

Comments from the Ombudsman for Children in Sweden on the List of Issues (CRC/C/SWE/Q/5) and Written replies by the Government of Sweden (CRC/C/SWE/Q/5/Add.1) in relation to the fifth periodic report of Sweden to the Committee on the Rights of the Child, December 11, 2014.

Part I

Issue 5. In view of Swedish legislation, in particular the Aliens Act establishing the right of the child to be heard only if it is not inappropriate, please elaborate under which circumstances it would be considered inappropriate to allow a child to express his or her views, taking into consideration the report of the Ombudsperson in that regard.

The Aliens Act (2005:716) states that children should be heard if it is not appropriate. According to the Ombudsman for Children in Sweden this appropriateness requirement has no counterpart in the Convention. In our view existing regulations provide authorities with loopholes that prevent children from being heard.

Our interviews with children and young people show that they are not given full opportunities to state their views in the asylum process. Our view is that the premise should not be to protect the child from participation; instead it should be to protect the child *in* his/her participation. This requires better methods for allowing children, including younger children, to give their views, as well as the adaptation of information to ensure that children and young people understand it.

Issue 6. Please indicate whether there is any intention to cease the use of straps or belts on and the solitary confinement of children, including children with disabilities, in mental health-care settings.

The Ombudsman is critical of the fact that the current legislation governing the use of coercive measures at psychiatric facilities neither considers the rights of the child nor distinguishes between children and adults. The Ombudsman for Children in Sweden recommends the Government to review the legislation and the coercive measures to which children may be subjected for the purpose of ensuring clear, suitable regulations. Such measures must be used only as a last resort and in situations where it is needed in order to protect the life of the child or other people's lives.¹

The Government refers to the Ministry Publication Series 2014:28 that proposes a new provision whereby coercion of children may take place only if it is in the child's best interest. Here it is also proposed that the usage of belts be limited to 2 hours.

In the Ombudsman's opinion to the proposal we have stated that such measures must be used only as a last resort and in situations where it is needed in order to protect the life of the child or other people's lives. It is also our view that a thorough analysis needs to be done of which coercive measures should be allowed for children. If the legislator, without such an analysis, decides to henceforth allow such coercive measures for children, we think that the proposal for a time limit, is a step in the right direction.

In its recent Concluding Observations to Sweden (CAT/C/SWE/CO/6-7) the UN Committee on Torture expresses its concerns at the widespread use of coercive and intrusive measures such as physical restraints and solitary confinement, including for young patients. According to the Committee the State party should use restraints and solitary confinement as a measure of last resort and for the shortest possible time and under strict medical supervision. It also states that the State party should ensure the effective monitoring of the conditions in psychiatric institutions and provide training to medical and non-medical staff on methods of non-violent and non-coercive care.

¹ The Ombudsman for Children in Sweden: Breaking the silence (2014).

Issue 7. Please comment on the findings of the Ombudsperson that solitary confinement is used in a manner that is inconsistent with Swedish legislation and/or the guidelines issued by the National Board of Institutional Care and that, in certain cases, children placed in solitary confinement lack access to basic hygiene. Please also provide further detailed follow-up to the concluding observations of the Committee on solitary confinement (CRC/C/SWE/CO/4, para. 70), in particular regarding the use of solitary confinement as a method of punishment.

Measures regarding the use of seclusion

According to the Government, reporting from the Swedish National Board of Institutional Care (SiS) shows that both the frequency and average period of seclusion in special (residential) homes have been reduced since 2009.

Since the Ombudsman's audit in 2009, several changes have been made to strengthen the rights of children placed in special residential homes for young people. In the years that followed our audit in 2009, both the number of seclusions and the average amount of time that children were secluded dropped sharply, but statistical data shows a renewed increase since 2012 (which is also confirmed by the data provided by the Government, under Part III). This could indicate that the problem of numerous and prolonged seclusions is exacerbated when the issue is not given attention. The Ombudsman for Children in Sweden does not consider the measures taken to be sufficient – and recommends the Swedish government to abolish solitary confinement for children placed in special residential homes for young people.

The UN Committee against Torture has also in its recent Concluding Observations to Sweden (CAT/C/SWE/CO/6-7) raised concerns over the application of restrictions, including isolation, to minors in police cells, remand prisons as well as in special residential homes. The Committee urges the State party to abolish the use of solitary confinement for minors as well as to set up a juvenile justice system in compliance with international standards.

Lack of access to basic hygiene

During 2012 the Ombudsman for Children in Sweden met with children and young people who had been deprived of their liberty in police cells and remand prisons. The children in our survey describe the police cell environment as unpleasant, inhumane and destructive. They compare the routines and the physical environment in the police cell with being in hell.

In 2012 the Ombudsman for Children in Sweden requested data from the country's police authorities on the total number of incarcerations of persons under 18 years of age during 2011. Our accumulated data shows that there were 3,052 incarcerations of children in police cells in 2011. Although the internal Regulations of the Police clearly state that persons between 15 and 18 years of age may only be placed in a cell when it is absolutely necessary the data shows that this is not the case in many situations (see part III).

In its recent Concluding Observations to Sweden (CAT/C/SWE/CO/6-7) the UN Committee on Torture 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.

According to the UN Committee on Torture 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.

The Government refers to the Parliamentary Ombudsmen for complaints. In our interviews with children and young people deprived of their liberty it became clear that they don't always know that you can make complaints about conditions and appeal against decisions. Institutions where children are deprived of their liberty are often closed to scrutiny by the outside world. It is therefore important that every child who is deprived of his/her liberty has a right to information and access to complaints mechanisms. These mechanisms must be known to and easily accessible to children. It is our view that an independent child representative should be established to serve as an independent instance to which children and young people deprived of their liberty can turn with any complaints about how their human rights have been upheld during the judicial process. The representative is to represent the child and have the right to pursue claims in court in order to secure damages.

Issue 15. Please comment on the report by the Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, according to which, in some instances, children in conflict with the law are not informed of their rights or are interrogated without a lawyer being present. In so doing, please indicate whether testimony or statements made by a child in the absence of a lawyer may be used in legal proceedings.

Access to a lawyer and admissibility of evidence

According to Swedish law, a lawyer must be assigned if the suspect is under the age of 18.

From the Ombudsman's own material, consisting of interviews with children in police cells and remand prisons, and other audits, it emerges that children are interrogated without the presence of defence counsel. This appears to be most common at the first interrogation. The need for defence counsel is likely to be more, not less acute at the first interrogation. Inducing the child by various means to waive defence counsel, e.g. with reference to the risk of remaining longer in the police cell, is obviously not acceptable. It must be possible to appoint a defence counsel at any time of the day or night, and promptly too. In recent years, the Parliamentary Ombudsmen have in several cases criticized the fact that interrogations in youth investigations have been carried out without defence counsel present.

Children and young people we spoke to felt that they were condemned in advance even at the first interrogation, which is to say that the justice system has already decided that they are guilty. The way they are treated during the interrogation may reinforce that feeling, and thereby contribute to their giving up or saying what the chief interrogator wants to hear. In the worst case, it may lead to the young person admitting to acts he or she has not committed.

In its recent Concluding Observations to Sweden (CAT/C/SWE/CO/6-7) the UN Committee on Torture 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. According to the Committee 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.

The UN Committee against Torture also raised concerns over 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 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, the widespread and, in some cases, the prolonged use of solitary confinement in pre-trial detention and the application of such restrictions, including isolation, to minors in police cells, remand prisons as well as in special residential homes. The Committee has urged the State party to use restrictions on remand prisoners only as an exceptional measure based on concrete grounds and to abolish the use of solitary confinement for minors as well as to set up a juvenile justice system in compliance with international standards.

The UN Committee against torture also remains concerned at the absence of maximum time-limit for pre-trial 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. According to the Committee the State party should use 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.

Issue 18. In relation to the Committee's observations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/SWE/CO/1) and with reference to paragraph 385 of the State party report, please provide updated information on the draft Act on International Crimes, according to which anyone who recruits children under the age of 15 to armed forces, or uses them in battle, is liable to prosecution for a war crime.

In November 2013 the Government referred a bill to the Council on Legislation regarding a new law on sanctions for genocide, crimes against humanity and war crimes. The Government's proposal would mean that anyone who recruits children who have not yet turned fifteen years of age to national armed forces or armed groups, or otherwise uses such children for direct participation in armed conflict, is to be sentenced for a war crime. In light of Sweden's accession in 2002 to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, and of the fact that Sweden has actively promoted the application of a general age limit of eighteen, as well as the fact that 153 states have now acceded to the protocol, we consider it important that Sweden contribute to a maximum strengthening of the protection of children from armed conflict and to the development of international law in the area. It is our view that the proposal referred to the Council on Legislation amounts to taking a step backwards in the fight for children's rights. In the draft referral to the Council that the Ombudsman for Children in Sweden presented an opinion on in March 2013, the Government proposed that anyone who uses a child who has not yet turned eighteen years of age for direct participation in armed conflict, recruits a child to armed groups or conscripts a child to service in national armed forces, is to be sentenced for a war crime. This was an approach which the Ombudsman for Children in Sweden welcomed.

Part III

Issue 2. Please provide, if available, updated statistical data, disaggregated by age, sex, ethnic origin, national origin, geographic location, and socioeconomic status, for the past three years on:

c) Children placed in detention (Apprehended and arrested children)

In the written replies to the list of issues, the Government has for the first time provided an overall picture of the number of children apprehended and arrested on suspicion of having committed a crime. According to the statistics provided by the Government the total amount of apprehensions and arrests of children made in 2011, where 2 974.

The Government has referred to the internal police regulations that clearly state that persons aged between 15 and 18 may be placed in a cell only when it is absolutely necessary. The Government thus draws the conclusion "that an overwhelming majority of the children apprehended and arrested have not been placed in a cell". The Ombudsman for children in Sweden questions this conclusion since our compiled data (see below) shows that children were placed in police cells on 3,052 occasions during 2011.

In 2012 the Ombudsman for Children in Sweden requested data from the country's police authorities on the total number of incarcerations of persons under 18 years of age who had been placed in a police cell in the police district during 2011. We explicitly asked for the number of *incarcerations of children in a police cell*. The data we received was based on the information in the paper form (arrestantblad) which is issued on each occasion of apprehension and/or arrest and contains certain information on whether the person has been incarcerated in a police cell. Our accumulated data shows that there were 3,052 incarcerations of children in police cells in 2011.

Our compilation provided the first national and regional picture of how many incarcerations of children in police cells occur during a year in Sweden. Our accumulated data shows that children were placed in police cells on 3,052 occasions during 2011. This includes those occasions when there was no suspicion of a crime, for instance when a child is intoxicated or on other grounds.² Our compilation shows that more than 1,500 incarcerations of children in police cells on suspicion of crime occurred in the same year. The true figure is probably much higher, as for example Stockholm is not included. Stockholm police authority reported the total number of children held in police cells, without specifying the grounds for the incarceration. We have therefore chosen to remove that figure from the compilation.

d) Children placed in solitary confinement

Regarding data on children placed in solitary confinement the Government has reported statistics for children in institutional care and for children in remand prison. Unfortunately the Government has not reported data on children placed in solitary confinement in police cells.

The UN Committee against Torture has in its recent Concluding Observations to Sweden (CAT/C/SWE/CO/6-7) raised concerns over the application of restrictions, including isolation, to minors in police cells, remand prisons as well as in special residential homes. The Committee urges the State party to abolish the use of solitary confinement for minors as well as to set up a juvenile justice system in compliance with international standards.

In its latest report to the Committee on the Rights of the Child, Sweden presented the number of children in remand prison, the duration of detention and the number of detained children with restrictions. The Committee has also requested data on the total number of children under 18 held in police stations and the average duration of their detention. Data that Sweden was unable to provide since the Government does not require police authorities to collect this type of

² According to LOB, Act (1976:511) on Police Interventions against Intoxicated Persons or on other grounds (Sections 11, 12, 14 of the Police Act etc.)

statistics. The Ombudsman for Children in Sweden therefore requested data from police authorities on how many children were held in police cells during 2011 (see Issue 2, above).

According to the data provided by the Government, the number of children placed in solitary confinement in institutional care has increased from 600 children in 2011 to 720 children in 2013. This contradicts the information provided by the Government under part I, Issue 7, and could indicate that the problem of numerous seclusions is exacerbated when the issue is not given attention.

Barnombudsmannen är en statlig myndighet med uppdrag att företräda barns och ungas rättigheter utifrån FN:s konvention om barnets rättigheter. Vi har regelbunden dialog med barn och unga för att få kunskap om deras villkor och vad de tycker i aktuella frågor. Vi bevakar och driver på genomförandet av barnkonventionen i kommuner, landsting/regioner och myndigheter. Barnombudsmannen informerar, bildar opinion och föreslår förändringar i lagar och förordningar i frågor om barns och ungas rättigheter.



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