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## **Submission to the United Nations Human Rights Council for its Universal Periodic Review of Sweden**

This information is submitted by RFSL<sup>1</sup> 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 the rights of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in Sweden.

### **Lack of basic rights for transgender people in Sweden**

Transgender people in Sweden lack legal protection against hate speech. The law covers and protects a number of vulnerable groups, but excludes transgender people, one of the more vulnerable groups targeted with intolerance and hatred.<sup>2</sup> Transgender people are not explicitly protected by the law concerning hate crimes, but despite this lack of the explicit inclusion, the law can be used to prosecute transphobic crimes. This lack creates legal uncertainty where the legislation can be interpreted in an arbitrary and inconsistent manner.<sup>3</sup>

Many transgender individuals in Sweden are denied legal gender recognition. Since the removal of forced sterilisation for people who want to change their legal gender in 2013, the medical and legal system has changed dramatically, however, the legal system still fails to ensure easy, fast and transparent access to gender recognition for everyone who needs it. Many people are denied this basic right, rejected by the Legal Advisory Council of the National Board for Health and Welfare, which demands fulfilment of requirements not stipulated in the legislation. Reasons given for rejection include that the person has not undergone a “standard evaluation” by a medical team, despite the fact that this is not required in the existing legislation<sup>4</sup>. In May 2014, RFSL successfully brought a case to the Administrative Court in Stockholm concerning the denial of the legal gender change of one individual, which sent the application back to the Legal Advisory Council for re-assessment based solely on the requirements of the law. The person is currently awaiting the new decision from the Council.

Sweden is currently failing to ensure that a change of legal gender has full effect in all areas of life, for example, in parental markers. In April 2014, RFSL won a case in the Administrative Court in Stockholm concerning a trans man who gave birth to a child and was forced by the Swedish Tax Agency (responsible for the Population Register in Sweden) to be recorded as “biological mother” in the child’s documents, despite his male name and male legal gender. This decision by the Tax Agency has forced him to be outed to everyone who has access to the documents. Because of the failure of the medical system to accept that a legal man could be pregnant, he also had his right to health care denied at times during his pregnancy and birthing. The Tax Agency has appealed the case and it is currently pending at the Administrative Court of Appeal in Stockholm.

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<sup>1</sup> RFSL (the Swedish Federation for Lesbian, Gay, Bisexual, Transgender and Queer Rights) is a non-profit organisation working with and for the rights of LGBTQ people.

<sup>2</sup> Brottsbalken (1962:700) 16 kap 8 §

<sup>2</sup> Brottsbalken, 29 kap 2 §

<sup>4</sup> Lag (1972:119) om fastställande av könstillhörighet i vissa fall

Despite the recent developments in the health care system, many people are still denied gender affirming health care. This leads to a situation where hormones are bought on the black market and people pay out of pocket for necessary surgeries, making them financially and medically vulnerable.

**RFSL recommends the Swedish Government to:**

- **Ensure the complete separation between the right to legal gender recognition and access to the medical system.**
- **Ensure that a change of legal gender has full effect in all areas of life, ensuring that no one risks being outed by, for example, the wrong parental marker.**
- **Include trans people in the hate speech legislation, by adding gender identity and gender expression as grounds in the legislation.**
- **Ensure access to free gender affirming health care for all transgender people who need it.**

**Lack of access to health care for vulnerable groups**

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, criticised the Government of Sweden for not living up to its human rights obligations with regard to the right to health for all undocumented people and asylum seekers following his mission to Sweden in 2006.<sup>5</sup>

Since 1 July 2013, undocumented migrants have the same availability to health care as asylum seekers, including health and dental care “that cannot wait”, prenatal care, contraceptive advice and abortions.<sup>6</sup> RFSL, as well as a number of other Swedish NGOs, such as The Swedish Red Cross, welcome the new law but would still recommend the Swedish Government ensures that undocumented migrants have the same access to health care as Swedish citizens.<sup>7</sup> RFSL would like to see full respect for the right to the best possible health for undocumented migrants, including those from especially vulnerable groups. These groups include, among others, migrant sex workers, who are at increased risk of violence and abuse, and have a higher risk of contracting STIs; and migrant transgender people, who, when denied access to hormonal replacement therapy, might be forced to get hormones on the black market, without necessary monitoring and risking negative health consequences.

The Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights both stress that States should provide adequate standard of physical and mental health without discrimination or limiting the access to health care.<sup>8</sup> The Committee on Economic, Social and Cultural Rights also stresses that asylum seekers and undocumented people who experience medical problems are some of the most vulnerable people in society and should not be denied their human right to medical services.<sup>9</sup>

Several reports have indicated that LGBT young people in Sweden experience poor health to a higher degree than the general population. For example, many young transgender people have poor mental health and 65% of transgender people aged 16-29 have considered suicide, compared to 16% of the rest of the population. RFSL believes that the Swedish State has responsibility for the health of all people in Sweden and that targeted interventions are necessary to avoid differences in health caused by discrimination.

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<sup>5</sup> 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

<sup>6</sup> <http://www.socialstyrelsen.se/nyheter/2013juli/fran1julifarpapperslosarattillhalso-ochsjukvardsominteknavanta>

<sup>7</sup> <http://www.redcross.se/teman/ratt-till-varld/>

<sup>8</sup> The Committee on the Elimination of Racial Discrimination, General Recommendation No 20 (2004) on non-citizens and The Committee on Economic, Social and Cultural Rights, General Comment No 14 (2000) on the right to the highest attainable standard of health.

<sup>9</sup> The Committee on Economic, Social and Cultural Rights, General Comment No 14 (2000) on the right to the highest attainable standard of health.

**RFSL recommends the Swedish Government to:**

- **Ensure that school nurses, psychologists, social workers and other professionals receive more knowledge and understanding of LGBT people's particular life situations and living conditions.**
- **Provide LGBT training and extra resources for health care services to be accessible and appropriate for all young people, including young LGBT people.**
- **Make targeted interventions to decrease the inequalities in health care.**
- **Guarantee the same access to health care for undocumented migrants as Swedish citizens.**

**Lack of rights for sex workers**

Since 1 January 1999, it is illegal to pay for brief sexual encounters in Sweden with money or other forms of compensation such as alcohol and narcotics. Sexual acts include intercourse and other sexual services. The act of selling sex is not criminalised. The purpose of the Sex Purchase Act is to discourage the buyers and decrease the number of sex workers. It is also intended to obstruct the establishment of trafficking networks in Sweden.<sup>10</sup> In 2005, the provision was transferred to the Penal Code as Section 11 of a new Sexual Crimes chapter. In 2010, the Government presented a report with a 10-year evaluation of the Act in which they concluded that it had achieved the Government's intended effect.<sup>11</sup> The report was heavily criticised by RFSL and others for not being impartial and not taking into account, nor respecting the experiences of sex workers. Among other statements in the report, the evaluator stated that comments made by sex workers that the law had made their life more difficult and increased the stigmatisation were not relevant, since the purpose of the law was to decrease the number of sex workers.

The Sex Purchase Act does not differentiate between voluntary sex work and involuntary sex work that includes trafficking and forced labour and this has made the empowering of voluntary sex workers very difficult. RFSL and others have also noted problems in relation to HIV prevention, where the distribution of condoms has been seen as an "encouragement to crime", as well as situations where the sex worker has been outed to neighbours when police have entered their apartment to arrest the buyer. We have also seen situations where a parent, who is a sex worker, has lost custody of their children. The human rights of sex workers in Sweden, such as the right to privacy, are seriously lacking.

The Sex Purchase Act is based upon a gender power perspective where sex work is seen as an example of men's sexualised violence against women. This heteronormative view leads to the exclusion of the majority of LGBT sex workers and also limits the number of interventions targeting sex workers who are not women selling sex to men. There is a need for more interventions reaching a wider group of sex workers to ensure that all sex workers who need health services and assistance, including stopping sex work, have access to it. Another law that limits the rights of sex workers is the law against procuring, which in some circumstances makes it illegal for sex workers to have a domestic relationship since it is illegal to be supported by a person selling sex.<sup>12</sup>

RFSL believes that the Sex Purchase Act does not solve the difficulties sex workers face and instead proposes greater social efforts and more active engagement by the Government to stop the exclusion of sex workers in society. There is also a lack of evidence that the legislation has had the intended effect as the number of sex workers and buyers in Sweden before and after the law was introduced remains unknown.

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<sup>10</sup> <http://www.regeringen.se/sb/d/2593/a/116601>

<sup>11</sup> SOU 2010:49

<sup>12</sup> Brottsbalken (1962:700) 6 kap 12 §

Several international organisations, such as WHO, UN Women, the Global Commission on HIV and the Law, and Human Rights Watch, call for the total decriminalisation of sex work.<sup>13</sup>

**RFSL recommends the Swedish Government to:**

- **Objectively evaluate all existing legislation affecting sex workers, with a clear focus on the effects for, and human rights of, sex workers.**
- **Increase social efforts to support both voluntary and involuntary sex workers with resources and advice.**
- **Ensure support from Government agencies to organisations for sex workers.**
- **Encourage research in the field of sex work.**

**Negative effects of the Communicable Diseases Act**

Every person in Sweden living with HIV must abide by a number of rules stated in the Communicable Diseases Act. According to this law, people living with HIV must disclose their HIV status to their sexual partner before engaging in any sexual acts, regardless of whether safer sex was practised.<sup>14</sup> If someone fails to inform a sexual partner of their HIV-positive status, the person might be charged with aggravated assault and face the penalty of prison, even though the virus was not transmitted.<sup>15</sup>

RFSL believes this focus on what is stated rather than what is done is counterproductive for HIV prevention and contributes to the stigmatisation of people living with HIV, requiring that only people knowingly living with HIV must at all times be responsible to take preventive measures. We believe that both (all) partners in the sexual activity have a shared responsibility for taking preventive actions, since it is impossible to know the status of another person and that person might be unaware of their HIV status themselves.

If a person does not abide by these rules, or any other rules stated by their doctor, they can, after a number of warnings and a court order, be forcefully isolated in the Disease Control Unit in a hospital. The isolation will be extended as long as the doctor deems fit.<sup>16</sup>

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.<sup>17</sup>

UNAIDS recommends that States abolish HIV criminalisation under certain circumstances. They believe that criminalisation should not be used in cases:

- without any real danger of disease transmission
- where the person was unaware of their positive status
- where the person feared retribution if the information got out and
- where the person took reasonable actions in preventing spread, such as using a condom or other actions minimising the risk of spread.<sup>18</sup>

States should also:

- Issue guidelines to limit Police and prosecutorial discretion in application of criminal law (e.g. by clearly and narrowly defining “intentional” transmission, by stipulating that an accused person’s responsibility for

<sup>13</sup> <http://www.amnesty.se/upload/files/2014/04/02/Summary%20of%20proposed%20policy%20on%20sex%20work.pdf>

<sup>14</sup> Smittskyddslagen 2004:168

<sup>15</sup> Brottsbalken 3 kap 6 §

<sup>16</sup> Smittskyddslagen 2004:168

<sup>17</sup> UNAIDS Policy Brief. Criminalization of HIV Transmission, August 2008.

<sup>18</sup> Ending overly broad criminalization of HiV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations, Guidance Note 2013, UNAIDS

HIV transmission be clearly established beyond a reasonable doubt, and by clearly indicating those considerations and circumstances that should mitigate against criminal prosecution).

- Ensure any application of general criminal laws to HIV transmission is consistent with their international human rights obligations.

RFSL support UNAIDS in these views.

During 2013, the Public Health Agency of Sweden published a document with new facts on HIV transmission, and the National Board of Health and Welfare followed up with a recommendation to doctors to review their instructions to patients living with HIV, stating that it was no longer necessary to inform sexual partners of a positive HIV status. RFSL views this as a very positive development, but the results of this recommendation remain to be seen.

**RFSL recommends the Swedish government to:**

**- Review the Communicable Diseases Act according to UNAIDS recommendations.**