



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



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## **Memorandum to the Swedish Government**

### **Assessment of the progress made in implementing the 2004 recommendations of the Council of Europe Commissioner for Human Rights**

For the attention of the Committee of Ministers  
and the Parliamentary Assembly

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## I. Introduction

1. The first Commissioner for Human Rights, Mr. Alvaro Gil-Robles, visited Sweden on 21-23 April 2004 on the invitation of the Swedish Government. The report of the visit<sup>1</sup> identified a number of concerns regarding the correctional system, the asylum procedure, discrimination and intolerance, the rights of the Sámi and Roma and trafficking in women. The Commissioner made recommendations to assist the Swedish authorities in addressing these shortcomings.
2. The present memorandum is part of the continuous dialogue between the Commissioner for Human Rights, Mr. Thomas Hammarberg, and the Swedish authorities. It is based on the main findings of members of the Commissioner's Office<sup>2</sup> who visited Sweden on 22-24 January 2007 with the purpose of assessing progress made in implementing the 2004 recommendations. A list of the ministries, authorities and other bodies met by the members of the Office during their visit is enclosed as Appendix 1. The Commissioner would like to express his gratitude for the excellent organisation of the visit and the hospitality provided by the Swedish authorities to the delegation from his Office.
3. This memorandum is based on information gathered during the visit from Government representatives, ombudsmen and non-governmental organisations (NGOs). It follows the order of the recommendations in the original assessment report (the "2004 report").
4. As mentioned in the 2004 report, the Swedish Government developed its first Action Plan for Human Rights in 2001 to cover the period 2002-2004. Follow-up and evaluation demonstrated that the experience gained from this work was valuable, which is why a new action plan was elaborated to cover the period 2006-2009. The Commissioner supports this comprehensive, transparent and participatory approach to identifying shortcomings and challenges and setting concrete measures to address these challenges. The Action Plan for 2006-2009 focuses on measures to combat discrimination, but covers other issues as well, such as children's, migrants' and indigenous people's rights, rule of law, asylum, violence against women and structural and organisational matters. A Delegation for Human Rights has been established to support the effective implementation of the plan. The Delegation appears to have an important task in providing tailored support on both substance and working methods to the authorities, municipalities and local authorities in their implementation activities.

## II. Correctional System

### Conditions of detention

5. The first Commissioner visited Kronoberg's Remand and Detention Centre in Stockholm and identified the poor outdoor facilities and overcrowding as the major issues to be addressed. Problems related to overpopulation concerned other detention centres and prisons as well, and the Commissioner recommended allocation of resources to address this issue.
6. Since then over 700 new detention and prison cells have been created in Sweden. Additional places are planned for the coming years, about 1800 in total, as well as a scheme for closing down old and less equipped centres. Since 2005 the previous, continuous increase in the remand and prison population has slowed down and currently remains stable.
7. The Director of the Kronoberg's Remand and Detention Centre confirmed that overpopulation was no longer a problem. On the other hand the poor outdoor facilities remained the same, and the out-of-cell time for detainees with restrictions had even decreased in one unit due to a reduced number of staff.
8. Both the Parliamentary Ombudsmen and the Ombudsman against Discrimination based on Sexual Orientation were concerned over the practice of isolating victims of inter-prisoner violence to guarantee their security.

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<sup>1</sup> Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, 8 July 2004, on his visit to Sweden, 21-23 April 2004, CommDH (2004)13

<sup>2</sup> Mr Lauri Sivonen and Ms Anna Nilsson

9. The Commissioner welcomes the efforts taken to overcome problems of overcrowding. Aware of the limited possibilities to improve the outdoor facilities the Kronoberg's remand centre he recommends that persons detained for longer periods are transferred to other better equipped facilities. Isolation of victims of inter-prisoner violence is contrary to government policy and additional efforts appear to be needed to prevent such practices.

### **Restrictions**

10. The 2004 report noted with concern the frequent use of restrictions, in particular isolation. Restrictions that, in principle at least, ought to be applied exceptionally were, in reality, applied almost systematically. The Commissioner accordingly recommended further action to ensure that restrictions were imposed only in situations where they are absolutely necessary.
11. Sweden lacks official statistics on the use of restrictions. Nevertheless, studies by the National Agency for Prison and Probation indicate that the situation has remained the same since the last visit in 2004. Between 40-50 per cent of the remand prisoners are subjected to restrictions.
12. Whether or not restrictions can be imposed upon remand prisoners is decided by the courts, upon request of the prosecutor. However, it is the prosecutor who decides which specific restrictions to use. New legislation is being considered within the Government offices. If adopted, it would be for a court to decide on the use of each individual restriction and every restriction would be subject to appeal. The prosecutor would have to provide the court with grounds for each restriction, unless justification is considered detrimental to the investigation. The prosecutor would maintain the possibility to decide on restrictions due to circumstances occurring after the court procedure. Such decisions would be subject to court review, upon request by the detainee.
13. The use of restrictions can be necessary to prevent obstruction of justice during the criminal investigation, but must be applied sparingly. The Commissioner encourages the adoption of legislation to reinforce the role of courts and secure that remand prisoners can effectively challenge and appeal decisions to impose or maintain specific restrictions.

### **Police complaints procedure**

14. The lack of an independent body to investigate allegations of police misconduct was raised during the 2004 visit. At the time, the Commissioner welcomed, nevertheless, the initiative taken by the Government to appoint an expert to prepare a proposal for an independent authority. He stressed that even though the current system embodied a number of guarantees to ensure impartiality, an internal structure could not guarantee the same level of independence as a separate body.
15. On the last day of the follow-up visit the expert presented a report, containing a proposal for a separate authority for investigation of misconduct by police officers and prosecutors, but favouring further reforms within the current system to increase transparency and public control. The report describes a number of challenges a separate authority may face. The authority would need to co-operate with the ordinary police in order to function effectively, possibly undermining public confidence of its independence. The report further argues that it would be difficult to secure both competence and independence of staff. The Commissioner reiterates that a system capable of conducting independent and impartial investigations of police misconduct is key to ensure accountability and public confidence in the law-enforcement system. He therefore believes that the establishment of a separate body is the preferred option.

### **Monitoring of places where people are deprived of liberty**

16. This topic was not directly raised during the 2004 visit to Sweden. Since then the Optional Protocol to UN Convention Against Torture has entered into force.
17. Sweden ratified the Optional Protocol to the Convention Against Torture in September 2005. The Parliamentary Ombudsmen have been designated as the national preventive mechanism, assigned to monitor all places where people are deprived of their liberty through regular visits. During the follow-up visit, the Parliamentary Ombudsmen expressed concerns regarding their designation as the national mechanism. Firstly, the Ombudsmen is an institution independent from the Government, with a broad mandate to supervise compliance with the law in the public sector. It is questionable whether such an institution should be instructed to carry out regular supervision of specific places. Secondly, the Ombudsmen underlined that the assignment of new tasks had not been accompanied by the granting of additional resources, raising doubts about the frequency and regularity of the visits the Ombudsman would be able to carry out.
18. The Commissioner welcomes the ratification of the Optional Protocol by Sweden. Yet, he encourages the Government to take into account the concerns raised by the Ombudsmen with a view to ensuring an effective monitoring of its implementation at national level.

## **III. Refugees and other people in need of international protection**

### **Asylum process**

19. At the time of elaborating the 2004 report, public debate was still lively in Sweden about the need to increase the effectiveness of the asylum process, reducing the length of asylum procedures and increasing legal certainty. A shift to replace the Aliens Appeals Board with an appeals procedure in courts was being considered by the Government, together with other options. The Commissioner's recommendation at the time was to continue this reform making it possible to introduce an appeal before a judicial authority against asylum and deportation decisions.
20. In March 2006, the new Aliens Act entered into force establishing a new procedure. The Migration Board's decisions on asylum and residence permits may be appealed to three Migration Courts (the administrative courts in Stockholm, Gothenburg and Malmö) and to a Migration Court of Appeal as a last resort. The procedure before the courts is an adversarial one, between the Migration Board and the applicant. The latter benefits from basic procedural guarantees and is entitled to participate in an oral hearing. Everyone, except for "Dublin cases", is given free legal aid.
21. To overcome lengthy processing times, the new act has altered the procedure for considering circumstances appearing just after a negative decision had become final. Previously, the applicant had the possibility to submit a new application for asylum or residence permit in such situations. This possibility has been replaced by a review procedure for refusal of entry and expulsion decisions. An applicant who puts forward new circumstances and claim impediments to enforcement of an expulsion decision has the right to a review carried out by the Migration Board. Those cases which involve new refugee or protection grounds are subjected to court appeal.
22. The definition of "refugee" has been extended so as to include persons who are prosecuted on grounds of gender or sexual orientation. However, so far case law has demonstrated reluctance to grant refugee status on these new grounds. Representatives from civil society claimed that UNHCR guidelines on grounds for providing asylum are not always applied.
23. In response to demands for amnesty for rejected asylum-seekers present in the country for a long time due to difficulties in implementing deportation orders, a temporary law was adopted allowing rejected persons a new assessment. The law was valid for registrations made between 15 November 2005 and 31 March 2006. Each case was tried individually, giving preference to children and persons who had been living in Sweden for over a year and who had not been deported due to practical or medical reasons. About 31,000 people registered, and 60% of those were granted residence permits, mostly permanent residence permits. A few hundred cases are still pending before the courts.

24. The Commissioner welcomes the new asylum procedure introduced in Sweden, which ensures respect for due process requirements and provides for a fair hearing and proper appeal procedures. He also commends the Swedish authorities for an efficient implementation of the temporary law and considers it a pragmatic solution to a long-lasting problem.
25. The extension of the definition of “refugee” so as to cover also persecution based on gender or sexual orientation is, again, an important step towards a better protection of refugees in Sweden. Some concern may, however, be expressed regarding the restrictive application of these provisions. Further professional training of decision-makers, perhaps in co-operation with the UNCHR, is encouraged to ensure proper application of this new legislation.

### **Detention of asylum-seekers**

26. Detention of asylum-seekers with unknown identity and those awaiting expulsion was on the increase in the last years preceding the 2004 Commissioner's visit. Remand centres were occasionally used for such detention. The Commissioner recommended, therefore, that measures be adopted with a view to ensuring that detention was limited to situations where it was absolutely necessary and to put an end to the use of criminal detention facilities for this purpose.
27. From 2004 to 2006, detention rates decreased due to the temporary legislation described in the previous section and a change of policy by the Migration Board. People arriving without proper documents are neither denied accommodation, basic financial support or legal representation, nor detained on a regular basis. However, detention prior to deportation is still common, but the Board assesses the timeframe for enforcement in order to prevent prolonged detention. This practice has reduced average detention periods from 18 to 13 days and brought lengthy detention periods, i.e. between six to twelve months, to an end. Further, NGO volunteers are allowed regular visits in the Board's detention centres. According to the information provided to the Commissioner's office, the arrangement appears to be functioning well.
28. Criminal detention centres are only to be used for asylum-seekers expelled because they have committed a crime or for security reasons. Asylum-seekers in need of mental health care are taken to a hospital. However, there are cases where a person is not admitted as an in-patient but the Migration Board still considers there to be a risk of self-injury or a danger to others. Such asylum-seekers are transferred to a remand prison, where conditions for supervision and access to medical care are better than the Migration Boards facilities. Decisions on such placements are subject to court appeal, and legal aid is provided.
29. The Commissioner notes with satisfaction the positive changes in the Migrations Board's policy on reception of undocumented asylum-seekers and pre-deportation detention. Whilst acknowledging that the Migration Board's facilities might not be suitable for accommodating persons who are a risk to themselves or others, placement in remand prisons is not a suitable solution either and is contrary to UNCHR guidelines on detention of asylum-seekers<sup>3</sup>. The Commissioner encourages the Government to consider other alternatives, including closed wards, for this group of asylum-seekers in need of care.

### **Non-refoulement**

30. The expulsion and deportation of two Egyptian citizens Ahmed Agiza and Mohammed Alzery was discussed by the first Commissioner on the occasion of his 2004 visit. In his view, these cases raised a number of general concerns. The procedure for asylum cases involving matters of national security gave the Government complete discretion. The information on which the decision was based was not accessible to the asylum-seeker and the Government's decision was not subject to appeal. Finally, the use of diplomatic assurances was highly questionable. Thus, the Commissioner recommended the Swedish authorities to adopt necessary legislative and policy changes to ensure that Articles 3 and 13 of the European Convention on Human Rights were respected.

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<sup>3</sup> UNHCR Revised Guidelines on applicable criteria and standards relating to detention of asylum seekers, 1999

31. The new Aliens Act has changed the procedure in asylum cases involving matters of national security. In the first instance, the Migration Board makes a decision, which can be appealed to the Government. Before the latter takes a decision, the case is brought before the Migration Court of Appeal. The Court holds an oral hearing, unless it is deemed unnecessary, and then passes the case to the Government along with its opinion on whether there is an impediment to the enforcement of a refusal-of-entry or expulsion order. The Court's assessment that such impediments exist is binding on the Government. The same procedure has been included in the Special Control of Aliens Act.
32. A party's right to access information in asylum cases is guaranteed by law, but can be restricted with regard to sensitive information. Decisions in security cases can be based on documents or information that are not revealed to the individual concerned, due to reasons of national security, activities of the National Police Board or protection of an informant. Swedish law does not regulate the use of information obtained in a manner, which is contrary to international standards. The Commissioner underlines that evidence obtained through interrogation methods violating international standards cannot be used as evidence in court.
33. The circumstances of the deportation of Ahmed Agiza and Mohammed Alzery have been subject to the scrutiny of both domestic and UN Treaty Bodies. The Parliament's Standing Committee on the Constitution examined the Government's involvement, condemning the reliance on diplomatic assurances without proper monitoring mechanisms. The prosecuting authorities decided that there was no ground for assuming that a criminal offence had been committed by the police in connection with the enforcement. The Parliamentary Ombudsman conducted a non-criminal investigation on the lawfulness of the security police performance and severely criticised the police's failure to intervene and prevent the inhuman treatment at Bromma Airport. The decision not to conduct a criminal investigation was based on the fact that the police officers present at Bromma Airport were of subordinate ranks and the lack of evidence that the person with ultimate responsibility would have known how the situation would develop.
34. In May 2005 the UN Committee Against Torture concluded that the prohibition of refoulement had been violated.<sup>4</sup> At the time of expulsion, there had been a real risk of torture and the procurement of diplomatic assurances was not sufficient protection against that risk. The lack of opportunity for an effective, independent and impartial review of the Government's decision also constituted a violation of the Convention Against Torture. The UN Human Rights Committee came to the same conclusion in November 2006, adding that the failure to promptly and independently investigate the mistreatment also violated international obligations<sup>5</sup>. Whilst not questioning the thoroughness of the investigation by the Parliamentary Ombudsman, the Committee added that the result of both this and the prosecuting authorities' actions was that nobody had been subject to a full criminal investigation.
35. Regarding future use of diplomatic assurances, the Government considers it as unlikely but does not rule out that exceptional circumstances might necessitate such measures.
36. The Commissioner welcomes that a procedure before a court of law has been established which should help prevent future violations of Article 3 of the European Convention. The prohibition of torture embodied in Article 3 of the European Convention is absolute, and there is broad consensus among international human rights bodies that diplomatic assurances do not provide an effective safeguard against such ill treatment. As illustrated by the UN Special Rapporteur on Torture, the fact that such assurances are sought demonstrates in itself that the sending country anticipates the possibility of a serious risk of the deportee being subject to torture or ill treatment upon arrival in the receiving country. Accordingly, the Commissioner urges the Swedish authorities to refrain from using diplomatic assurances in such cases.
37. The fact that the circumstances of the expulsion of Agiza and Alzery have been investigated at the national level is in itself positive. However, the Commissioner shares the view of the Human Rights Committee that the prosecuting authorities must be able to effectively

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<sup>4</sup> Committee Against Torture's decision concerning Mr. Ahmed Agiza, 24 May 2005 (CAT/C/34/D/233/2003)

<sup>5</sup> Human Rights Committee's decision concerning Mr. Mohammed Alzery, 10 November 2006 (CCPR/C/88/D/1416/2005)

investigate and allocate criminal responsibility for acts violating the prohibition of torture. The decisions of UN Committees regarding Agiza and Alzery must be put into full effect, including the provision of adequate reparation and compensation.

### **Unaccompanied minors**

38. The first Commissioner was concerned about the considerable number of unaccompanied minors that had disappeared from the centres where they were accommodated. The fact that the appointed legal custodians had very limited influence on the personal relations of the child was one problem. Lack of coordination between the Migration Board, the police and the social services was another. The Commissioner welcomed a Government initiative to extend the competences of legal custodians and recommended measures to ensure tighter control by the accommodating centres to prevent disappearances.
39. The number of children disappearing has decreased from around 150 in 2005 to around 90 in 2006. To prevent future disappearances, legislation on guardian ad litem for unaccompanied children has been changed, giving guardians competences equivalent to that of parents. In cases where there are indications of a risk of disappearance, the Migration Board cooperates closely with the police and social services. These children are appointed a guardian ad litem and a legal representative. Their asylum procedure is given priority and contacts are established with the Embassy to locate parents or relatives in the home country.
40. The responsibility for accommodating unaccompanied minors has been transferred from the Migration Board to the municipalities, which are considered to be better equipped to provide appropriate care. However, implementation of this reform has been problematic, even more so due to the major increase in the number of unaccompanied minors arriving in 2006. Only about 10-15 municipalities have accepted their responsibility to receive these children, which is why many of them end up spending a long time in temporary, less suitable accommodation in the municipality of arrival. Recruiting enough custodians has also proven difficult and representatives from civil society highlighted the need to provide support and training to guardians so that they can fulfil their responsibilities in the best possible manner.
41. The Commissioner welcomes the serious efforts undertaken to strengthen the protection of unaccompanied minors and prevent future disappearances. Underlining the particular vulnerability of these children, he encourages the Government and municipalities to join their efforts to ensure that minors arriving in Sweden are provided with care, safe and suitable accommodation and appointed competent guardians as expeditiously as possible.

### **Victims of trafficking**

42. The 2004 report underlined that the assistance provided to victims of trafficking could be improved and that special attention had to be paid to the specific needs of child victims. Despite cooperation programmes with other countries it was reported that victims lacked security upon return. The Commissioner recommended measures to address each of these concerns.
43. Combating trafficking has been a continued priority in Sweden, closely linked with efforts to reduce the number of persons exploited in prostitution, particularly so-called indoor prostitution, and the sex industry over the Internet. Criminal provisions have been extended to include trafficking within national borders and trafficking for the purpose of forced labour and removal of organs. Special funding has been allocated to the police for operational work and training, and resources invested in international co-operation against prostitution and trafficking, including assistance to child victims.
44. Victims of trafficking, who are willing to participate in the criminal investigation, may receive temporary residence permits, including the right to health care and financial aid. Such permits can be prolonged, upon request by the prosecutor, but also revoked if the victim continues to have contact with the perpetrators. The Government is currently preparing the implementation of the EU directive on residence permits to victims of trafficking or illegal immigration who

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cooperate with the competent authorities (2004/81/EC). Future legislation will have more specific provisions on the criteria for issuing permits, their length, conditions for stay, grounds for non-renewal and withdrawal. The regular asylum procedure is open to victims of trafficking, and permanent residence permits have been granted in a few cases.

45. The Government is finalising a national programme to combat trafficking, to be composed of two action plans. The first plan will target prostitution and trafficking for sexual purposes, with a focus on women and children. It will include measures to protect and assist victims, ensure safe return, discourage demand, bring traffickers before justice as well as to address root-causes in countries of origin. The other plan will target trafficking for the purpose of forced labour, removal of organs and other forms of exploitation.
46. In February 2006, the Government appointed an expert to review the penal legislation against trafficking in human beings, to evaluate its implementation and to consider possible amendments to give stronger protection against trafficking. The expert shall also analyse whether the provisions of the Swedish Aliens Act relating to residence permits need to be supplemented in order to provide the protection needed in Sweden by victims and witnesses participating in the legal process. Furthermore, the expert shall analyse Sweden's accession to the Council of Europe Convention on Action Against Trafficking in Human Beings. Finally, the expert shall analyse whether existing legislation affords satisfactory protection – from a criminal law perspective - against child marriages and forced marriages.
47. The Commissioner welcomes the modifications in the Swedish Penal Code to criminalise trafficking within national borders as well as trafficking for other purposes than sexual exploitation. Clarification of the criteria and length of temporary residence permits, conditions for stay and grounds for renewal or withdrawal is desirable from the perspective of legal security and victim rights. While it is of outmost importance that traffickers are brought before justice, it is equally important to protect and support their victims. Commissioner encourages timely finalisation and implementation of both action plans and stresses that these plans should be adequately funded to meet the victims' needs. The Commissioner also recommends ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings without delay. The added value, compared with other international instruments, lies in this convention's clear human rights approach, its provisions on victims rights and monitoring machinery to ensure effective implementation. In the context of this ratification, Sweden should decide, in conformity with Article 14, paragraph 1, to follow a generous approach and provide for the granting of residence permits not only when the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings but more generally when their stay is necessary owing to their personal situation.

#### **IV. Tolerance and Non-discrimination**

48. The 2004 report recommended persistent efforts on preventing racism and discrimination, that continued to manifest itself in areas such as employment, education and housing, as well as efforts to promote greater integration of immigrants and their descendents.
49. Since then much energy has been invested towards that aim. Existing legislation prohibiting discrimination has been strengthened, in particular with regard to gender-based discrimination outside working life, and new legislation has entered into force protecting pupils at school. The 2001 Action Plan against Racism, Xenophobia, Homophobia and Discrimination has been incorporated in the new Action Plan for Human Rights, which has a strong focus on protection against discrimination. Non-discrimination is an important part of Swedish integration policy. Several state agencies, including judicial authorities, have developed anti-discrimination strategies. An Agency for Disability Policy and Co-operation has been established to support and accelerate implementation of the Action Plan for Disability Policy. The possibilities of using so-called "situation testing" for investigating the occurrence and extent of ethnic discrimination are being looked into as well as indicators for measuring discrimination based on sexual orientation. A number of labour market policy schemes for migrants and persons with disabilities are also in force and might be replaced with a general subsidy of payroll costs for people excluded from the labour market.

50. The Government is currently considering a proposal from the Committee on Discrimination on a consolidated and more comprehensive non-discrimination legislation and a new merged ombudsman. This proposal protects against discrimination based on sex, sexual identity, ethnic background, religion or other religious belief, disability and sexual orientation, covering most areas in the public sphere. A more limited prohibition of age-based discrimination covering working life is also included.
51. Hate crimes have been a priority for the police since 2003. Statistics show variations in the prevalence over the country. The National Police Board have produced manuals for victim support, which have proven to be key components in police efforts to fight hate crimes. A development centre has been established within the Prosecution Authority to focus on hate crimes, and special prosecutors secure proper coordination and co-operation with the police. Living History Forum has continued its awareness-raising activities to counteract intolerance as well as studies on anti-Semitism, homophobia, Islamophobia and xenophobia.
52. The Commissioner notes with satisfaction the importance the Swedish Government attaches to the fight against discrimination and intolerance, as demonstrated by strengthened legislation, well-functioning Ombudsmen bodies and wide-ranging programmes to promote equality. He encourages continued efforts in this area, including implementation of the National Action Plan for Human Rights. New challenges also need to be addressed. Civil society particularly raised multiple discrimination as an area calling for more attention.
53. The proposal for new anti-discrimination legislation appears to respond to many of the weaknesses of the current legislation. According to the Disability Ombudsman, about half of the complaints to the Ombudsman concern lack of reasonable accommodation. Inclusion of a right to such accommodation in the coming legislation is therefore recommended, and in line with recent codification of standards in the UN Convention on Rights of Persons with Disabilities as well as the European Disability Action Plan. While fully supporting the inclusion of the additional discrimination grounds of age and sexual identity, the Commissioner notes that the protection contained in Article 14 of the European Convention on Human Rights and Protocol 12 is broader. He invites the Government to consider a non-exhaustive list of grounds for discrimination to guarantee that the legislation is well equipped to protect against all forms of discrimination in an efficient manner. Even though the European Convention is incorporated in Swedish legislation the Ombudsmen's mandate does not seem to cover discrimination based on other grounds than those enumerated in the specific laws against discrimination. The Commissioner also invites the Government to reconsider its position on ratification of Protocol 12 to the European Convention of Human Rights.

## **V. Indigenous people and national minorities**

### **Sámi**

54. The 2004 report underlined the importance of land rights for the traditional Sámi livelihood and Sámi participation in decision-making affecting their environment and recommended that the Government speed up its efforts to resolve these questions. Pointing to the difficulties for Sámi villages to cover the costs of court proceedings as well as to obtain documentation on land use, the Commissioner welcomed alternative means of solving conflicts in this area. Other issues raised during the visit were the need for increased efforts to address the under-representation of women in the Sámi Parliament and gender equality in the Sámi villages, as well as greater resources for instruction of the Sámi language.
55. In January 2007 the Sámi Parliament was designated as the central administrative agency responsible for reindeer husbandry, and a number of administrative tasks, mainly concerning reindeer herding, were transferred to the parliament from county administrative boards and the Board of Agriculture. Questions affecting non-Sámi landowners are still handled by the county administrative boards.
56. Two Governmental Commissions of enquiry, set up to investigate issues relating to Sámi land rights as well as fishing and hunting rights in order to facilitate the ratification of ILO Convention no. 169 on Indigenous and Tribal Peoples in Independent Countries, have submitted their final reports. The Boundary Commission's report identifies land that the Sámi traditionally occupy and land to which they traditionally had access for their subsistence and traditional activities under the ILO convention Article 14. The other Commission has defined

the scope of Sámi fishing and hunting rights. The objectiveness, working methods and findings of both investigations have been questioned by the Sámi, the landowners as well as by others. Both reports are being reviewed within the Government offices, and conditions for ratification of the ILO convention will be assessed in the light of these studies. At the same time, the work towards a Nordic Sámi Convention continues and the draft from 2005 is being analysed by the Government.

57. Past court rulings regarding the right to reindeer breeding have repeatedly been in favour of the non-Sámi side, sometimes without any substantial examination of the situation because of lack of financial means on the Sámi side. However, last year the district court in Umeå dismissed a suit from over 100 landowners and ruled that the Sámi villages had traditional rights to reindeer pasture in the area of Nordmaling. The case has been appealed and new proceedings before the court of appeal are scheduled for this summer. There are other cases on pasture rights still pending in courts, and Sámi organisations expressed their concerns about the uncertainty that still exists. They also voiced their concern over their lack of influence over the use of natural resources, such as mining and forestry, seriously hampering their possibilities to pursue their traditional livelihoods. Even though Swedish legislation requires forestry companies to consult affected Sámi villages before undertaking major deforesting projects, this consultation mechanism has had limited impact.
58. There have been positive developments in the women's situation. Their representation in the Sámi Parliament increased by 7% in the 2005 election, up to 32% of the Plenary Assembly. Legislation on Reindeer Husbandry and on Sámi Parliament has been amended into gender-neutral wording. However, representatives from a Sámi organisation pointed out that, in practice, possibilities to engage in reindeer breeding are still greater for men.
59. The situation for Sámi language instruction is still problematic. Shortage of teaching materials, difficulties in recruitment of teachers and lack of access to mother tongue education outside Sápmi continue. The South Sámi language is particularly endangered as it is spoken by few residing in areas lying outside the Sámi administrative area. The Government is aware of the situation and currently considering the possibility of extending existing legislation on the right to use Sámi in contacts with authorities and before courts. The Agency for School Improvement is also developing teaching material in Sámi, with a special focus on South Sámi.
60. The Commissioner regrets that the issue of land rights remains unresolved and that Sweden has still not ratified ILO Convention no. 169. He urges the Government to give priority to this long-standing problem and accelerate its efforts to reach a solution, in co-operation with the different parties involved. The findings of the Boundary Commission's report could bring the Swedish authorities one step closer to a solution. It should not be forgotten, however, that the Commission's assessment is in certain cases simply based on court rulings without a proper consideration of the merits due to lack of financial means on the Sámi side.
61. The Sámi Parliament's mandate, even with the recent changes, is still limited to issues concerning the Sámi culture and administration of reindeer breeding. The Commissioner encourages the Government to further enhance the influence of the Sámi in decision-making concerning use of natural resources affecting Sámi traditional means of subsistence. The adoption and implementation of the Nordic Sámi Convention, which contains provisions on self-determination, could pave the way in this direction.
62. The Commissioner notes with satisfaction that women's participation in the Parliament has increased. However, further efforts to improve gender equality in Sámi communities are still needed and are encouraged. Similarly, measures are called for to guarantee that all Sámi children have access to language instruction and to proper teaching materials. Such measures would include awareness raising among municipalities of their obligations and among parents about their rights to request such instruction for their children, as well as measures to stimulate the professional training of more Sámi teachers.

## **Roma**

63. Since 2002 there has been an established framework for the consultation between the Roma population and the Government. The first Commissioner met with representatives of the Council for Roma Issues, who informed him that the Roma continued to suffer from prejudice

and discrimination in their daily lives, leading to difficulties with access to employment, education, housing and services. Efforts were needed to address problems of low school attendance and high dropouts. The Commissioner welcomed further action, including awareness raising to improve the knowledge among the majority population about Roma culture and traditions.

64. The Government is well aware that the Roma are particularly affected by prejudice and discrimination. To address this, the Ombudsman against ethnic discrimination has received extra funding; regional seminars on the situation facing Roma girls and women in school and at the labour market have been organised; and the National Agency for Education has conducted an in-depth study on the school situation for Roma children. Furthermore, a Delegation for Roma Issues has recently been established, replacing the Council for Roma Issues. Whilst the Council was a consultative body maintaining dialogue between the Government and the Roma, the Delegation's mandate is more action-oriented, advancing the implementation of the government's minority policy. The Delegation's main tasks are to study the situation of the Roma, to promote and support local projects and programmes and to raise awareness about Roma culture and history. Finally, the Delegation shall propose how work to improve the situation of the Roma should continue after its own mandate terminates in 2009.
65. The Commissioner welcomes the efforts undertaken by the Government to combat discrimination and prejudice against the Roma population. Yet, discrimination and intolerance persist, calling for pursued and intensified efforts. Representatives from civil society also highlighted the difficult situation of Roma who suffer multiple discrimination because of their gender, disability or sexual orientation.
66. It is expected that the Delegation for Roma issues will play a central role in supporting and accelerating the realisation of Roma rights. Underlining the importance of participation of Roma communities in the decision-making process, the Commissioner encourages close cooperation between the Delegation and its reference groups as well as continued dialogue between representatives from Roma organisations and governmental and local authorities.

## **VI. Violence against women**

67. Violence against women was not raised during the 2004 visit, apart from violence related to trafficking. However, it is a priority theme for the Commissioner and closely linked to gender equality.
68. The Government recognises violence against women as a serious human rights problem. Combating such violence, including honour-related violence and trafficking, is a priority within the Governments' gender equality policy. Much effort has been invested in crime prevention and victims' support, following a Government bill on Violence against women in 1997. An evaluation showed positive developments, but also that work on violence against women needs to be further incorporated in ordinary work of the police, prosecuting authorities and social services to gain continuity and effectiveness.
69. "Gross violation of a woman's integrity" is a criminal offence in Sweden, covering repeated acts - such as assault, unlawful threat or sexual exploitation - committed by a man against a woman who is his partner or ex-partner. "Gross violation of a person's integrity" is a gender-neutral crime protecting same-sex partners, children and others with whom the perpetrator has a close relationship against the same kind of violence. The crimes are made separate in order to underline the gender aspects of domestic violence and to facilitate collection of segregated data of their prevalence. The penalty scale for the two crimes is however the same.
70. New legislation on sexual crimes came into force in 2005 with a view to furthering the protection of sexual integrity. The definition of rape was broadened by lowering the requirement of force to include less grievous forms of violence or threats of a criminal act. It also includes cases in which the offender sexually exploits someone in a helpless state, such as persons with certain disabilities or persons who are unconscious, sleeping, intoxicated or under the influence of drugs. Rape of children is a separate crime, which does not legally require use of force.

71. Restraining orders to perpetrators of violence became possible in 1988 and were extended in 2003 to cover a shared home. Legal aid to victims of sexual and domestic violence is also provided by law. Sexual violence is a priority in the law enforcement authorities' work. However, studies indicate that sexual crimes often go unreported. The Government is considering a number of proposals on how to ease the distress for victims during the criminal investigation and court proceedings without compromising legal certainty and fair trial standards.
72. Recent studies show a positive development regarding victim's access to protection and support, although capacity to provide such support differ throughout the country and is often dependent on efforts by voluntary women's shelters. Female substance abusers, women with disabilities and Roma women have particular problems accessing shelters. Similarly, there are certain obstacles preventing women of foreign background to get appropriate help and protection. A Government bill on social services to women who are victims of violence proposes legislative changes clarifying local authorities obligations to ensure adequate support to all women as well as measures to enhance quality, coordination and support a uniform implementation of the obligations throughout the country. In addition the Government has started to develop an action plan to prevent violence against women.
73. The Commissioner welcomes the efforts of the Government to prevent violence against women, including honour-related violence, and the support offered to the victims. The development of an action plan, building on previous experience, is encouraged. Such a plan should be adequately funded and followed up.
74. Recognising the important work of NGOs in providing protection and support to victims, the Commissioner also stresses the responsibility of regional and local authorities. The measures foreseen in the Government bill on the social services' support to victims of violence respond to several of the shortcomings highlighted in recent studies and expressed by civil society. The Commissioner supports its implementation and underlines that special care should be taken to address the needs of women of foreign origin, women with disabilities and women with substance abuse problems.

## VII. Summary of recommendations

The Commissioner for Human Rights recommends that the Swedish authorities:

1. Continue their efforts to prevent isolation of prisoners, in particular victims of inter-prisoner violence.
2. Change the current system on restrictions to reinforce the role of courts and secure that remand prisoners can effectively challenge and appeal decisions to impose or maintain specific restrictions.
3. Establish a separate and independent body for investigation of complaints of police misconduct.
4. Provide training for decision-makers in the asylum procedure to ensure proper application of the new legislation granting refugee status to persons who are persecuted on grounds of gender or sexual orientation.
5. Refrain from using diplomatic assurances in cases where there are doubts about the deportee being subject to torture or ill treatment upon arrival in the receiving country
6. Give full effect to the decision of the UN Committee Against Torture concerning Ahmed Agiza and the decision of the UN Human Rights Committee concerning Mohammed Alzery including the provision of adequate reparation and compensation.
7. Take further action in cooperation with the municipalities to ensure that unaccompanied minors arriving in Sweden are provided with care, safe and suitable accommodation and competent guardians as expeditiously as possible.
8. Finalise and implement action plans against trafficking in human beings to ensure adequate protection and assistance to victims and ratify the Council of Europe Convention on Action Against Trafficking in Human Beings without delay.
9. Continue counteracting discrimination by creating a more comprehensive protection to cover all forms of discrimination, including multiple discrimination, and a right to reasonable accommodation for persons with disabilities. Ratify Protocol 12 to the European Convention on Human Rights.
10. Speed up the efforts to resolve problems relating to Sámi land rights, leading to the ratification of ILO Convention no. 169, in cooperation with the parties concerned.
11. Enhance the influence of the Sámi in decision-making related to the use of natural resources affecting their traditional means of subsistence.
12. Encourage efforts to improve gender equality in the Sámi communities and guarantee all Sámi children access to instruction in the Sámi languages.
13. Intensify efforts to combat discrimination and intolerance against the Roma population, including efforts to assist Roma suffering from multiple discrimination.
14. Develop and implement an action plan to prevent violence against women with sufficient funding and follow-up mechanisms and adopt necessary legislative and policy changes to ensure adequate victims support and protection to all women.

## Appendix

During the follow-up visit contacts were made with representatives from the following:

Ministry of integration and Gender Equality

Ministry for Foreign Affairs

Ministry of Justice

Ministry of Health and Social Affairs

Ministry of Agriculture, Food and Fisheries

Ministry of Education and Research

Kronoberg's Remand and Detention Centre

Migration Board,

Agency for Disability Policy Co-ordination,

Sámi Parliament

Delegation for Human Rights

Delegation for Roma Issues

Chancellor of Justice

Parliamentary Ombudsmen

Children's Ombudsman

Ombudsman on Gender Equality

Ombudsman against Ethnic Discrimination

Disability Ombudsman

Members of the Office also met with several representatives of non-governmental organisations working in the field of human rights.