

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Sweden (8th Session)

This information is submitted by RFSU¹ and RFSL² in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting sexual and reproductive health and rights and lesbian, gay, bisexual and transgendered (LGBT) people in Sweden.

Young LGBT people's health

States shall according to the Yogyakarta Principles "take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity".³

Several reports have indicated that LGBT youth in Sweden suffer from poor health to a higher degree than the general population.⁴ A report from 2005 concludes that mental illness or mental health problems were twice as common among homosexual and/or bisexual people compared with the rest of the population.⁵ Transgendered people of all age groups reported worse health than homo- and bisexual people. The poll also showed that among transgender people, one in two had considered committing suicide and 21 per cent reported that they had attempted suicide.

A study by the Swedish National Institute of Public Health (Statens folkhälsoinstitut) from July 2009 studied the health of young LGBT people between the ages 16-29. The report shows that homosexual and bisexual young people in Sweden suffer from poorer health than the general population. It concludes that it is especially apparent when it comes to psychological problems, and shows an increased incidence of attempted suicide. The results indicate that every fourth homosexual or bisexual woman has attempted suicide and the incidence of reports of poorer health in the group is three times higher than that experienced by heterosexuals. Many young LGBT people had tried to access health care services and found them to be lacking in understanding of LGBT issues.⁶

Compared with the population in general, young LGBT people reported more health-threatening habits. The study also shows that young homosexuals and bisexuals are significantly more subjected to physical violence, and homo- and bisexual men are 2,5 times more likely to be subjected to threats of violence compared with other youth and young adults. Many homo- and bisexual young men also refrain from going out alone for fear of being assaulted, robbed or in other ways harassed.⁷

Despite the fact that recurrent studies show that young LGBT people are at high risk of suffering from mental and/or physical illnesses, very little action has been taken to improve the health situation. Apart from instructing the Swedish National Board for Youth Affairs (Ungdomsstyrelsen) to carry out a detailed analysis of the health situation of young LGBT people, the Government of Sweden has made few efforts to provide better health care for young LGBT people and to recognize the sometimes special needs of LGBT patients.

¹ RFSU (the Swedish Association for Sexuality Education) is the leading organisation in Sweden in the field of sexual and reproductive health and rights (SRHR)

² RFSL (the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights) is a non-profit organization that works with and for the rights of lesbian, gay, bisexual and transgender people (LGBT).

³ The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. The Principles affirm binding international legal standards with which all States must comply, The principle on non-discrimination in health care is a reflection of, *inter alia*, Article 12(1) of ICESCR

⁴ See for example, Statens folkhälsoinstitut (The Swedish National Institute of Public Health), Homosexuellas, bisexuellas och transpersoners hälsosituation. Återrapportering av regeringsuppdrag att undersöka och analysera hälsosituationen bland hbt-personer, rapport A 2005:19 Statens folkhälsoinstitut, (The Swedish National Institute of Public Health) Levnadsvillkor och hälsa bland unga homosexuella, bisexuella och transpersoner- resultat från nationella folkhälsoenkäten. PM. 2009 Ungdomsstyrelsen (The Swedish National Board for Youth Affairs), Fokus 07- En analys av ungdomars hälsa och utsatthet. 2007

⁵ Statens folkhälsoinstitut (The Swedish National Institute of Public Health), Homosexuellas, bisexuellas och transpersoners hälsosituation. Återrapportering av regeringsuppdrag att undersöka och analysera hälsosituationen bland hbt-personer, rapport A 2005:19

⁶ Statens folkhälsoinstitut, (The Swedish National Institute of Public Health) Levnadsvillkor och hälsa bland unga homosexuella, bisexuella och transpersoner- resultat från nationella folkhälsoenkäten. PM. 2009.

⁷ Ibid.

The Committee on the Rights of the Child encouraged Sweden in 2009 “to strengthen its mental health care system, including both preventive and interventional programmes, to ensure that adequate treatment and care are provided to all children that need it without undue delay” and urged Sweden “to strengthen the health care resources for people in suicidal crisis and to take measures to prevent suicide among groups that are at risk”.⁸

RFSU and RFSL also believe that a comprehensive sexuality education in schools is important for the health of young LGBT people. The need to strengthen the sexual and reproductive health education in Swedish schools was recognized by the Committee on the Rights of the Child in 2009.⁹

RFSU and RFSL call on the Swedish government to:

- ensure that school nurses, psychologists, social workers and other professionals gets more LGBT knowledge and understanding of the LGBT people’s particular life situation and living conditions.
- recognize the need for health care services to get LGBT training and extra resources in order to be accessible and acceptable to all young people, including young LGBT people.
- ensure that sexuality education in schools responds to the needs of students of all sexual orientations, gender identities and gender expressions.

Transgendered people’s rights

In Sweden most transgendered individuals are denied the right to change their legal gender. Under the provisions of the present law only those individuals who have undergone treatment by one of the six regional gender teams will be granted the right to change their birth gender.¹⁰

According to this law the applicant must be a Swedish citizen, unmarried and sterile and above the age of 18. With the application a statement by the treating psychiatrist must be submitted that verifies that the patient meets the criteria in WHO ICD-10, F.64.0 and that this condition has prevailed for a long period of time.¹¹ This is in effect stricter diagnostic criteria than those present in the ICD-10.

Only after an approval of the National Board of Health and Welfare (Socialstyrelsen), will a permission to undergo genital surgery be issued. After undergoing sterilization will the applicant be handed a decision that gives him or her a new personal identification number corresponding to the new gender. All public records can then be changed, but there is still the problem with older records and records kept by a non-official body such as schools and other institutions of learning etc.

Transgendered individuals who do not fulfill the WHO ICD-10 diagnosis Transsexualism, F 64.0, will not be accepted for treatment and hence will have no possibility of having their gender legally changed for their birth gender. As a consequence they will not be accepted for any form of gender reaffirming treatment.

The Swedish treatment protocols do include a minimum period of 12 months of psychiatric evaluation before a recommendation for Hormone replacement therapy (HRT) can be made, in comparison by the 3 months period prescribed in the WPATH Standards of Care.¹²

Due to a decision of the National Board of Health and Welfare’s body that oversees medical practitioners in Sweden, it is illegal for any physician to prescribe HRT to a patient that has not met the diagnostic criteria of F64.0 and that have a referral from one of the approved gender teams. This practice leads to several alarming health consequences for transgendered people in Sweden and an abundance of black market hormones. The necessary monitoring of hormone levels by health professionals is not available and the transgendered people using this form of treatment are therefore risking their health due to overdoses and other problems.

⁸ CRC/C/SWE/CO/4 para. 51.

⁹ Ibid. para.47.

¹⁰ Lag (1972:119) om fastställande av könstillhörighet i vissa fall

¹¹ International Statistical Classification of Diseases and Related Health Problems (ICD), 10th Revision, Chapter V: Mental and behavioural disorders, F64.0

¹² The World Professional Association for Transgender Health’s Standards of Care for Gender Identity Disorders, Standards of Care (Sixth Version)

For those transgendered people that have moved to Sweden and have transitioned abroad the requirement is that they also must go through the Swedish gate keeping system before being able to access HRT under medical supervision. Sometimes this will lead to a situation that a post-op transgendered man or woman will be without any form of hormone treatment for months or years before being accepted into a program.

To meet the current sterilisation requirement the person undergoing gender reassignment surgery is not allowed to save germ cells. The interpretation of the sterilisation requirement therefore makes it much harder for a transgendered people to become a parent.

A revision of the present law is taking place and if this law is enacted, it will in some respects be even more restrictive.¹³ Instead of sterilization it will be a requirement of gonadectomy (castration) and the proposal is that only those who meet the WHO ICD-10 F64.0 diagnostic criteria will have the right to apply for gender recognition. This will in effect strengthen the position of the psychiatrist in the treatment process and the pathologization of transgendered people in Sweden.

The fear of discrimination and stigma that many transgendered people feel are barriers to accessing health care. If individuals experience discrimination or feel that their needs are not being recognised or addressed, this can result in them not going back. A recent study shows that there is a lack of trained staff with knowledge about the, sometimes, specific health care needs of transgender people.¹⁴

RFSU and RFSL recommend the Swedish government to:

- review the Swedish legislation and practice relevant to gender recognition and gender reassignment treatment.
- stop forced sterilization of transgendered and ensure that sex reassignment treatments respect the dignity of the person concerned and is available for all transgendered people.
- fund and support various health needs of transgendered people and offer health care of high quality that is consistent across the country.
- educate health sector professionals and decision-makers on issues concerning health care for transgendered clients.

HIV policies

According to the Swedish Institute for Infectious Disease Control (Smittskyddsinstitutet) about 5000 people are living with HIV in Sweden today. As of 1 July 2009, 8 655 cases of HIV infection had been reported since 1985. 448 cases of HIV infection were reported in 2008.

HIV is a disease considered to be a hazard to public health under the Swedish Communicable Diseases Act. A patient infected with a disease under the Act is legally obliged to follow directions given by the patient's doctor. If a patient is infected with HIV, s/he must disclose her HIV status when seeking medical or dental care. A person living with HIV is also obliged to inform a prospective sexual partner that s/he has HIV. This obligation applies to vaginal and anal intercourse, to oral sex and other sexual activities that involves a risk of spreading infection. The person living with HIV is obliged to inform the prospective sexual partner regardless if s/he is practicing safer sex or not.

Studies show that young people in Sweden have a comparatively low rate of condom use¹⁵ and risk-taking sexual behaviour in relation to HIV/STI has increased over the past decades, in particular amongst young people.¹⁶ RFSU and RFSL believe that the legal obligation to inform prospective sexual partners of HIV status is counterproductive to HIV prevention since it contributes to a false notion of safety. It also risks undermining the human rights of people living with HIV and contributes to stigma.

¹³ Ändrad könstillhörighet – förslag till ny lag (SOU 2007:16)

¹⁴ RFSL Ungdom, "Är du kille eller tjej?", 2008

¹⁵ Inequalities in young people's health, HBSC international report from the 2005/2006 survey, WHO/Europe, 2008

¹⁶ Herlitz, Claes, Hiv och aids i Sverige: Kunskaper, attityder och beteenden hos allmänheten 1987–2007, National Board of Health and Welfare, 2007

The directions issued to a patient under the Communicable Diseases Act, not least the obligation to inform prospective sexual partners of HIV status, are highly relevant in criminal cases involving HIV transmission or exposure. Courts have used the directions issued to a patient to decide both the objective and subjective elements of a crime. People living with HIV who violate the directions issued under the Communicable Diseases Act may as a result face criminal charges of the intentional crime *gross assault* (or *attempt to gross assault* where there was no transmission) or the negligent crime *causing bodily injury or illness* (or *creating danger to another* where there was no transmission) in the Swedish Penal Code.

In a precedent from 2004, the Supreme Court attempted to provide guidance on how to determine intent and carelessness in cases concerning HIV transmission or exposure. However, the way in which district courts and courts of appeal have decided similar cases after this precedent has not been foreseeable. The sentences for similar acts – where the person was aware of his/her HIV status and had unprotected sex and had not disclosed his/her status – have varied, from two months to several years of imprisonment. The infectiousness of the accused may, in some cases, be decisive for determining whether a crime was one of negligence or intent. In some cases, infectiousness is completely disregarded.¹⁷

According to UNAIDS, there are no data indicating that a broad application of criminal law achieves criminal justice or prevents HIV transmission. Rather, it risks undermining public health and human rights.¹⁸

Another obstacle to HIV prevention in Sweden is the lack of availability of needles for injecting drug users. In 2006 the Swedish Parliament passed legislation allowing for the setting up of needle exchange programmes in country councils. However, Stockholm County Council has to date not set up a needle exchange programme in spite of the fact that around 20 injecting drug users have been infected with HIV per year over the past decade.¹⁹ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, expressed concerns about the lack of a comprehensive harm reduction policy after his mission to Sweden in 2006.²⁰

RFSU and RFSL call on the Swedish government to:

- review criminal and public health law and practice with a view to eliminate provisions and practices that are counterproductive to HIV prevention, treatment, care and support, or provisions or practices that otherwise violate the human rights of people living with HIV.
- implement, throughout Sweden and as a matter of priority, a comprehensive harm-reduction policy, including counselling, advice on sexual and reproductive health and clean needles and syringes.

Protection of LGBT people in the asylum procedure

Since 2006 a person seeking asylum from persecution for reasons of his or her sexual orientation may be recognized as a refugee in Sweden in accordance with the 1951 Convention relating to the Status of Refugees. However, Sweden continues to forcibly return LGBT people to countries where homosexual or other "unnatural acts" by law can result in the death penalty or imprisonment or other persecution.

In the experience of RFSL, who provide advice and information to many individual LGBT asylum seekers, the Migration Board (Migrationsverket, the first instance deciding on claims for asylum) still writes in their statements that if nobody in the country of origin knew about the person's sexual orientation or gender identity, there should be no problem for him or her to return there, as long as the person did not live openly as homosexual. We are deeply concerned by the assertion that simply keeping one's sexuality covert is a safe and acceptable response to the possibility of persecution. To live withdrawn and silenced lives is not an alternative, but is in itself a form of persecution and discrimination.

¹⁷ For more information on HIV and criminalization in Sweden, see Gröön, Peter, and Leijonhufvud, Madeleine, *Hiv och straffansvar – en uppklarad problematik*, Svensk Juristtidning 2009 p. 609-643

¹⁸ UNAIDS Policy Brief. *Criminalization of HIV Transmission*, August 2008

¹⁹ See Holm, Lars-Erik, Carlson, Johan, and Wamala, Sarah, "Sprutbyte för narkomaner är en viktig folkhälsofråga" in *Dagens Nyheter* 4 November 2009

²⁰ A/HRC/4/28/Add.2 para. 62.

The Migration Board has also been criticized on several occasions for using country reports, written by the Swedish embassies on the situation in countries, as their main source of country information and rarely referring to reports from NGOs or other sources. According to the experience of RFSL, many of the embassy reports are of low quality and do not focus on LGBT rights or give a comprehensive picture of the situation for LGBT people in the country. There has also been a lack of understanding of for example the fact that it could sometimes be difficult for a LGBT person applying for asylum to immediately come forward to officials as a LGBT person, or to tell them about the problems the person has had in their country of origin. This is a problem related to poor expertise in LGBT rights.

Persecution on the grounds of gender identity, gender expression or sexual orientation is many times very difficult to prove. The Migration Board often refers to lack of indication that authorities are actively searching for homosexuals in the assessments. Many claims from LGBT asylum-seekers from countries where homosexuality is considered illegal, are rejected because of uncertainties about the application of the law.

Many asylum seekers in Sweden are placed in asylum reception centres, others face detention. RFSL has seen some cases where these living conditions have generated problems for LGBT asylum seekers. Many people often share rooms, and there have been cases where living together with people from the country you left due to homophobic or transphobic persecution has been difficult for LGBT people.

RFSU and RFSL recommend the Swedish Government to:

- review legislation, policies and practices concerning LGBT people in the asylum procedure.
- recognize the need for training of decision-makers and other staff at the Swedish Migration Board on issues regarding sexual orientation, gender identity and gender expression.
- stop encouraging LGBT people to refrain from expressing their sexual orientation or gender identity in order to avoid persecution.

Health care for undocumented migrants

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, criticized the Government of Sweden for not living up to its human rights obligations with regards to the right to health for all undocumented people and asylum-seekers after his mission to Sweden in 2006.²¹ The Government of Sweden has still not put in place any national legislative measures to alleviate the concerns expressed by the Special Rapporteur regarding health care for undocumented migrants, although some hospitals and county councils have adopted local and regional policies. Other obstacles to access to health care include cost and fear of discriminatory attitudes or of being reported to the authorities.²²

RFSU and RFSL wish to draw attention to the need for a full respect for sexual and reproductive health and rights for undocumented migrants. A recent study of the situation of undocumented pregnant women in Stockholm shows that, *inter alia*, cost was a barrier to their accessing antenatal care and that many women were not in control of their reproduction due to their lack of access to contraceptive advice and modern contraceptive methods.²³ Many of the patients seeking assistance from the underground health clinics in Sweden are women; of those many have reproductive health concerns such as need for antenatal or gynaecological care, treatment of sexually transmitted infections or access to abortion.

RFSU and RFSL call on the Swedish government to:

- ensure that all asylum-seekers and undocumented people are offered the same health care, on the same basis, as people legally resident in Sweden.

²¹ A/HRC/4/28/Add.2 para. 75. The concerns expressed by the Special Rapporteur mirror the advice expressed in the general comment of the Committee on Economic, Social and Cultural Rights, E/C.12/2000/4 para. 34

²² European Observatory Report on Access to Healthcare for Undocumented Migrants, Médecins du Monde, 2009

²³ Höög, Karolina, The ghost women - A study about undocumented pregnant women's needs and access to antenatal care in Stockholm, Sweden, Master thesis, Karolinska Institutet, 2009