

To
The UN Committee on the Rights of the Child
Geneva

Stockholm 15 February 2014

Alternative report from UNICEF Sweden re. the Swedish Government's 5th report to the UN Committee on the Rights of the Child

Introduction

UNICEF Sweden welcomes the Swedish Government's 5th report which gives a comprehensive overview of the legal situation of children's rights. However we could have hoped to see more of challenges and problems also discussed in the report, especially in relation to the previous recommendations from the Committee.

The Swedish Government has taken several initiatives which strengthen the rights of the child over the past few years. In these comments we will however highlight some of the gaps in the implementation, and lack of coherence with, the UN Convention of the rights of the Child (CRC).

UNICEF Sweden's prioritized issues are the following:

- to ensure a full and comprehensive implementation of the CRC
- to protect children in the migration process
- to increase participation of children living in social exclusion
- to stop child trafficking and
- to fulfil the millennium development goals.

General measures of implementation

UNICEF Sweden believes that the principles and provisions in the CRC would be considered more seriously in the judicial system if the CRC would be incorporated as such into Swedish legislation and became Swedish law. UNICEF Sweden welcomes the Government's decision to appoint a commission with the mandate to consider the incorporation of the CRC into Swedish legislation.

It is necessary to strengthen the legal status of the CRC in order to implement it in different areas and levels in the Swedish society. If the CRC in whole would be incorporated into the Swedish legislation, its principles and provisions should be directly invoked before the courts and applied by national authorities. We believe that this would imply that the Swedish Government, national or local authorities as well as municipalities, must see their role as fulfilling clear legal obligations to each and every child.

An incorporation of the CRC into Swedish legislation would also imply a need to consider the CRC not only article by article but also holistically, recognizing the interdependence and indivisibility of children's human rights. Although this would be an important legal reform which would promote the implementation process, the transformation of different laws is still needed to ensure that all relevant domestic legislation is brought into compliance with the CRC. As long as the CRC is not incorporated as such, it will not have any legal status nor impact in individual cases, especially not in the judicial system.

We are also concerned that the Swedish Government has not yet ratified the Third Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure. We cannot understand the reason for not ratifying in order to expressly protect the right of children to redress violations of their rights.

- ***UNICEF Sweden recommends the Swedish Government to initiate an incorporation of the CRC as such into the Swedish legislation.***
- ***UNICEF Sweden recommends the Swedish Government to ratify the Third Optional Protocol on a Communication Procedure.***

Children in migration

The asylum process

It is clear that a more eloquent children's rights perspective should be applied in the asylum process. A scrupulous investigation regarding the child's own reasons for seeking asylum or residence permit should be included in the decision making of each case, and the grounds for every decision should be thoroughly documented.

Migration officers and decision makers in asylum cases should have a specific knowledge of children's rights, and a certain competence for child focused assessment methods.

The Swedish law should expressly refer to child specific forms of persecution, so that there is a special protection assessment in place when a child is concerned.

- ***UNICEF Sweden recommends the Swedish Government to initiate an amendment in the Aliens Act regarding child specific forms of persecution.***

Best interests of the child

Although the best interests of the child has been transformed and inserted into the Aliens Act, we are concerned about the principle not being given actual weight in the decision making regarding e.g. children at risk of being expelled or deported while in care due to negligence or domestic violence, children affected by the Dublin Regulation and children with long residence in Sweden. According to the CRC *the best interests of the child shall be a primary consideration in all actions concerning children*, while the Aliens Act, less distinct, states that *particular attention should be paid to consideration of what the child's health, development or best interests otherwise require*. We believe this disparity results in that the child's best interests is not being considered enough in various situations. We believe the principle would be considered more seriously if the CRC would be incorporated as such into the Swedish legislation.

- ***UNICEF Sweden recommends the Swedish Government to initiate further strengthening of the principle of the best interests of the child in all decision making regarding children in migration.***

Health care and education

We welcome that the Swedish Government has acknowledged undocumented children's legal rights to health care and education. These law amendments went into force in 2013. We believe it is now very important to monitor that these legal rights also are possible to access in practice.

- ***UNICEF Sweden recommends the Swedish Government to ensure that undocumented children are given access to health care and education in practice.***

Children in out-of-home care

According to the Aliens Act it is legitimate to expel or deport children who have been placed in out-of-home care due to negligence and/or domestic violence during the asylum process. This is not in accordance with article 2, 3, 6 and 20 in the CRC. Social workers report they are prevented to fulfil their responsibilities to consider the best interests of the child in these cases, since the Aliens Act has precedence over the Social Services Act and the Care of Young Persons Special Provisions Act. They report situations where they wait to intervene despite the risks for the child in the home environment, while awaiting a decision from the Swedish Migration Board. It is necessary to strengthen the collaboration between relevant authorities such as the social services, the Migration Board, the police authorities and children's health care.

UNICEF Sweden welcomes the initiative from the Swedish Government to closer look into the matter of children in out-of-home care (the Care of Young Persons Special Provisions Act and the Social Services Act), that aims to strengthen the child rights perspective (SOU 2014:3). However, we cannot understand why children in the asylum process and their specific situation was not included in this initiative. UNICEF Sweden also welcomes the proposal regarding changing from "exceptionally" to "particularly" distressing circumstances, suggested to come into force in July 2014. However we see continued difficulties for migrant children in care to have their needs and rights fulfilled.

- **UNICEF Sweden recommends the Swedish Government to initiate an amendment to the Aliens Act ensuring that no child is expelled or deported while in need of care due to negligence and/or domestic violence.**
- **UNICEF Sweden recommends the Swedish Government to strengthen the collaboration between authorities involved in cases regarding migrant children in care, such as the social services, the Migration Board, the police authorities and children's health care.**

Children victims of trafficking

Legislation

The existing legislation is not sufficiently clear regarding the crime of trafficking in children. UNICEF Sweden believes it would be easier to understand and apply the legal provision if there was one specific on child trafficking in the Penal Code. This would increase the transparency and facilitate the law enforcement. Such a provision should specify what types of exploitation that it criminalizes, in order to bring precision to the outlining of the crime. Such a specific provision would imply a stronger protection for children under the age of 18 years.

- **UNICEF Sweden recommends the Swedish Government to initiate an amendment in the Penal Code regarding the crime related to trafficking in children.**

A national plan of action against trafficking in children

A specific national plan of action must be adopted where preventive measures as well as support mechanisms are clarified to combat trafficking including all forms of exploitation of children. Cooperation-wise, there are problems concerning the Swedish authorities' anti-trafficking efforts. A consistent and well-measured national action plan, including a description of what specific methods should be taken by which specific agency and when, is required. This action plan must also describe what the different responsibilities are for the different Swedish authorities, so that it is clear which authority is in charge of what problem area.

- **UNICEF Sweden recommends the Swedish Government to adopt a national plan of action to combat trafficking in children.**

Training programs and awareness raising

UNICEF Sweden believes that there is a need for awareness raising among decision makers about the different aspects and natures of trafficking. This work should not only cover trafficking in children for *sexual* purposes, but all forms of exploitation, e.g. begging, crimes and labour. These training programs should include what trafficking is, how trafficking in children can be recognized, and how to act when there is a suspicion of trafficking in children.

- **UNICEF Sweden recommends the Swedish Government to include all types of exploitation related to trafficking when raising awareness about trafficking in children.**

- ***UNICEF Sweden recommends the Swedish Government to develop and increase the use of training programs on trafficking in children for different authorities.***
- ***UNICEF Sweden recommends the Swedish Government to take an initiative to improve the collaboration between relevant authorities to prevent trafficking in children and to protect children who are victims of trafficking.***

Children in social exclusion

A national strategy with a holistic approach

Children in social exclusion live in a complex multifaceted situation, where factors such as child poverty, lack of health, education and social contexts, lack of participation in recreational and cultural activities, increased risk factors of being placed in care by the social services etc. interact. Social exclusion has to be approached with a holistic perspective, where all the underlying factors are seen as connected. Social exclusion is a multidimensional issue that requires multidimensional actions, whereas actions addressing children's rights in this area often are focusing on one of the factors. A multidimensional approach requires collaborations between all relevant authorities such as the educational authorities, social services, children's health care and the police authorities. UNICEF Sweden believes that the Swedish Government should take a comprehensive and integrated approach to combat social exclusion, its consequences and its underlying causes. It is important to adopt a national strategy in order to reach all municipalities and to get the authorities to collaborate.

- ***UNICEF Sweden recommends the Swedish Government to adopt a national strategy with a holistic approach on how to prevent social exclusion and increase social inclusion among children.***

The child's right to be heard and participate

Children living in social exclusion report they have limited opportunities to express their views and participate in the decision making affecting them. This leads to frustration and feelings of being left behind by the society. They report they lack confidence in the future and are not provided with enough support to break their negative social inheritance. Their limited access to important areas of the society affects their lives in several aspects: their abilities to concentrate in school and get good grades, their abilities to interact with friends, their possibilities to participate in recreational and cultural activities, their physical and mental health etc. Children in social exclusion, with their experiences, perspectives and proposals on how to strengthen social inclusion, needs to increasingly be taken into consideration in the decision making process at all levels.

- ***UNICEF Sweden recommends the Swedish Government to realize the right for children in social exclusion to express their opinions and participate in all the decision making affecting them.***

Education is a central factor in increasing social inclusion among children

Of all the preventive factors known to combat social exclusion and breaking negative social inheritance, education is among the most central. Through surveys conducted in Swedish elementary schools, it is noticeable that the Swedish educational system moves in a direction where the inequities and equality gaps are growing more significantly and where the current quality of the Swedish education is decreasing, with overall student grades growing poorer, and educational differences between municipalities increasing. The CRC does not tolerate regional differences in educative quality. Family- and socio economic background seem to have an increased impact on how well a child performs in school. This is not in accordance with article 2 in the CRC and must be addressed. Children in social exclusion state that their schools are being depopulated of high performing students and that the schools lower the ambitions as a result. They also state that the school system is based upon the assumption that parents can provide extensive educational support, which is not the case for all children. UNICEF Sweden believes that the perspective of the child and the specific actions required to enable children in social exclusion to benefit from education, should be added to political debates, proposals and the decision making concerning the Swedish school system.

- ***UNICEF Sweden recommends the Swedish Government to enhance the central follow-up mechanism of the educational system in order to counteract educative inequalities.***
- ***UNICEF Sweden recommends the Swedish Government to include children's perspectives and the particular vulnerability and needs of children in social exclusion in the decision making regarding the school system.***

Education

Raising awareness about the CRC in school environments

UNICEF Sweden welcomes the Swedish Governments projects and initiatives to raise awareness on the CRC amongst children. However UNICEF Sweden would like to see a long term strategy on how these projects can leave on and how the CRC could be implemented in schools, beyond the subject of a lesson plan. UNICEF Sweden believes that there is a need to build the capacity of rights-holders, especially children, to claim their rights, and the capacity of duty-bearers to fulfil their obligations. It helps adults and children work together, providing the space and encouragement for meaningful participation and sustained civic engagement. UNICEF Sweden promotes a 'child rights approach' to help empower both children and adults in schools. A 'child rights approach' includes learning about rights, learning through rights (using rights as an organising principle to transform the culture of learning) and learning for rights (taking action to realise rights). Knowledge of the CRC should be rooted already in teacher training.

- ***UNICEF Sweden recommends the Swedish Government to develop a long term strategy on how to build the capacity of schools to implement the CRC.***

Child rights to be heard and participate in school

In 2010 UNICEF carried out a Nordic study on children's rights to participate. The purpose of the study was to receive information on the participation of secondary school aged students related to every-day life and daily decision-making in decision-making concerning children and youth. Students in Sweden valued participation in school-related issues as most important. At the same time Swedish respondents graded school as the area where they feel the weakest possibility to have influence. According to the average results from the gap analysis the best possibilities to influence were found among Danish respondents. The weakest influencing possibilities were among Swedish respondents.

- ***UNICEF Sweden recommends the Swedish Government to enhance the central follow-up mechanism of the educational system in order to secure that students have possibilities to be heard and participate in decision making in school.***

Discrimination and harassment in schools

UNICEF Sweden welcomes the government's wider protection against age discrimination in the Discrimination Act and the strengthening of human rights in The Education Act. Most schools in Sweden work to prevent discrimination and other degrading treatment to some extent. Still a survey conducted by The Swedish National Agency for Education shows that there were inaccuracies in 80 percent of the equality plans in the primary schools inspected in 2007 and the first half of 2008. Another survey conducted by The Swedish National Agency for Education shows that students are unaware of the discrimination laws and that many schools do not include the students in the process of developing the equality plans, although children have a strong commitment to value issues, and many proposals for preventive measures.

- ***UNICEF Sweden recommends the Swedish Government to strengthen the work against discrimination, harassment and violations in schools by closer central control, especially to make sure student's proposals for preventive measures are taken into account.***

International development

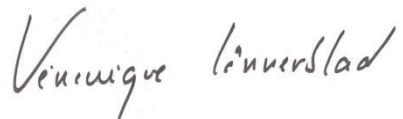
UNICEF Sweden welcomes the Swedish Government's initiatives in the field of child rights in international development assistance. We particularly appreciate the valuable thematic support to UNICEF in the field of Child protection - an area which is consistently underfunded in UNICEF.

UNICEF Sweden underlines the importance of developing the proposed action plan and other measures within Sida (the Swedish International Development Cooperation Agency) to better make visible and mainstream the child rights perspective within the whole organisation. At present, the work in this field does not seem to be prioritised, with neither sufficient funds nor staff resources dedicated to the task. This work has to go in line with the development of the new policy for international development (biståndspolitiska plattformen). In the draft policy, currently on referral,

the child rights perspective is not very well integrated. UNICEF Sweden however welcomes that women and children are prioritised as focus target groups.

- ***UNICEF Sweden recommends the Swedish Government to go further with the intended plans to develop an action plan for the mainstreaming of the child rights perspective within Sida, including developing new methods of integrating and measuring results achieved for children. This requires strategic thinking but also dedicated staff resources.***
- ***UNICEF Sweden recommends the Swedish Government to strengthen the child rights perspective within the new policy for international development, especially regarding children as actors on their own with the right to participation and influence on their own lives.***

UNICEF Sweden



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