobby • Uppsala Antidiscrimination Office

**Equally Unique represents six disability organisations and HSO represents 39 disability organisations*

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Introduction

1. The following report is submitted by the Swedish Foundation for Human Rights with contribution from 16 organisations. The purpose is to give input to the Committee on Economic, Social and Cultural Rights review of Sweden's commitments under the International Covenant on Economic, Social and Cultural Rights.

General information – (LOI § 1, 2)

Incorporation of the International Covenant on Economic, Social and Cultural Rights

2. The Covenant has not been incorporated into Swedish law and the material content of the Covenant is therefore not directly applicable in courts of 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.[1] 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 why individuals do not enjoy the rights protection they are entitled to. In addition, most ESC rights do not have the same constitutional protection in Sweden as civil and political rights, as they are excluded from the Swedish Bill of Rights (*Rättighetskatalogen*).[2] The Government's report as well as the List of issues lack information regarding court decisions which contain references to the provisions of the Covenant as well as whether the State party considers economic, social and cultural rights justiciable. This despite the fact that this information has specifically been requested by the Committee both in its concluding observations from 2008[3] and List of issues from 2015.[4]

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

3. Sweden has not ratified the Optional Protocol and therefore there is no remedy available for Swedish citizens or migrants when access to justice for violation of the rights in the Covenant has been denied at the national level. According to information provided by the International department at the Ministry for Social Affairs, a decision on whether Sweden intends to sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is currently being prepared and is to be expected in time for the Committee session in June. It should be noted that Sweden has ratified the Optional Protocol to the International Covenant on

[1] SOU 2010:70, En ny struktur för skydd av mänskliga rättigheter, Slutbetänkande av Delegationen för mänskliga rättigheter i Sverige, p.130
[2] See Rättighetskatalogen (*Bill of Rights*) in Regeringsformen (*The Instrument of Government*), available at: http://www.riksdagen.se/en/Documents-and-laws/
[3] E/C.12/SWE/CO/5, para 13.
[4] E/C.12/SWE/Q/6, I para 3.

Civil and Political Rights. This suggests that the Swedish government, at least until now, have not given the same priority to the justiciability of economic, social and cultural rights (ESC) as to civil and political rights.

Local Self-Government

4. As human rights are often realised 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 Covenant, 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. This is exemplified by a case in front of the UN Committee on the Rights of Persons with Disabilities (CRPD), where the committee found that a municipality in Sweden had violated the right to health, article 25 in the CRPD convention, by not taking exceptional circumstances into account when refusing a building permit.[5] The Swedish Government declined to take any further action referring to the principle of local self-government, stating that the plaintiff could apply for a building permit again.[6] However, as the Government has not followed the recommendation by the CRPD to take legislative action, it is unlikely that a second application for a building permit would be approved by the courts as it would be tried under the same law once again.

National Human Rights Institution

5. The Government has not provided any information regarding existing human rights institutions mandated with protection and promotion of ESC rights nor if the monitoring functions of these institutions are based on the Covenant. Sweden has not established an independent national human rights institution in accordance with the Paris principles, but did accept the UN Human Rights Council UPR recommendation on vesting a national institution with the competence to promote and protect human rights.[7] In July 2015, the Government announced that it would propose that the Parliament 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 placed under the Parliament, and not under the Government. However, it is a matter of concern that the Government has announced that the institution should form part of an already existing agency. The two relevant agencies currently under the Parliament—the Parliamentary Ombudsman and the Swedish National Audit Office—lack relevant expertise and experience in human rights law and do not address institutional and structural rights problems in ways that are necessary for an independent human rights institution to operate effectively. Therefore, Swedish civil society organizations have expressed that it is vital that a new institution be established 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

[5] CRPD/C/7/D/3/2011.
[6] Ministry of Health and Social Affairs, "Written replies by the government of Sweden to the list of issues (CRPD/C/SWE/E/Q1) in relation to the initial report of Sweden", adopted by the Committee at its tenth session (2-13 September 2013), p 13.
[7] A/HRC/WG.6/21/L.10, para. 146.14.

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.

We recommend that the State:

- incorporate ICESCR into domestic law;
- ratify the Optional Protocol to ICESCR as a matter of priority;
- work with municipalities to ensure human rights compliance and awareness, since there are wide discrepancies throughout the country in addressing ESC rights and provide support for local measures that respect ESC rights;
- in its proposal to the Parliament about a National Human Rights Institution, emphasize that the institution be established as a new agency directly subordinated 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;
- emphasize that for the institution to operate effectively, civil society must be guaranteed transparency and influence.

Article 1, Free disposal of natural wealth and resources

6. Sweden has received massive criticism from international and regional bodies relating to its failure to safeguard the rights of the Sami.[8] Instead of heeding calls for action, the Government has taken measures that further aggravate the situation. Large-scale prospecting and mining due to lenient mining legislation and policies in the Sami territory have had devastating consequences for 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.[9]

Nordic Sami Convention – (LOI § 4)

7. 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 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

[8] HRC, *Concluding observations of the Human Rights Committee*, Doc no CCPR/C/SWE/CO/7, Advance unedited version, 30 March 2016, paras 38-39, 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, *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, 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.

[9] 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.

from the governments, and call for the closure of negotiations and adoption of the Convention in 2016.[10]

The Sami Parliament – (LOI § 5)

8. The Sami Parliament plays a key role for indigenous rights in Sweden. However, representatives of the Parliament itself, academics and Sami activists often express frustration at its limited possibilities to safeguard the rights of the Sami people in practice. In order for the Parliament to better safeguard Sami self-determination and Sami indigenous rights its parliamentary functions, including its mandate to take decisions in matters of substantive relevance to the Sami people, need to be significantly strengthened and its budget increased. A major concern is its double roles – both as a government agency and a representative body. As such, it is both supposed to represent the Sami people (in its representative function) and execute the government's policies on Sami issues (in its government agency function), which sometimes run contrary to Sami interests. In 2004 a Sami Parliament-appointed committee on how to strengthen the Sami right to self-determination found that it was inappropriate that the Sami Parliament is a governmental agency and that, as a consequence of this, its decisions can be appealed to non-Sami authorities and courts. Moreover, the committee concluded that the right of the government to give directives to the Parliament was inconsistent with the Parliament's function as an organ for Sami self-determination.[11] Similarly, an official report of the Swedish Government from 2002 found that the double nature of the functions of the Sami Parliament is problematic in relation to Sami self-determination.[12] The report concluded that it is not suitable for the Sami Parliament to also function as a government agency.[13]

9. UN treaty bodies have criticized the Parliament's organizational flaws, limited budget and weak mandate. In its most recent review the UN Human Rights Committee (HRC) expressed concern over the Parliament's limited budget, making it difficult for it to fulfill its mandate effectively.[14] The former UN Special Rapporteur on the situation on human rights and fundamental freedoms of indigenous people, James Anaya expressed concerns over its ability to safeguard the rights of the Sami in 2011.[15]

The burden of proof in cases concerning Sami land and grazing rights – (LOI § 6)

10. 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

[10] Declaration from the Sami Parliament's Conference on the Nordic Sami Convention adopted in Umeå 2014.
[11] Conclusions from the Committee on the Swedish Sami Parliament commissioned to put forward a proposal for a strategy for the implementation of the Sami people's right to self-determination on the Swedish side of Sápmi (*Betänkande av det svenska Sametingets kommitté med uppgift att ta fram ett förslag till strategi för en implementering av det samiska folkets rätt till självbestämmande på den svenska sidan av Sápmi)* (2004), ch. 7.2.4.
[12] SOU 2002:77, *Sametingets roll i det svenska folkstyret*, p. 130.
[13] *Idem*, p. 10.
[14] UN Human Rights Committee, *Concluding observations of the Human Rights Committee*, Doc no CCPR/C/SWE/CO/7, Advance unedited version, 30 March 2016, paras 38-39.
[15] "Sweden should review the statutory status and functions of the Swedish Sami Parliament in relation to Swedish government authority structures, with the goal of increasing its independent decision making powers.", UN, 2011. A/HRC/18/XX/Add.Y, 12 January 2011, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, para 76.

ownership in proceedings related to exploitation of land in traditional Sami territory.[16] This creates a significant obstacle faced by the Sami in securing rights over lands and resources. The HRC recommended in 2009 that Sweden grant adequate legal aid to Sami villages in 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.[17] In 2016, the HRC reiterated these recommendations.[18] However, no measures have been taken to heed these recommendations in this regard, which is also apparent from the response to question 6 in the Government's own report to this Committee.

11. 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 Act[19] 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.

Mining activities – (LOI § 7)

12. In February 2013, the Swedish Government presented a new strategy for extraction of minerals.[20] According to this strategy, the Government aims for a doubling of the number of mines by 2020 and a tripling by 2030.[21] The new strategy was met with widespread protests from the Sami people and civil society. 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 and informed consent (FPIC).[22] The Equality Ombudsman has called the situation for Sami rights in relation to extractive industries "alarming" and has urged the Government to put an end to all discriminatory practices against the Sami.[23]

13. 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

[16] UN, 2011. A/HRC/18/XX/Add.Y, 12 January 2011, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, para 51.
[17] HRC, *Concluding observations of the Human Rights Committee*, Doc no CCPR/C/SWE/CO/6, 7 May 2009, para 21.
[18] HRC, *Concluding observations of the Human Rights Committee*, Doc no CCPR/C/SWE/CO/7, Advance unedited version, 30 March 2016, paras 38-39.
[19] Law (1971:437) on reindeer grazing.
[20] Ministry of Enterprise, Energy and Communications, *Sveriges mineralstrategi: För ett hållbart nyttjande av Sveriges mineraltillgångar som skapar tillväxt i hela landet*, February 2013.
[21] 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.
[22] 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.
[23] Equality Ombudsman Agneta Broberg, *Stoppa diskrimineringen av samer med ny urfolkspolitik*, Dagens Nyheter, 16 September 2013.

the assessment must take ecological, social, culture and economic factors into account.[24] In practice, 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.[25] One example is the approval given 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 and ignoring cultural and ecological factors.[26]

14. 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. Accordingly, the widespread exploitation of natural resources in the Sami territory per definition jeopardises the existence of the Sami as a people.[27]

15. 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. [28] Such a commission would be an important contribution to the recognition of historic and current structural violations of the human rights of the Sami. This has, nevertheless, not been heeded by the Government.

We recommend that the state:

- ratify ILO Convention No. 169 as a matter of urgency and review all laws and policies to place them in accordance with the Convention;
- ensure the timely negotiation and adoption of a Nordic Sami Convention in line with well-established principles on the rights of indigenous peoples;
- 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;
- establish a truth commission on the treatment of the Sami people throughout Sweden's history and establish procedures for redress and compensation for historic and present human rights violations of the Sami people.

[24] Swedish Environmental Code (1998:808), ch. 3-4.
[25] Equality Ombudsman Agneta Broberg, *Stoppa diskrimineringen av samer med ny urfolkspolitik*, Dagens Nyheter, 16 September 2013.
[26] 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".
[27] Sami Parliament, *Sametingets syn på gruvor och mineraler i Sápmi*, 2014.
[28] Swedish Sami Parliament motion adopted on May 21 2014, Records from Sami Parliament plenary session in Åre 2014.

Article 2, Non-discrimination

Vulnerable EU Citizens – (LOI § 10, 23)

16. 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. According to the Government's own recent estimate there were about 5000 vulnerable EU citizens in Sweden in 2015. A service provided by the NGO Stadsmissionen called CrossRoads directed towards EU citizens in need of a temporary bed, a meal, a shower etc. has doubled its visits in the last couple of years counting some 100 000 visits between 2011 and 2014. Many are returning visits, but the trend is clear. Many of these EU citizens have fled structural discrimination and societal exclusion in their home. However once in Sweden, many of the Roma EU migrants find themselves in deplorable living conditions, begging for money and sleeping in tents or temporary settlements on the outskirts of the cities. Many live in extreme poverty.

17. There is widespread confusion among municipalities and other local authorities on what obligations they have to provide for these groups of vulnerable EU citizens. In some municipalities, local authorities have determined that EU citizens should be treated as "tourists" and thus be granted no right to any social services, health care, housing or education.[29] The freedom of movement within EU has therefore opened up a parallel legal system for vulnerable EU citizens, where they have even less rights than individuals of a third country without papers.[30] This violates, among others, the right to work, right to health, right to education and the right to an adequate standard of living, including access to water and sanitation.

18. The public commitment to securing Roma rights and counteracting anti-Gypsyism, as elaborated upon in the Government's report to this Committee (para. 10), does not extend to Roma from other European countries. The Government has so far been unwilling to recognize that Sweden's economic, social and cultural rights obligations – as established in the covenant – apply to this group staying in Sweden, under Swedish jurisdiction. Instead, in the public discourse and concrete policy, the Government focuses almost exclusively on the responsibility of the states the Roma originate from, primarily Romania.

19. In 2015, the Government appointed a national coordinator whose task was to support public bodies and NGOs working with this group of vulnerable EU citizens, as mentioned in the Government's report to this Committee (para. 23). However the coordinator's final 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.[31] For example, the report recommends that children to vulnerable EU citizens should not be granted the right to primary education, in violation of Sweden's obligations under the ICESCR, the UN Convention of the Rights of the Child and the European Convention on Human Rights.

[29] Swedish Association of Local Authorities and Regions, *Några juridiska frågor vad gäller utsatta EU-medborgare* (Some legal issues regarding vulnerable EU-citizens), 2014, and National Board of Health and Welfare, *Rätten till socialt bistånd för medborgare inom EU/EES-området – en vägledning* (The right to Social Assistance for citizens within EU/EES – a guide), 2014.

[30] Lag (2013:407) om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd (*The Act 2013:407 on health and medical care for persons staying in Sweden without necessary permits*) and Skollag (2010:800), (*Law on education)*, ch. 7 para 2, and ch. 29 para. 2.

[31] 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.

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, without offering alternative accommodation. 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 national coordinator's report also shows an astonishing lack of methodological rigor – basing its findings on anecdotes and media sources instead of using evidence based research.[32]

20. Furthermore, it is well documented that vulnerable EU citizens of Roma origin routinely are victims of violent attacks with hate crime motives – such as settlements being set on fire and physical violence[33] – crimes that tend to result in absolute impunity.[34]

21. The limited access of vulnerable EU Citizens to economic, social and cultural rights has recently been criticized by the HRC: "The State Party […] should also ensure that all individuals within its jurisdiction, including vulnerable Roma citizens of other EU countries, enjoy equal rights without discrimination and identify ways to facilitate their access to support assistance services, including social benefits".[35]

We recommend that the State:

- ensure that vulnerable EU citizens are granted their fundamental rights to health care, primary education, social services, adequate standard of living and protection against hate crimes and forced evictions;
- ensure that public efforts to counter anti-Gypsyism and promote Roma inclusion expand to Roma of non-Swedish nationality and that all Roma in Sweden are granted protection against hate crime and discrimination.

Hate crimes – (LOI § 9)

22. In the Government's answer to the List of issues, "changes in the nature of the offences" is listed as a possible explanation for the discrepancy between increasing number of reported hate crimes and the decreasing number of investigations and convictions. The Government mentions that many of the reported crimes have taken place on internet forums and through graffiti and argue that these types of crimes are generally harder to investigate since they are more difficult to link

[32] *Migrant-utredningen bygger inte på fakta* (Migrant-investigation is not based on facts), February 16, 2016, Op-ed written by the researchers Anna Ryan Bengtsson, Katarina Hollertz and Charlotta Thodelius, in the newspaper Göteborgsposten, available at: http://www.gp.se/newspilot.se.gp.2555049 [accessed 2016-04-14] and Blogpost from the Secretary General of the Swedish Bar Association, Anne Ramberg, available at https://annerambergs.wordpress.com/2016/04/17/om-att-diskriminera-romer/ accessed [2016-04-21]

[33] See for example SR, *Forum på nätet uppmanar till våld mot EU-migranter* (Internet forums call for violent attacks against EU-migrants), June 23, 2014, available at: http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6196914.

[34] 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.

[35] CCPR/C/SWE/CO/7, para 15, March 2016, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSWE%2fCO%2f7&Lang=en

to a suspect. However, the latest statistics show that only 5% of the crimes were committed through graffiti and only 11% were committed on the internet. Moreover, 63% of the crimes were committed directly to a person (with or without physical contact) and not from a distance (such as internet, graffiti and phone calls).[36] Furthermore, the Government did not give any examples of measures being taken to combat hate crimes, regardless of the nature of the offences, but simply stated in its report that there are continuous measures taken to handle hate crimes within the judicial system. The HRC has recently expressed concerns about the occurrence of hate crimes, such as hate speech and assaults, and emphasized the need for measures to combat these crimes.[37] We endorse the HRCs recommendations in this matter.

We recommend that the State:

- implement legal and policy frameworks to enable thorough investigation of cases of hate crime and prosecution when appropriate;
- establish a centralized monitoring of hate crimes in order to establish a national overview which in turn can lead to specific measures related to specific groups and geography;
- institute awareness-raising campaigns aimed at promoting tolerance for diversity and combating stereotypes of ethnic or religious minorities.

Persons with disabilities

23. There is a lack of law enforcement and sanctions regarding accessibility. Subsequently, there are no consequences for long term investments that do not take accessibility and universal design into consideration. There is also a lack of measures to ensure that accessibility and universal design are included in community planning. In addition, there are several exceptions to the new Discrimination Act covering reasonable accommodation for persons with disabilities, for example organisations with less than 10 employees are exempt from the guidelines. The applicability to housing is unclear due to its complexity and subsidiarity in regard to other laws. Another issue is the possibility of receiving compensation for discrimination in the form of inaccessibility. During 2015, 680 cases of discrimination against persons with disabilities were reported to the Equality Ombudsman,[38] but due to scarce resources and a shift to strategic litigation only a few cases were considered, undermining the right to individual compensation. None of the cases concerning discrimination against persons with disabilities were brought to trial in 2015.[39] Furthermore, there is a failure to recognize the important role that civil society organisations can and should play in putting various cases into focus, including the development of strategic litigation. In practice the Ombudsman has a monopoly on equality cases. Realization of the goals of the law would be well served if for example disability NGOs are given the

[36] Hatbrott 2014, *Statistik över polisanmälningar med identifierade hatbrottsmotiv och självrapporterad utsatthet för hatbrott*, BRÅ Rapport 2005:13, page 42-43, avaliable at: http://www.bra.se/download/18.3f29640714dde2233b1bd975/1438687979405/2015_13_Hatbrott_2014.pdf, [23 March 2016]
[37] HRC, *Concluding observations on the seventh periodic report of Sweden*, CCPR/C/SWE/CO/7, adopted at 24 March 2016, para 16-17.
[38] Diskrimineringsombudsmannen, (Equality Ombudsman) *DO:s tillsynsverksamhet i siffror 2015*, available at: http://www.do.se/globalassets/om-do/komplement-till-arsredovisningen-statistik.pdf
[39] Email conversation with Laine Nou Englesson, Litigator at the Equality Ombudsman (Diskrimineringsombudsmannen), 19 April 2016.

resources to develop strategic litigation that would constitute an important complement to the work of the Ombudsman, in addition to contributing to a healthy competition in the field.

We recommend that the State:

- make adjustments in the Discrimination Act to ensure a stronger protection for the lack of accessibility;
- establish a support mechanism from which civil society organisation can receive support in carrying out varying forms of strategic litigation.

Article 3, Equal rights of men and women

Wage gap and involuntary part-time work – (LOI § 11)

24. The gender wage gap, the concentration of women in part-time working arrangements and the uneven parental leave taken by women remain a problem and concerns about these issues were most recently stated by the UN Committee on the Elimination of Discrimination of Women (CEDAW).[40] The wage gap between women and men in Sweden in 2014 was 13.2% and the gap has remained largely unchanged for over 30 years.[41] In its answer to the List of issues, the Government mentions that the matter of reintroducing annual pay surveys is currently being considered. We welcome this initiative, since the surveys are currently required only every third year and only in working places employing 25 or more people. Involuntary part-time work and insecure employment conditions in the form of hourly-pay, temporary and short-term contracts are more widespread among women and within female-dominated sectors. Even though the number of women working part-time has been decreasing for the last 30 years, 30% of women still work part-time (against 11% of men). Of those working part-time due to caring for a child or adult relative, 88% are women. Women account for 75% of paid parental leave and 63% of temporary parental benefit to care for a child. On an average day women spend approximately one more hour on unpaid work than men.[42]

25. Another issue that needs greater examination in this context is intersectionality. An improved understanding of the interplay between e.g. gender, ethnicity and disability could potentially provide a clearer understanding of the ongoing gender wage gap as well as indicate additional solutions. The Government seldom puts intersectionlity into focus concerning the wage gap or other issues. There is at least some indication that the ethnic wage gap plays an important role.[43] In its answer to the List of issues, the Government mentioned its decision to introduce a third

[40] CEDAW, *Concluding observations on the combined eighth and ninth periodic report of Sweden*, CEDAW/C/SWE/CO/8-9, 7 March 2016, para 34.
[41] Medlingsinstitutet (The Swedish National Mediation Office), Wage differences between men and women, 2014**,** available at: http://www.mi.se/files/PDF-er/ar_foreign/eng_wage_differntials_2014.pdf
[42] SCB (Statistics Sweden), *Gapet mellan kvinnors och mäns arbetstid består* (The difference in working hours between women and men persists), 2014, available at: http://www.scb.se/sv_/Hitta-statistik/Artiklar/Gapet-mellan-kvinnors-och-mans-arbetstid-bestar/.
[43] See eg Katarina Katz Torun Österberg, IFAU WORKING PAPER 2013:8, Wages of childhood immigrants in Sweden – education, returns to education and overeducation, accessed 26 April 2016, available at: http://www.ifau.se/globalassets/pdf/se/2013/wp2013-08-wages-of-childhood-immigrants-in-sweden.pdf

reserved month per parent. We welcome this decision, however, it is important to take further steps in the direction of wholly individualised and non-transferrable parental leave. Further, in its answers to this Committee, the Government mentions that it "trusts that the social partners within the welfare sector will solve the issue about full-time work as a norm", leaving the responsibility of ensuring the right to full-time employment to the social partners. By the term "social partners" we assume that the Government is referring to the labour market parties. The Government's answer is unfortunate, since the prevalence of women in part-time working arrangements remains high and the labour market parties have failed to solve the issue.

We recommend that the State:

- reintroduce the requirement for annual wage surveys and action plans for gender equality for all businesses employing 10 or more people urgently. It should be complemented with a requirement for job evaluations to identify and correct structural wage differences between professions and sectors;
- legislate the right to full-time employment in order to reduce part-time employment among women;
- individualize the parental leave benefits. This would strengthen women's position in the labour market, lead to a more balanced distribution of home and care work and strengthen the child's right to both parents;
- commission a study that examines the gender wage gap from an intersectional perspective so that other factors such as ethnicity and disability are taken into account, and if needed proposes relevant measures.

Article 6, The right to work

Immigrants and the Roma national minority – (LOI § 13)

26. Immigrants in Sweden tend to be over-qualified for their jobs. Many scholars and highly educated immigrants have low qualified jobs and immigrants generally have a higher education than Swedish-born persons with the same profession. The most common profession among immigrants is cleaner. The prevalence of immigrants in low-qualified jobs and the difficulty for highly educated immigrants to get a job within their field is not a new phenomenon in Sweden.[44] Nevertheless, the Government provides no answers on how the concentration of ethnic minorities in unskilled or low-paying jobs can be prevented. In its report to this Committee, the Government states that the measures taken to provide employment opportunities for ethnic minorities is not specific: the goal is to increase employment opportunities in general. Whether this solution is efficient in terms of providing better employment opportunities for immigrants

[44] SVT, *Invandrade forskare jobbar med annat*, (Immigrants scholars have other jobs), 28 March 2016, avaliable at: http://www.svt.se/nyheter/inrikes/invandrade-forskare-jobbar-med-annat

is questionable since it overlooks the issue of discrimination faced by immigrants on the job market.[45]

27. Concerning skilled immigrants who are unemployed or underemployed, their main problem is presumably related to discrimination. The law puts a burden on the target of discrimination to react after it has occurred. Even in the few cases taken to court, the compensation is minimal and hardly provides an incentive to employers to undertake proactive measures to prevent discrimination. At a minimum the law should provide full economic compensation to a job seeker who can show that he or she was the most qualified person for the job. The Government is contemplating an amendment of the existing weak rules on active measures. However, this proposal seems to be based on the requirement of more paperwork, while little attention has been paid to the remedies if an employer does little or no proactive work. The cost risks are minor at best. This needs to be remedied.

28. One measure undertaken by the Government in 2006 to encourage proactive measures by employers was the adoption of a regulation stipulating that Sweden's 30 largest government agencies shall include an anti-discrimination clause in their larger public contracts.[46] Since then, there has been no evaluation of the effect of such clauses, or the need for closer follow-up of such clauses.

29. The Roma national minority is another group that face immense discrimination on the labour market. Despite efforts from the authorities, about 80 % of the 50 000 Roma living in Sweden are outside the job market.[47] The Government mentions the pilot project for Roma inclusion within the Public Employment Service in its report. The project took place in five municipalities, between 2012 and 2015. The agency's report on the results of the project shows that about 280 persons belonging to the Roma minority have been employed and several hundreds have been registered at the agency.[48] This effort is naturally positive, yet it is insufficient. 280 persons out of the tens of thousands outside the job market is a small number. Moreover, the project within the Public Employment Service has ended and in its report to this Committee the Government did not present any measures that will be taken hereafter to combat unemployment among the Roma national minority.

We recommend that the State:

- initiate a nationwide project for Roma inclusion on the labour market and strengthen its efforts to combat unemployment among the Roma national minority;
- amend the Discrimination Act so that a job seeker who can prove that they were discriminated against in spite of being the most qualified applicant shall have the right to economic compensation;

[45] SVD, *Diskriminering slår mot utlandsfödda,* (Discrimination against immigrants on the job market), 16 November 2016, available at: *http*://www.svd.se/diskriminering-slar-mot-utlandsfodda
[46] Förordning (2006:260) om antidiskrimineringsvillkor i upphandlingskontrakt (Regulation on anti-discrimination clauses in public contracts), 26 April 2016, available at: http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2006260-om_sfs-2006-260
[47] Swedish Government Official Report, SOU 2010:55, "Betänkande av Delegationen för romska frågor, Romers rätt – en strategi för romer i Sverige" (*Roma peoples' rights – a strategy for Roma in Sweden*), p. 35.
[48] Arbetsförmedlingen, "Arbetsförmedlingens återrapportering 2016, pilotverksamhet för romsk inkludering" (The Public Employment Service´s feedback-report 2016, pilot project for Roma inclusion), 1 March 2016, avaliable at: http://www.arbetsformedlingen.se/Om-oss/Var-verksamhet/Rapporter/Aterrapportering/2016-03-01-Pilotverksamhet-for-romsk-inkludering.html.

- amend the Discrimination Act so that an employer who fails to undertake the active measures required by law can be required to pay substantial fines;
- commission a review of the 2006 Regulation on anti-discrimination clauses in public contracts in order to analyze its effectiveness and, if effectiveness is lacking, propose amendments to increase its effectiveness.

Persons with disabilities – (LOI § 12)

30. The Public Agency for Employment has calculated that persons looking for employment who are deemed as ”far away from the labour market”, including persons with disabilities who have “reduced capacities or limitations”, will reach 80 percent in 2018.[49] The labour market programs intended to increase employment for persons with disabilities has stayed the same for decades, despite a lack of results. The so called “Funka Enquiry”[50] suggested measures to increase employment of persons with disabilities, for example development of vocational rehabilitation, but no new policy measures have been introduced yet. Wage subsidies that are given to employers when hiring persons with a disability have remained unadjusted despite regular cost increases for the last eight years. To get funding for a work place adaptation or to receive a technical aid, a person needs to be registered as a person with “reduced capacities or limitations”, a term that risks labelling people negatively: it emphasizes deficiency instead of capacity. The use of this term has been criticized by the (CRPD).[51] Moreover, the HRC has recently expressed concerns about remaining gaps with regard to equal access of persons with disabilities to employment.[52]

31. Public employers such as governmental agencies, municipalities and county councils have an important role of showing the way by being role models in employing persons with disabilities. However, that is not the case today. The previous governmental agency Handisam described in a report from 2011 that only 14% of governmental agencies that employed new personnel during 2010 employed one or more persons with disabilities with needs of accessibility adaptations from the employer.[53]

32. Between 2008 and 2011 only 57% of women with a disability (against 66% of men) were employed, despite the fact that women have a higher level of education.[54] Support for people with disabilities in relation to education and work varies widely from municipality to municipality and there are notable differences in how men and women benefit from the labour market initiatives that are implemented. In 2014 the CRPD expressed concern over this,[55] and the disabilities movement has on a number of occasions, including in the Funka Enquiry, pointed out that a better understanding of gender differences is required if labour market policies are to contribute to real gender-equality.

[49] Public Agency for Employment, *Public Agency for Employment reports 2015*, February 2015
[50] SOU 2012:21, *Sänkta trösklar, högt i tak. Arbete, utveckling, trygghet,* 2012, available at: http://www.regeringen.se/rattsdokument/statens-offentliga-utredningar/2012/05/sou-2012311/
[51] CRPD, *Concluding observations on the initial report of Sweden*, CRPD/C/SWE/CO/1, 12 May 2014, para 50.
[52] HRC, *Concluding observations on the seventh periodic report of Sweden,* CCPR/C/SWE/CO/7, 24 March 2016, para 12.
[53] Handisam, *Vad gör myndigheter för att anställa personer med funktionsnedsättning?*, 2011
[54] SCB (Statistics Sweden), *Women and men - Facts and figures 2014***,** p. 61, available at: http://www.scb.se/Statistik/_Publikationer/LE0201_2013B14_BR_X10BR1401ENG.pdf
[55] CRPD, *Concluding observations on the initial report of Sweden*, CRPD/C/SWE/CO/1, 12 May 2014, para 49.

We recommend that the State:

- abolish the use of the term "reduced capacities or limitations";
- become role models and employ people with disabilities in a much larger extent;
- investigate the extent to which persons with wage subsidies are subject to discrimination since employers are used to receiving the subsidies even for fully capable employees;
- strengthen the measures to improve equal access of persons with disabilities on the labour market;
- offer specific support to women with disabilities, for example in the form of guidance, supplementary education, assistance in finding the correct aids and help in establishing contact with employers.

Transgender people

33. When discussing provision of a wider range of employment opportunities, it is important to note that access to labor market is limited for transgender people.[56] There is no guarantee that school certificates, diplomas and certificates from employers will be changed retroactively for those who changed legal gender, which in practice means that there is a discrepancy between one's legal ID and other relevant documents. Consequently, personal records may expose the person to unwanted attention to the legal gender change, which in turn usually is an additional obstacle to access the labor market.

We recommend that the State:

- put measures in place to facilitate access to labor market by transgender people, including legal avenues ensuring that legal name and gender data on school certificates, diplomas and other relevant documents correspond with one's ID.

Article 7, The right to just and favourable conditions of work

Undocumented migrants – (LOI § 14)

34. There have been an increased amount of reports related to the poor working conditions for so-called "economic migrants", both in Europe at large and in Sweden. There have been cases were the employer has confiscated passports, and salaries can be up to four times lower than what is guaranteed under collective agreements. Many perform dangerous work without sufficient training, for example within construction work, and the working environment is often severely substandard. There have also been reports of cases where migrants have been forced to perform sexual acts to keep their job. As most of these workers are undocumented immigrants, they

[56] European Union Agency for Fundamental Rights, *Being Trans in the European Union – Comparative Analysis of EU LGBT Survey Data*, 2014, p. 27-34.

become dependent on their employer, and have no other choice than to comply or be threatened by expulsion.[57]

35. The Government mentions in its answer to the List of issues that undocumented migrant workers have a right since 2013 to make a claim against their employer for any outstanding salary. However, a person who risks expulsion might not wish to make themselves visible to the authorities. Further, the Government writes that The Swedish Work Environment Authority has been assigned extra funding for the period 2015-2018 in order to strengthen their supervision and inspections of businesses and employers. Though this initiative is positive, it is nonetheless aimed at the working environment in general and not specifically at detecting and ensuring just and fair working conditions for undocumented migrants, a particularly vulnerable group on the job market. Illegal employment of immigrants is penalized, as the Government mentions in its report to this Committee. However, the employers themselves are often the ones who give information to the police that they have illegally employed staff. They employ people who are awaiting deportation and hiding from the authorities. When the employees ask for their salary, their whereabouts are reported to the police. The employers rarely get convicted.[58]

We recommend that the State:

- examine the reasons behind the low number of convictions of employers;
- take legislative measure to ensure the detection and punishment of exploitation of undocumented migrants;
- intensify its effort to ensure fair working conditions for everyone within the state territory.

Article 9, The right to social security

Personal assistance – (LOI § 17)

36. The right to personal assistance based on fundamental needs has existed since 1994 in Sweden, as part of the Act Concerning Support and Service for Persons with Certain Functional Impairments (LSS). If a person covered by LSS needs personal assistance for more than 20 hours a week the cost will be covered by The Swedish Social Insurance Agency instead of the municipality. Statistics state that 61.7 % of the applications for personal assistance in 2014 were rejected, a very high number and an increase since 2013.[59] Since 2010 roughly 10 - 12% of applicants per year lose their state funded assistance after a two year review. As a result of the loss of financial support, people are unable to continue their work, to take parental leave, and thus reducing the possibility to freely pursue their economic, social and cultural development. The CRPD has expressed concerns about the number of personal assistance withdrawn and the cutbacks for those who receive it, for reasons which are "unknown or only seemingly

[57] See for example, Dagens Nyheter, *De osynliga* (The Invisible ones), May 2015, available at http://fokus.dn.se/.
[58] Sydsvenskan, *Arbetsgivare utnyttjar papperslösa – anger dem sedan till polisen* (Employers exploit undocumented migrants and then report them to the police), 1 April 2016. Available at: http://www.sydsvenskan.se/sverige/arbetsgivare-utnyttjar-papperslosa--anger-dem-till-polisen-sen/ and Arbetet, *Arbetsgivare anger papperslösa*, April 2016, available at: http://arbetet.se/2016/04/05/arbetsgivare-anger-papperslosa/
[59] Assistanskoll (Independent Living Institute), *Statistik om personlig assistans* (Statistics about personal assistance), 2015, available at: http://assistanskoll.se/assistans-statistik.php

justified".[60] We share this concern. The Government instruction to the Swedish Social Insurance Agency for 2015 states as a first goal to ensure that the cost for personal assistance should not increase. A worrying development as it can be interpreted to give priority to the reduction of costs over the priority to the human rights that the assistance is meant to ensure.[61] Although the Government has not formally changed the law, the Government seems to be encouraging the trend toward an increasingly restrictive application of the law. This is very worrisome, since the Government instruction goes against national legislation and international law pertaining to the right to social security. Since ratification of CRPD also means that the rights in place shall not be rolled back, the Government's action may tend to violate at least the spirit of the CRPD.

We recommend that the State:

- ensure that personal assistance programs provide sufficient and fair financial assistance to guarantee independent living;
- revises its priorities to indicate that priority is to be given to ensuring that the rights guaranteed by law are provided by the Swedish Social Insurance Agency.

Article 10, Protection of the family, mothers and children

Asylum Seekers' Right to Family Reunification

37. As a reaction to the constant increasing flow of refugees during 2015, the Government adopted a set of measures in view of reducing the number of refugees applying for asylum in Sweden.[62] One of the suggested measures was to introduce a law that temporarily restricts the possibility of being granted a residence permit in Sweden, that introduces tougher maintenance requirements and that restricts the possibilities of family reunification. The law is suggested to entry into force 20 July 2016 and will be in effect for three years.[63] The draft bill aimed at reducing the number of asylum seekers in Sweden have been criticized and disapproved by the Council of Legislation, the instance that scrutinizes the Government's draft bills. The Council of Legislation is of the opinion that the law has been drafted too hastily without thorough preparation and that it jeopardizes the right to asylum.[64]

38. A person who has been granted a temporary residence permit will not have the right to family reunification if they applied for asylum after 24 November 2015 (the date when the Government

[60] CRPD, *Concluding observations on the initial report of Sweden*, CRPD/C/SWE/CO/1, 12 May 2014, para 43.
[61] Regeringsbeslut I:8, 2015-12-17, S2015/07997/RS(delvis)/S2015/07998/RS(delvis)/S2015/08135/RS(delvis), Regleringsbrev för budgetåret 2016 avseende Försäkringskassan
[62] "The government proposes measure to create respite for Swedish refugee reception", Government Offices, November 2015, available at: http://www.regeringen.se/artiklar/2015/11/regeringen-foreslar-atgarder-for-att-skapa-andrum-for-svenskt-flyktingmottagande/ [accessed 2015-12-22].
[63] "Proposal to temporarily restrict the possibility of being granted a residence permit in Sweden", Government Offices, February 2016, available at: http://www.government.se/press-releases/2016/02/proposal-to-temporarily-restrict-the-possibility-of-being-granted-a-residence-permit-in-sweden/ [accessed 2016-04-14].
[64] The Council of Legislation, Excerpts from the minutes of the meeting 2015-12-07, available at http://www.lagradet.se/yttranden/Sarskilda%20atgarder%20vid%20allvarlig%20fara%20for%20den%20allmanna%20ordningen%20eller%20den%20inre%20sakerheten%20i%20landet.pdf [accessed 2016-04-14].

adopted the restricting measures). The regulation has a couple of exceptions, for instance: persons who have been given refugee status and persons with temporary residence permits that have reasonable prospects of obtaining permanent residence permits will have the right to family reunification.

39. The restriction of family reunification will have serious effects on an already vulnerable group, infringing their right to protection of the family – "the natural and fundamental group unit of society". These restrictions have been heavily criticized by many actors, from civil society organizations to Trade Unions, The Swedish Bar Association, Universities and Courts. Concerns have been raised pertaining to the draft bill's inconsistencies with the right to family life and its connecting procedural rights. There is also a risk that the restriction of family reunification leads to women and children endangering their lives in trying to reunite with their relatives in Sweden by themselves.[65] The CEDAW has recently expressed concerns about the restriction of family reunification and emphasized the negative consequences it may have for women and children.[66]

We recommend that the State:

- ensure all people within its jurisdiction protection of the family, including asylum seekers and persons in need of subsidiary protection.

Gender based violence against women – (LOI § 18)

40. In Sweden, criminal liability for rape requires the use of force or threat rather than lack of consent of the victim. This definition of rape has most recently been criticized by the CEDAW.[67] Few cases of rape and sexual crimes are reported and even fewer lead to prosecution and conviction. During 2013, 98,000 people (ranging in age from 16 to 79 years) reported that they had been the victim of sexual crime,[68] but in that same year only 1,170 cases of sexual assault led to prosecution or a conviction in court.[69] The percentage of rapes for which somebody was convicted is 20%. Of those suspected of sexual offences, 98% are men.[70] Further, there are shortcomings in the treatment and knowledge of violence against women who belong to the national minorities, notably among social service, healthcare workers and the police. Women belonging to national minorities are often met with prejudice in attitudes and comments when contacting authorities and the judiciary.[71]

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[65] Ministry of Justice, *Lagrådsremiss Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*, (Draft Bill Temporary restrictions on the possibility of being granted a residence permit in Sweden) April 2016, available at http://www.regeringen.se/contentassets/c8a2c65d34534a0a9de7eab1169ab1d9/slutlig-lagradsremiss-begransningar-uppehallstillstand.pdf [accessed 2016-04-14].

[66] CEDAW, *Concluding observations on the combined eighth and ninth periodic report of Sweden,* CEDAW/C/SWE/CO/8-9, 7 March 2016, para 10.

[67] *Idem*, para 15.

[68] NTU (The Swedish Crime Survey), 2015 and Brottsförebyggande rådet (The Swedish National Council for Crime Prevention), *Rape and sex offences*, 2014**,** available at: http://www.bra.se/bra/publikationer/arkiv/publikationer/2016-01-12-nationella-trygghetsundersokningen-2015.html and https://www.bra.se/bra/bra-in-english/home/crime-and-statistics/rape-and-sex-offences.html

[69] The Swedish National Council for Crime Prevention, *Rape and sex offences*, 2014**.**

[70] *Ibid***.**

[71] Folkhälsomyndigheten (The Public Health Agency of Sweden), *Bemötande av våldsutsatta kvinnor som tillhör de nationella minoriteterna* (Treatment of abused women who belong to national minorities), 2010**,** available at: https://www.folkhalsomyndigheten.se/pagefiles/12415/A2010-06-Bemotande-av-valdsutsatta-kvinnor.pdf

We recommend that the State:

- ensure that rape is defined on the basis of lack of consent of the victim;
- introduce compulsory training on sexual crimes and men's violence against women for all professionals within the legal system, in particular judges, in sexual offence cases;
- establish a commission of enquiry to review the judiciary's handling of sexual crime cases as well as improve methods for combating sexual abuse and rape;
- take measures to increase the knowledge of men's violence against women and minorities' specific living conditions among the personnel of social services, police and health care.

Gender based violence against LGBTQ persons – (LOI § 18)

41. Effective measures to stopping gender-based violence cannot look merely at the men's violence against women as the only structural problem to be addressed in policies or strategies. Gender-based violence, including against lesbian, gay, bisexual, transgender and queer persons, should consider the different circumstances and structures involved in such a phenomenon. Otherwise it erases the experiences of the group, which is especially exposed to gender-based violence due to breaking gender and sexuality norms. Transgender persons are especially exposed to different types of violence, including domestic violence and violence in close relations.[72] It is apparent that transgender women face serious difficulties in accessing shelters or support centers due to their gender identity and/or expression. This further exposes them to violence, discrimination and exclusion. Meanwhile, Swedish judiciary does not utilize the existing law with the support of knowledge of gender-based violence. It was indicated that the input from the National Coordinator on Domestic violence would be incorporated in the upcoming national strategy to address men's violence against women. This is going to be a useful tool, however, it is problematic when domestic violence is investigated and analyzed only from a heteronormative perspective. It consequently leaves out a number of persons, such as LGBTQ persons who fall outside of gender or sex norms.

We recommend that the State:

- include violence against lesbian, gay, bisexual, transgender and queer persons in strategies combating gender-based violence;
- put in place a policy response on how to ensure that all who are exposed to domestic violence receive the same quality of support as well as a concrete strategy;
- revise training programs to judicial operators, including law students, and include combating social stereotypes leading to gender-based violence;
- investigate and research on domestic violence specifically experienced by LGBTQ people.

Violence in same-sex relations – (LOI § 19)

42. It was noticed with concern that the Government failed to include in its response any information regarding violence in same-sex relations, which this Committee specifically

[72] Folkhälsomyndigheten, (The Public Health Agency of Sweden) *Hälsan och hälsans bestämningsfaktorer för transpersoner - En rapport om hälsoläget bland transpersoner i Sverige* (A report on the health of transgender persons), 2015, p. 30-34.

addressed in its List of Issues. It is apparent that violence in same-sex relations is a significant problem,[73] which continuously is being left behind by policy makers. The Policy on Gender Equality Goal[74] frames violence in close relations as a concept of only men's violence against women, consequently making experiences of LGBTQ people invisible. Such an approach also makes it impossible to address the issues within the policy. This results in no ownership of the implementation and lack of concrete standards on how to address violence in close relations of LGBTQ persons.

We recommend that the State:

- put in place clear policies taking ownership of the issue of violence in same-sex and LGBTQ relationships and include an intersectional approach to domestic violence;
- create specific standards on how social services should work with domestic violence taking into account specific realities of same-sex and LGBTQ relations.

Article 11, The right to an adequate standard of living

Evictions of Vulnerable EU Citizens (LOI § 23)

43. Several hundreds of the vulnerable EU citizens staying in Sweden have established settlements in different parts of the country and in many locations they have been forcibly removed. Some evictions have taken place in the presence of riot police in spite of there being no signs of violent resistance, and some sheds have been destroyed with bulldozers.[75] A recent research report shows that between 2013 – January 2016, Swedish municipalities have initiated at least 83 evictions of groups of vulnerable EU citizens.[76] The vast majority of the evictions where made on grounds of sanitation hazards and littering. The research report shows that the evicted persons often just establish a new settlement near a cemetery or gas station, where there is access to water for drinking and cooking, only to be evicted again after a few days or weeks.[77] The human right to water was recognized in this Committee's General Comment 15.[78] The independent human right to sanitation was confirmed by the UN General Assembly in December 2015.[79] The rights to an adequate standard of living, and the access to water and sanitation apply to everyone within the jurisdiction of Sweden, regardless of their land tenure or immigration status. These human rights standards are in contrast to the Government's assertions to this Committee

[73] Holmberg & Stjernqvist, *Våldsamt Lika och Olika – En Skrift om Våld i Samkönade Parrelationer*, 2008, RFSL, p. 11; and *Nationell strategi mot mäns våld mot kvinnor och hedersrelaterat våld och förtryck*, (SOU 2015:55), 2015, p. 91-93.
[74] Proposition 2005/06:155, *Makt att forma samhället och sitt eget liv – nya mål i jämställdhetspolitiken.*
[75] As reported in numerous articles, for example SVT, *Dubbelt så många tiggande EU-migranter senaste året* (Number of begging EU-migrants has doubled in one year*)*, April 29, 2015, available at: http://www.svt.se/nyheter/inrikes/dubbelt-sa-manga-tiggande-eu-migranter-senaste-aret and Dagens Nyheter, "Migranter vräktes från läger i Helenelund" (*Migrants evicted from camp in Helenelund*), March 13, 2014, available at: http://www.dn.se/sthlm/migranter-vraktes-fran-lager-i-helenelund/
[76] Martha F. Davis, Natasha Ryan, *Inconvenient Human Rights: Access to Water and Sanitation in Sweden's Informal Roma Settlements*, Raoul Wallenberg Institute for Human Rights and Humanitarian Law, Södertörn University, and the NuLawLab of Northeastern University School of Law, April 2016, available at http://rwi.lu.se/app/uploads/2016/04/Inconvenient-Human-Rights2.pdf [accessed 2016-04-14].
[77] *Ibid.*
[78] General Comment No. 15: The right to water (arts. 11, 12), para. 1.
[79] G.A. Res. 70/169, A/RES/70/169, 4 (17 Dec. 2015).

that EU citizens only are entitled to emergency support. All the ESC rights apply to everyone in the jurisdiction of Sweden, including the vulnerable EU citizens.

44. On November 3, 2015, one of the largest informal settlements in Sweden, Sorgenfri, in the city of Malmö, was evicted by the police. Malmö City justified its decision by citing poor sanitary and environmental conditions. The persons living in the camp were given five days to evacuate, under threat of the police then removing them. The only alternative housing provided was a five day long stay at emergency housing in case of "extreme weather", however it only had 50 beds and the camp consisted of roughly 150 – 200 persons. Another winter housing with 40 beds was to be provided between December and February, but, it was not available when the eviction took place.

45. Despite efforts from Swedish civil society organisations and an urgent appeal from the UN Special Rapporteur on Minority issues,[80] Malmö City decided to continue with the eviction without regard to the human rights issues concerning procedural rights, alternative housing or other support. As is common in forced evictions, most personal possessions were lost. The Swedish police also clearly violated the covenant by choosing to execute the eviction at 4.30 am, in breach of General Comment no. 7, which states that no eviction should take place at night or during bad weather.[81] The result of this was that the people concerned chose to camp outside Malmö City hall after the police evicted them, and the eviction resulted in homelessness for the people concerned. Further, the manner in which Malmö City progressed with the case and the way it was executed gives rise to serious questions of discrimination.[82]

We recommend that the State:

- ensure vulnerable EU citizens an adequate standard of living, including housing and access to water and sanitation;
- work with municipalities to ensure human rights awareness and compliance in addressing the rights of vulnerable EU citizens, and provide support for local measures the respect these human rights;
- ensure that all evictions are made in a manner consistent with the requirement in this Committee's General Comment 7 on Forced Evictions.

Eviction of children

46. In 2015 the number of children being affected by an eviction was 472, an increase from the previous year. There is a clear majority of single parents, most commonly women, in cases concerning these evictions. Most of the evictions are a consequence of relatively small rental arrears; the average debt is around 20 000 SEK (corresponding approximately to 2 500 USD), but many of the evictions take place due to debts which are under 10 000 SEK. Children were present in 53 of the evictions that took place last year and in 8 of these cases, the social services were not present.[83]

[80] OHCHR, UN Special Rapporteur on Minority issues, 30 October 2015, Refernce: UA, SWE 1/2015.
[81] General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, para 15.
[82] Compare General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions.
[83] Kronofogden (Swedish Enforcement Authority) *Fördjupad statistik av vräkningar som berört barn 2015* (Statistics of evictions concerning children 2015), p. 1-2, available at:

47. Children themselves do not get evicted since they cannot enter a tenancy agreement, the eviction of children is rather a consequence of sanctions being directed at their parents or caretakers.[84] Nevertheless, there is no prohibition of evictions involving children. The social services are obliged to take into account the "best interest of the child" in their decision making, but the weight given to the best interest of the child varies. In cases concerning health and interventions, the best interest of the child is decisive, in other cases it is merely one factor among others that the social services have to consider. The social services are assigned to prevent evictions but they are not obliged, nor do they have the legal possibility, to stop an eviction involving children.[85]

48. There are no detailed follow ups on families subjected to evictions. In some cases, the families move to another apartment with the assistance of the social services but there have also been cases of families living in camping spots, hostels, moving in with relatives and other temporary solutions. The definition of homelessness made by the National Board of Health and Welfare includes these temporary housing solutions. The shortage of housing in most municipalities further complicate the abilities of evicted families to rent a new apartment.[86] In spite of the Government's objective of eliminating eviction of families with children, not enough has happened the last few years. The number of evictions involving children has decreased slightly since 2008,[87] but the issue is far from being eliminated.

We recommend that the State:

- take legislative measures to ensure that the best interest of the child is decisive in all cases and treat children's right to housing as a right and not merely an objective.

Shortage in housing and homelessness

49. In February 2016 the estimated number of inhabitants in Sweden was 9 866 670 people.[88] This number is expected to increase by 1, 5% in just a few years.[89] Simultaneously there is a huge lack of housing in Sweden today. According to the National Board of Building, planning and housing there is a need for 705 000 new apartments within a period of 10 years. There has not been such a shortage of housing since the 50's and 60's. The current shortage is largest in bigger cities, in particular Stockholm, whose population increases by 46 people a day. The housing shortage is not caused by a sudden event such as larger numbers of people seeking refuge in Sweden. The need has instead been built up over the years causing what can be considered an acute lack of housing.

https://www.kronofogden.se/download/18.73c55da914b3fa1855a2a8df/1453970375118/fordjupad_statistik_avhysning_barn_2015.pdf

[84] Utsökningsbalk (1981:774), chap. 16 para 8, (The Enforcement code).

[85] Socialstyrelsen (The National Board of Health and Welfare), *Vräkta barn, underlagsrapport till barns och ungas hälsa, vård och omsorg 2014*, May 2013, p. 11, available at: https://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/19102/2013-5-35.pdf

[86] *Idem*, p. 13-14.

[87] *Idem*, p. 10.

[88] SCB (Statistics Sweden), *Befolkningsstatistik*, February 2016, available at: http://www.scb.se/sv_/Hitta-statistik/Statistik-efter-amne/Befolkning/Befolkningens-sammansattning/Befolkningsstatistik/ [accessed 2016-04-13].

[89] SCB (Statistics Sweden), *Stor befolkningsökning att vänta*, April 2016, available at: http://www.scb.se/sv_/Hitta-statistik/Statistik-efter-amne/Befolkning/Befolkningsframskrivningar/Befolkningsframskrivningar/14498/14505/Behallare-for-Press/402291/ [accessed 2016-04-13].

50. The shortage also show a lack of affordable tenancies, something that affects low income families, elderly, young adults and the most vulnerable in the housing market. Most of the newly built apartment buildings offer exclusive and expensive apartments often only accessible to high income families.[90] To settle part of this problem the Swedish Government presented an investment grant for property owners to produce affordable tenancies. This would generate at least 15 000 apartments a year, but the funds are (in April 2016) still not accessible even though the suggestion was passed in Chamber in December 2015.[91] According to the government there were too many negative responses to the bill that needs to be addressed before the funds can be made accessible.

51. The last 9-10 years there have been a number of deregulations in the housing market starting with a sell-out of publicly owned apartment buildings.[92] According to the National Board of Housing, Building and Planning publicly owned real state companies have not compensated for the sales, contributing to the decrease in tenancies. It should be noted however that the housing shortage overall consists of all different sorts of housing – not only tenancies. Another deregulation, allegedly made to increase tenancies, was made in July 2014 when it was made easier to sublet a privately owned apartment, and the profit margin for doing so was set more freely.[93] In particular bigger cities subletting an apartment has as a consequence become extremely costly. Subletting is however for some people, primarily young adults living in bigger cities in general but Stockholm in particular, the only housing alternative. It is difficult to measure how many sublet but a survey made by Stockholm County Administrative Board in 2012, approximately 3% of the inhabitants (between 18 and 85 years old) in Stockholm, lived in second hand apartments – yet another 3% rented a room. This means that approximately 100 000 people lacked an apartment of their own. One reaction to the shortage of apartments on the housing market is accumulative prices. This also creates a growing black market with illegal sales of tenancies and an intensifying of second and even third hand leases. Overcrowding and lack of living spaces are likewise linked to the shortage of housing, in particular lack of affordable apartments. Segregation is another effect due to higher living costs.[94] Too high housing cost can be a human rights violation if it affects an individual's possibility to effectively enjoy other human rights.

52. According to both public figures from e.g. The National Board of Health and Welfare and NGOs, such as Stadsmissionen, homelessness is a growing problem in Sweden. Even though there has not yet been a national survey to follow up on the report from 2011, referred to in the Government's report, other and later state funded reports show that the problem is not only increasing, but is becoming more and more complex and in some situations acute. In its report

[90] Bostadsförmedlingen (Stockholm Housing Agency), available at: https://bostad.stockholm.se/Lista/details/?aid=121908 [accessed 2016-04-13].
[91] Hem & Hyra, *Statligt byggstöd kraftigt försenat*, 7 April 2016, available at: http://www.hemhyra.se/riks/staligt-byggstod-kraftigt-forsenat [accessed 2016-04-13].
[92] Boverket (The National Board of Housing, Building and Planning) *Förändringar i allmännyttans bestånd* (Changes in the property portfolio of the Publicly Owned Real Estate companies), May 2015 Available at: http://www.boverket.se/sv/samhallsplanering/bostadsplanering/kommunernasverktyg/allmannyttan/forandringar-i-allmannyttans-bestand
[93] Fastighetsägarna, *Lättare hyra ut bostad i andra hand* (Easier to sublet a privately owned apartment), May 2014, available at: http://www.fastighetsagarna.se/aktuellt-och-opinion/nyheter/nyheter-2014/lattare-hyra-ut-bostadsratt-i-andra-hand
[94] Boverket (The National Board of Housing, Building and Planning), *Flyttmönster till följd av omfattande renoveringar*, Rapport 2014:34, December 2014, available at*:* http://www.boverket.se/globalassets/publikationer/dokument/2014/flyttmonster-omfattande-renoveringar.pdf

from 2011, the Board indicates that there are about 34 000 homeless persons in Sweden, later reports show that this number is growing. The 2011 survey however lacks at least two important components: vulnerable EU citizens are not included and it only comprises individuals who are known to social services. Accordingly, individuals without papers are least likely to be part of the survey, including those who have been denied residence permits, and/or have gone underground at the risk of being deported due to the Dublin Regulation (often children, young adults arriving alone).

53. In its report from 2013 to the this Committee, the Government refers to reasons why a person ends up in homelessness: "substance abuse and dependence, mental illness, family conflicts, divorce, eviction, not being accepted as a tenant in the regular housing market, and also inadequate financial capacity". The causes could thus be interpreted as being individual rather than structural and systematic. It is however evident both from reports by NGOs and from the County Administrative Boards that the housing shortage, lack of affordable housing and increasingly higher demands from Real Estate Companies, are just as important reasons why individuals are excluded from permanent tenancies and thus their housing rights.

54. In early 2015 the County Administrative Boards jointly presented a report to the Government urging it to tackle homelessness as a housing problem ("Housing First") and not only as problem related to the individual.[95] In November 2015 the Boards also presented a report on how publicly owned Real Estate Companies fulfill their social commitment despite a legal obligation to also make a profit.[96] In the report it is clear that many, but not all, companies are unable to combine these obligations and that there is a need to formulate new owner directives in this area. As a reference it should be mentioned that between 2011 and 2014, publicly owned Real Estate Companies transferred a profit of 6,8 billion SEK to its owners – the municipalities.

55. Young, newly arrived, elderly and low, sometimes even middle-income families (one-parent households) are affected by the housing shortage. Demands from the landlords are increasing effectively keeping not-wanted tenants away from their tenements. Regular demands is e.g. that a tenant must prove to have an income three or sometimes even four times as high as the yearly rent, no payment defaults, good references and that individuals with benefits/income support will not be considered. These demands are sometimes even set by publicly owned companies. Many NGOs as well as the National Coordinator on Homelessness[97] (report in 2014) demand that income support should not exclude an individual from a tenancy. Access to appropriate housing is crucial for an individual's possibility to live in dignity and enjoy other human rights such as work, education, food and political participation.

We recommend that the State:

- promptly address the current housing shortage, in particular the need for affordable housing;
- work actively with the municipalities in order to counteract a continued segregation;

[95] Länsstyrelsen Stockholm (County Administrative Board of Stockholm), *Hemlöshet – en fråga om bostäder*, 2015, available at: http://www.lansstyrelsen.se/stockholm/Sv/nyheter/2015/Pages/ny-rapport-om-hemloshet.aspx
[96] Länsstyrelsen Västerbotten (County Administrative Board of Västerbotten), *Ägardirektiv till allmän nytta*, December 2015, available at: http://www.lansstyrelsen.se/vasterbotten/Sv/nyheter/2015/Pages/agardirektiv-till-allman-nytta.aspx
[97] Regeringskansliet (The Swedish Government offices), *Bostad sökes - Slutrapport från den nationella hemlöshetsamordnaren*, S2014.019, available at: http://www.regeringen.se/rapporter/2014/06/s2014.019/

- honour its responsibilities and obligations as to respect all individuals' living in Sweden their human right to housing;
- ensure that publicly owned Real Estate Companies act in a manner that protect, respect and fulfill the right to housing if necessary by changing the current legislation;
- ensure that demands from privately and particularly publicly owned Real Estate Companies does not exclude individuals with income support from tenancies.

Article 12, The right to physical and mental health

Compulsory psychiatric care – (LOI § 24)

56. According to the Act on compulsory psychiatric care[98] it is only persons who are suffering from a serious mental disturbance who can be cared for against their will. There must be a risk to the individual's own life or health or for the safety of other persons. Unfortunately, the Act has on several occasions been used to detain persons with disabilities into psychiatric compulsory care, on the sole basis of their disability. Individuals and relatives 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 several covenants and the Government has received criticism from the CRPD on this matter.[99] More information about measures taken to offer alternative forms of care, instead of institutionalization, is also requested by the signatory organizations and the CRPD.[100] 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.

We recommend that the State:

- take legislative and judiciary measures to ensure that no one is detained in psychiatric compulsory care solely on the basis of their disability;
- ensure persons in compulsory care adequate access to legal aid.

[98] Lag (1991:1128) om psykiatrisk tvångsvård.
[99] CRPD, *Concluding observations on the initial report of Sweden*, CRPD/C/SWE/CO/1, 12 May 2014, para 35.
[100] *Idem*, para 24.

Forced actions – (LOI § 24)

57. 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.[101] The use of forced actions against women is even more common when it comes to minors. When it comes to ECT-treatment 4 out of 5 patients registered 2015 were female.[102] Yet little or nothing has been done to stop the culture that enables women to become more subjected to forced actions.

We recommend that the State:

- identify the reasons why women become subjected to compulsory treatments in a larger extent than men and take measures to stop this practice;
- ensure that the personnel responsible for compulsory treatments receive adequate training to reduce the overrepresentation forced actions against women;
- ensure that consent is given by the persons being subjected to ECT and that those responsible for imposing treatment without consent are held accountable.

Coercive and involuntary treatment of children – (LOI § 24)

58. In special residential homes for young people the personnel are allowed to use restraint special measures against their clients. These measures includes for instance limiting the individual's possibility to correspondence with the outside world, bodily examination, drug testing and various forms of isolation. A Government official investigation shows that the restriction isolation is widely used as a punishment rather than a measure to detach the child from others because the child is violent in an extension that motivates the measure. The investigation proposes several changes with regard to the use of restrictions. If those proposals becomes reality, several improvements will be made in this regard. For instance, the measure to isolate someone must immediately be reported to Health and Social Care Inspectorate and the permitted time for isolation will be decreased.[103] Sweden has received criticism from the CRC concerning the use of restrictions.[104]

We recommend that the State:

- drastically work towards the reduction of the use of solitary confinement within residential homes for young people;
- ensure that all young persons deprived of their liberty be granted information about their rights, the reasons for the restrictions and how they can appeal the use of restriction. The information must be provided in a language and by means that they can understand;

[101] Socialstyrelsen (The National Board on Health and Welfare), *Statistik om psykiatrisk tvångsvård enligt lagen om psykiatrisk tvångvård (LPT) år 2015 available at: https://www.socialstyrelsen.se/SiteCollectionDocuments/statistik-om-psykiatrisk-tvangsvard-enligt-lpt-2013.pdf*
and Socialstyrelsen, *Bättre vård – mindre tvång?*, 2013, available at: http://www.socialstyrelsen.se/publikationer2013/2013-11-27

[102] Psykiatriregister, *Kvalitetsregistret ECT*, 2015, available at: http://www.psykiatriregister.se/sites/default/files/documents/ect_prel._resultat_2015.pdf

[103] SOU 2015:71, *Barns och ungas rätt vid tvångsvård. Förslag till ny LVU*, 2015, available at: *http://www.regeringen.se/contentassets/e77c4c5bd7624980aebe10b0bfe1c23f/barns-och-ungas-ratt-vid-tvangsvard-forslag-till-ny-lvu-sou-2015_71_dela_webb.pdf*

[104] CRC, *Concluding observations on the fifth periodic report of Sweden*, CRC/C/SWE/CO/5, 6 March 2015, para 25.

- put in place a system to monitor the use of solitary confinement in all closed institutions.

Asylum seekers and undocumented migrants – (LOI § 25)

59. The Government mentions in its answer to the List of issues that asylum seekers and undocumented persons under the age of 18 have the same right to health and dental care as resident children. Though this is encouraging, persons over the age of 18 still only have access to health and dental care that cannot be postponed, maternity care, abortion care and contraceptive advice.[105] Further, the National Board on Health and Welfare has presented concerns about the use of the term "care that cannot be postponed" from different aspects. One aspect is ethical: there is a risk that it is in conflict with the principle of everyone's equal worth since this limitation in health and dental care only applies to undocumented migrants and asylum seekers. Moreover, it is in conflict with the professional ethics which holds that medical staff are to provide care based on needs. Another problematic aspect concerns the content of the term: the information provided about the content is often inaccessible, inconsistent and many times misleading. There is no list on what types of diagnoses should be included in the term nor is it possible to make such a list due to the fact that disease progression and need for medical care varies between patients. Hence, the meaning of "care that cannot be postponed" is individually determined by the medical doctor or dentist. This leads to uncertainty about the content of "care that cannot be postponed" and could consequently endanger the safety of the patients.[106] Subsequently, undocumented migrants and asylum seekers are denied the right to the highest attainable standard of health.

60. Another aspect of asylum seekers right to health is the Government's draft bill that temporarily restricts the possibility of being granted a residence permit in Sweden, already mentioned under article 10. This will affect asylum seekers' health in a negative manner. The fact that only being granted a temporary residence permit increases instability, insecurity and is not conducive for the asylum seeker's physical and mental health. The majority of the actors who were consulted on the draft bill, state that it will have negative consequences for the asylum seekers as well as for the authorities.[107] The Swedish Red Cross affirms that the instability caused by the temporary residence permits also increases the risk of developing depression and Post Traumatic Stress Disorder. Research shows that there is a strong correlation between temporary residence permits and poor mental health. Temporary permits are particularly harmful for persons who have been subject to torture as well as children, where stability is a prerequisite for adequate support and treatment.[108]

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[105] Lag (2008:344) om hälso- och sjukvård åt asylsökande m. fl., 6 §, and Lag (2013:407), om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd, 7 §, available at: https://www.riksdagen.se/sv/Dokument-Lagar/ [31 March 2016]

[106] Socialstyrelsen (The National Board of Health and Welfare), *Vård för papperslösa – vård som inte kan anstå, dokumentation och identifiering vid vård till personer som vistas i landet utan tillstånd*, February 2015, p. 26-28, avaliable at: https://www.socialstyrelsen.se/publikationer2014/2014-2-28

[107] Ministry of Justice, *Lagrådsremiss Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*, (Draft Bill Temporary restrictions on the possibility of being granted a residence permit in Sweden) April 2016, available at: http://www.regeringen.se/contentassets/c8a2c65d34534a0a9de7eab1169ab1d9/slutlig-lagradsremiss-begransningar-uppehallstillstand.pdf [accessed 2016-04-14].

[108] Swedish Red Cross, *Svenska Röda Korsets yttrande över utkastet till lagrådsremiss Begränsningar av möjligheten att få uppehållstillstånd i Sverige* (The Swedish Red Cross's Opinion on the Draft Bill Temporary restrictions on the possibility of being granted a residence permit in Sweden), March 2016, available at: http://www.redcross.se/PageFiles/7627/SRK%20remissyttrande%2020160302.pdf [accessed 2016-04-14].

We recommend that the State:

- take legislative action to ensure everyone within the state territory the right to the highest attainable health, regardless of their legal status;
- reconsider its draft bill restricting the possibility of being granted a residence permit in Sweden;
- pay particular attention to the right to health of persons who have been subject to torture as well as children.

Vulnerable EU citizens

61. Many of the vulnerable EU citizens staying in Sweden lack health insurance and are denied access to subsidized health care in Sweden. 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 citizens do not, due to discrimination and exclusion in their home countries, have health insurance and they typically lack the means to support themselves. Hence, beyond the three months stay, most commonly EU citizens fall within the category of people staying in Sweden without necessary permits. The health care accorded to this category of persons is restricted to "health care that cannot be postponed". As mentioned earlier, this term is problematic from an ethical perspective and there is a great uncertainty about what constitutes health care that cannot be postponed.[109] What is more, it is practically impossible to determine whether an EU citizen has been staying in Sweden for more than three months since there is no registration of EU citizens when entering Sweden. There is widespread confusion around what kind of health care should be accorded to EU citizens in Sweden, resulting most often in them being denied the right to the highest attainable standard of health.

We recommend that the State:

- ensure that vulnerable EU citizens are granted their right to the highest attainable physical and mental health, regardless of their legal status.

Roma girls and women

62. The Swedish Public Health Authority released a report in 2015 concerning the health of Roma girls and women. The findings of the report are worrying: Roma girls and women generally have a poorer health than the rest of the female population. The lack of trust towards social institutions, such as health care institutions, is higher within the Roma population, which can be explained by the fact that many Roma girls and women face discrimination and bad treatment by authorities and by the society at large. The report also shows that the poor health can be the

[109] Lag (2013:407) om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd (*The Act on health and medical care for persons staying in Sweden without necessary permits (2013:407*) and Socialstyrelsen (The National Board of Health and Welfare), *Vilken vård ska ett landsting erbjuda asylsökande och papperslösa?* (What healthcare should a county council offer asylum seekers and people with no papers*?*) available at: https://www.socialstyrelsen.se/vardochomsorgforasylsokandemedflera/halso-ochsjukvardochtandvard/vilkenvardskaerbjudas [accessed 2015-12-22].

result of unemployment, lower levels of education and reluctance to seek medication. Further, Roma girls and women are more frequently subjected to violence than the rest of the female population. What is more, they have a less healthy lifestyle, the number of smokers is higher within the Roma population and the level of physical activity is lower compared to the female population in general.[110]

We recommend that the State:

- incorporate a clear gender equality perspective in the strategy for Roma inclusion 2012-2032, as well as in the implementation of the strategy;
- in collaboration with Roma women's groups educate the personnel in governmental agencies, municipalitites, schools and health care institutions on Roma's rights, history and social situation.

Article 13 and 14, The right to education

Vulnerable EU citizens

63. The Swedish National Agency for Education and the Swedish Schools Inspectorate have clarified that children to EU citizens staying in Sweden for longer than three months without the necessary permits, have the right to education.[111] Yet, the decision to allow these children to go to school is taken at the municipal level, where the officials are not necessarily aware of these children's right to education. Children to EU citizens staying in Sweden for less than three months have often no possibilities to go to school. The result being that children to vulnerable EU citizens are often not guaranteed their right to primary education.

We recommend that the State:

- ensure that children to vulnerable EU citizens are granted their right to education, regardless of their legal status and in which municipality they live.

Official Minority languages – (LOI § 26)

64. The Swedish educational system's ability to support the language development of minority and indigenous children is the single most important problem to address when it comes to the survival of the official national minority languages in Sweden - Finnish, Sami, Romani Chib, Yiddish, and Meänkieli. In spite of continued criticism from minority and indigenous NGOs,[112]

[110] Folkhälsomyndigheten, *Fördjupad studie om romska flickors och kvinnors livssituation och hälsa,* October 2015, p. 26-27. Avaliable at: http://www.folkhalsomyndigheten.se/documents/om-myndigheten/uppdrag-styrdokument/avslutade/RU-romska-flickors-kvinnors-halsa.pdf

[111] Dagens Nyheter, "Snårig lagstiftning kring EU-migranters rätt att gå i skolan" (*Complicated legislation regarding EU-migrants right to attend school*), April 25, 2015 available at http://www.dn.se/nyheter/sverige/snarig-lagstiftning-kring-eu-migranters-ratt-att-ga-i-skolan/ and SVT nyheter, "Barn till romska tiggare kan kräva skolgång i Sverige", (*Children of Roma beggars may require schooling in Sweden*), March 2016, available at http://www.svt.se/nyheter/inrikes/barn-till-romska-tiggare-kan-krava-skolgang-i-sverige [accessed 2016-04-14].

[112] Alternative report submitted to Council of Europe by a number of NGOs in connection with a monitoring visit in December 2013, "*Marginalized and Ignored – National Minority Children's Struggle for Language Rights in Sweden 2013*",

numerous repeated recommendations from Council of Europe,[113] and also the UN Special Rapporteur on Indigenous Issues,[114] the Swedish Government has taken very few steps to improve the educational situation of national minorities and indigenous children.

65. The main problems consist of weak or unclear legislation and the lack of structures within the educational system that can provide national minority and indigenous children the support needed to reach higher proficiency and literacy in their minority language. As a consequence, Sweden is not fulfilling its educational obligations.

66. The most common option available at present, a single mother tongue tuition lesson once a week, is not enough to provide the educational support needed to reach higher levels of proficiency and literacy in the minority language. Mother tongue tuition is a marginalized subject and the amount of time provided varies. To receive such tuition remains a problem. Access to bilingual education continues to be a problem. Legal regulations hinder the use of stronger bilingual or immersion programs needed. The Government's program for teacher training in national minority languages is seriously underfunded. The academic quality and structures needed for these languages will be difficult to reach. Only a fourth of the needed resources were allocated for the teacher training program.

67. The Swedish National Agency for Education is currently working on the assignment to train at least 12 teachers in minority languages. We welcome the initiative but note that the assignment will not solve the structural problem of teacher training and that it will have no consequences for the lack of teachers in Yiddish, Romani Chib or Finnish.

68. In its answer to the List of issues, the Government mentions that the requirement of "basic knowledge in minority language" in order to be entitled to mother tongue tuition in primary and compulsory school was revoked 1 July 2015. We welcome the initiative but note that the requirement of "good knowledge" will still remain a requirement for upper secondary school. The national minorities fear that the changes in regulations will have limited impact and the shortage of teachers in minority languages still remains a serious problem in many municipalities. Even if the requirements are changed, the municipalities will not be able to find enough teachers in the national minority languages.

focuses on the difficult educational situation of national minority children in Sweden, available at: http://www.sverigefinne.nu/julkaisut/206507_SvK.pdf

[113] Recommendations from Council of Europe: http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/SwedenCMRec1_en.pdf , https://wcd.coe.int/ViewDoc.jsp?id=98247&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383 , http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/SwedenCMRec2_en.pdf , https://wcd.coe.int/ViewDoc.jsp?id=1307569&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383 , http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/SwedenCMRec3_en.pdf , http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/SwedenCMRec4_en.pdf , https://wcd.coe.int/ViewDoc.jsp?id=2075435&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

[114] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, A/HRC/18/35/Add.2, available at: http://unsr.jamesanaya.org/docs/countries/2011-report-sapmi-a-hrc-18-35-add2_en.pdf

We recommend that the State:

- take immediate action to provide the national minority and indigenous children the support needed to reach higher proficiency and literacy in their minority language;
- strengthen the right to education in and on national minority languages;
- increase the access to bilingual education;
- improve teacher training in national minority languages, and;
- allow strong educational models for revitalization of national minority languages such as full-immersion models.

Children with disabilities – (LOI § 27)

69. In spite of the new Education Act of 2011 (SFS 2010:800) and the clarifications that were made in the Act in 2014, children with disabilities still do not get the support they need in school. There is a large gap between the intentions of the Education Act and the reality. The support is often provided too late and too limited in scope. In practice it is necessary to have a diagnosis to be granted access to the support even though the law does not provide for this. The Children's Ombudsman's yearly report from 2016 clearly maps and describes the problems in today's schools. The report indicates a lack of knowledge of teachers, principals and school authorities as a major contributing factor to the absence of inadequate support. It also shows considerable differences in support for boys and girls, where girls are disadvantaged to a large extent.[115]

70. A growing problem in today's Swedish school is students who are not able to go to school even though they want to or students with long absence without leave. Children and young people with neuropsychiatric disabilities are overrepresented in this group. A poor learning environment, where physical, educational and social accessibility are deficient, is the main cause. The Public Health Agency indicates in a report from 2014 that children with disabilities are less satisfied in school, that they are exposed to bullying to a greater extent and have a less active leisure and assess their health as worse than other children.[116]

71. Children of deaf parents are often not entitled to learn sign language in preschool and/or school. The municipalities are able to give children sign language courses if there are 5 or more children within their jurisdiction and if there is an available teacher. But this is not an obligation. As a result, parents with sign language as a first language are often not able to fully communicate with their children. Neither are siblings where one sibling is deaf and the other hearing.[117] Another grave concern is that students/children that are deaf or hard of hearing tend to have lower grades than average students.[118] Schools with deaf children often do not require their personnel to be fluent in sign language. This makes these children spend time and energy

[115] The Children's Ombudsman, "Respect - Barn med funktionsnedsättning om samhällets stöd" (*Respect – Society's Support to Children with Disabilities*), 2016, available at: http://www.barnombudsmannen.se/globalassets/dokument-for-nedladdning/publikationer/respekt-2016.pdf
[116] The Public Health Agency, "Skolbarns hälsovanor 2013/14", (*Schoolchildren's Health Habits 2013/14*) December 2014, Available at: https://www.folkhalsomyndigheten.se/pagefiles/18915/skolbarns-halsovanor-sverige-2013-14.pdf
[117] The County Council of Jönköping, "Barn som anhöriga - Hörande barn till döva eller teckenspråkiga föräldrar", (*Children as relatives – Children of deaf or hard of hearing parents*), June 2014, available at: http://plus.rjl.se/info_files/infosida38725/horande_barn_till_dova_foraldrar_20160707.pdf
[118] The National Agency for Special Needs Education and Schools, "Måluppfyllelse för döva och hörselskadade i Skolan" (*Achievement of goals for deaf and hard of hearing in school*), May 2008, Available at: http://www.barnplantorna.se/UserFiles/file/rapporter/maluppfyllelse_for_dov-hsk_i_skolan_Hendar_08.pdf

on simply understanding their teachers rather than learning. Therefore many families with deaf or hard of hearing children make requests of attending schools with adequate personnel and equipment. Yet, municipalities can turn down the families' requests if they find it to be "an economic or organizational burden". Putting deaf and hard of hearing children in an even more vulnerable situation impairing their right to education.[119]

We recommend that the State:

- ensure early intervention and individual adaptations in order to ensure education for all on the basis of equal opportunities;
- increase knowledge of teachers, principals and school authorities about children with disabilities;
- monitor and develop measures to counter the fact that girls with disabilities receive no support or inadequate support to a larger extent than boys with disabilities;
- accessibility has to be improved and apply to both the physical and psychological environment within the schools;
- ensure that the municipalities guarantee children of deaf parents their right to learn sign language and subsequently their right to fully communicate with their parents;
- ensure deaf or hard of hearing children's equal opportunities in school by providing them teachers who are fluent in sign language and access to adequately equipped schools despite the extra economic burden this may possible mean for the municipality in question.

[119] See for instance The Swedish National Association of the Deaf press release, August 2014, available at: http://www.sdr.org/component/k2/item/1276-diskriminerande-skolstarter-for-dova-och-horselskadade