

**Supplementary report from the
Ombudsman for Children in
Sweden to the UN Committee on
the Rights of the Child regarding
Sweden's fifth periodic report,
2014-03-01**



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We have organized this report according to the areas specified by the UN Committee on the Rights of the Child and in the manner used by the States Parties in their reports to the Committee. The articles of the UN Convention on the Rights of the Child are thus attributed to the following areas:

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Summary

The Ombudsman for Children in Sweden is charged with representing children in accordance with the UN Convention on the Rights of the Child ("the CRC"). We monitor and encourage the implementation of the CRC.

In our supplementary report to the UN Committee on the Rights of the Child ("the Committee") we provide a description and an analysis of the areas that the Ombudsman for Children in Sweden has highlighted. We base these on the recommendations the Swedish Government received from the Committee in connection with the audit it carried out in 2009. Our report is also intended as a supplement to the presentation provided in Sweden's fifth periodic report (2012) on the implementation of the CRC.

In it we describe the issues that children and young people have brought to our attention since 2009, the application of legislation based on the CRC, and progress in implementing the CRC in municipalities, county councils and government agencies.

Over the last few years the Ombudsman for Children in Sweden has systematically listened to the accounts of children in vulnerable situations. We have organized expert groups of children who have experienced violence or abuse, who have been in society's care or experienced exclusion. We have visited children in state-run special residential homes for young people, in transit housing for unaccompanied asylum-seeking children, in homes for care or residence, and in remand prisons and police cells. The picture that emerges is that the rights of children in vulnerable situations are disregarded in two fundamental respects. First, the child's right to express their views and be heard and second, the child's right to have his/her case examined and obtain redress when his/her rights are violated. In our latest annual reports, we have reported how children in vulnerable situations describe that they don't know their rights and feel they have limited opportunities for being heard on issues that are extremely important to them. It is particularly grave that agencies which are meant to provide important protection for children as a rule are unknown or inaccessible to them. This applies to the social services, but also to supervisory authorities and the courts. Sweden also falls short in providing children with the opportunity to have their case heard and obtain redress when the violating party is the state.

1. General measures of implementation (articles 4, 42 and 44 para. 6)

Legislation

10. The Committee invites the State party to take all necessary measures to ensure that national legislation is brought into full conformity with the Convention and recommends that the State party continue and strengthen its efforts towards formal recognition of the Convention as Swedish law. It further recommends that the Convention should always prevail whenever domestic law provisions are in conflict with the law enshrined in the Convention.

In a written submission in 2009, the Ombudsman for Children in Sweden urged the Government to undertake a broad review of how Swedish legislation and practice relate to the Convention's provisions, and to consider whether the Convention should be officially adopted as law.¹ In 2011 a survey was carried out within the Government Offices to elucidate how Swedish legislation and practice conformed with the CRC. The survey resulted in a ministry memorandum that was presented in November 2011. The survey noted that Swedish legislation on the whole was in good conformity with the CRC.² The Ombudsman for Children in Sweden did not fully concur with its conclusions. The survey furthermore lacked a review of practice, i.e. to what extent children's rights are respected in practical application, in decisions and measures. Our assessment is that in some respects there are still significant differences between the CRC and Swedish legislation, even if the greatest challenges concern how existing legislation is applied.

One example of a difference between Swedish legislation and the CRC is that Swedish law permits the solitary confinement of children suspected of crimes and deprived of their liberty in police cells and remand prisons during the criminal investigation. Considering the serious mental injuries or suffering that solitary confinement can lead to in children, the UN Special Rapporteur on Torture holds the view that it can amount to torture and cruel, inhuman or degrading treatment and that its use against children should be prohibited. Solitary confinement of children should thereby be irreconcilable with Article 37 of the CRC, which states that no child may be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Our view is that no child should be deprived of his or her liberty by means of solitary confinement during the course of the investigation. Swedish law also permits the solitary confinement of children placed in special residential homes for young people, by keeping them in what is referred to as seclusion. An earlier audit by the Ombudsman for Children in Sweden showed that seclusion was used routinely or as punishment in a way which is inconsistent not only with Article 37 of the CRC, but with Swedish legislation and guidelines issued by the National Board of Institutional Care (SiS) as well.

There are also shortcomings in the application of the law, even when it has been adapted to the CRC. The introduction of the principle of the child's best interests in a number of gateway provisions in Swedish law has not been sufficient to make an impact in practice and for the principle to underlie all administration and all decisions. This applies, *inter alia*, to the Aliens Act. It specifies that in cases involving a child, particular attention must be given to what is required with regard to the child's health and development and the best interests of the child in general. Despite this provision, it happens in cases involving children that it is not clear if or how the best interests of the child have been taken into account. It is our view that the best interests of the

¹ The Ombudsman for Children in Sweden: The legal position of the CRC in Sweden (written communication, 18 November 2009).

² The Government Offices: 'Hur svensk lagstiftning och praxis överensstämmer med rättigheterna i barnkonventionen – en kartläggning' (*How Swedish legislation and practice conform with the rights in the CRC – a survey*) (Ds 2011:37).

child must be given a more prominent role in the Aliens Act, and that it should be clear from case documents how the child's best interests have been taken into account. There are also shortcomings in how the child's best interests are taken into account and in how the child's right to have his or her views taken into account is put into practice. This applies in custody, residence and contact disputes, for example, which goes against the principle that the child's best interests must be the primary consideration in such decisions and that the child's wishes must be given due weight in accordance with his or her age and maturity.

The Ombudsman for Children in Sweden welcomes the commission of inquiry which has now been appointed to carry out a survey in particularly urgent areas of how the application of laws and other regulations corresponds with the rights of the child under the CRC and the optional protocols that Sweden has acceded to. The commission is also to analyze advantages and disadvantages of incorporating the CRC into Swedish law.³

It is our view that the CRC should be incorporated into Swedish law, in combination with a continued transformation. Although Sweden has carried out several measures to implement the CRC since it was ratified in 1990, many of the shortcomings and suggested measures repeatedly stressed by the Committee on the Rights of the Child in its recommendations to Sweden remain unaddressed. In those cases where articles of the CRC have been integrated into Swedish legislation, this may have an impact on the application of the law in individual cases. However, the CRC still has a limited impact in areas where legislation has not been adapted to the CRC. Inquiries and legislative history sometimes refer to a summary of the CRC's content, but it is often unclear what practical significance this is intended to have. Legislative history describes the legislators' intentions with a law, and it would be of the utmost importance if the CRC were elucidated to a greater extent in legislative history and thereby given significance in the application of the law.

Sweden's public international law commitment in respect of the CRC is not just an issue for legislators, but also very much an issue for the public sector in the form of government agencies and courts, as well as at the local and regional level. Despite the fact that Sweden, through its ratification of the CRC, is bound by it under international law, it appears that the principle of interpreting legislation in conformity with ratified treaties is not applied to any significant extent by the country's courts in respect of the CRC. On the contrary, the argument is heard that the CRC should not be taken into consideration as it is not part of Swedish law.⁴ The Ombudsman for Children in Sweden welcomes a ruling by the Supreme Court in December 2013, in which the court appears to have taken the CRC into account in accordance with the principle of interpreting national legislation in conformity with ratified treaties. The ruling halted the forced sale of the home of a family with children. However, since the court primarily refers to the European Convention⁵ it is unclear what significance this ruling will have.

Making the CRC Swedish law would ensure its application in practice as well, i.e. in measures and decisions by courts, government agencies and in municipalities and county councils. Incorporating the Convention into Swedish law would also be significant in cases of conflict between national legislation and the CRC. It is likely that the CRC would be invoked by parties to a greater extent, and officials, lawyers and decision makers at various levels would be forced to improve their knowledge of the CRC in order to be able to use it as an instrument of law.

If the CRC were made into Swedish law, this would increase the likelihood that the CRC would be taken into account and applied even in areas where Swedish law had not been adapted to the Convention. If courts and government agencies applied the CRC in individual cases, this could

³ Dir. 2013:35 'Översyn av barnets rättigheter i svensk rätt' (*Review of children's rights in Swedish law*)

⁴ NJA 2007, p. 168.

⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms.

contribute to a development of case law on the basis of the CRC, as well as to identifying omissions in legislation which could then be rectified. The independent role of the CRC as a source of law would be clarified and strengthened, including the General Comments and statements by the Committee on the Rights of the Child. The Third Optional Protocol to the CRC, on a communications procedure, which comes into force in the spring of 2014, will also contribute to new practice and thus be a significant instrument of interpretation.

It is our view that an incorporation of the CRC should be carried out together with continued transformation. It is important for the CRC to be reflected in all relevant legislation, in its logical context. Even if the CRC is incorporated into Swedish law, there is nothing to prevent Sweden from going further in its implementation by means of existing legislation or by passing new laws that benefit children.

Incorporating the CRC would be significant for the individual child, but also for the way children are seen in society as a whole. The Ombudsman for Children in Sweden believes that this would increase the possibilities for the CRC to be implemented in its entirety. Legal protection of the individual child would be strengthened, while at the same time children's role as rights holders with their own specific rights would be made clearer. It would also be made clearer that legislation concerning children must be based on a child rights perspective and that Swedish legislation must be interpreted on the basis of the CRC in its entirety.

Coordination

12. The Committee recommends that the State party continue and strengthen its efforts to improve the coherence and coordination of efforts on behalf of children so as to ensure adequate cooperation among central and local authorities as well as cooperation with children, parents and non-governmental organizations. The Committee also recommends that the State party strengthen its measures to monitor and follow up on decisions taken at the municipal and regional level to address the remaining disparities and to ensure implementation of the Convention at all levels, including through the county administrative boards.

Measures are needed to improve coordination and follow-up of CRC implementation at national, regional and local levels. What happens at the regional and local level is of great significance for how the CRC is implemented in Sweden. In practice, a large part of the decisions and measures that affect children are taken by the country's municipalities and county councils. There are considerable differences between municipalities, county councils and regions in the implementation of the CRC.⁶ For example, differences between and within municipalities in terms of the number of children living in economically vulnerable circumstances. A recurring difference is in municipalities' means allocation to schools, leisure activities and preschools as well as to various support measures. Reviews of social child care also indicate sizeable differences between municipalities' social services in terms of offering, quality and safety. Of particular concern are the differences between social services' available resources for children at risk.

National Plan of Action

14. The Committee recommends that the State party adopt a comprehensive national plan of action on children and ensure that it covers all areas of the Convention and takes due account of the outcome document of the 2002 Special Session of the General Assembly of the United Nations "A World Fit for Children" and the "A World Fit for Children Plus 5 Declaration".

⁶ Barnombudsmannens yttrande över betänkandet En reformerad grundlag' (Opinion of the Ombudsman for Children in Sweden on the report "A reformed constitution") (SOU 2008:125).

The Ombudsman for Children in Sweden welcomes the strategy adopted by the Government for strengthening the rights of the child. In order for a comprehensive plan of action to be effective, however, it must have concrete, measureable goals and indicators, a clear timetable, and sufficient resources. There should also be a version of the strategy in which the language is adapted to children. We are also concerned that work on the Government's third comprehensive strategy for human rights has not yet led to any decision.

Independent monitoring

16. *The Committee recommends that:*

a) The State party consider providing the Ombudsman for children with the mandate to investigate individual complaints;

a) The mandate for the Ombudsman for Children in Sweden, to investigate individual complaints

Through contacts with the public, both adults and children, and through the cases reported, the Ombudsman for Children in Sweden gains important knowledge. We carry out studies at a general level and examine individual cases from a general perspective in order to monitor how Sweden is living up to its commitments and to assess if there are shortcomings in complying with the CRC and if these are due to legislation itself or to shortcomings in its application. Our legal powers are used to ensure an in-depth dialogue with municipalities, county councils and government agencies. We submit proposals for legislative amendments and other measures to ensure that national legislation complies with the CRC. However, we are unable to intervene in individual cases other than by using them as a basis for raising issues of principle.

In light of the introduction of an international complaints mechanism linked to the CRC and of the fact that implementation of the CRC is influenced by how courts and agencies interpret and apply the law, it should be explored how the Ombudsman for Children in Sweden might contribute to a greater extent to the development of case law as well. The possibility should be considered of empowering the Ombudsman for Children in Sweden to represent individuals in cases where the matter in issue is particularly significant for the application of the law, or is otherwise of special interest for the implementation of the CRC.

Allocation of resources

18. *The Committee recommends that the State party continue and strengthen the provision of specific information in terms of figures and percentage of the national budget regarding the implementation of the Convention in order to allow proper assessment of the degree to which the State party is meeting its obligation under article 4 of the Convention. The State party should also strengthen its measures to ensure equal access and availability of services for all children, irrespective of where they live. In that regard, the Committee recommends that the State party take into account its recommendations following its 2007 Day of General Discussion on "Resources for the Rights of the Child - Responsibility of States."*

Equal access and availability of services irrespective of where children live

The Ombudsman for Children in Sweden is concerned about the differences between measures carried out by different municipalities' social services. We have highlighted the situation for children in various vulnerable situations, and it emerges from their accounts that there are differences in the support given and the measures applied by the social services. Several inspection reports in different areas also point to considerable differences in terms of services, support, quality and safety between different municipalities' social services.⁷

⁷ The County Administrative Board: 'Socialtjänsten och barnen. Länsstyrelsernas granskning av den sociala barn- och ungdomsvården 2006–2007' (*Social services and children. County Administrative Boards' review of social care for children*)

There is considerable variation both within and between municipalities in terms of how reports to the social services are handled and how the assessment is made of whether the matter should be investigated or not. Comparative national data is required in order to get an overall picture of how many children in Sweden are coming to harm and are the subject of reports to the social services, how often investigations are initiated and what measures and results that leads to. Currently such data is not available.

A report from the National Board of Health and Welfare shows that children may be living under different circumstances depending on which municipality they grow up in.⁸ Seven deprivation indicators and six risk indicators for children and young people were studied. They show that there are very considerable variations in the incidence of deprivation and risk, where municipalities with high numbers for deprivation indicators also had high numbers for risk indicators, and vice versa. At the same time the report shows that there are considerable differences in municipalities' costs for activities directed towards children and young people. The report notes that deprivation and risk indicators do not directly co-vary with municipalities' costs for children and young people. The County Administrative Boards' national review of care for children and young people shows that the proportion of notifications to the social services that lead to investigation varies greatly between municipalities, from 20 per cent to 80 per cent. The trend has been negative, in that the overall number of notifications which are investigated has been decreasing.⁹ The conclusion drawn in the national review is that it is the child's place of residence and not the contents of the notification that determine whether or not a child's situation becomes investigated.

Data collection

20. The Committee recommends that the State party strengthen its efforts to establish coordinated approach between all entities collecting data on children and to improve the systematic collection of disaggregated data concerning the situation of all children, in particular concerning children with disabilities, child victims of abuse aged 15 to 18 years, and children victims of sexual exploitation.

Ample knowledge of children's living conditions at different institutional levels is a prerequisite for taking appropriate action and making the right decisions concerning children. Access to current statistics is also needed in order to be able to determine if Sweden is living up to its commitments. It is positive that the Ombudsman for Children in Sweden has been charged with developing a system for following up child rights policy and the implementation of the CRC in Sweden. The Max18 follow-up system is an important tool for identifying problem areas in child rights policy, but at the same time there are several groups of children who for various reasons do not show up in the statistics. This applies, for example, to undocumented children, children of EU migrants or children subjected to human trafficking. There is also a lack of statistics about children with disabilities and children who have been subjected to abuse or sexual exploitation. In its Surveys of Children's Living Conditions (Barn-ULF), Statistics Sweden developed, in consultation with the Swedish Agency for Disability Policy Co-ordination (Handisam), questions

and young people 2006–2007) (2008), and the County Administrative Board and the National Board of Health and Welfare: 'Våldsutsatta kvinnor och barn som bevittnat våld – Alla kommuners ansvar.' (*Women subjected to violence and children who witness violence – a responsibility for all municipalities.*) Concluding report from a national oversight 2008–2009 (2009).

⁸ The National Board of Health and Welfare: 'Olika villkor – Om levnadsförhållanden, risker och kommunala kostnader för barn och unga.' (*Different circumstances – about living conditions, risks and municipal costs for children and young people*) (2010).

⁹ The County Administrative Board: 'Socialtjänsten och barnen. Länsstyrelsernas granskning av den sociala barn- och ungdomsvården 2006–2007.' (*Social services and children. County Administrative Boards' review of social care for children and young people 2006–2007*) (2008).

that identify children with disabilities. However, the quality of the Barn-ULF survey is compromised by the small number of respondents.¹⁰

22. *The Committee encourages the State party to strengthen its measures to ensure that all children are aware of the Convention and its two Optional Protocols and can use such instruments to defend their rights. The Committee further recommends that the State party ensure systematic and ongoing training programmes on human rights, including children's rights, for all persons working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, teachers, social workers, health personnel and especially children themselves).*

Children and young people's knowledge of their rights

In 2009 the Ombudsman for Children in Sweden carried out a survey of 750 children in years 5 and 8 at school. The survey showed that among 11 and 14-year-olds, only about one in five children had heard of the CRC.¹¹ We repeated the survey in the first quarter of 2010. It shows that among pupils in year 5, awareness of the Convention had increased from 24 per cent in 2009 to 34 per cent in 2010. Among the pupils in year 8, however, awareness levels were unchanged.¹² All children, regardless of their circumstances and life situation, have the right to receive information about their rights. If children and young people become aware of their rights and are able to express them in their contacts with adults, pressure increases on the adult world to provide for these rights. Knowing one's rights is often a prerequisite for being able to influence one's situation and call attention to violations of the fundamental human rights.

Training in children's rights for professional groups working with and for children

It is our view that there is a need to increase knowledge about children's rights, both among professionals who come into contact with children and among children themselves. Our view is further that a provision should be added to the Higher Education Ordinance specifying that knowledge about children's rights, how to identify children who are coming to harm and how to fulfil the obligation to report is a requirement in the following professions: teacher, social worker, pre-school teacher, psychologist, nurse, dentist and doctor.^{13 14} Additionally there is the requirement that those individuals who are already active professionally receive further training.¹⁵ The Ombudsman for Children in Sweden also considers that all the actors in the judicial system must possess knowledge about children's rights and how children are to be received and treated. This is in order to guarantee the child his or her human rights throughout the judicial process.¹⁶ It is important to systematically and continuously train e.g. policemen, prosecutors, judges, social workers and legal representatives so that they will be able to fulfil the child's fundamental rights and needs.

Ratification of international human rights instruments

73. *The Committee encourages the State party to consider ratifying the international human rights instruments to which it is not yet party,*

¹⁰ Statistics Sweden, 2012: Living conditions among people with disabilities, measured using ULF.

¹¹ The Ombudsman for Children in Sweden: 'Kom närmare' (*Come closer*) (2009).

¹² The Ombudsman for Children in Sweden: 'Upp till 18 fakta om barn och ungdom.' (*Up to 18 – facts about children and young people*) (the Ombudsman for Children series of reports, 2010:01).

¹³ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar' (*Signals – violence in close relationships. Accounts by children and young people*) (2012).

¹⁴ The Ombudsman for Children in Sweden: 'Vårdens ansvar för barn som far illa.' (*Care services' responsibility for children who come to harm*) (written communication, 27 December 2010).

¹⁵ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (*Signals – violence in close relationships. Accounts by children and young people*) Accounts by children and young people (2012).

¹⁶ The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

Sweden has not yet ratified the Optional Protocol to the CRC on a communications procedure, which was adopted by the UN General Assembly in December 2011. The Protocol imposes more stringent requirements that the CRC be made a reality in children's lives and that children be given a real possibility of having their cases heard when their rights under the Convention have been violated. In cases where there is no effective legal remedy for children at the national level, they must be able to have their case examined before the Committee on the Rights of the Child. It is our view that Sweden should strengthen the protection of children by ratifying the Protocol as soon as possible. It enters into force in the spring of 2014.

2. General principles (Articles 2, 3, 6 and 12)

Article 2

26. The Committee recommends that the State party monitor and ensure full compliance with article 2 of the Convention and ensure the implementation of existing laws guaranteeing the principle of non-discrimination with respect to all children within its jurisdiction.

Registration of Roma children and young people

In September 2013, information emerged that the Police Authority in Skåne has kept a register of thousands of Roma people, of which more than a thousand are children and young people – and fifty or so as young as two years. Reportedly registration has sometimes begun when the child is a few months old. According to the investigation carried out by the Swedish Commission on Security and Integrity Protection (SIN), more than a thousand children were registered. The Police Authority described to SIN the reasons behind the registration of 15 of the children. However, neither SIN nor the Police Authority considers that these reasons can justify the registration of approximately 1,000 children. According to SIN there is no possible explanation for why so many children would need to be included in the register.¹⁷

Supervisory authorities have established that laws have been violated, which implies serious damage to trust. Our view is that a broadly based commission of inquiry should be appointed to propose measures which ensure that similar incidents will not be repeated and to provide redress to the children and other persons affected.

Article 3

The best interests of the child

28. The Committee recommends that the State party strengthen measures to raise awareness about the meaning and practical application of the principle of the best interests of the child and ensure that article 3 of the Convention is duly reflected in its legislation and administrative measures. It also recommends that the State party take appropriate and effective measures to ensure that the principle of the best interests of the child form the basis and guide the process and all decisions, especially in asylum cases involving children, including by providing regular training to staff at the Swedish Migration Board and the social welfare authorities.

Although the principle of the best interests of the child has been introduced into a number of gateway provisions in Swedish law, this has not proven enough to give the principle an impact in legal application. It is our view that measures are required in order to guarantee that the principle underlies all administration and all decisions. In order to demonstrate that the right of the child to have his or her best interests taken as a primary consideration has been respected, any decision concerning one or more children must, according to the Committee, be motivated,

¹⁷ The Swedish Commission on Security and Integrity Protection: The processing of personal data in the register entitled "Kringresande" ("Travellers") by the Skåne Police Authority (statement on 15 Nov 2013).

justified and explained.¹⁸ The motivation should state all factual circumstances regarding the child, what elements have been found relevant to the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. According to the Committee, the child's own views must also be taken into consideration in the best interests assessment. Article 3, para. 1 cannot be correctly applied if the requirements in Article 12 are not met. If the decision differs from the views of the child, the reason for that should be clearly stated.¹⁹

Children in society's care who are deported

The Ombudsman for Children in Sweden is concerned that children placed in society's care, e.g. due to neglect and/or domestic violence, risk being deported with their parents/guardians. To deport a child while a care measure is ongoing, without ensuring that the care can continue and be completed in the child's homeland, is a violation of the child's right to protection under the CRC. In 2011 and 2012 the Ombudsman for Children in Sweden therefore summoned, on the basis of its judicial powers, the National Board of Health and Welfare and the Swedish Migration Board to a dialogue and tried to urge the two agencies to improve their collaboration. Our view is that legislation needs to be tightened so that enforcement of a deportation order of a child placed in care and who needs continued care may only occur if assurances have been obtained that adequate care can be provided in the child's homeland. The Ombudsman for Children in Sweden is further of the opinion that children who have been placed in care should have a special public counsel – a representative – who safeguards the child's interests in case of a deportation order. The Government recently presented a proposal for changing the wording of the granting grounds "exceptionally distressing circumstances" to "particularly distressing circumstances". Under the proposal, the circumstance that the child is in the care of the social welfare authorities is a factor which may come to be considered in the overall assessment of the reworded granting grounds.²⁰ We will be monitoring these developments and the transition from "exceptionally distressing" to "particularly distressing circumstances".

Care, residence and contact on the basis of the child's best interests

Children who have experienced domestic violence may currently be forced to have contact with the perpetrating parent, despite the existence of a sentence for abuse/assault. A parent who has subjected his or her child to threats, violence or abuse can force the child to have contact, even against the explicit wishes of the child. Further, the fact of one parent refusing to deliver the child to the other, sentenced, parent may lead to custody being transferred to the latter. Our view is that contact should be voluntary and entirely on the child's own conditions.²¹

If one of two parents with joint custody dies, the other parent receives sole custody. It happens that parents receive sole custody of their children after having killed the other parent. This allows the parent who has killed the other parent to deny the child support and treatment, among other things. Our view is that an automatic examination of custody should take place in those cases where one guardian has killed the other.²²

¹⁸ UN Committee on the Rights of the Child: General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

¹⁹ UN Committee on the Rights of the Child: General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

²⁰ The Government Offices: 'Särskilt ömmande omständigheter' (*Particularly distressing circumstances*) (Ds 2014:5)..

²¹ Opinion of the Ombudsman for Children in Sweden on Sweden's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence, and certain issues regarding contact prohibition when a home is shared (Ds 2012:52).

²² The Ombudsman for Children in Sweden: 'Barnets bästa måste alltid gå före mördarens föräldrarätt.' (*The best interests of the child must always take precedence over the murderer's parental right*) (2013).

Article 12

30. In light of article 12 of the Convention, and drawing the State party's attention to the Committee's recommendations adopted on its day of general discussion on the right of the child to be heard held on 15 September 2006, the Committee recommends that the State party:

(a) Continue to promote and facilitate, including through legislation, within the family, schools, institutions, the courts and administrative bodies, respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention;

(a) Promote respect for the views of children and their participation

"You don't get a chance to say anything. No, I don't get to say anything, they only talk to my foster parents", Sabina.²³

Our interviews with children and young people show that they are not given full opportunities to state their views, whether in disputes over custody, residence and contact or in investigations by the social services and the asylum process. Despite the positive changes that have been made to legislation, it emerged in our meetings with children and young people that they don't feel as if they are being listened to, and that they have not felt that they have been given the opportunity of stating their view on issues and measures that concern them. In many cases the children have not understood the measures taken either, and have also felt that they have not been given enough information about what they imply. Our view is that it is important to ensure that the changes made to legislation are applied in practice, and that children's participation becomes meaningful. It is also important to create visibility about how the child's right to be heard is handled in practice. In order to allow for an assessment of whether the child's right to be heard has informed application, the Committee on the Rights of the Child has pointed to the importance of including these assessments in the decisions.²⁴

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.

Legal counsel in disputes over custody, residence and contact

"I need help to make the authorities understand that I WANT TO LIVE WITH MY MUMMY!!!!", 11-year-old child.²⁵

Every year 50,000 children experience their parents separating.²⁶ Many children are drawn into disputes where their rights are not fully protected. They lack real opportunities to be heard in these cases, and there are reasons from a child rights perspective for introducing the possibility of appointing a special counsel in cases concerning custody, residence and contact. This was also recommended by the Committee. The Riksdag announced that the Government would draft a bill giving children the right to their own legal counsel in all cases concerning custody, residence and contact.²⁷ In its bill "Children's opportunities for receiving care", however, the Government judged that such a possibility should not be introduced at present.²⁸

The Ombudsman for Children in Sweden recommends that Sweden ratify the European Convention on the Exercise of Children's Rights, which represents an important means for

²³ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

²⁴ UN Committee on the Rights of the Child: General Comment No. 12 (2009) The right of the child to be heard.

²⁵ The Ombudsman for Children in Sweden: 'Kom närmare.' (*Come closer*) (2009).

²⁶ Statistics Sweden, www.scb.se: 'Barn- och familjestatistik' (*Child and family statistics*), 2011.

²⁷ bet. 2005/06:LU27, rskr. 2005/06:309. 'Barns möjlighet att få vård' (*Children's opportunities for receiving care*) (Govt. bill 2011/12:53).

²⁸ "Children's opportunities for receiving care" (Govt. bill 2011/12:53).

strengthening children's rights in family law cases. Sweden has signed the Convention, which means it is also committed to striving for a Swedish ratification of it.²⁹

One proposal under discussion, which the Ombudsman for Children in Sweden supports, concerns the possibility for social welfare committees to speak to children without the consent of their guardians in connection with custody investigations. However, the Government has not found that the need for providing this possibility is great enough to justify a change.³⁰

The opportunity for children and young people to voice complaints

Supervisory authorities and courts are generally inaccessible to children, neither are they adapted to them. Children's position of dependence makes it difficult for them to claim their rights. This problem is exacerbated in cases where the guardian and the child have conflicting interests, or where the guardian is unable to represent the child. The Committee has also noted that children in vulnerable situations have particular difficulties in being heard.³¹ The Committee emphasizes that if rights are to have any meaning, there must be effective legal remedies for redress.³² Effective and child-adapted complaints mechanisms are part of the implementation of Article 12. Children are entitled to complaints procedures in all areas, e.g. in family life, in alternative care, in school and in all other institutions, services and facilities available to them.³³ Supervisory authorities must provide accessible and child-adapted agents for children to turn to with complaints (see Item 37b, inter alia). Special consideration should be given to children for whom it may be especially complicated to use these, e.g. children living with protected personal data and children with disabilities.

In cases where no national remedies for violations of children's rights exist, or where they are ineffective, children and their representatives must be provided with the possibility of bringing their complaints before international bodies for human rights. Prior to the negotiations in February 2011, the Ombudsman for Children in Sweden urged the Government to take an unequivocally positive position on strengthening children's rights through the establishment of an international complaints mechanism, and to actively contribute to the strongest possible optional protocol.³⁴ In December 2011, the UN General Assembly adopted a resolution on a new optional protocol to the CRC with the effect of establishing an international complaints mechanism. The protocol has now been ratified by ten states and will therefore come into force in the spring of 2014. Our view is that Sweden should ratify the protocol as soon as possible and thereby strengthen children's rights.

3. Family environment and alternative care (Articles 5, 9-11, 18.1-2, 19-21, 25, 27.4 and 39)

Family environment

*35. The Committee recommends that the State party:
(a) take measures to address the causes of the high number of children who are removed from their families as well as children who run away from home or are forced to leave home and ensure that the children who run away or are forced to leave home have access to services and get*

²⁹ 'Utöandet av barns rättigheter i familjerättsprocesser' (*The exercise of children's rights in family law cases*) (Ds 2002:13).

³⁰ 'Umgängesstöd och socialtjänstens förutsättningar att tala med barn' (*Contact support and the social services' conditions for talking to children*) (Govt. bill 2009/10:192).

³¹ UN Committee on the Rights of the Child: General Comment no. 12 (2009) – The right of the child to be heard.

³² UN Committee on the Rights of the Child: General Comment no. 5 (2003) – General measures of implementation of the Convention on the Rights of the Child.

³³ Unicef: Implementation Handbook for the Convention on the Rights of the Child (2008).

³⁴ The Ombudsman for Children in Sweden, written communication to the governments of Norway and Sweden (17 January 2011).

the necessary advice and support;

(b) further develop and implement programmes and policies to prevent the placement of children in institutions, inter alia by providing support and guidance to the most vulnerable families, developing, funding and providing parent-training programmes for parents from vulnerable families, and conducting awareness-raising campaigns.

(a) Measures providing help and advice to children who run away from home or are forced to leave

The National Board of Health and Welfare has attempted to map homelessness among children and young people who are in the grey area between family and social care. In total, about 400 children and young people were reported during one week in May 2011.³⁵ In 2009 one of the first studies on homelessness was published, which found that 11 per cent of all young people had at some point run away from or been kicked out of home.³⁶ According to young people themselves, problems at home and fights with their parents are the most common reasons they run away or get kicked out. We have also heard accounts by children who have grown up in families with strict codes of honour, who have been forced to run away when they felt threatened or risked being forced into marriage, for example. The social services must pay greater attention to and become more available for children and young people who are in this situation. In its interim report, the Inquiry on Compulsory Care for Children and Young People has proposed new forms of placement, including support homes, which could be a good option for these children.³⁷

(b) Further develop and implement

It is also important to work preventively by offering support and guidance to parents. Parent training programmes must also be based on a child rights perspective.

Children deprived of a family environment

37. The Committee recommends that the State party:

(a) ensure adequate supervision and monitoring of the situation of children placed in foster homes or institutions, including private alternative care or homes for care and residence;

(b) take the necessary measures to ensure the provision of effective, well-known, independent and impartial complaint mechanisms for children without parental care; and

(c) provide adequate follow-up and reintegration support and services for children who leave institutional care.

“The most important thing is that they want to help you.” Lina³⁸

In 2009 the Ombudsman for Children in Sweden invited young people living in special residential homes for young people to talk about their experiences, as experts on their own life and situation. In the following year we met with more than 100 children and young people placed in foster homes or homes for care or residence (HVB). Many of those we met, as well as many of the children and young people we have met over the past year, told us about occasional lapses and shortcomings in social services for children, which has also been confirmed by the Inquiry on Redress for Past Abuse. Among its findings was that procedures to prevent, detect and correct abuses are rare.³⁹

³⁵ The National Board of Health and Welfare: ‘Hemlöshet och utestängning från bostadsmarknaden 2011–omfattning och karaktär’ (*Homelessness and housing market exclusion in 2011–scale and character*) (2011).

³⁶ Sjöblom, Y and Högdin, S: ‘Tillfälligt uppbrott: Om ungdomar som rymmer och kastas ut hemifrån’ (*Temporary breakups: About young people who run away from or are kicked out of their own homes.*) Save the Children Sweden, 2009.

³⁷ Swedish Government Official Reports (SOU 2014:03): ‘Boende utanför det egna hemmet – placeringsformer för barn och unga’ (*Not living at home – placement options for children and young people.*)

³⁸ The Ombudsman for Children in Sweden: Behind the façade (2011).

³⁹ Swedish Government Official Reports (SOU 2011:9): The children that society betrayed – measures to rectify abuse and serious neglect in society’s care of children.

These shortcomings underlay our 2011 survey of all municipalities' social welfare committees. The purpose of the survey was to determine if the social welfare committees had adopted their own directives on custody and placement of children and if so, what was dealt with in the directives. The results show that few social welfare committees, or about a third of the total, have adopted special directives regarding the health, medical care and schooling of children placed in homes or institutions. Only about one in five social welfare committees has adopted directives on how the social services are to act when malpractice or substandard conditions are discovered in a foster home or a home for care or residence (HVB).⁴⁰

A review by the Health and Social Care Inspectorate (IVO) of the training and methods of care and treatment personnel in HVB for children and young people showed that half of the personnel have no specialized training in care and treatment of children and young people.⁴¹ At many HVB there was also insufficient knowledge about treatment measures, and methods appeared unconsidered and were often without scientific support, according to IVO.

The Ombudsman for Children in Sweden therefore considers that legislation should be reviewed in order to guarantee the rights of children placed in care. Current legislation has an inadequate human rights perspective and does not describe the rights of children and young people placed in care. Children's rights to education and health and medical care need to be guaranteed, as do children's rights to voice their views and be heard, and to receive information about their human rights. Clear rights legislation, with clear requirements for activities, is not least important for the youngest children, who have an even harder time making their voices heard.

The granting of licences for HVB needs to be reviewed against a quality benchmark that more clearly states what is meant by good care. Today no licence at all is required for publicly run HVB, and the requirements for approving private HVB specified in the law are far too low. It is important that legislation makes more specific demands on the content of care and on staff competence and suitability, and that results are evaluated. The commission on compulsory care for children and young people has also been tasked with determining if more stringent regulations are needed, which the Ombudsman for Children in Sweden considers to be the case.

"My older sister was in a place where they were unqualified and couldn't take care of her because they didn't know how to control her anger." Erika⁴²

Our survey from 2011 shows that only one third of Sweden's municipalities provide prospective foster parents with compulsory basic training.⁴³ We welcome the proposal in the interim report by the commission on compulsory care for children and young people, for compulsory training of all foster and emergency foster home parents.⁴⁴

(a) Supervision and monitoring

"You get a bit angry with the social services since it sometimes feels as if they don't listen to what you say at all." Tahir⁴⁵

The young people that we have spoken to rarely know their rights, which means they accept restrictions without this coming to the attention of any authority. The Ombudsman for Children

⁴⁰ The Ombudsman for Children in Sweden: 'Socialnämndens ansvar för barn i samhällsvård.' (*Responsibilities of the social welfare committee for children in care*) The Ombudsman for Children in Sweden reports, BR2011:02.

⁴¹ The Health and Social Care Inspectorate: 'En trygg och säker vård – har personalen lämplig utbildning? En granskning av vård- och omsorgspersonalens utbildning och metoder i HVB för barn och unga.' (*Secure and safe care – are staff suitably trained? A review of the training and methods of care and treatment personnel in HVB for children and young people*) (2013).

⁴² The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

⁴³ The Ombudsman for Children in Sweden: 'Socialnämndens ansvar för barn i samhällsvård.' (*Responsibilities of the social welfare committee for children in care*) The Ombudsman for Children in Sweden reports, BR2011:02.

⁴⁴ Swedish Government Official Reports (SOU 2014:03): 'Boende utanför det egna hemmet – placeringsformer för barn och unga' (*Not living at home – placement options for children and young people*)

⁴⁵ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

in Sweden welcomes the changes to legislation which mean that the social welfare committee must appoint a special social welfare officer in connection with decisions on placement. He or she is responsible for monitoring care and keeping in contact with the child during the placement, as well as visiting the child to the extent that this coincides with the child's wishes and needs. Our view is that the social welfare officer should be independent in relation to the foster parents or the institution caring for the child. Children and young people must be able to change social welfare officer if their contact isn't working. We further consider that the possibilities for the child and the foster parents to request a review of a decision by the social services should be explored, including decisions concerning placement with new foster parents.

"We feel locked up, alone and crushed." Lisa⁴⁶

Several of the children we met said that on their first contact with HVB, they have to sign a contract which amounts to their renouncing several of their human rights. Sometimes this contract is supplemented with various forms of punishment systems. Legislation must provide protection against the use of contracts for punitive purposes.

The Ombudsman for Children in Sweden welcomed the decision that the Health and Social Care Inspectorate (IVO) as of 2011 visits all HVB at least twice a year, of which one visit is unannounced. We also see as crucial the amendments to the Social Services Ordinance which prescribe that contact talks are to be held with the child, provided he or she wants to, during inspections of HVB, foster and special residential homes for young people.

(b) Provide effective and impartial complaints mechanisms

"I feel bad. Try to ask for help but nobody listens... As soon as I do something wrong I get punished instead of getting some help."⁴⁷

Children who are placed in care must be able to obtain redress and compensation when the authorities responsible for their care have neglected those responsibilities. Children must be able to turn to an independent body with any complaints regarding care. The representative must be entitled to pursue matters in court in order to obtain damages for children who are in society's care.⁴⁸ The activities currently managed by IVO, with a helpline that children and young people placed in care can turn to, would do well to become part of the strengthened ombudsman function in the future.

The right to security and a long-term perspective

"Then they just sent me to the next family, where it was the same thing, and then I got sent back and forth like that, like I was a letter in the post or something."⁴⁹ Kim

Every year around 17,500 children are placed in foster homes. A study in 2012 found that about one in four placements end prematurely.⁵⁰ This was in spite of the fact that in many cases the child had spent as long as ten years in the home. Most often it is the foster parents who end the placement. Children and young people who grow up in foster homes, or who need society's support in other ways during all or part of their childhood and adolescence, are in a vulnerable situation. It is a fundamental right for them to be able to feel security. Children who have been placed in a foster home at a young age and who have their entire emotional grounding there must also have a right to security and a long-term perspective. It is a matter of concern that so

⁴⁶ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

⁴⁷ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

⁴⁸ The Ombudsman's proposals in its 2011 Annual Report. Written communication, 4 March 2011.

⁴⁹ The Ombudsman for Children in Sweden: Query and dialogue (2013).

⁵⁰ The National Board of Health and Welfare: Unplanned interruptions to foster home placements among younger children and children in long-term placements (2012).

few of these children receive this, and that the possibility of bringing about a transfer of custody – in some cases followed by adoption – is so rarely explored.

Abuse and neglect

39. The Committee recommends that the State Party continue and strengthen its efforts to provide adequate assistance to children who are victims of child abuse, including through:

- (a) early detection and treatment of cases involving child abuse;
- (d) providing adequate protection to child victims of abuse in their homes;
- (e) supporting the Swedish Children’s helpline so it can provide a 24-hour helpline service for children;

(a) Early detection and treatment

Our interviews with children and young people show that violence and abuse can go on for many years without intervention from the outside world. The children have tried to signal what is going on, but the adults haven’t seen. All adults who meet children in their work must have the ability to see signs and intervene when they suspect that children are subjected to and/or experience violence at home. Professional groups who meet children should routinely ask about violence and, wherever possible, talk in private with the child.⁵¹ School health care services and counselling centres for young people are important actors who are often forgotten when it comes to early detection and reporting of children who are coming to harm. Under the Education Act each school must have access to a school doctor, a school nurse, a psychologist and a welfare officer. However, the act does not specify what “access to” means, and as a result it can be difficult in many schools to get in touch with a school psychologist, for example.

The results of the 2012-2013 national audit of municipalities’ work with women subjected to violence and children who have witnessed violence show that there are significant differences between the examined municipalities and city district committees. These differences can mean that women subjected to violence and children who have witnessed violence receive attention and support on the basis of where they live, not on the basis of their needs. The audit also notes that municipalities’ work with this target group has not improved since the previous national audit.⁵² Many children who have experienced domestic violence come to women’s shelters together with their mothers. The shelters offer protection against violence, but there is a risk that the children do not get their rights fulfilled in terms of support, treatment and schooling, as specified in the CRC. Our view is that measures are needed to ensure that society – in the form of social services, child psychiatry services and schools – lives up to its responsibility to initiate and maintain cooperation with women’s shelters.⁵³

Good schools are a protective factor

“Our classes were pretty big. And it’s hard to sort of feel trust or build confidence with a teacher who has so many pupils. There was no sort of direct contact.” Emma⁵⁴

Research indicates that school is very significant for children who are coming to harm. Positive experiences at school are an important protective factor, since they reduce the risk of an unfavourable development over time. Difficult childhood conditions with e.g. abuse increases

⁵¹ The Ombudsman for Children in Sweden: ‘Signaler, Våld i nära relationer. Barn och ungdomar berättar.’ (*Signals – violence in close relationships. Accounts by children and young people*) (2012).

⁵² The Health and Social Care Inspectorate (IVO): ‘Våldsutsatta kvinnor och barn som bevittnat våld. Slutrapport från en nationell tillsyn 2012–2013’ (*Women subjected to violence and children who have witnessed violence. Final report of a national review 2012-2013*)

⁵³ The Ombudsman for Children in Sweden: ‘Signaler, Våld i nära relationer. Barn och ungdomar berättar.’ (*Signals – violence in close relationships. Accounts by children and young people*) (2012).

⁵⁴ The Ombudsman for Children in Sweden: ‘Signaler, Våld i nära relationer. Barn och ungdomar berättar.’ (*Signals – violence in close relationships. Accounts by children and young people*) (2012).

the risk of poor achievements at school.⁵⁵ Teachers in pre-school and school have an important role in terms of providing knowledge about violence against children and about children's right to protection against all forms of physical and psychological violence. Our view is that pre-school and school teachers need increased knowledge about violence.

Healthcare services must dare to ask questions about violence

"They should have become more suspicious of all the bruises I had. And my shoes were falling apart. That's just one sign that something isn't right." Rebecka⁵⁶

The children and young people we have met said that they had been in contact with health and medical care services and child and youth psychiatric services (BUP) about problems related to the violence they had experienced. They requested help, sometimes several times, for physical injuries such as bruises, headaches or fractures, for self-destructive behaviour, sleeping problems and eating disorders. It emerges from their accounts that healthcare services and BUP rarely asked if there was violence at home. The focus was on treating the presented symptoms, not their underlying causes. The Ombudsman for Children in Sweden considers it important that a systematic way is found for asking questions about whether children have experienced violence in their families.⁵⁷

Several surveys have been carried out in order to study the ability of healthcare services to see and act to protect children subjected to violence. These surveys show that health and medical care services and dental care services sometimes lack the competence and procedures required. A national questionnaire, for example, indicates that only about 25 per cent of the country's graduates in paediatric medicine have received training about abuse and neglect of children.⁵⁸

(d) Protection for children subjected to abuse in their own homes

Reform the social services – establish the child service in the municipalities

"I've lived with abuse for 15 years. The social services have come and gone throughout, but nothing has ever come of it"⁵⁹

The social services should be a principal actor in dealing with these children's difficult situation, but instead are often absent and invisible in their accounts. Either the children have not had any contact at all with the social services, or else a possible meeting made such a weak impression that the child doesn't remember it or didn't realize he or she had met the social services.⁶⁰ The Ombudsman for Children in Sweden welcomes the Government's instruction to the National Board of Health and Welfare and the Ombudsman for Children in Sweden to make proposals for how the social services can become more known and accessible to children.

⁵⁵ The National Board of Health and Welfare: Social report (2010).

⁵⁶ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (*Signals – violence in close relationships. Accounts by children and young people*) (2012).

⁵⁷ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (*Signals – violence in close relationships. Accounts by children and young people*) (2012). See also Hedtjärn, G, Hultmann, O and Broberg, A: 'Var femte mamma i BUP-vård hade utsatts för våld' (*One in five mothers in BUP care has been subjected to violence*), *Läkartidningen*, 24 November 2009.

⁵⁸ Mårtensson, T and Jansson, S: 'Få blivande barnläkare utbildas om barnmisshandel.' (*Few future paediatricians are trained regarding child abuse*), *Läkartidningen*, 31 August 2010. See also the Ombudsman for Children: 'Tandvården och barn som far illa.' (*Dental care services and children coming to harm*) (2010).

⁵⁹ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (*Signals – violence in close relationships. Accounts by children and young people*) (2012).

⁶⁰ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (*Signals – violence in close relationships. Accounts by children and young people*) (2012).

Children living with protected personal data

“At first [...] it was really hard to get rid of the fear. I never slept at night, not at all. It was really very difficult.” Ebba⁶¹

The children and young people that we have met who live with protected personal data feel that their everyday existence is insecure, complicated and difficult. They describe feelings of not being believed and taken seriously when they meet public actors.⁶² We consider it necessary to establish national guidelines for when protected personal data is to be granted and reviewed. The Swedish Tax Agency should be instructed to draw up guidelines, ideally in consultation with the police, social services and judicial system. We also believe that children’s security needs to be strengthened when there is a threat of violence. Children are furthermore entitled to clear, child-adapted information about what it means to live with protected personal data.⁶³ It is important for government agencies to review how they might make life simpler for children and young people living with protected personal data.

(e) Support for a child helpline to allow it to maintain a 24-hour service for children who need to call it

Children coming to harm or at risk of coming to harm must also have the opportunity to report this to the competent authority and receive immediate protection. It emerges from 2012 report by the National Board of Health and Welfare that 62 per cent of the country’s municipalities state that they have a social helpline which is manned around the clock by trained social workers.⁶⁴ It is not acceptable that 38 per cent of the country’s municipalities cannot manage this.

4. Disabilities, basic health and welfare (articles 6, 18 para. 3, 23, 24, 26, 27 para.1-3, and 33)

Children with disabilities

Children with disabilities

41. The Committee recommends that the State party, in accordance with article 23 of the Convention and taking into account General Comment No. 9 (CRC/C/GC/9) as well as the Convention on the Rights of Persons with Disabilities and its Optional Protocol, continue to strengthen measures to protect and promote the rights of children with disabilities, inter alia, by:

- (a) developing and implementing a comprehensive policy for the protection of children with disabilities and for their equal access to social, educational and other services;
- (b) ensuring that equal access to services is provided to children with disabilities taking into consideration the standard rules on the equalization of opportunities for persons with disabilities (General Assembly resolution 48/96);
- (c) undertaking the necessary measures to collect accurate statistical data that is disaggregated on children with disabilities; and
- (d) providing equal educational opportunities for children with disabilities, including by providing

⁶¹ The Ombudsman for Children in Sweden: ‘Oskyddad, Barn och ungdomar som lever med skyddade personuppgifter.’ (Unprotected – children and young people living with protected personal data) (2012).

⁶² The Ombudsman for Children in Sweden: ‘Oskyddad, Barn och ungdomar som lever med skyddade personuppgifter.’ (Unprotected – children and young people living with protected personal data) (2012).

⁶³ The Ombudsman for Children in Sweden: ‘Oskyddad, Barn och ungdomar som lever med skyddade personuppgifter.’ (Unprotected – children and young people living with protected personal data) (2012).

⁶⁴ The National Board of Health and Welfare: ‘Öppna jämförelser av den sociala barn- och ungdomsvården’ (Open comparisons of social care services for children and young people) (2012).

the necessary support and ensuring that teachers are trained to educate children with disabilities within the regular schools.

(a)-(b) A comprehensive policy that ensures equal access to services

The Ombudsman for Children in Sweden welcomes the Government's development of a strategy for implementation of Sweden's disability policy between 2011 and 2016. The focus is on identifying and removing obstacles to full participation in society for girls and boys with disabilities, preventing and combating discrimination, and creating the conditions for independence and self-determination.⁶⁵ We would like to highlight the importance of Handisam continuing to spread information to municipalities and county councils on methods and strategies for children with disabilities to influence decisions that affect them.⁶⁶

In our encounters with children who have experienced violence in close relationships we have noted in particular how subjected to violence certain groups of children are. These groups include children with various types of disability.⁶⁷ This observation is supported by research. It emerges in a 2011 survey⁶⁸ that children with various types of disability are particularly subjected to violence. The Ombudsman for Children in Sweden holds that increased knowledge regarding children with disabilities is needed in the social services, schools, in health and medical care and the judicial system. More concrete measures are also required to prevent violence against these children.

(c) Accurate and disaggregated data

Current statistics are deficient in terms of tracking developments for children and young people with disabilities. In Surveys of Children's Living Conditions (Barn-ULF), Statistics Sweden (SCB), in consultation with the Swedish Agency for Disability Policy Co-ordination (Handisam), devised questions that identify children with a disability. However, the quality of Barn-ULF was deemed insufficient in this respect as there were few respondents to the study.⁶⁹ Our view is that statistics on children and young people with disabilities need to be developed and improved.

(d) Equal educational opportunities

"It got worse than in like the first year. Someone who wasn't qualified as a teacher. I got to do stuff I already knew. I didn't even get a maths book. I didn't even get to try. My Swedish teacher gave me the alphabet, which I already knew in the first year."⁷⁰

Expectations are an important success factor for good education outcomes. Each child must be given opportunities to develop their skills as far as possible. Knowledge about disabilities and about how teaching can be tailored to each child's needs to be improved so that children with disabilities can be fully guaranteed their right to education.

In our encounters with children we have also seen that children with disabilities are particularly subject to abusive treatment and harassment at school, often because the school staff don't understand their disability. Our view is that schools need increased knowledge in order for these children to be protected against abusive treatment and harassment.

⁶⁵ The Government Offices: 'En strategi för genomförandet av funktionshinderpolitiken 2011-2016' (*Strategy for the implementation of Swedish disability policy 2011-2016.*)

⁶⁶ Government decision s2011/3088/FST.

⁶⁷ The Ombudsman for Children in Sweden: 'Pejling och Dialog.' (*Query and dialogue*) (2013).

⁶⁸ The Allmänna Barnhuset Foundation and Karlstad University: 'Kroppslig bestraffning och annan kränkning av barn i Sverige – en nationell kartläggning 2011.' (*Corporal punishment and other violations of children's rights in Sweden – a national survey 2011.*)

⁶⁹ Statistics Sweden, 2012: Living conditions among people with disabilities, measured using ULF.

⁷⁰ Opinion of the Ombudsman for Children in Sweden on the New Education Act – for knowledge, freedom of choice and security (Ds:2009:25).

Health and healthcare

The health situation for children in Sweden is in many respects very good. Still, there are considerable disparities in terms of the risk of illness and death between those who are worst off economically and the rest of the population.⁷¹ Studies show that children living in economically vulnerable families are at greater risk of physical and mental ill health, among other things.⁷² Children of mothers whose education does not extend beyond secondary school are, for example, at greater risk of dying at birth, having fatal accidents in their youth, and entering institutional care for substance abuse, depression, anxiety, ADHD and psychosis. Considerable differences have also been established in terms of dental health between children of different socioeconomic backgrounds.⁷³ A study in Malmö showed that caries needing treatment was six times more common among six-year-olds at clinics in areas where a large part of the adult population are unemployed or have low incomes, compared with six-year-olds at clinics in areas where conditions for the adult population are the reverse.⁷⁴ Children and young people placed in society's care have proven to have poorer health than other children. They are more often treated with psychoactive drugs and are more often in care for self-harming behaviour. Young people placed in care also tend to protect themselves less against sexually transmitted diseases and unwanted pregnancies.⁷⁵

Our view is that measures are required to counteract these disparities and guarantee every child's right to the highest attainable standard of health.

Mental health services

51. The Committee encourages the State Party to strengthen its mental health care system, including both preventive and interventional programmes, so as to ensure that adequate treatment and care are provided to all children that need it without undue delay. In addition, the State party should ensure better cooperation between related services, such as schools, social care homes, the juvenile justice system, treatment centres for drug and alcohol abuse, etc. The Committee urges the State party to strengthen the health care resources for people in suicidal crisis and to take measures to prevent suicide among groups that are at risk.

A prerequisite for every child's enjoyment of the highest attainable standard of health and his or her right to health and medical care is that care is available to all. During 2013 the Ombudsman for Children in Sweden met with children and young people in order to learn about their experiences of the help that is available when you are young and feel mentally distressed.⁷⁶ It emerged from these encounters that children find it difficult to seek help, including for mental ill health. Judging from their accounts, a discussion is urgently needed about how children can contact and receive support from care services when they are mentally unwell. In order to achieve health and medical care that is available to all children and young people with various forms of mental ill health, an analysis is needed of what availability means to children and young people. This might involve building an easily accessible and well developed first line of support, with operators who work preventively and refer patients on when necessary, and a second, specialist line that can give support to those with more serious and complicated problems.

⁷¹ The National Board of Health and Welfare: 'Barns och ungas hälsa, vård och omsorg 2013.' (*Health, care and treatment of children and young people 2013.*) (2013)

⁷² See also Item 53 below.

⁷³ The National Board of Health and Welfare: 'Barns och ungas hälsa, vård och omsorg 2013.' (*Health, care and treatment of children and young people 2013.*) (2013)

⁷⁴ Commission for a socially sustainable Malmö: 'Malmö's väg mot en hållbar framtid Hälsa, välfärd och rättvisa.' (*Malmö's route to a sustainable future – health, welfare and equity*) (2013).

⁷⁵ The National Board of Health and Welfare: 'Barns och ungas hälsa, vård och omsorg 2013.' (*Health, care and treatment of children and young people 2013.*) (2013)

⁷⁶ See the 2014 annual report of the Ombudsman for Children in Sweden, which will be submitted to the Government on 26 March.

The Ombudsman for Children in Sweden does not consider it acceptable that children and young people suffering from mental ill health do not receive adequate support and help. (More information is included in the Ombudsman for Children in Sweden's 2014 annual report, which will be presented at the end of March).

Following up suicides among children

Since the early 1990s, suicide rates have fallen in all age groups – except the youngest. Among children and young people suicide has instead become slightly more common. This is deeply worrying. According to a survey by the Karolinska Institute (KI), very few countries in the EU show a similar tendency.⁷⁷ Sweden lacks a consolidated, in-depth body of knowledge about the situation for children and young people who commit suicide. The fact that suicide rates in this group are rising must be seen as a failure of society, requiring both increased knowledge and further measures.

Our view is that the law about obligatory investigations into the deaths of young people from violence (Lex Bobby) should be expanded to include suicides by children. Society needs to gain more knowledge about how suicide can be prevented, but also about how gaps in the chain of care can be discovered.

Let boys decide for themselves if they are going to be circumcised (Article 24.3)

Under the 2001 Act on circumcision of boys, the child's attitude must be established in so far as this is possible. The procedure may not be carried out against the child's will. In practice, however, these formulations in the law have no significance. Most children who are circumcised in Sweden are so when they are still babies, or so young that they cannot influence the decision.

At a meeting in September 2013, the Nordic ombudsmen for children, representatives of Nordic paediatric organizations and paediatricians agreed on a joint statement. It holds that circumcision carried out without medical indication on a child who has not consented to it violates the child's human rights as well as fundamental medical-ethical principles. We consider circumcision without medical indication of boys to be in contravention of Article 12 of the CRC, which enshrines the child's right to express his/her views in all matters affecting him/her. Circumcision in these cases also contravenes Article 24.3, which states that children must be protected against traditional practices prejudicial to their health.⁷⁸ In connection with the Nordic meeting, an opinion piece was also published, signed by the Ombudsman for Children in Sweden, the chair of the delegation for medical ethics at the Swedish Society of Medicine, the president of the Swedish Association of Health Professionals, the chair of the Swedish Paediatric Society and the chair of the Swedish Association of Paediatric Surgery.⁷⁹ The article highlights the need for changes to legislation to bring it in line with children's human rights and medical ethics.

Our view is that there are no health-related grounds for circumcising small boys in those cases where surgery is not justified for medical reasons. The procedure is painful, irreversible and may cause serious complications. We therefore regard it as fundamental that parents' rights are not given precedence over the child's right to being consulted, to bodily integrity and to protection against harmful traditional practices. Circumcision without medical indication must only be allowed if a boy who has reached the age and maturity required to understand the information gives his consent to the procedure. At present no overview exists of the short and long-term consequences of circumcision. We consider it of great importance that all circumcisions of boys

⁷⁷ Karolinska Institutet School of Public Health: 'Själv mord i Europa och världen.' (*Suicide in Europe and the world*) (2010:31).

⁷⁸ The Child Ombudsman in Sweden: Joint statement by the Nordic ombudsmen for children and paediatric experts regarding circumcision, 30 September 2013.

⁷⁹ Dagens Nyheter: 'Omskärelse strider mot barns mänskliga rättigheter.' (*Circumcision violates children's human rights*), 28 September 2013.

carried out without medical indication by the healthcare service be followed up in order to get a local and national picture of occurring complications.⁸⁰

Female genital mutilation

Although Swedish legislation is in line with the CRC regarding female genital mutilation, there is still not enough knowledge about how many girls have been mutilated or risk being mutilated in the country or during a trip abroad. Existing legislation is very rarely applied. Our view is that more knowledge is needed about genital mutilation in Sweden, about the number of children who are mutilated and about the reasons why the law is not applied.

It is further of particular importance that staff in maternity and paediatric care, student and school healthcare, at paediatric hospitals and youth counselling centres have knowledge about genital mutilation. They also need to know what they can do in their work to prevent genital mutilation of girls and to help girls who have been mutilated. It is likewise important that staff begin to observe the reporting obligation they are under if genital mutilation is suspected or established. It is our view that student and school healthcare services need more knowledge about reporting to the social welfare committee when girls have been or risk being mutilated.⁸¹

Child marriages

A 2009 report by the National Board for Youth Affairs showed that 70,000 young people between the ages of 16 and 25 felt that they were not free to choose who to marry. Of these, 8,500 worried about marriages being arranged for them.⁸² The Ombudsman for children in Sweden has long called for strengthened protection against child marriages. We have also given its support to a proposal for a new penal provision regarding child marriage crime for anyone who induces a child to enter into marriage or who initiates or arranges a child marriage.⁸³ In a bill referred to the Council on Legislation, the Government proposes amendments to civil and penal law in order to strengthen the protection against forced marriage and child marriage.⁸⁴ According to the Government, the proposals amount to a significant strengthening of the protection against child marriage. Moreover, the Government does not consider it necessary to introduce a child marriage crime classification, as no further criminalization is necessary of acts that amount to inducing a child to enter into marriage than what follows from the Government's proposed introduction of the crime of forced marriage. It is our view, however, that the perspective on child marriage as a crime must be different from the perspective when an adult is forced into marriage. Children must be protected against child marriage also when it involves someone inducing a child, by means that do not amount to duress or abuse of a vulnerable position, to enter into a marriage.

Standard of living

53. The Committee recommends that the State Party take all necessary measures to ensure that all children are not living below the poverty line. The Committee also recommends that the State party take adequate measures, including special support measures, to ensure that children, in particular those from socially disadvantaged families, including single-parent households and of

⁸⁰ The Ombudsman for Children in Sweden: 'Låt pojkar själva få bestämma om de ska omskäras.' (*Let boys decide for themselves if they are going to be circumcised*) (written communication, 7 October 2013).

⁸¹ The Ombudsman for Children in Sweden: Sweden's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence, and certain issues regarding contact prohibition when a home is shared (Ds 2012:52).

⁸² The National Board for Youth Affairs: 'Gift mot sin vilja' (*Married against one's will*) (2009).

⁸³ Opinion of the Ombudsman for Children in Sweden on the report 'Stärkt skydd mot tvångsäktenskap och barnäktenskap' (*Strengthened protection against forced marriages and child marriages*) (the Ombudsman for Children in Sweden, 2012).

⁸⁴ 'Stärkt skydd mot tvångsäktenskap och barnäktenskap samt tillträde till Europarådets konvention om våld mot kvinnor.' (*Strengthened protection against forced marriage and child marriage, and accession to the Council of Europe Convention on Violence against Women*), Government bill referred to the Council on Legislation, 13 February 2014.

non-Swedish ethnic origin, are not living in poverty, regardless of where they reside. The State party should consider drawing up a plan of action for combating child poverty in times of economic crisis.

Overall, families with children have improved their financial situation. The share of children who live in low-income families fell during the 1990s and has remained at a fairly stable level since the beginning of the 2000s.^{85 86} At the same time, income distribution has grown. The trend that increasing numbers of children are living in relative poverty increases the risk of social vulnerability and marginalization for many children. Studies show that children living in economically vulnerable families are at increased risk of physical and mental ill health, poorer education outcomes and lower future income. Economic vulnerability also has negative consequences for children's social life and relationships.^{87 88} In addition, children in socio-economically vulnerable families are at greater risk of accidents and injuries.⁸⁹ Children of single parents, particularly of single mothers, and children with foreign backgrounds are often worse off economically.⁹⁰ Financial family policy, made up of means-tested benefits, general allowances and insurance, has become less significant as a leveller of income differences.⁹¹ Unless this is compensated for with different measures, children's marginalization and social exclusion risks increasing.

No child should have to suffer eviction

"Follow up, follow up, follow up. All the time – follow up! But this isn't the way it should be. The social services should do the following up!"

During 2013 the Ombudsman for Children in Sweden spoke to children and young people who had experienced one or more evictions. A common theme among the children is that they feel the social services have not been there for them. They talk about a lack of information from the social services about what support they can get, as well as about when and how the eviction will take place. Several of the children feel that it is important for the social services to speak privately with them and ensure that there is a suitable place for them to go after the eviction. School is important for the children, but it can be difficult to get schoolwork done when you are in an insecure living situation. In 2007 the Government adopted a strategy for counteracting homelessness and exclusion from the housing market. One of the strategy's goals was that no child should be evicted.⁹² The number of children affected by executed evictions has fallen, but not to zero. In 2013 there were 504 children who were affected by an executed eviction, which represents an 11 per cent reduction on 2012.⁹³ Statistics also indicate that there are considerable differences across the country.⁹⁴

It is a positive development that fewer children are affected by evictions. However, the Ombudsman for Children in Sweden regards it as a matter of grave concern that children are still being evicted into homelessness and exclusion. Our view is that legislative amendments are

⁸⁵ The Ombudsman for Children in Sweden: Max18 (2013).

⁸⁶ 'Ekonomiskt utsatta barn' (*Economically vulnerable children*) (Ds 2004:41).

⁸⁷ 'Ekonomiskt utsatta barn' (*Economically vulnerable children*) (Ds 2004:41).

⁸⁸ The National Board of Health and Welfare: 'Social rapport 2010.' (*Social report 2010*) (2010).

⁸⁹ Swedish National Institute of Public Health: Social health inequalities in Swedish children and adolescents – a systematic review, second edition (2011).

⁹⁰ The Ombudsman for Children in Sweden: Max18 (2013).

⁹¹ The Swedish Social Insurance Agency: 'Resultatindikatorer för den ekonomiska familjepolitiken.' (*Results indicators for financial family policy*) (2013).

⁹² The National Board of Health and Welfare: 'Hemlöshet – många ansikten, mångas ansvar. Genomförande av regeringens strategi för att motverka hemlöshet och utestängning från bostadsmarknaden 2007–2009.' (*Homelessness – its many faces and many causes.*) Implementation of the Government's strategy for counteracting homelessness and exclusion from the housing market 2007-2009. Final report (2010).

⁹³ The Swedish Enforcement Authority's website, <http://kronofogden.se/28601.html> (2013).

⁹⁴ The Ombudsman for Children in Sweden: Max18 (2013).

required that oblige municipalities to take preventive action against child evictions.⁹⁵ A number of measures should be applied to guarantee children's rights when there is a threat of eviction.

Children and young people living in over-indebted families

"At the beginning of the month there's money. I talk a lot to my Mum, so I get to hear how much is left and that we need it for food. Then you try to put some away so that there will always be some." Niki.

We have listened to the experiences of children and young people of living in an over-indebted family. They describe how they often feel a responsibility for the family's situation. The inquiry into over-indebtedness compiled statistics showing that 161,416 children are living in families with debts registered by the Swedish Enforcement Authority.⁹⁶ There are no studies of the effects on children and young people of over-indebtedness.⁹⁷ However, there are studies of the effects on adults. Over-indebted parents are more at risk of mental and physical ill health, suicide and premature death. Stress-related illnesses such as anxiety, anguish and depression are common.⁹⁸ It is reasonable to assume that children of over-indebted families are affected negatively in similar ways to children who live in economically vulnerable families.⁹⁹ The situation for these children should be investigated further. Their situation in case of seizure of property, attachment of salary and debt restructuring should be highlighted particularly from a child rights perspective.

5. Education, leisure and cultural activities (Articles 28, 29, 30 and 31)

Education, including vocational and professional training and guidance

55. The Committee recommends that the State party pursue its efforts to ensure that all children enjoy the right to education, including children without residence permit, such as "children in hiding" and undocumented children. The Committee further recommends that the State party incorporate the Convention and other relevant human rights treaties in the curricula in the context of the new Education Act and strengthen such education in both primary and secondary education.

Right to education for undocumented children

The Ombudsman for Children in Sweden welcomes the reform which extends the right to education, preschool care and school childcare to all children and young people in the country, including those who have no permit for their stay (unless it is a purely temporary visit). Giving all children, including those who are living "in hiding" and those without documents, the right to education is an important reform. However, despite this positive development, we continue to see it as problematic that there is no statutory proscription against the police entering schools and preschools to collect children forcibly. Schools and preschools ought to be a free zone where police collection may not be carried out, and we would therefore like to see an unequivocal ban

⁹⁵ The Ombudsman for Children in Sweden: 'Hur kommuner kan vända utvecklingen med att allt fler barn berörs av vräkning.' (*How municipalities can reverse the trend that ever more children are affected by evictions*) (2011).

⁹⁶ Swedish Government Official Reports (SOU 2013:78): 'Överskuldssättning i creditsamhället?' (*Over-indebtedness in the credit society?*)

⁹⁷ The National Board of Health and Welfare: 'Barn till överskuldssatta – underlagsrapport till Barns och ungas hälsa, vård och omsorg, 2013.' (*Children of over-indebted parents – supporting documentation to Health, treatment and care of children and young people*) (2013).

⁹⁸ The National Board of Health and Welfare: 'Barn till överskuldssatta – underlagsrapport till Barns och ungas hälsa, vård och omsorg, 2013.' (*Children of over-indebted parents – supporting documentation to Health, treatment and care of children and young people*) (2013).

⁹⁹ Swedish Government Official Reports (SOU 2013:78): 'Överskuldssättning i creditsamhället?' (*Over-indebtedness in the credit society?*)

on forcible collection by the police of children in schools or preschools for the purpose of deportation.

The Ombudsman for Children in Sweden further considers that the social welfare committees' obligation to pass on information to the executive authorities should be changed. If there is concern at a school that a child is coming to harm, the school is obliged to report this to the social welfare committee. That is an important provision giving fundamental protection to children in vulnerable situations. But for the undocumented and hidden children – and the school staff – it is a problem, since the social welfare committee is obliged to pass on information to the executive authorities. There is thus the very real risk that schools, in reporting their concern about a child, will contribute to the identification of the child and family by executive authorities if and when they make inquiries of the social authorities. It is therefore our view that information regarding reported concern about children should be excluded.

Right to education for children and young people in HVB and special residential homes for young people

"I have nothing to do and I only go to school for two hours. Kids on the outside have six hours – we should get more education." Ibrahim, 18¹⁰⁰

A third of the young people interviewed by the Ombudsman for Children in Sweden in special residential homes for young people feel they don't get enough school. Many expressed a wish for more school and the possibility of getting grades in all subjects.¹⁰¹ School is also particularly significant for the undocumented children and young people who are placed in HVB pending a decision on a residence permit. The children we met feel that they don't get the schooling they want and need. They express a strong desire to learn Swedish quickly, be assimilated into Swedish society and participate at school on the same conditions as the other pupils.¹⁰² Since these young people have a strong perception of being isolated from society, school gives them stability in an insecure existence, as well as the opportunity of being part of a context and having contact with peers.¹⁰³

The Ombudsman for Children in Sweden's 2011 survey of social welfare committees showed that only one in three social welfare committees has adopted directives for how children placed in care are to receive the education they are entitled to.¹⁰⁴ Research shows that school performance is a key factor affecting the risk of adverse development that children placed in care may experience later in life.¹⁰⁵ It is alarming and remarkable that many of these children are missing from the grading records for compulsory education. Of children placed in care before the age of ten, 12 per cent are missing, while 19 per cent of children placed in care after the age of 12 are missing from the records.¹⁰⁶

The right to equivalent education for children and young people in care must not be encroached upon. The Ombudsman for Children in Sweden welcomes the guidance material produced by the National Board of Health and Welfare and the Swedish National Agency for Education, which is intended as a practical knowledge support system for the social services, schools and health and medical care services in their efforts to improve the schooling and health of children

¹⁰⁰ The Ombudsman for Children in Sweden; I.m sorry (2010).

¹⁰¹ The Ombudsman for Children in Sweden; I.m sorry (2010).

¹⁰² The Ombudsman for Children in Sweden: 'Pejling och Dialog.' (Query and dialogue) (2013).

¹⁰³ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

¹⁰⁴ The Ombudsman for Children in Sweden: 'Socialnämndens ansvar för barn i samhällsvård.' (*The social welfare committee's responsibility for children in social care*) The Ombudsman for Children in Sweden Reports BR2011:02.

¹⁰⁵ The National Board of Health and Welfare: Social report (2010).

¹⁰⁶ The National Board of Health and Welfare: 'Öppna jämförelser av placerade barns utbildningsnivå.' (*Open comparisons of the education level of children placed in care*) (2011).

placed in care.¹⁰⁷ We are also positive to the proposal that children and young people living in HVB have their right to education more clearly provided for by transferring responsibility for the children's schooling to the general education system, which is encompassed by the Education Act. We further welcome the inquiry's proposal for collaboration between the social welfare committee and the education committee in order to ensure that children placed in care receive their education, that the home municipality takes on the responsibility for following up pupils placed in HVB or with the National Board of Institutional Care (SiS), as well as the requirement for approved teaching qualifications with in SiS and the requirements for a school library and a head teacher.¹⁰⁸ However, the exceptions for SiS proposed by the inquiry are not acceptable. Pupils in special residential homes for young people must be entitled to an education adapted to their needs in the same way as other pupils are. The Ombudsman for Children in Sweden holds that children's right to education must be the same for all children, and that no exceptions to this requirement can be made for any responsible organization offering education.¹⁰⁹

Equivalent and cost-free education – homework aid/extra tuition

Costs for homework aid/extra tuition are currently tax deductible. Studies by the Swedish National Agency for Education have shown that equivalence within the Swedish school system has lessened. The Agency also considers the links between pupils' socio-economic background and results to be well established, and is concerned that tax breaks for homework aid/extra tuition may lead to parents' socio-economic situation affecting pupils' results to an even greater degree. It falls on the responsible organization to ensure that pupils have access to support and extra tuition. There is a need for intensified measures to fulfil the requirements of the Education Act that schools must strive to compensate for differences in their pupils' conditions for assimilating the education. Our view is that homework aid/extra tuition is a measure that all pupils must have access to.¹¹⁰

Bullying

59. The Committee recommends that the State Party strengthen the measures taken to combat bullying and pay special attention to children with disabilities and of foreign origins, and to ensure the participation of children in the initiatives aimed at reducing bullying. Such measures should also address new forms of bullying and harassment outside classrooms or school yards, including by mobile phone and in virtual meeting places.

Under the Education Act, education must be arranged in such a way that all pupils are guaranteed a school environment characterized by security and the peace to study. If a child or pupil considers themselves to have been subjected to abusive treatment or harassment in connection with school activities, the education provider or staff must report this to the head teacher, who is obliged to report on to the responsible organization. The responsible organization is in turn obliged to promptly investigate the circumstances surrounding the abuse and take appropriate action. Despite this, a report shows that every week 12 per cent of the pupils in years 4-6, five per cent of the pupils in year 7-9 and four per cent of upper secondary pupils feel that they are subjected to some form of abuse by other pupils.¹¹¹ The report also shows that despite the fact that a larger share of pupils and teachers believe that schools are

¹⁰⁷ The National Board of Health and Welfare: 'Placerade barns skolgång och hälsa – ett gemensamt ansvar. (*The schooling and health of children placed in care – a shared responsibility*) 2012.

¹⁰⁸ Opinion of the Ombudsman for Children in Sweden on the report 'Utbildning för elever i samhällsvård och fjärr- och distansundervisning' (*Education for pupils in institutional care and distance learning*) (SOU 2012:76).

¹⁰⁹ Opinion of the Ombudsman for Children in Sweden on the report 'Utbildning för elever i samhällsvård och fjärr- och distansundervisning' (*Education for pupils in institutional care and distance learning*) (SOU 2012:76).

¹¹⁰ The Ombudsman for Children in Sweden rejects the addition of homework aid/extra tuition to HUS deductions (2012).

¹¹¹ The National Agency for Education: 'Attityder till skolan 2012.' (*Attitudes to school 2012*) (Report 390, 2013).

working actively to counteract bullying or other abusive treatment, the share of pupils subjected to bullying has not fallen.¹¹²

Preliminary statistics indicate that during the first half of 2013, the Swedish Schools Inspectorate/Child and School Student Representative (BEO) received 1,984 complaints about anomalies in schools from parents or other persons. Compared with the same period in 2012, this is an increase of 30 per cent. The largest group of complaints, 581 in total, concerned abusive treatment.¹¹³ Our view is that since pupils' school attendance is compulsory, the responsible organizations must also live up to their commitment to ensure that all pupils receive the education they are entitled to in a secure school environment. A policy of zero tolerance of bullying must apply not just in theory, but in the reality faced by pupils as well.

6. Special protection measures (articles 22, 30, 32-36, 37 b-d, 38, 39 and 40)

Asylum-seeking and refugee children

61. The Committee recommends that the State party take the necessary steps to ensure that all children, including undocumented children, have a right to health care and medical services under the same conditions as children legally residing in the country.

The Ombudsman for Children in Sweden welcomes the fact that asylum seekers and undocumented migrants are now guaranteed subsidized health and medical care on the same conditions as permanent residents. We have learned, however, of incidents where unaccompanied children have been forcibly collected at child psychiatry clinics by the border police. We are concerned about this. There should be national guidelines in health and medical care services for this type of situation, based on child's right under the CRC to health and medical care.¹¹⁴

The Ombudsman for Children in Sweden has learned that the Swedish Migration Board is collaborating with the authorities in Afghanistan on the setting up of a reception centre in Kabul, to which unaccompanied asylum-seeking children who are being deported may come to be sent. We have requested and received a statement from the Swedish Migration Board detailing the conditions for such a centre.¹¹⁵ The Ombudsman for Children in Sweden is greatly concerned about how the unaccompanied children's rights and protection are to be guaranteed if a reception centre is opened. There is the risk, for example, that the children will be subjected to human trafficking and the risk of persecution.

63. The Committee urges the State party to strengthen measures to ensure that adequate support and supervision are provided to children living in reception centres, as well as adequate psychological and psychiatric care for traumatized asylum-seeking children. The Committee urges the State Party to take the necessary legislative steps to ensure the appointment of a temporary guardian (or "trustee") for each unaccompanied asylum-seeking child within 24 hours of his or her arrival in the country, with a task of informing the child about his or her legal situation as well as

¹¹² The National Agency for Education: 'Attityder till skolan 2012.' (*Attitudes to school 2012*) (Report 390, 2013).

¹¹³ <http://www.skolinspektionen.se/sv/Anmalningar/Att-anmala-till-Skolinspektionen/Statistik/Anmalningar-och-beslut-forsta-halvaret-2013/>

¹¹⁴ The Ombudsman for Children in Sweden: 'Begäran om yttrande mot bakgrund av uppgifter om att barn hämtas av gränspolis på barnpsykiatrisk klinik.' (*Request for a statement concerning reports that children had been collected by border police at child psychiatry clinics*) (written communication, 20 May 2013).

¹¹⁵ The Ombudsman for Children in Sweden: 'Begäran om yttrande mot bakgrund av uppgifter om upprättandet av en institution/ett center i Kabul för avvisade ensamkommande asylsökande barn.' (*Request for a statement concerning reports of the setting up of an institution/centre in Kabul for unaccompanied asylum seeking children who have been deported*) (written communication, 11 June 2013).

available legal immigration procedures. The Committee also recommends that efforts be strengthened to ensure the suitability and adequate qualifications of such guardians. The Committee draws the attention of the State party to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin.

"We have no family. No parents. They sent us into the forest." Sharif¹¹⁶

In 2013 there were 3,852 applications for asylum in Sweden by unaccompanied children and young people. The majority were placed in HVB pending decisions on residence permits. The Ombudsman for Children in Sweden has met unaccompanied asylum-seeking children living in group residences in recipient municipalities and in transit housing, PUT homes and HVB. Following these meetings, we noted among other things that many unaccompanied asylum-seeking children feel desperately lonely and alienated, both during the asylum process and after a decision has been issued by the Swedish Migration Board.¹¹⁷

Support and supervision of children living in refugee reception centres

"I have never met a staff member who says 'come, sit down here and we can talk about what your rights and responsibilities are, what you're allowed to do.'" Unaccompanied asylum-seeking boy.

The children describe their time in various transit housing units during the asylum process as hard. They are alone, they don't speak the language, and many feel that they don't get the adult support and the care they need. Several children also highlight the fact that they have very limited means and that the money doesn't cover travel, winter clothes, hygiene articles and school materials. The children also told us that they have no access to dictionaries and computers with internet connections. They are unable to seek information, stay in contact with friends and family, use translation tools or do their schoolwork.

Several children describe difficulties in sharing rooms. They might be disturbed by sounds and by other children's nightmares. Some children have not felt safe sleeping with strange children. Together with the stress they all experience during the asylum process, this makes them prone to mental ill health. Some children have described recurring thoughts about suicide or self-harm. The children we met also feel as if they don't really count before they get a decision on their residence permit. They say that they have been advised by staff and guardians ad litem that there is no point in asking the social services for help with e.g. a new residence or clothes, since they will be turned down. Some children did not know that they have the same rights as other children in Sweden.

Through the social welfare committee, the municipality has an overall responsibility for ensuring that all who live there receive the support and help they need, including unaccompanied asylum-seeking children. This means, among other things, that the municipality is responsible for guaranteeing the child's right to a place to live, schooling and the support measures the child may be entitled to under the Social Services Act.

Right to the appointment of a guardian ad litem within 24 hours

"The guardian ad litem must be nice and give them lots of attention. Have time for the youngsters, listen to them and take them seriously."¹¹⁸

The Ombudsman for Children in Sweden has drawn attention to the deficiencies in municipalities' appointment of guardians ad litem for unaccompanied children. For some

¹¹⁶ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

¹¹⁷ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011); 'Pejling och dialog.' (*Query and dialogue*) (2013).

¹¹⁸ The Ombudsman for Children in Sweden: 'Bakom fasaden.' (*Behind the façade*) (2011).

children it takes a very long time, up to several weeks, before the municipality appoints them a guardian ad litem. It is important that a child-competent guardian ad litem is appointed as soon as possible, preferably within 24 hours of an unaccompanied child having submitted his/her asylum application.

Far from all the children we have met said they had regular contact with their guardians ad litem. Several also testified to never having met their guardian ad litem with an interpreter, and to interpreters rarely being used at the residences. That means they can't ask questions or describe what they find difficult. The young people also highlight how important it is to be able to feel trust for the guardian ad litem. Levels of competence, suitability and education also vary greatly among guardians ad litem. It is an important relationship, and it is therefore important that the children and young people are allowed to change guardian ad litem if things don't work out. The guardian ad litem plays an important role as substitute guardian and must be empowered to look out for the child's interests and rights. There must be a requirement that guardians ad litem for unaccompanied children receive adequate training and guidance in their task.

Age assessments

We feel concerned about the lack of clarity that exists in age assessments of unaccompanied children. Since there are no methods for reliably assessing the exact age of a child, our view is that instead it must be a question of an assessment of reasonableness. It will require clear guidelines and a consistent application to clarify the child rights perspective and achieve greater legal certainty in these assessments of reasonableness. Considerable care must be taken, and the assessment should always be interpreted to the child's advantage and include several elements, which is also clear in the guidelines drawn up by the National Board of Health and Welfare. Our view is that the Swedish Migration Board's age assessment should be based on a reasonableness assessment and constitute a formal decision which it must be possible to appeal separately.

Recruitment of children in armed conflicts

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.¹¹⁹ 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.¹²⁰

¹¹⁹ 'Straffansvar för folkmord, brott mot mänskligheten och krigsförbrytelser.' (*Criminal liability for genocide, crimes against humanity and war crimes*) Referral to the Council on Legislation, 22 November 2013.

¹²⁰ Opinion of the Ombudsman for Children in Sweden on the additional referral of draft bill presented to the Council on Legislation: Act on sanctions for genocide, crimes against humanity and war crimes (reg. no. Ju2002/7754/L5).

Sale of children, child prostitution and child pornography

CRC/C/OPSC/SWE/CO/1

11. The Committee urges the State party to fully incorporate the Convention and its Optional Protocols into its legislation, including by:

(b) Ensuring that all victims of child abuse, particularly those above the age of 15 years, are provided with adequate legal protection.

(c) Reconsidering its evaluation of the purchase of a sexual act of a minor and exploitation of children for sexual purposes as “less serious sexual offences against children” and consider removing the requirement of double criminality for such offences when they are committed outside its territory.

22. The Committee recommends that the State party:

(c) Undertake measures to prohibit all convicted sex offenders from working with children

26. The Committee recommends that the State party revise and bring its Penal Code into full compliance with articles 2 and 3 of the Optional Protocol, and ensure that the law is enforced in practice and that perpetrators are brought to justice in order to prevent impunity. In particular, the State party should criminalize:

(b) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography.

11. (b) Ensuring that all victims of child abuse, particularly those above the age of 15 years, are provided with adequate legal protection.

More stringent legislation regarding age

Children have a right to equal protection simply by virtue of the fact that they are children under the age of 18. The consequences for an individual child of a sex crime must be taken seriously. Buyers of sex can currently get away by claiming that they did not intend specifically to exploit a child. We consider this unacceptable. It is also unreasonable that cases sometimes have to be decided by the court’s assessing a child’s physical development, in order to determine whether the sex buyer should have realized that he/she was dealing with a child. Assessments of this kind are really tantamount to a second violation of an already vulnerable child. Our view is that the introduction of a stringent liability for the age prerequisite in sex crimes against children should be considered.¹²¹

11. (c) Reconsidering its evaluation of the purchase of a sexual act of a minor and exploitation of children for sexual purposes as “less serious sexual offences against children”

Changes to the classifications of sex crimes

The Ombudsman for Children in Sweden opposes the prerequisite of sexual intercourse or some other similar act in the classification of child rape. It is the sexual violation that must be the crucial element in the distinction between child rape and sexual abuse of a child, not technical considerations with sexual intercourse as the norm.¹²²

We further consider that those acts which currently fall under the provisions on sexual abuse of a child and sexual exploitation of a child should, in the vast majority of cases, fall under those on child rape. Our view is that just about all forms of sexual acts which contain sexual touching should be classified as child rape.¹²³ The classification “sexual exploitation of a child”, or “sexual

¹²¹ The Ombudsman for Children in Sweden: ‘Skärpt lagstiftning krävs för att skydda barn från sexuell exploatering.’ (*More stringent legislation is required to protect children from sexual exploitation*) (written communication, 13 December 2013).

¹²² Opinion of the Ombudsman for Children in Sweden on the memorandum “Serious sexual abuse of a child (Ch. 6, Section 6, Para. 2 of the Swedish Penal Code)”.

¹²³ Opinion of the Ombudsman for Children in Sweden on the memorandum “Serious sexual abuse of a child (Ch. 6, Section 6, Para. 2 of the Swedish Penal Code)”.

abuse of a child”, should instead include the crimes “purchase of a sexual act” and “exploitation of a child for sexual posing”. The convicted offender would thus automatically be sentenced to prison. We consider the fact that buying a sexual act is punishable with fines to be disproportionate to the suffering endured by the child victim.¹²⁴

22. (c) Undertake measures to prohibit all convicted sex offenders from working with children

More stringent legislation to protect children against convicted sex offenders working in preschools and schools

The Ombudsman for Children in Sweden is concerned that teachers convicted of sex crimes are allowed to work in schools and preschools in Sweden. Our assessment is that there are several loopholes in the legislation. One is that the Swedish Schools Inspectorate does not currently have to be informed of convictions of non-qualified teachers, preschool teachers and school staff for which there is no qualification requirement. That should change. We also consider that the requirement should be made for courts to inform the Swedish Schools Inspectorate of all convictions for child pornography crimes and other serious crimes, even crimes committed outside of the perpetrator’s professional activity and even when the sanction is only fines. This is currently not the case. Persons who have been convicted of a sex crime against a child should be officially excluded from working with children in a position of dependence, which means e.g. teachers and preschool teachers. Persons who have committed certain types of crimes are not suitable as holders of a teaching qualification. This should apply to crimes committed before the person acquired his/her qualification as well.¹²⁵

26. (b) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography.

It is our view that child pornography should be regarded as a sex crime against the depicted child. Child pornography crimes therefore belong under Ch. 6 of the Swedish Penal Code and not, as now, among crimes against the public order in Ch. 16 of the Swedish Penal Code. Child pornography is primarily an abuse of the depicted child, which should be decisive for its categorization as a crime. Child pornography is of course also an abuse of children as a group, but this is not sufficient as an argument for including it in Ch. 16 of the Swedish Penal Code.¹²⁶

The Ombudsman for Children in Sweden is concerned that it is not punishable under current legislation to spread pornographic images of a child who has reached full pubertal development when the person spreading them is aware that the child is under 18, but when it is not clear from the image and the circumstances surrounding it that the depicted person is under 18. Considering the suffering and the abuse that the depicted child is subject to, our view is that it is unreasonable for such an action not to be punishable.¹²⁷

Administration of juvenile justice

71. The Committee recommends that the State party, taking into account General Comment No.

¹²⁴ Opinion of the Ombudsman for Children in Sweden on the memorandum “Serious sexual abuse of a child (Ch. 6, Section 6, Para. 2 of the Swedish Penal Code)”.

¹²⁵ The Ombudsman for Children in Sweden: ‘Skärpt lagstiftning behövs för att skydda barn mot att sexualbrottsdömda arbetar i förskola och skola.’ (*More stringent legislation is needed to protect children against convicted sex offenders working in preschools and schools*) (written communication, 18 July 2013).

¹²⁶ Opinion of the Ombudsman for Children in Sweden on the report ‘Barnet i fokus En skärpt lagstiftning mot barnpornografi’ (*Focus on the child – More stringent legislation against child pornography*) (SOU 2007:54); opinion of the Ombudsman for Children in Sweden on the ‘Genomförande av EU:s direktiv om bekämpande av sexuella övergrepp mot barn, sexuell exploatering av barn och barnpornografi’ (*EU directive on combating sexual abuse of children, sexual exploitation of children and child pornography*) (Ds 2012:45).

¹²⁷ Opinion of the Ombudsman for Children in Sweden on the report “The Council of Europe convention on IT-related crime” (SOU 2013:39).

10 on children's rights in juvenile justice (CRC/C/GC/10) and the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20):

- (a) Review as a matter of priority the current practice of solitary confinement, including amendment of current legislation, as appropriate;
- (b) Limit the use of this measure to very exceptional cases, reduce the period for which it is allowed and seek its eventual abolition; and
- (c) Ensure that all children who have been taken into custody are provided with adequate legal representation.

(a) Review the current practice of solitary confinement, including amendment of current legislation

"There shouldn't be any solitary confinement, just a room with a sofa where you can sit and talk instead of being locked in a room with a mattress." Mia, 14¹²⁸

"It's dark and you have to lie on a bare mattress. It's a punishment. For talking back to the staff."¹²⁹

Children and young people who are in custody and placed in special residential homes for young people are in a particularly vulnerable situation. Currently the law allows for them to be placed in what is termed "seclusion", in special solitary confinement rooms, if they display violent behaviour or are under the influence of drugs to the extent that they jeopardize the general order at the home. The Ombudsman for Children in Sweden's examination of the records of more than 450 cases of seclusion at special residential homes for young people over a six-month period in 2008 showed that seclusion had been used in a manner that is not consistent with either Article 37 of the CRC, Swedish legislation or the guidelines of the National Board of Institutional Care (SiS). In several cases seclusion had been used routinely or as a punishment, and there were also examples of children and young people suffering from anxiety or a crisis having been secluded instead of receiving proper treatment. During the period studied, approximately 100 seclusions had been imposed on children under 15 years of age.

(b) Limit the use of this measure, reduce the time period for it and seek its abolition

"I was put in solitary confinement seven times in two months when I got here. After 24 hours they can let you out for five minutes, then you go right back in again"¹³⁰

Since our audit in 2009, several changes have been made to strengthen the rights of children placed in special residential homes for young people. SiS has clarified its internal instructions, trained personnel and tightened up its procedures for decisions on solitary confinement. In the years that followed, both the number of seclusions and the average amount of time that children were secluded dropped sharply, but preliminary statistical data suggests a renewed increase. This indicates that the problem of numerous and prolonged seclusions is exacerbated when the issue is not given attention. We do not consider the measures taken to be sufficient – our view is that solitary confinement should be abolished.

(c) Ensure that all children who have been taken into custody are provided with adequate legal representation.

A decision on seclusion can be appealed against in an Administrative Court. There are several reasons why this does not happen. Children and young people are not aware of the possibility, and an appeal can only be made retrospectively, when the seclusion has already occurred. In

¹²⁸ The Ombudsman for Children in Sweden: I.m sorry (2010).

¹²⁹ The Ombudsman for Children in Sweden: I.m sorry (2010).

¹³⁰ The Ombudsman for Children in Sweden: I.m sorry (2010).

addition, children under the age of 15 do not have the right to appeal – only the guardian may appeal in their case. In order to strengthen legal certainty, we propose that an independent child representative be established to represent the interests of children and young people.¹³¹

Children suspected of crime and deprived of their liberty – Sweden must guarantee the human rights of children in police cells and remand prisons

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. We visited a total of 13 police cell blocks and remand prisons in different parts of Sweden, and carried out additional studies. Our 2013 annual report details systematic and very far-reaching shortcomings regarding the human rights of children deprived of their liberty.¹³² Our position is that several changes are necessary if Sweden is going to live up to its commitments under the CRC:

Incomplete data on children in police cells

Sweden's latest report to the Committee lacks data on the number of children held in police cells on suspicion of crimes and on the average duration of the deprivation of liberty. The Committee has expressed its concern about incomplete data and urges states parties to systematically collect and process data on the use of and average duration of pretrial deprivation of liberty. Swedish police authorities have not collected this type of data in the past. In 2012 the Ombudsman for Children in Sweden therefore 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. Our compilation provides the first national and regional picture of how many incarcerations of children in police cells occur during a year in Sweden.

Continuous follow-up of data on children deprived of their liberty is a prerequisite for upholding the human rights of children. Comparable data which can be examined contributes to increased openness and a lower risk of judicial abuse, which in turn increases trust in the rule of law. Our view is therefore that the Government should instruct the National Police Board to systematically collect data on the number of incarcerations of children in police cells and on the duration of each deprivation of liberty.¹³³

More and more children are detained in Sweden

Figures indicate that the number of young people suspected of crimes and detained in remand prisons has grown sharply in Sweden over the past 15 years. In 1998 there were 41 children detained in remand prisons; in 2011 that number had risen to 122. This increase is notable considering that the intention of both the CRC and Swedish legislation is that children should only exceptionally be detained before trial.

Under Swedish law, children may only be detained in a remand prison before trial if it is apparent that adequate supervision cannot be arranged. In addition to the general conditions that must be fulfilled, extraordinary reasons are also required before pretrial detention can be considered. The same requirements apply for arrest warrants. The Parliamentary Ombudsmen (JO) has stated that pretrial detention of persons under 18 years of age may only occur in extreme situations.

¹³¹ The Ombudsman for Children in Sweden: 'Förbjud isolering av barn och unga.' (*Ban solitary confinement of children and young people*) (written communication, 27 December 2007).

¹³² The Ombudsman for Children in Sweden: *From the Inside – children and young people on life in police cells and remand prisons* (2013).

¹³³ The Ombudsman for Children in Sweden: *From the Inside – children and young people on life in police cells and remand prisons* (2013).

To investigate on what grounds children are detained in remand prisons, we examined the detention records for children who had been held in remand prisons during the second half of 2011 and the first half of 2012. Our examination showed that the records rarely specify how the assessment is made of what are to be regarded as extraordinary reasons. The legislative history provides no clear indication either of how consideration of what constitutes extraordinary reasons should be carried out. Our view is that legislators need to clarify the meaning of “extraordinary reasons”.¹³⁴

In order to reduce the use of pretrial deprivation of liberty it is necessary that the alternatives to arrest and detention, which involve adequate supervision, also be acceptable in that they fulfil the child’s human rights. A legislative report, SOU 2012:34, proposes new sanctions for young offenders, e.g. youth supervision that does not amount to full deprivation of liberty. In our view, several of these measures could also be used for children suspected of crimes, with the aim of reducing the number of deprivations of liberty before trial as well as the time in detention for those who do have their liberty deprived.

No child suspected of a crime shall be held in solitary confinement during the investigation
“You’re just trying to remain in the real world.” Daniel

The UN Special Rapporteur on Torture defines solitary confinement as a physical and social isolation of individuals who are confined to their cells for at least 22 hours a day. When a child is placed in a remand prison or a police cell in Sweden it almost always means that the child is held for shorter or longer periods in solitary confinement according to this definition. Solitary confinement is what children perceive as the very worst treatment. The children and young people that we have met describe an existence characterized by isolation and a lack of human contact. The mental strain is described as feelings of panic, anguish and claustrophobia – feelings that become so strong and overpowering that they are difficult to manage. Children say that it takes both willpower and strength to endure the enormous mental strain that solitary confinement causes. Thoughts of self-harm and suicide recur in several of the accounts.

Against the background of the serious mental harm or suffering solitary confinement can lead to for children, the UN Special Rapporteur Against Torture considers that it may amount to torture and other cruel, inhuman or degrading treatment. According to the Rapporteur, solitary confinement of young people, irrespective of its duration, contravenes Article 7 of the UN Covenant on Civil and Political Rights and Article 16 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It is the Rapporteur’s view that it should be prohibited in respect of children. In our view, no child should be deprived of his or her liberty in solitary confinement during the investigation period. The measures used today to break solitary confinement are not enough to compensate for or mitigate the children’s difficult experiences.

The state must assume its responsibility for creating a justice system in which children in conflict with the law are treated in accordance with their fundamental rights. The Ombudsman for Children in Sweden welcomes the fact that the Prosecutor-General, in part as a result of the publication of our report, appointed a working group which has now presented several proposals that are on the right track. Among other things, the working group has proposed that

¹³⁴ The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

a statutory ban on the solitary confinement of remand prisoners be considered.¹³⁵ Our view is that an explicit statutory ban is necessary.¹³⁶

Introduce time limits

“From the moment you wake up until lunchtime, you’re waiting. After that, you’re more or less sitting around, waiting for dinner.” Mark

According to the Committee, the law must state clearly on what grounds a child may be placed or held in a police cell or remand prison pending trial. There must be a statutory time limit for pretrial deprivation of liberty, which must be regularly reviewed. Time limits must be shorter than those that apply to adults. The maximum time a child in Sweden may be held in a police cell is four days. In Norway a limit of 24 hours has been introduced for the time a child may be held in a police cell. It is our view that this should also be the case in Sweden.

A child who has been deprived of his or her liberty pending trial shall, according to the Committee, be formally charged and put on trial within 30 days of the beginning of the deprivation of liberty. It is our view that Sweden should live up to this requirement, and therefore introduce a time limit of 30 days for pretrial detention. This means that the state must prioritise investigations in which children suspected of crimes have been deprived of their liberty. As pretrial detention should be for the shortest possible time, the state must furthermore prioritise investigation measures that contribute to the reduction of e.g. the risk of collusion.¹³⁷

No child shall be placed in police cells in their current form

“The police cell is pure hell.” Axel

“It was pretty much your worst nightmare, spending time in the cell. You weren’t treated like a human being at all. They threw the food in when it was time. If you were lucky, the container didn’t break. Otherwise you had to pick the food up off the floor and eat it.” Mark

The time spent in a police cell is often a frightening experience for a child. The children in our survey describe the police cell environment as unpleasant, inhuman and destructive. They compare the routines and the physical environment in the police cell with being in hell. The treatment the children describe receiving by the staff varies, but can be summarised as cold, impersonal or downright frightening. The children also describe the feeling of being worth less as a human when you have been deprived of your liberty.

Locking children up in that kind of environment during the judicial process is not consistent with the child’s fundamental human rights. Neither can it be considered legally certain, as the child is to be interrogated during the time he or she spends in the police cell. In our view, no child should be deprived of his or her liberty during the investigation in a cell intended for adults. Today there are alternatives to the cell environment which must be used. According to the National Police Board, persons between 15 and 18 years of age should only be held in police cells when absolutely necessary. Under normal circumstances, anyone under 18 should be held under guard in an interrogation room or similar space. Our view is that if a child is arrested and for some reason cannot be held in an interrogation room or similar, he or she should be placed in a remand prison instead of a police cell. A remand prison is a more humane environment where

¹³⁵ The Swedish Prosecution Authority: ‘Häktningstider och restriktioner.’ (*Remand times and restrictions*) (report, January 2014).

¹³⁶ The Ombudsman for Children in Sweden: *From the Inside – children and young people on life in police cells and remand prisons* (2013).

¹³⁷ The Ombudsman for Children in Sweden: *From the Inside – children and young people on life in police cells and remand prisons* (2013).

children are generally received in a much better way than in police cell blocks, according to the children themselves.¹³⁸

Individualise restrictions for children

“I’m not allowed to speak to my mother. I find that too much, especially for a young person. Imagine, there are kids who are 15 in here.” Malcolm

From our interviews with children and young people, analyses of statistics and detention records, as well as discussions with law enforcement representatives, it is clear that it is not unusual for children to have full restrictions imposed on them, both during their time under arrest and in detention, which means that their contacts with the outside world have been limited. It has even happened that young people have been held in solitary confinement in the remand prison for several months, without any contact with either their family or anyone else outside the prison. One of the most important messages from the interviewees was precisely that the lack of contact with the family can be difficult to endure. Our examination of detention records shows that restrictions were approved in all cases where the prosecutor had requested them (91 of 108 cases). In one case alone the court highlighted the suspect’s young age in connection with the prosecutor’s request for restrictions. Neither is it unusual for the restrictions to be maintained for relatively long periods of time.

Criticism of Sweden from both the Council of Europe Committee on the Prevention of Torture and the UN Committee Against Torture concerns the use of restrictions following detention. The UN Committee Against Torture inspected Sweden in 2008 and recommended the country to undertake measures to reduce the use of restrictions and to shorten the time restrictions lasted. Restrictions must always be based on concrete grounds, be individualised, be proportional to the crime the individual is suspected of and be removed immediately when no longer needed. Our view is that when a court decides to place a child on remand, it must make an individual assessment in each case as to which restrictions are necessary.¹³⁹

All children must always have access to a public defence counsel, from the first interrogation

“The difference if you have a lawyer in an interrogation is that they don’t shout at you and they don’t look you straight in the eye and tell you that you’re lying.” Gomer

From the accounts we have heard it appears to be the rule rather than the exception that a defence counsel is not present at the initial police interrogation of a young person. A common reason for this is that the children themselves waive the right, since they believe that they will then be allowed to leave the police cell sooner. 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.

All children must be guaranteed fundamental rights during the judicial process. Under the CRC, every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. There must be no margin for the stakeholders of the judicial process to use pressure, threats and promises to get the child to waive these rights. Moreover, the child is already at a disadvantage due to the very form of the judicial process and therefore it cannot be

¹³⁸ The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

¹³⁹ The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

regarded as acceptable, in the vast majority of situations, that the child waives that right. In most cases it is impossible for the child to foresee the consequences of such a choice, and therefore the stakeholders of the judicial process must assume their responsibility to guarantee the child his/her fundamental human rights. The circumstance that the child shall always be guaranteed public defence counsel must furthermore not mean that the duration of the deprivation of liberty is prolonged. This requires society to make sure that a public defence counsel can be appointed, regardless of the time. It must also be possible to make the appointment promptly.¹⁴⁰

Establish an independent child representative

“You can’t make complaints, no. Or can you?” Axel

In our interviews with children and young people it became clear that they don’t always know that you can make complaints about conditions and appeal against decisions. The Council of Europe Committee for the Prevention of Torture has criticised Sweden for not informing young people of their rights. The Committee says that Sweden must ensure that all persons deprived of their liberty receive such information.¹⁴¹ The Ombudsman for Children in Sweden regards it as very serious that many young people have not had a clear idea about how the system works or about the procedure for appealing against decisions. The right to information is fundamental for giving a child the ability to influence his or her situation, and a core right under the CRC.

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.¹⁴²

Victims and or witnesses of crimes

72. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).

Children who have witnessed violence should be given judicial status as injured party

Children who have witnessed violence are defined as victims of crime under the Social Services Act, and are entitled to criminal injuries compensation. However, we consider an expansion necessary such that children who have witnessed violence should be given judicial status as injured party. As injured party, a child who had witnessed violence could be assigned a special representative. Thereby the child could in turn be interrogated without the guardian’s consent, e.g. in cases where the guardian was a suspect. Courts and social welfare committees do not make risk assessments to the same extent for children who have witnessed violence as they do for children who have been subjected to violence. By giving children who have witnessed

¹⁴⁰ The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

¹⁴¹ European Committee for the Prevention of Torture (CPT/Inf [2009] 34).

¹⁴² The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

violence the same judicial status as crime victims, those children's position would be strengthened. Moreover, as injured parties the children would be able to apply, with the help of their counsel, for criminal injuries compensation.¹⁴³

It is unfortunate that under current regulations children who are subjected to violence in close relationships are entirely dependent on their guardian applying for crime victim compensation. A guardian who is in a vulnerable situation is not always capable of seeing to the child's best interests. There can also be occasions when it is not in one parent's interest to demand payment from the other. It is also possible that both parents are perpetrators.¹⁴⁴

The judicial process – faster processing and better information are needed

“It took an extremely long time. It took maybe a year and half, I think, and then it was withdrawn completely, because by then my recollections weren't clear enough.”

In our encounters with children and young people it emerged that children find the judicial processes far too extended and drawn out.¹⁴⁵ The Ombudsman for Children in Sweden's survey¹⁴⁶ of local public prosecution offices' administration of cases in which it is suspected that children are subjected to violent or sex crimes in close relationships showed that around 40 per cent of the country's local public prosecution offices don't always stick to the time limit of two weeks for the first interrogation, as is currently recommended. Our view is that legislation should be introduced regarding a time limit between the report and the first interrogation of the child. The current recommendation has evidently not had a sufficiently controlling effect.¹⁴⁷

We are furthermore of the view that society must send a clear signal, though legislation and resource distribution, that crimes against children must always be given high priority and that the investigation must be expedient. We regard it as positive to use legislative regulation to try to achieve a shortening of turnaround times in the courts in respect of cases with young injured parties.¹⁴⁸ During our encounters and interviews with children it also emerged that it is difficult for some children to understand why a suspected perpetrator can be released even though the child has told the authorities what happened. It is our view that children's right to receive clear information in the course of a judicial process, presented in a way they can understand, should be strengthened.¹⁴⁹

¹⁴³ Opinion of the Ombudsman for Children in Sweden on the report 'En ny brottsskadelag' (A new crime victim compensation act) (SOU 2012:26).

¹⁴⁴ Opinion of the Ombudsman for Children in Sweden on the report 'En ny brottsskadelag' (A new crime victim compensation act) (SOU 2012:26).

¹⁴⁵ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (Signals – violence in close relationships. Accounts by children and young people) (2012).

¹⁴⁶ The Ombudsman for Children in Sweden: 'Tid för rättvisa.' (Time for justice.) Survey of local public prosecution offices' administration of cases in which it is suspected that children are subjected to violent or sex crimes in close relationships (2012).

¹⁴⁷ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (Signals – violence in close relationships. Accounts by children and young people) (2012).

¹⁴⁸ Opinion of the Ombudsman for Children in Sweden on the memorandum 'Skyndsamhetskrav och tidsfrister i ärenden med unga misstänkta och unga målsägande' (Expediency requirements and time limits in cases with young suspects and young injured parties) (Ds 2013:30).

¹⁴⁹ The Ombudsman for Children in Sweden: 'Signaler, Våld i nära relationer. Barn och ungdomar berättar.' (Signals – violence in close relationships. Accounts by children and young people) (2012).