

The Human Rights Council
Geneva

Stockholm 6th July 2019

UPR submission- UNICEF Sweden

I. The legal status and implementation of the UN Convention on the Rights of the Child

Issues of concern:

1. The Swedish parliament has decided to incorporate the Convention on the Rights of the Child (CRC) into national law 1st January 2020, alongside continued transformation. This decision is highly welcomed and in line with the Committee of the Rights of the Child's recurring recommendation to Sweden and numerous recommendations from the previous UPR review of Sweden.¹ However, the CRC will gain legal status as national law and will not take precedence over other national legislation in situations of law conflict. This raises a risk that the Convention will not always prevail when provisions of domestic law conflict with the Convention. When the European Convention on Human Rights was incorporated into national legislation in Sweden, it was complemented with a specific constitutional status stating that no law may be announced that violates the Convention.² This possibility has not been applied for the CRC.

UNICEF Sweden recommends the Swedish Government to:

2. *Introduce effective legal measures to guarantee that the Convention of the Rights of the Child (CRC) and its optional protocols will prevail when provisions of domestic law conflict with the CRC.*

II. Access to effective remedies

Issues of concern:

3. Access to remedies is a precondition for the complete fulfilment of human rights.³ However, Sweden lacks specific complaints mechanism for children. When children's rights are violated in Sweden, there are limited possibilities to receive support and redress at local, national and international level.

¹ 145.5. Initiate the process to incorporate the UN Convention on the Rights of the Child into national legislation and continue the formulation of a third plan of action for human rights (Albania); 145.6. Adopt measures to incorporate the Convention on the Rights of the Child into national legislation (Angola); 145.7. Take measures to ensure the full incorporation of the provisions of the Convention on the Rights of the Child in Swedish legislation (France); 145.8. Take measures to incorporate the provisions of CRC into the Swedish law (Qatar); 145.9. Work effectively on incorporating the CRC into Swedish laws (Iceland);

² The 1974 Instrument of Government, Chapter 2:19. The ECHR was incorporated into Swedish law 1995.

³ CRC/GC/2003/5 paras. 24 - 25

Despite the previous recommendations of the Committee on the Rights of the Child and the accepted recommendations from the previous UPR review⁴, no progress has been made. The Swedish Government has not presented any plans on ratifying the Optional Protocol on a Communications Procedure, nor has the Government expressed any intention to introduce national complaints mechanisms for children. This despite the fact that the CRC will be incorporated into national legislation 1st January 2020.

4. The Swedish Government has proposed that Sweden should establish a national institution for human rights.⁵ According to the proposal the institution will however not be able to receive individual complaints. No measures have been taken to provide the Ombudsman for Children with the mandate to receive individual complaints.

UNICEF Sweden recommends the Swedish Government to:

5. ***Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, granting children the right to lodge individual complaints against the State.***
6. ***Ensure that children have access to effective remedies at local and national level when their rights are violated.***
7. ***Extend the mandate of the Ombudsman for Children to receive, investigate and decide on individual complaints from children in a child-sensitive manner.***

III. Children in Migration

Issues of concern:

Legislation

8. Since the previous review of Sweden, there have been several changes in national legislation regarding asylum and protection. A temporary Aliens Act was passed in July 2016 with the purpose to reduce the number of asylum-seekers. The law has been prolonged until 2021. A new permanent asylum legislation is to be developed in parallel.
9. The temporary Aliens Act has affected children seeking asylum negatively in many ways, both unaccompanied children and children with families. The change to temporary instead of permanent residence permits has had a negative impact specifically on children and their well-being. The previous amendment initiated 2014, to enable for children to be granted a residence permit in cases of particularly distressing circumstances that widened the scope of the provision for children⁶, has now been severely restricted. Under this provision, the state of health, the level of integration, and the situation in the country of origin of a child was taken into consideration. This provision has now been limited in law to only cover situations when an expulsion would be in breach of a “Swedish convention obligation” and is thus very rarely applied.

⁴ A/HRC/29/13, para. 145.1. Consider the ratification of the third Protocol to the Convention on the Rights of the Child, thereby establishing a procedure for presentation of communications (Belgium); para. 145.24. Consider the introduction of a complaint mechanism for children at the domestic level as well as signature and ratification of the Third Optional Protocol to the Convention on the Rights of the Child on a communication procedure (Ireland);

CRC/C/SWE/CO/5, paras. 14, 61

⁵ Ds 2019:4, Förslag till en nationell institution för mänskliga rättigheter i Sverige

⁶ Aliens Act (2005:716) Chapter 5:6

Age assessment procedures

10. In Sweden, age assessments in the asylum procedure are permitted when there is ‘reasonable doubt’ about an individual’s age. However, it is unclear how reasonable doubt is defined and what safeguards are in place to prevent abuse of the concept.⁷ According to official statistics there has been a significant increase in the number of unaccompanied minors whose age has been changed to 18 without medical age assessments or other investigations, due to lack of proof for being a minor and considered as an “obvious” case.⁸ The “obvious cases” are not decisions that can be appealed and no legal representation is provided. The consequence of an incorrect assessment is the total denial of the child’s rights.
11. Sweden has in previous years used different medical assessment methods to assess the age of asylum seekers. In 2017 a method based on dental and knee X-rays was introduced.⁹ The results have however shown a high margin of error and quality of the procedure has been questioned by experts. Despite this, the procedure continues to be used.
12. The value of non-medical methods such as psychological and social assessments have not been given due weight as they are not considered as highly credible information to assess the age of a minor. This despite the recommendation of holistic assessments presented by the Committee of the Rights of the Child.¹⁰
13. The medical age assessment is not compulsory, but a refusal to participate without an acceptable reason will lead to the prediction that the person is 18 years or older.

Family unity

14. The right to family reunification has been constrained by the temporary Aliens Act. The Migration Court of Appeal ruled in a case that the legal restriction is contrary to the provisions of the CRC.¹¹ The Swedish Government has responded to the criticism and reintroduced right to family reunification for a wider group of asylum-seekers. However, the law is insufficient as many practical obstacles including stricter supporting requirements remain.

Right to participation

15. There are serious restrictions both in legislation and practice for asylum seeking children to exercise their right to be heard in the asylum process. The Committee on the Rights of the Child has recommended Sweden to amend the legal provision to ensure that a child is heard whenever a decision affecting him or her is made.¹²
16. This has not been attended and the Aliens Act still includes an exception clause allowing for children to be denied their right to be heard if considered inappropriate. In the latest annual report from the Swedish Ombudsman for Children the majority of the children interviewed experienced not being questioned or asked relevant questions in order to determine their need for asylum and protection.

⁷ Protected on paper? An analysis of Nordic country responses to asylum-seeking children. UNICEF Office of Research- Innocenti, Florence (2018)

⁸ In a report examining a sample of 145 cases, the Swedish Migration Agency found that the child’s age had not been investigated sufficiently in the majority of cases due to the pressures on asylum systems.

⁹ Procedure exercised by National Board of Forensic Medicine. <https://www.rmv.se/verksamheter/medicinska-aldersbedomningar/medicinska-aldersbedomningar-asylarenden/>

¹⁰ CMW/C/GC/4-CRC/C/GC/23, para. 4

¹¹ MIG 2018:20

¹² CRC/GC/2003/5, para. 20

This is also confirmed in a recent government inquiry where the majority of cases reviewed had not questioned children.¹³

Child-specific forms of persecution

17. The Swedish Aliens Act does not explicitly include a clause on child-specific forms of persecution. This has been recommended by the Committee of the Rights of the Child.¹⁴ The Swedish Government has considered it sufficient to, for instance, handle of asylum claims for unaccompanied minors at specific child units with specialised staff. However, in 2016 the Swedish Migration Agency changed their work model and removed the specialised child units.
18. There is no specific legal position as guidance for the case officers on the assessment of children's asylum claims. Furthermore, there are very few decisions from the Migration Court of Appeal concerning children and child-specific persecution, to offer clear guidance.

UNICEF Sweden recommends the Swedish Government to:

19. ***Strengthen the implementation the principle of the best interests of the child in all decision making regarding children in migration.***
20. ***Ensure that the future Aliens Act provides the possibility for asylum-seeking children to be granted specific humanitarian protection in accordance with the principles of the CRC and the principle of non-refoulement.***
21. ***Introduce age assessment procedures that are child-sensitive, based on holistic evaluations, respecting the rule of law and the principle of the benefit of the doubt.***
22. ***Introduce effective measures in law and practice in order to guarantee the effective right to family reunification for all children.***
23. ***Ensure that all children in the asylum process have the right to be heard and participate in the asylum process in a child-sensitive manner.***
24. ***Initiate an amendment in the Aliens Act regarding child specific forms of persecution, to safeguard that child- specific forms of persecution are recognized and individually assessed.***

IV. Violence against children

Issues of concern:

25. Sweden was the first country in the world to ban corporal punishment in the home. Despite current legislation, children are exposed to various forms of domestic violence. According to the latest national survey, no less than 36 percent of the children in Sweden say that they have been subjected to some form of child abuse by their parents during their upbringing.¹⁵ We also know that many cases remain unreported especially among younger children.

¹³ Barnombudsmannen (2017), "Vi lämnade allting och kom hit" – Röster från barn och unga på flykt SOU 2016:19, Barnkonventionen blir svensk lag.

¹⁴ CRC/GC/2003/5, para. 50 (b)

¹⁵ Jernbro, Carolina & Jansson, Staffan. *Violence against children in Sweden 2016. A national survey*. Stiftelsen Allmänna Barnhuset.

26. The law on corporal punishment is not legally sanctioned as a specific crime in the Penal Code. There is a lack of consistency between the definition of violence against children according to the CRC and the Penal Code in Swedish law. Current legislation implies that certain forms of violence against children are not considered a crime, for example neglect and psychological violence.
27. Children themselves confirm their weak legal status as victims of domestic violence. Children many times experience that they haven't been able to express their right to be heard and listened to. They also feel that authorities have failed to provide appropriate support based on their needs. In many cases children have reported to social services or police but their case has not been accounted for.¹⁶
28. The Swedish Government has responded to this issue by assigning an official inquiry to investigate the possibility of penalising the situation of letting children witness violence. The inquiry was presented in June 2019 and it suggests that a new penal provision on violation of a child's integrity be introduced in the Penal Code. This is a positive measure, but only covers a limited area of violence against children.
29. The legal responsibility to promote collaboration is stated in the Social Services Act.¹⁷ Nevertheless, the social protection system does not function primarily based on the child's right to support and protection. Barnahus is a child-friendly, interdisciplinary and multi-agency centre for child victims of violence. Children can be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals. However, there is a lack of national governance and formalization of guidelines, which results in varied quality of the centres as well as inequality in access to support and protection for children affected by violence.¹⁸
30. Official statistics concerning domestic violence are inadequate. Existing statistical systems do not specifically record violence on children from caregiver. There are no national statistics on number of reported cases of suspected domestic child abuse to social services, only scattered local statistics collected. Neither are there statistics on number of suspected cases that lead to legal proceedings. Statistics on social protection systems response to children experiencing violence at home are also missing.

UNICEF Sweden recommends the Swedish Government to:

- 31. *Take further legal and social measures to fully protect children from all forms of violence as stipulated in article 19 in the Convention the Rights of the Child, and thereby include all forms of physiological violence and neglect.***
- 32. *Introduce child-abuse as a specific crime in the Penal Code that includes all forms of violence against children aligned with the CRC.***
- 33. *Regulate by law how the police, social services and judiciary should coordinate in cases involving child-abuse, including a national guidelines for the Barnahus model.***
- 34. *Improve the national statistic system to be able to monitor the extent of domestic violence of children.***

¹⁶ UNICEF Sverige 2018, *Vem skyddar mig från våld*

¹⁷ Social Services Act (2001:453) chapter 5:1a

¹⁸ SLUTRAPPORT UTVÄRDERING AV BARNAHUS S2018/00212/FST, Barnafriid 2019

V. Children in social exclusion

Issues of concern

35. Sweden is one of the countries where inequalities increase the most within the OECD and EU. Research from UNICEF¹⁹ states negative development and increasing inequalities regarding income, education, health and well-being in Sweden.
36. Results from the annual report from the Ombudsman for Children²⁰ show that children experience alienation and exclusion from vital parts of society. Many children describe violence as an ever-present reality, both in school and in their neighbourhood. The more excluded children are, the weaker are their opportunities to participate in matters affecting them. Participation is described as a counterforce to the feeling of exclusion. Children need the possibility to express their opinions and their experiences of social exclusion and ways to inclusion and meaningful participation.
37. The Swedish Government has responded by appointing a national coordinator in 2014, with the purpose to review the social services system for children. Funds have also been earmarked to improve the social services system for children. In 2017, the Government also initiated a welcomed review of the Social Service Act, including a specific part on how to strengthen the child rights perspective. The review will be presented July 1st, 2020.
38. Despite the efforts made by government, the situation for children in need of support from society is still of great concern. Results from a government inquiry show that the right to express your views and be listened to does not seem to be considered an obligation in the application of the law.²¹
39. Completed schooling is a powerful tool to breach social exclusion. According to UNICEF²², Sweden is one of the world's richest countries where inequality informs the educational system to a high extent. OECD latest report on Swedish schools express that measures are needed to solve the increasing inequality in Swedish schools. The OECD and UNICEF considers that the design of the free school system contributes to school segregation. The system does not cut down on competition in itself, but the latest report points out that Sweden is does not sufficiently counteract the negative effects that freedom of choice and competition leads to.²³
40. The Government has assigned several inquiries concerning the challenges of the Swedish school system, but still the inequality continues to expand.²⁴ It is crucial that the school fulfils its compensatory mission and function as a leveraging tool for all children, rather than contribute to further exclusion.

¹⁹ UNICEF Office of Research (2016). 'Fairness for Children: A league table of inequality in child well-being in rich countries', Innocenti Report Card 13, UNICEF Office of Research – Innocenti, Florence.

²⁰ Barnombudsmannen (2018), *Utanförskap, våld och kärlek till orten*

²¹ SOU 2016:19, *Barnkonventionen blir svensk lag*

²² UNICEF Office of Research (2018). 'An Unfair Start: Inequality in Children's Education in Rich Countries', Innocenti Report Card 15, UNICEF Office of Research – Innocenti, Florence.

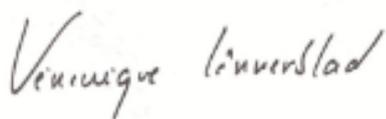
²³ <http://www.oecd.org/economy/sweden-economic-snapshot/>, <http://www.oecd.org/education/school/improving-schools-in-sweden-an-oecd-perspective.htm>, UNICEF Office of Research (2018). 'An Unfair Start: Inequality in Children's Education in Rich Countries', Innocenti Report Card 15, UNICEF Office of Research – Innocenti, Florence.

²⁴ Dir. 2015:35, Dir. 2015:140, Dir. 2016:86, Dir 2018:71.

UNICEF Sweden recommends the Swedish Government to:

- 41. Take active measure to realize the right of participation for all children, not least children affected by social exclusion and vulnerable living conditions.*
- 42. Adopt a national strategy with a holistic approach on how to increase social inclusion among children.*
- 43. Increase the state responsibility of the educational system in order to fulfil its compensatory mission and counteract educative inequalities.*

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