

## Committee against Torture

### Concluding observations on the sixth and seventh periodic reports of Sweden

#### ADVANCE UNEDITED VERSION

1. The Committee against Torture considered the combined sixth and seventh periodic reports of Sweden (CAT/C/SWE/6-7) at its 1252<sup>nd</sup> and 1255<sup>th</sup> meetings, held on 4 and 5 November 2014 (CAT/C/SR.1252 and 1255), and adopted the following concluding observations at its 1272<sup>nd</sup> meeting, held on 18 November 2014 (CAT/C/SR.1272).

#### A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure, as it improves the cooperation and the dialogue between the State party and the Committee. The Committee also welcomes the submission of the common core document (HRI/CORE/SWE/2011).

3. The Committee welcomes the interactive dialogue held with the State party's multi-sectoral delegation as well as the additional information provided by the delegation to the Committee.

#### B. Positive aspects

4. The Committee welcomes the State party's ratification of the following international and regional instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Protocol, in 2008;

(b) The Council of Europe Convention on Action against Trafficking in Human Beings, in 2010;

(c) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2014.

5. The Committee welcomes the following legislative and other measures taken by the State party in areas of relevance to the Convention:

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

(b) The entry into force of the new Anti-Discrimination Act, on 1 January 2009 ;

(c) The efforts made to comply with obligations under article 22 of the Convention.

## C. Principal subjects of concern and recommendations

### **Definition and criminalization of torture and the statute of limitations**

6. The Committee welcomes the fact that an inquiry has been commissioned in June 2014 to consider the need for a specific provision on torture in Swedish penal law. The Committee expresses its continuing concerns that the State party has not yet specifically incorporated the crime of torture as defined in article 1 of the Convention into domestic law. The absence of torture as criminal offences creates actual or potential loopholes for impunity and obstructs the victim's capacity to access and enjoy his or her rights guaranteed in the Convention. Further, the Committee is concerned that the offence of torture, which is subsumed in the offence of assault and aggravated assault, is subject to a statute of limitations on that account in the Swedish legislation. (arts. 1 and 4)

**The Committee reiterates its previous recommendation (CAT/C/SWE/CO/5, para.9) and urges the State party, as a matter of priority, to define and criminalise torture in domestic law in full compliance with articles 1 and 4 of the Convention. Recalling its General Comment No.2 (CAT/C/GC/2) on the implementation of article 2 by State parties, the Committee considers that by naming and defining the offence of torture in accordance with the terms of the Convention as distinct from other crimes, States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself. Furthermore, the State party should ensure that acts amounting to torture as defined in article 1 of the Convention are not subject to any statute of limitations in its law.**

### **Fundamental legal safeguards**

7. While taking note of the Act on Detention (2010:611) regulating procedures for arrest and temporary detention in custody or other detention facilities, the Committee remains concerned that persons deprived of their liberty, including minors, are not always afforded all fundamental legal safeguards from the very outset of deprivation of liberty, such as the rights to access to a lawyer, to independent medical examination and to notify a relative or a person of their choice. The Committee is concerned at reports that the right of notification of custody is often unduly delayed in the interest of the investigation and that access to health care for persons in police custody continues to be left to the discretion of the police. (art. 2)

**Recalling the Committee's General Comment No. 2 (CAT/C/GC/2), the State party should take all necessary measures to ensure that all persons deprived of their liberty are afforded, in law and in practice, all the fundamental legal safeguards from the very outset of deprivation of liberty, in particular right to access to a lawyer, right to a medical examination by an independent doctor, preferably of their choice, and right to notify a relative, in accordance with the international standards.**

### **Imposition of restrictions, including isolation**

8. The Committee notes with regret the State party's position on the necessity of the use of restraints, such as isolation, during the preliminary investigation in the Swedish legal system and recalls the State party's adherence to all fundamental legal safeguards while in pre-trial detention. In particular, the Committee remains concerned at: (arts. 2, 11 and 16)

(a) The high percentage of the remand prisoners who are subject to restrictions and the differing restrictions which exist concerning their communications with the outside world;

(b) The widespread and, in some cases, the prolonged use of solitary confinement in pre-trial detention;

(c) The application of such restrictions, including isolation, to minors in police cells, remand prisons as well as in special residential homes; and

(d) The incidents of suicide or suicide attempts in places of detention, in particular in remand prison, suggestive of being the result of the use of nature of restraints such as isolation measures.

**The Committee urges the State party:**

**(a) To use restrictions on remand prisoners only as an exceptional measure based on concrete grounds laying them down in the law in accordance with international standards and only when strictly necessary in the interest of criminal investigations. To that end, the State party should establish clear guidelines for public prosecutors on the application of restrictions;**

**(b) To abolish the use of solitary confinement for minors as well as to set up a juvenile justice system in compliance with international standards; and**

**(c) To carry out thorough investigations of incidents of suicide or suicide attempts, and ascertain whether there is a link between the use of measures of physical restraints and the incidents of suicide or suicide attempts in places of detention.**

**Pre-trial detention**

9. The Committee appreciates various measures taken by the State party to reduce pre-trial detention periods. However, the Committee remains concerned at the absence of maximum time-limit for such detention as well as minimal attention given to alternatives to such detention. Furthermore, the Committee expresses its serious concerns that minors continue to be subjected to pre-trial detention and that there is a lack of general and formalized routines on how to handle minors in pre-trial detention, as raised in the 2013 Annual Report of the Swedish Ombudsman for Children. (arts. 2 and 11)

**The State party should use the pre-trial detention as a measure of last resort, in particular for minors. In that regard, the State party should consider alternative measures to its use, ensure that the decisions imposing pre-trial detention are based on objective criteria and facts in support. It should also develop clear rules for treatment of minors in police custody and monitor the effective implementation in practice of the rules.**

**Detention of asylum-seekers**

10. While noting the ongoing review of the legal framework on detention under the Aliens Act, the Committee is concerned at (a) time limits to a maximum of twelve months under the Aliens Act as amended on 1 May 2012, (b) reports that detention of asylum-seekers is not always only used as a measure of last resort, and the limitations are not always only for the shortest possible time, (c) the use of detention is, in practice, much more common than supervision, and (d) some asylum seekers are still placed in remand prisons for security or other exceptional reasons. (arts. 11 and 16)

**The State party should take all necessary measures to ensure that the detention of asylum seekers is used only as a last resort, and, where necessary, for as short period as possible and without excessive restrictions. The Committee recommends the State party to review the law and practice in relation to exceptional lengthy detention of asylum seekers and to improve the capacity of the detention centers run by the**

**Migration Board with a view to avoiding placement of asylum seekers in remand prison.**

**Non-refoulement**

11. The Committee welcomes positive developments, including permanent residence permits granted to Mr. Agiza in July 2012 and Mr. Alzery in April 2014 and the legal position issued by the Swedish Migration Board with a view to improving investigation skills for cases of torture victims, in line with the judgment of the European Court of Human Rights in the case *R.C. vs. Sweden* (41827/07). The Committee also notes that all asylum-seekers, including those from Iraq, are individually considered and that diplomatic assurances are considered only in exceptional cases. However, the Committee remains concerned at: (arts. 3 and 10)

- (a) Reports that returns to some countries did not always take into account the risks facing individuals due to their ethnicity or religion;
- (b) The lack of clear guidelines on identification and proper documentation of torture victims and investigation in such cases;
- (c) Gaps in policy and obstacles to family reunification, including strict identity document requirements; and
- (d) The high number of asylum seekers returned “voluntarily” or “non-voluntarily” to Iraq.

**The State party should respect, in law and in practice, its non-refoulement obligations under article 3 of the Convention, inter alia, by:**

- (a) Undertaking judicial review of all decisions of deportation of all persons, with particular attention to the risks faced due to ethnicity or religion;**
- (b) Establishing clear guidelines and related training on the investigation and documentation of torture;**
- (c) Reviewing the criteria and procedural requirements pertaining to family reunification; and**
- (d) Refraining from the use of diplomatic assurances as a means of returning a person to another country where the person would face a risk of torture.**

**Unaccompanied children**

12. The Committee welcomes the Common Action Plan developed by the Border Control Police in Stockholm with a view to minimizing the risk of unaccompanied children becoming victims of trafficking. However, the Committee remains concerned at vulnerable situations for unaccompanied asylum-seeking minors and children of irregular immigrants or undocumented children. (art. 16)

**The State party should ensure that adequate protection measures exist and given effect to in the case of children seeking asylum or migration, including increasing control over the persons into whose care the child is placed.**

**Use of coercive and intrusive measures in psychiatric hospitals**

13. The Committee notes the steps taken by the Government to reduce the use of coercive measures and to ensure the safety of patients in psychiatric institutions and hospitals. However, the Committee remains concerned at: (art. 16)

- (a) The widespread use of coercive and intrusive measures such as physical restraints and solitary confinement, including for young patients;
- (b) The incompleteness of registration system and proper safeguards of the use of electroshock therapy (ECT); and
- (c) The lack of effective and impartial investigation of the excessive use of restrictive measures.

**The State party should:**

- (a) Use restraints and solitary confinement as a measure of last resort and for the shortest possible time and under strict medical supervision;**
- (b) Introduce an integral registration system and appropriate safeguards to administer the ECT;**
- (c) Ensure the effective monitoring of the conditions in psychiatric institutions; and**
- (d) Provide training to medical and non-medical staff on methods of non-violent and non-coercive care.**

**Investigations**

14. The Committee is concerned at reported cases of ill-treatment and excessive use of force by police, the lack of independent, impartial and effective investigations of such incidents, and the absence of an independent body for investigation of complaints of police misconduct. The Committee notes that a Department of Special Investigations, with an autonomous standing, will be established in 2015 within the Police at the national level, including seven regional investigation units. (arts. 12, 13 and 16)

**The Committee recalls its previous recommendation (CAT/C/SWE/CO/5, para. 18) and urges the State party to ensure prompt, impartial and effective investigations by an independent body into all allegations of ill-treatment and excessive use of force by law enforcement officials.**

**Hate crimes**

15. While noting the priority consideration given by the Equality Ombudsman and the National Police Board, to combat and prevent hate crimes, the Committee remains concerned at reports of violence and criminal acts motivated by hatred towards minorities and other vulnerable groups in Sweden, including Muslims, Afro-Swedes, Roma and Jews as well as persons belonging to the lesbian, gay, bisexual, and transgender (LGBT) community. In this context, the Committee is concerned at a series of violent attacks in Malmö and at the low level compensation paid to thousands of Roma Swedes whose names were registered by police in southern Sweden due to their ethnicity. The discrepancy between increased reports to the police of hate crimes and the decrease in the number of preliminary investigations and convictions is a matter of concern. According to reports before the Committee, during 2007, 155 cases of agitation against ethnic minorities were reported, but the Attorney General initiated proceedings against barely six of them. (arts. 12, 13 and 16)

**The Committee recalls its position that the special protection of minorities or marginalized individuals or groups especially at risk is part of the State party's obligation to prevent torture or ill-treatment (CAT/C/GC/2, para.21). In this respect, the State party should intensify efforts to prevent and prosecute criminal acts motivated by such factors as discrimination, intolerance, hatred or negative stereotype, by:**

(a) **Ensuring effective investigation, prosecution and punishment of perpetrators;**

(b) **Collecting detailed information and statistics on the number and type of hate crimes, as well as on the administrative and judicial measures taken to investigate and prosecute such crimes and the sentences imposed; and**

(c) **Increasing awareness-raising and information campaigns to promote tolerance and respect for diversity as well as measures fostering a sense of security toward communities at risk.**

#### **Gender-based violence**

16. While welcoming that Sweden adopted broader legal definition of rape and raised the minimum penalty for gross sexual abuse of a child, the Committee remains concerned at the increasing high incidence of violence against women compared to the low number of complaints, investigations, prosecutions and convictions in rape cases. (arts. 2, 4, 12, 13 and 16)

**The State party should intensify its efforts to combat all forms of violence against women, including domestic violence and rape, in particular by:**

(a) **Setting up a gender-sensitive system to receive and deal with such complaints ;**

(b) **Punishing perpetrators with appropriate penalties and providing adequate protection and assistance to the victims; and**

(c) **Conducting awareness-raising campaigns for the public at large and in particular training on domestic violence issues for law enforcement personnel, judges, lawyers and social workers who interact with the alleged and actual victims in order to prevent and prosecute gender-based violence.**

#### **Trafficking in persons**

17. The Committee commends the State party's significant efforts to combat trafficking in persons and to assist victims of trafficking, including the adoption of a National Action Plan on human trafficking in July 2008 and of an Action Plan for protection of children against human trafficking, exploitation and sexual assaults in February 2014. However, the Committee remains concerned at: (arts. 2, 12, 13, 14 and 16)

(a) Reports of the increasing number of victims of trafficking for the purpose of various forms of exploitation, such as labour exploitation, forced begging, and forced criminality involving children; and

(b) The very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking as well as at the lack of protection and remedy provided to victims.

**The State party should enhance its efforts to combat trafficking in persons, by prosecuting and punishing perpetrators, providing adequate protection and redress to the victims and preventing return of trafficked persons to their countries of origin where there is a substantial ground to believe that they would be in danger of torture or ill-treatment.**

#### **Training**

18. Notwithstanding the detailed information provided on training programmes for the State officials, the Committee regrets the paucity of information on (a) specific training

regarding the provisions of the Convention, (b) evaluation of the effectiveness of the programmes in reducing incidents of torture and ill-treatment, and (c) training of health personnel on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). (arts. 10 and 16)

**The State party should intensify its efforts to provide (a) training programmes on the prohibition of torture and the State party's obligations under the Convention, for all officials and (b) systematic and practical training on the Istanbul Protocol to medical personnel who are in direct contact with persons deprived of their liberty. The State party is encouraged to sensitise the media on the State party's obligations under the Convention, in particular the absolute prevention of torture.**

#### **Data collection**

19. While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data which has made it difficult for the Committee to monitor and assess the implementation of the Convention of the State party at the national level. (arts. 2, 12, 13, 14 and 16)

**The State party should imperatively compile statistical data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, on gender-based violence, including domestic violence and trafficking, on hate crimes as well as on means of redress provided to the victims, including compensation and rehabilitation.**

#### **Other issues**

20. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

21. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

22. The Committee requests the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations related to ensuring or strengthening legal safeguards for persons deprived of their liberty and ensuring effective investigation, prosecution and punishment of perpetrators, as contained in paragraphs 7, 8 (a), 14 and 15 (a) of the present document.

23. The State party is invited to submit its next report, which will be the eighth periodic report, by 28 November 2018. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

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