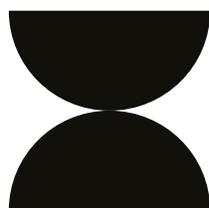
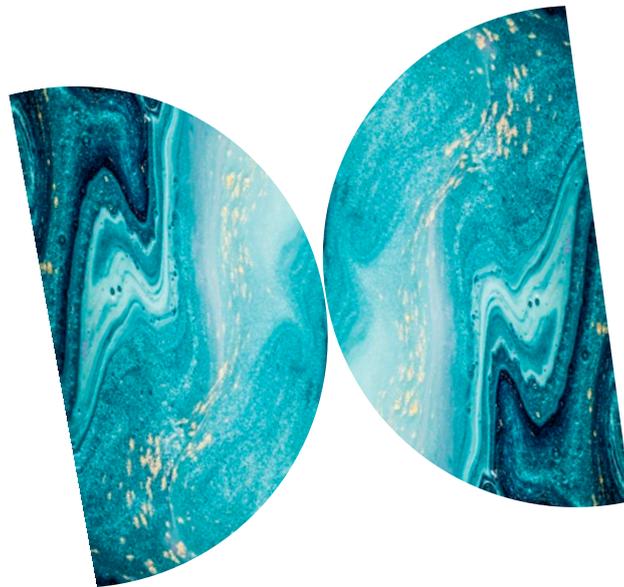


2022

# Supplementary information to the UN Committee on the Rights of the Child



SWEDISH  
INSTITUTE FOR  
HUMAN RIGHTS



The inauguration of the Institute on 31 May 2022.  
Photo: Charlotte Carlberg Bårg

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## **Supplementary information to the UN Committee on the Rights of the Child for consideration of the sixth and seventh periodic reports of Sweden**

With reference to the Committee's invitation to provide updated supplementary information prior to the consideration of Sweden's sixth and seventh periodic reports. The Swedish Institute for Human Rights commenced operations on 1 January 2022. The purpose of the Institute is to actively promote the safeguarding of human rights in Sweden, based on the Constitution of Sweden and Sweden's international human rights commitments, including the UN Convention on the Rights of the Child (CRC).

The Institute's independence is central to its contribution to safeguarding human rights in Sweden. An important part of the Institute's independence is that its duties are regulated in the Act (2021: 642) on the Institute for Human Rights. The Act states that the Institute itself determines its organisation and the detailed direction of its work within the framework of its duties. Submitting supplementary reports to international human rights monitoring bodies is an important tool for a national human rights institute to fulfil its mission in accordance with the Paris Principles.

The Institute hereby takes this opportunity to draw the attention of the UN Committee on the Rights of the Child (the Committee) to seven areas that we suggest the Committee take into account in its deliberations with and recommendations to Sweden.

Our submission does not reflect all relevant human rights challenges in Sweden within the scope of the CRC. Thus, we also refer to submissions from other national actors, such as the Swedish Ombudsman for Children, various civil society organisations and the coordinated civil society alternative report.

**On behalf of the Swedish Institute for Human Rights**

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# I. NEW DEVELOPMENTS

## 1. The impact of the COVID-19 pandemic on children

### Reference to List of Issues (LoI) I para. 2 b and response to LoI para. 2 b and c.

The Swedish Ombudsman for Children's report to the Committee on the Rights of the Child on the COVID-19 pandemic highlights the impact of Sweden's response to the COVID-19 pandemic on children.<sup>1</sup>

The Swedish Ombudsman has also been tasked with, based on the UN Convention on the Rights of the Child (CRC), reporting and analysing the consequences of the COVID-19 pandemic for children and young people in Sweden, with a particular focus on vulnerable children and children with special needs.<sup>2</sup>

The final report points out that shortcomings in the implementation of the CRC, which had been known for some time, were exacerbated during the pandemic, for example in relation to assessments and determination of the best interests of the child and the right to participation.

Several national decisions during the pandemic have been made with an awareness of the need to take into account the impact on children and the best interests of the child, for example by keeping schools open to a large extent. At the same time, the pandemic itself and the decisions made have had a major impact on children, and particularly on children who were already in vulnerable situations. A particular challenge during the pandemic, according to the Swedish Ombudsman for

Children, has been ensuring, in accordance with Article 2 of the CRC, that the rights of every child are respected without discrimination of any kind. Circumstances such as place of residence, socio-economic status, age, or disability should not have an impact, which according to the Swedish Ombudsman for Children has been the case to a large extent. Furthermore, the final report states that the impact on children's rights is not fully known, nor is it clear in what ways children's vulnerability has been affected by the pandemic.

The Swedish Ombudsman for Children stresses that further follow-up and evaluation will need to be carried out for a long time to come, both for children in general and for different groups of children and individual children. According to the Swedish Ombudsman, there is a need to follow, inter alia, children who have long-term symptoms from COVID-19, children with relatives who have had a serious case of COVID-19, children with disabilities, children with a parent in detention, and children who live in financial or other vulnerability at home. For example, according to the Swedish Ombudsman for Children, there is evidence of a general increase in domestic violence during the pandemic, as shown in a report by the Swedish Gender Equality Agency.<sup>3</sup>

The Swedish Ombudsman points out, among other things, that the wide variations in the picture of children's exposure to violence expressed in different reports need to be followed up, as this may indicate that there is a large number of

<sup>1</sup> *The Swedish Ombudsman for Children (2020), Additional submission to the UN Committee on the Rights of the Child from the Ombudsman for Children in Sweden focusing on Sweden's response to Covid-19, 2020-06-15.*

<sup>2</sup> *Regeringsbeslut, Regleringsbrev för Barnombudsmannen 2020 (A2020/02109/MRB) samt 2021 (A2020/02710, A2020/02668). [Government decision, Annual appropriation directives for the Swedish Ombudsman for Children 2020]*

<sup>3</sup> *Swedish Gender Equality Agency report 2021:8, Covid-19 och våldsutsatthet [COVID-19 and vulnerability to violence].*

unreported cases which have not been brought to the attention of the responsible authorities. At the same time, social vulnerability in the wake of the pandemic may also increase the need for social service intervention. There must be preparedness on the part of both the Government and the municipalities as to how these needs are to be handled and prevented, according to the Swedish Ombudsman.

The pandemic has affected the lives of all children and young people, but it is only when the consequences of the pandemic become visible that the right interventions can be designed, according to the Swedish Ombudsman for Children. In order to minimise and compensate for negative consequences for children during a social crisis and to ensure that the necessary considerations regarding children and their rights are made before decisions on action are taken, it is crucial, according to the Swedish Ombudsman, that child rights assessments and determinations on the best interests of the child are carried out in accordance with Articles 3 and 4 of the CRC. Furthermore, the Swedish Ombudsman underscores in their report that child participation is a challenge for many decision-makers. At the same time, participation is central to the realisation of children's rights. The Swedish Ombudsman points out that in monitoring the impact of the pandemic on children and young people and in deciding on measures, the groups of children and young people concerned must be involved in accordance with Article 12 of the CRC.<sup>4</sup>

For example, Sveriges Elevkårer [Swedish Federation of Student Unions] has conducted its own studies as well as a study in partnership with the Swedish National Agency for Education on the effects of the COVID-19 pandemic on upper-secondary school pupils in Sweden. The study in

partnership with the Swedish National Agency for Education was conducted in the spring of 2020 to follow up on pupils' experiences of distance learning during the COVID-19 pandemic.

As many as 50 per cent of the responding pupils said that their well-being was negatively impacted by the rapid shift from physical to digital distance learning. Many also reported experiencing higher levels of stress (40 per cent) as a result of not only the shift, but also due to their own discipline and structural factors such as scheduling. In many cases, the digital interaction with the school and teachers has also led to the perception that support from the teachers has deteriorated (42 per cent) and that it has become more difficult to ask the teacher questions. This follow-up study, which focused on the design and quality of distance education, shows, among other things, that what characterises good distance education is in principle the same as quality classroom instruction. A clear structure, sufficient teacher support, and variation in the tasks and exercises are important.

At the same time, the respondents indicate that teaching needs to be designed differently to a large extent, indicating that the conditions for learning, study motivation and focus are different at a distance compared to in the classroom. The vast majority (79 per cent) felt that the physical working environment was acceptable good or very good, and even more felt that the technical equipment, internet connection and digital platforms worked in a satisfying way.<sup>5</sup>

In 2021, Sveriges Elevkårer conducted a follow-up survey on upper-secondary pupils' experience of being back in school after distance learning in the context of the COVID-19 pandemic. In the report, Sveriges Elevkårer point out that they had already drawn the public's attention to the increase

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4 *The Swedish Ombudsman for Children (2021), Covid-19-pandemins konsekvenser för barn – slutredovisning av regeringsuppdrag 2021-06-30, Dnr 2020-0218. [The consequences of the COVID-19 pandemic for children – final report of government assignment 2021-06-30.]*

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5 *Sveriges Elevkårer [Swedish Federation of Student Unions] and Swedish National Agency for Education (2020) Uppföljande undersökning om gymnasieelevers upplevelse av distansundervisning VT2020 [Follow-up survey on upper-secondary school pupils' experience of distance education, spring 2020], p.4.*

in poor mental health among pupils back in 2017. After being largely isolated at home, with less port in school matters and a lack of social contact with classmates and teachers, the situation has worsened during the COVID-19 pandemic.

Sveriges Elevkårer describe how a whole generation of young people has lost knowledge, seen a drop in grades, and lost study skills and motivation. Back at school, the pressure has increased on them to make up for lost time, while adapting to the new environment. High-achieving pupils are stressing to raise their grades, while those who needed extra support have now completely fallen by the wayside. Their research has seen pupils report depression, eating disorders, burnout, low self-esteem and social phobia. Sveriges Elevkårer argues that in order to prevent the situation from getting worse, resources must be put in place immediately. They believe that it is the young people who will carry society into the future.

Sveriges Elevkårers proposals for change include offering all pupils counselling, mapping skills, and providing extra support to those who need it. The school health service needs to be strengthened and resources put in place to shorten waiting times for child and adolescent psychiatry services. The “Skolmiljard” government grant allocated to schools to combat the effects of the COVID-19 pandemic must under no circumstances be hoarded; it is urgently needed, according to Sveriges Elevkårer. In their report, they write that decision-makers must now stop casually saying that they are listening, and actually hear what the pupils are saying. They express that this is a cry for help.<sup>6</sup>

Like the Swedish Ombudsman for Children, the Swedish Institute for Human Rights would like to

emphasise the need to take action based on the follow-up carried out in order to ensure that the negative consequences of the pandemic are compensated for and minimised so that children’s rights are respected to the maximum extent possible.<sup>7</sup>

In its 2021 annual report to the Swedish Government, the Swedish Ombudsman for Children suggests, among other things, that children’s participation in Sweden’s crisis response needs to be ensured by including a child rights perspective in the statutes, strategies, guidelines and policies related to Sweden’s crisis response and total defence. The best interests of the child must be taken into account in measures concerning children. This must be clear in the regulation of the actions of municipalities, regions and authorities before and during crises and times of high alert.

The Swedish Ombudsman for Children proposes a clearer child rights perspective in the regulation, requiring an analysis of the impact of preparations and other measures on children and requiring that decisions are taken with regard to the best interests of the child. Furthermore, the Swedish Ombudsman suggests in its annual report to the Swedish Government that it must be ensured that child-friendly information is available before, during and after crises and extraordinary events and that the information provided must also be adapted to different groups of people according to their circumstances. Children and young people should also be involved in the creation of public information aimed at them.<sup>8</sup> The Swedish Institute for Human Rights would like to stress the importance of the information produced being adapted to the circumstances and needs of different groups of children, especially children with disabilities.<sup>9</sup>

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6 Sveriges Elevkårer (2021), *Framtidsoro & psykisk ohälsa – Så har Sveriges gymnasieelever påverkats av distansundervisningen* [Worry for the future & poor mental health – How Sweden’s upper-secondary pupils have been affected by distance education], p. 4.

7 The Swedish Ombudsman for Children (2020), *Additional submission to the UN Committee on the Rights of the Child from the Ombudsman for Children in Sweden focusing on Sweden’s response to COVID-19*, 15 June 2020.

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8 The Swedish Ombudsman for Children’s 2021 annual report, *Alla tar ju inte ansvar - Barnkonventionen som lag under en samhällskris* [Not everyone takes responsibility – The Convention on the Rights of the Child as law in a time of societal crisis].

9 See also Swedish Disability Rights Federation (2019) *Respekt för rättigheter? Rapport om hur Sverige lever upp till konventionen om rättigheter för personer med funktionsnedsättning 2019* [Respect for rights? Report on how Sweden complies with the Convention on the Rights of Persons with Disabilities 2019], p. 35.

In the Swedish Agency for Participation's (MFD) mapping of the impact of the pandemic, they have listened to children and young people with their own experience and have taken note of their challenges and solutions. The mapping describes specific areas that have affected children and young people, and specific implications of the pandemic for children and young people with disabilities. For many children and young people with disabilities, the school situation has deteriorated during the pandemic. The sick leave and workload are higher among teachers, and this has affected the quality and continuity for pupils in all grades. In addition, many schools have failed to provide pupils with special needs with the same support they had before the pandemic. Upper-secondary school pupils studying at a distance have faced additional challenges. Increased individual responsibility, reduced contact with teachers and a perceived loneliness have contributed to lower motivation and poorer academic performance.

The mapping refers to the fact that the Government presented special initiatives for holiday schools to give pupils the opportunity to catch up on knowledge. MFD believes that specific measures are needed in the initiatives to ensure that pupils with disabilities receive extra support and the same opportunities to catch up. MFD believes that the pandemic has also had a major impact on the labour market, with more people becoming unemployed and increased competition for jobs. For young people with disabilities, this means they face additional challenges to enter the labour market. More internships, increased support from the Swedish Public Employment Service, and more opportunities for further education are needed to overcome the impact of the pandemic. MFD's mapping also found that children and young

people with disabilities feel a greater sense of anxiety than other children and young people during the pandemic. Many feel that general advice and recommendations are not adapted to their situation, and they worry about getting sick. This has led to cancellation of activities, social isolation and poorer mental health. When children can be reactivated through hobbies and a more active leisure time, social isolation can be broken, but beyond that, special support and care may be necessary for some. According to MFD, it has become clear during the pandemic that there is a lack of data and statistics on the lives and well-being of children and young people with disabilities<sup>10</sup>.

Based on previous research, available statistics and current data on the pandemic, the Institute for the Evaluation of Labour Market and Education Policy (IFAU) has published a report highlighting possible consequences of the COVID-19 pandemic for children and young people at the time and in the slightly longer term. IFAU argues that it was too early to draw conclusions about the long-term consequences of the COVID-19 pandemic, but the overall conclusion was that the pandemic is having a negative impact on many children and young people.

Particularly affected are children and young people from already vulnerable backgrounds, with weak socioeconomic backgrounds and weaker social safety nets. IFAU therefore finds that there is a need to protect and develop the institutions, such as maternal and child health care services, social services and school health services, that deal with vulnerable children and young people, as well as to provide the education system with the means to compensate for the shortcomings in human capital development and lost life chances caused by the pandemic.<sup>11</sup>

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<sup>10</sup> Swedish Agency for Participation (2021), *Barn och unga mitt i en pandemi – Konsekvenser av coronapandemin för barn och unga med funktionsnedsättning* [Children and young people in the midst of a pandemic – The impact of the coronavirus pandemic on children and young people with disabilities].

<sup>11</sup> IFAU report 2021:2, *Barn och unga under coronapandemin - Lärdomar från forskning om uppväxtmiljö, skolgång, utbildning och arbetsmarknadsinträde* [Children and young people during the coronavirus pandemic – Lessons learned from research on childhood environment, schooling, education and entry into the labour market].

The Swedish Corona Commission was tasked with evaluating the measures taken by the Government, administrative authorities, regions and municipalities to limit the spread of the virus causing COVID-19 and the effects of its spread. According to the Commission, the overall picture shows that the pandemic has contributed to accentuating already existing inequalities.

The Commission's terms of reference also required it to report throughout what impact the measures taken have had on human rights and freedoms, including the rights of the child. The Commission was also required to report on the impact on gender equality and on people with disabilities.

The final report of the Corona Commission, submitted to the Swedish Government in February 2022, indicates that it is difficult to determine with certainty how different assessments and determinations were made, and by whom. Except for the issue of school closures, it is unclear, other than at a general level, what the considerations were in more detail or what individual interests were weighed against each other in various decisions. In the Commission's view, it was not possible to see any clear-cut pattern as to who was responsible for the final determinations. It is therefore unclear to what extent the human rights of the child have actually been taken into account in the determinations made.<sup>12</sup>

The conference *Vägen framåt - pandemin och de mänskliga rättigheterna* [The way forward – the pandemic and human rights], organised in partnership between the public sector and civil society, was held on 27 October 2021. The aim of the conference was to examine the pandemic's impact on equality and human rights, and to identify actions for better dialogue, collaboration and compliance on these issues. The Jönköping County Administrative Board commissioned Ramböll to

act as special rapporteur before, during and after the conference. The conference had a two-part focus with four underlying themes: the impact of the pandemic on different rights and groups in the population, and governance, means and methods. Ramböll's analysis<sup>13</sup> shows that the pandemic has exposed several shortcomings in Swedish society regarding human rights and equal living conditions. They argue that these are societal challenges that already existed before the pandemic and that have become more evident during the crisis.

Ramböll has drawn four overarching conclusions:

- The pandemic has highlighted inequalities and gaps in the protection of human rights
- The pandemic has particularly impacted certain groups of the population
- Civil society has been a particularly important force during the pandemic
- A human rights perspective and equality issues have not been sufficiently integrated into crisis preparedness

Ramböll recommends the development of a national strategy on the role of civil society in crises. The interaction of the public sector with civil society and the business sector is crucial for a holistic, effective and equitable crisis preparedness. One challenge for civil society organisations is the ability to participate on an equal footing despite limited resources. For national authorities, one of the challenges is the diversity of civil society actors also at the national level. Ramböll suggests that a national strategy on how to better include civil society in pre-crisis and crisis preparedness would strengthen societal preparedness.

Ramböll also recommends that human rights and equality perspectives be integrated into the daily

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<sup>12</sup> SOU 2022:10 *Sverige under pandemin* [Sweden during the pandemic].

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<sup>13</sup> Ramböll (2022) *Vägen framåt – pandemin och de mänskliga rättigheterna* [The way forward – the pandemic and human rights].

work of public actors so that they are also taken into account in times of crisis. Significant knowledge and skills enhancement and better support are needed for public actors to put these perspectives into practice. Ramböll therefore recommends that clearer requirements are put in place for municipalities and regions to collect, update and use knowledge on citizens' living conditions. They also argue that human rights and equality perspectives should also be used in the construction of total defence to a greater extent than is currently the case. Ramböll further recommends that human rights and equality perspectives be better integrated into crisis preparedness. A key lesson from the COVID-19 pandemic is that human rights and equality issues have not been sufficiently integrated into crisis preparedness work across the country. Human rights and equality perspectives therefore need to be more clearly integrated into crisis preparedness at all levels.

This supports the conclusions of the Swedish Ombudsman for Children in their report to the Committee on the Rights of the Child that there was a risk that children's rights would be affected, both in the short and long term, if impact assessments are not carried out by actors at different levels of society before decisions are made on various measures affecting children. A conclusion supported by the Swedish Institute for Human Rights. Ensuring that the impact of decisions and actions on children is analysed, including an analysis of the impact of these decisions and actions on children's human rights, is of paramount importance in order to ensure that the human rights of the child are safeguarded – even in times of crisis.

In peacetime crises, such as during the COVID-19 pandemic, we test our ability to ensure fundamental human rights, for both children and adults. If basic structures and procedures for ensuring human rights are not in place in times of peace, there is likely to be no scope for creating them in peacetime crises or other crises.

## **SUGGESTED QUESTIONS AND RECOMMENDATIONS:**

- What measures has the Swedish Government taken to ensure that the impact on children and young people of decisions taken by the Government is analysed in both times of peace and in times of crisis, including an assessment of the impact of decisions on the rights of the child?
- What measures has the Swedish Government taken to ensure that impact assessments of decisions and actions affecting children and young people are carried out at all levels of society, in both times of peace and in times of crisis, including an assessment of the impact of the decisions on the rights of the child?
- What measures has the Swedish Government taken to ensure that gender equality and human rights perspectives, and in particular the child rights perspective, are integrated into crisis preparedness and overall defence?
- How have the views of children and young people been taken into account in decisions and actions at different levels of society in response to the COVID-19 pandemic?
- How should civil society be involved in crisis preparedness before and during a crisis?
- Does the Swedish Government intend to draw up an action plan containing measures to reduce the inequalities accentuated by the COVID-19 pandemic based on the follow-up that has been carried out?
- How will the Swedish Government take particular account of the situation of children and young people with disabilities, children and young people belonging to indigenous peoples or national minorities and children in vulnerable situations?
- What measures will the Swedish Government take to monitor the impact over time of the measures taken to reduce the inequalities accentuated by the COVID-19 pandemic?

## 2. Sweden's adherence to the third Optional Protocol

### Reference to LoI I para. 2 (c) and CRC/C/SWE/CO/5 para. 61 and 62.

Each State Party has the responsibility to ensure that human rights are guaranteed and respected. If rights are to be meaningful, there must be effective means of enforcing them in practice. This means that, in the first instance, there must be domestic remedies for individuals to claim their rights. For the rights of the child under the CRC to be meaningful, children and young people must have access to effective and child-friendly remedies for redress and compensation for violations of their rights.<sup>14</sup>

The individual right to a communications procedure in relation to the UN treaty bodies is one of several important instruments for the effective enforcement of rights. For the individual, the individual right to a communication procedure provides the possibility to lodge a complaint in cases where an individual's rights have been violated and all national remedies have been exhausted. However, this is often a long process and not always an effective way for individuals to claim their rights.

Nevertheless, in the event that a government lacks the political will or capacity to meet its international obligations, the individual right to a communications procedure can provide an alternative at the international level that ensures the individual's ability to bring a complaint about human rights violations in their own country. Such a right to a communications procedure can also contribute, alongside the reporting system, to a developed

understanding of the content and relevance of a convention. The UN human rights conventions that Sweden has ratified include individual communications procedures. Sweden has acceded to all communications procedures except those related to the UN Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. There is nothing to prevent children and young people, or where appropriate their representatives, from making use of the communications procedures to which Sweden has acceded.

However, it is not currently possible for children to lodge a complaint in relation to the rights enshrined in the International Covenant on Economic, Social and Cultural Rights nor in relation to the child's own rights under the CRC.<sup>15</sup>

Sweden has received several recommendations to accede to the two remaining communications procedures, both from the respective treaty bodies and in the framework of the UN Universal Periodic Review. Sweden's response to these recommendations has been, inter alia, that further analysis is required before Sweden can take a position on ratifying these optional protocols. However, at the last periodic review, the Swedish Government indicated that the question of ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights had been analysed and that the Government did not intend to ratify the Optional Protocol at present.<sup>16</sup> However, the Swedish Institute for Human Rights has not been able to find that such an analysis has been published.

<sup>14</sup> CRC/GC/2003/5, *General Comment No. 5 (2003) of the Committee on the Rights of the Child, General measures for the implementation of the Convention on the Rights of the Child (Articles 4, 42 and 44.6)*.

<sup>15</sup> *Individuals can lodge complaints about rights violations to the UN Committee on the Rights of Persons with Disabilities (CRPD), the UN Committee on the Elimination of Racial Discrimination (CERD), the UN Committee on Civil and Political Rights (CCPR), the UN Committee on the Elimination of Discrimination against Women (CEDAW) and the UN Committee against Torture (CAT)*.

<sup>16</sup> *Government Offices of Sweden (2020) Response from the Swedish Government regarding UPR Recommendations p. 4.*

On 29 April 2022, the Government of Sweden decided to commission a special inquiry into whether Sweden should ratify the third Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure including an analysis of the consequences of possible ratification and, if ratification is proposed, any legislative proposals needed for Sweden to fulfil its obligations under the Protocol and to enable ratification.<sup>17</sup> The Swedish Institute for Human Rights welcomes the initiative and hopes for a similar initiative with regard to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on an individual communications procedure.

Based on what has been stated in proposals for ratification of other individual communications procedures, the Swedish Institute for Human Rights understands that there is a greater reluctance to ratify these two individual communications procedures in comparison to the other communications procedures previously ratified by Sweden.

The human rights conventions are mutually supportive and equivalent. It is therefore equally important that the State fulfils its obligations with regard to civil and political rights, as well as economic, social and cultural rights. The CRC contains both civil and political rights and economic, social and cultural rights. It is positive that the question of ratification of the third Optional Protocol to the CRC will be carefully analysed. However, the Swedish Institute for Human Rights would like to draw the Committee's attention to the fact that no corresponding in-depth analysis of the possible consequences of the ratification of individual communications procedures was carried out for the ratification of the other individual communications procedures. Irrespective of a ratification of the third Optional Protocol to the CRC on a

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<sup>17</sup> *Dir. 2022:35 Barns möjligheter att klaga och utkräva sina rättigheter enligt barnkonventionen [Children's ability to lodge a complaint and claim their rights under the Convention on the Rights of the Child].*

communications procedure, it is of the utmost importance that human rights, and in particular the rights of the child, are enforceable at the national, regional and municipal level. In 2016, the Barnrätighetsutredningen (Child Rights Inquiry) highlighted the possibilities for children and young people to claim their rights. It noted, among other things, that children and young people are not sufficiently informed about their rights and proposed that the authorities that are central to ensuring the rights of the child should be instructed to take measures to make their own activities known, accessible and adapted to children. In addition, all children should be informed at school about where they can turn for support and help if they find themselves in a vulnerable situation.<sup>18</sup> The Swedish Institute for Human Rights thinks it would be interesting to conduct a follow-up as to whether children and their representatives know where to turn to claim their rights.

### **SUGGESTED QUESTIONS AND RECOMMENDATIONS:**

- Elaborate on why there has been reluctance to accede to the third Optional Protocol to the CRC regarding a communications procedure, and why it requires a deeper analysis than before ratification of other communications procedures?
- Is there knowledge about the extent to which children and their representatives can claim their rights and the extent to which children and their representatives know how to go about claiming their rights in different areas?
- What measures have been taken to disseminate information on how children and their representatives can use the communications procedures available to other human rights conventions?

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<sup>18</sup> *SOU 2016:19 Barnkonventionen blir svensk lag [The Convention on the Rights of the Child becomes Swedish law] p. 331–339.*

## II. RIGHTS UNDER THE CONVENTION AND THE OPTIONAL PROTOCOLS

### 3. Incorporation

#### A. General measures of implementation (Articles 4, 42 and 44.6)

##### Reference to LoI II para. 4 and response to LoI I para. 2 (a) and II A para. 4.

The implementation of human rights obligations under the Convention into Swedish law is usually done by the legislator adjusting Swedish provisions to comply with the Convention's requirements. This method of implementation is called transformation. When during implementation the legislator instead finds that Sweden's existing legislation already meets the obligations of the Convention and that no further legislative measures of implementation are needed, this is usually referred to as a finding of norm harmonisation.

Another approach to the implementation of conventions is incorporation, which means that the convention is made directly applicable as law in the country. The only human rights conventions that have been incorporated into Swedish law so far are the European Convention on Human Rights (ECHR) and, since 1 January 2020, the CRC.

In its report to the Committee on the Rights of the Child, the Swedish Government states that the Convention does not take precedence over other legislation by virtue of its incorporation. Since knowledge of how to interpret and apply a convention, and in particular an incorporated convention, is not very widespread among those applying the law at various levels in Sweden, it is important that this statement is not misunderstood.

According to the Instrument of Government (RF), the principle of the formal force of law applies (Chapter 8, Section 18 RF), according to which a law may not be amended or repealed other than by law. The principle of the formal force of law is an expression of the hierarchy of norms and means, by extension, that a statute of a higher constitutional value takes precedence over a statute of a lower value. This means that the constitution takes precedence over other laws, that ordinary law takes precedence over regulations, and that regulations take precedence over official decrees.<sup>19</sup>

The Swedish Institute for Human Rights would like to draw the attention of the Committee on the Rights of the Child to the fact that the Swedish Government, in connection with the incorporation, considered that there was no need to specifically regulate the status of the Convention in relation to other legislation. The Government stated that any normative conflicts that may arise should be resolved by the courts and administrative authorities by means of various law application methods.<sup>20</sup>

In practice, this means that the CRC applies as ordinary law and does not automatically take precedence in the event of a normative conflict with statutes of the same value. A normative conflict with a statute of the same value may therefore be resolved by different methods of interpretation and application, such as the principle that a special rule takes precedence over a general provision and the principle that a more recent law takes pre-

<sup>19</sup> See also *Ds 2019:37 Vägledning vid tolkning och tillämpning av FN:s konvention om barnets rättigheter* [Guidance on the interpretation and application of the UN Convention on the Rights of the Child] p. 69 and 70.

<sup>20</sup> *Bill 2017/18:186 Inkorporering av FN:s konvention om barnets rättigheter* [Incorporation of rights under the UN Convention on the Rights of the Child] p. 85 and 86.

cedence over an older one. Depending on the circumstances of the individual case, this means that the CRC could take precedence over another law of the same value.

The fact that international conventions are not incorporated into Swedish law does not mean that they are of no importance for the decision-making of authorities and courts. It is up to Sweden, as a State Party to the Convention, to ensure, e.g. through legislation, that its internal legal framework is consistent with its international obligations. Courts, government authorities, regions and municipalities are also obliged to interpret Swedish internal rules of law in accordance with Sweden's human rights obligations under the Convention where possible, i.e. interpretation in conformity with the spirit of the treaty.

The CRC became Swedish law on 1 January 2020. The Government's bill on the incorporation of the UN Convention on the Rights of the Child states that incorporation gives the Convention on the Rights of the Child the status of Swedish law, which means a clarification that those applying the law in cases and matters must interpret Swedish provisions in relation to the CRC. One of the reasons for this was that the Swedish Government considered that the CRC had not been sufficiently reflected in the application of law. It was also noted that the CRC would not be applied if it were not linked to the legislation applicable to the activities of the municipality or authority.<sup>21</sup>

Although the Swedish Institute for Human Rights can see a number of positive effects from the CRC becoming Swedish law, not least through the development of guiding practice, a study by UNICEF Sweden, among others, has shown that the lower courts have so far not been guided by the practice that has developed.<sup>22</sup>



<sup>21</sup> Bill 2017/18:186 *Inkorporering av FN:s konvention om barnets Rättigheter [Incorporation of rights under the UN Convention on the Rights of the Child]* p. 1 and 74.

<sup>22</sup> See UNICEF Sweden (2021) *Barnkonventionen som lag i praktiken – En granskning av domar från 2020 [The Convention on the Rights of the Child as law in practice – A review of judgments from 2020]*.

The development of such practice takes time, but it would now be of interest, almost three years after the CRC has entered into force as Swedish law, to monitor the effects of incorporation. This is not limited to the development of case law in the courts, but also extends to how the CRC as law is interpreted and applied by those responsible for applying the law in government agencies, regions and municipalities.

Prior to the CRC's entry into force as a law, a knowledge boost initiative was carried out among municipalities, regions and government authorities. Furthermore, the Swedish Government took the initiative to produce a guide to the interpretation and application of the CRC.<sup>23</sup>

In its strategy for national human rights work, the Swedish Government states that the effects of incorporating and further transforming the provisions of the CRC into domestic legislation should be followed up and evaluated.<sup>24</sup>

Such follow-up and evaluation have not yet been carried out. In the first instance, such follow-up and evaluation would contribute to knowledge about whether further measures are needed to ensure that the CRC is fully reflected in issues and decisions affecting children at the national, regional and local levels.

Like the Swedish Government, the Swedish Institute for Human Rights believes that such an evaluation could also contribute to important knowledge about how best to ensure compliance with Sweden's other human rights obligations and achieve strengthened legal protection for human rights. It would also be of interest in a follow-up to examine the impact of the above-mentioned knowledge boost and guidance.

## **SUGGESTED QUESTIONS AND RECOMMENDATIONS:**

- When will a follow-up and evaluation of the impact of the incorporation of the CRC, including how the CRC is applied and linked to other legislation in government authorities, municipalities and regions, take place?
- Will such a follow-up and evaluation include the impact of the knowledge boost and the use and interpretation of the guidance on the interpretation and application of the CRC among government authorities, municipalities and regions?



<sup>23</sup> Ds 2019:37 *Vägledning vid tolkning och tillämpning av FN:s konvention om barnets rättigheter* [Guidance on the interpretation and application of the UN Convention on the Rights of the Child].

<sup>24</sup> Skr. 2016/17:29 *Regeringens strategi för det nationella arbetet med mänskliga rättigheter* [Government strategy for national human rights work] p. 12 and 24.



## 4. Government follow-up of the strategy

### Reference to LoI II para. 5 (a) and response to LoI II A para. 5 (a).

Sweden has had two national strategies for the implementation of the CRC adopted by the Swedish Parliament (Riksdag).<sup>25</sup> The current one was adopted in 2010. A strategy should be long-term, but it should also be followed up at regular intervals. The 2010 Strategy to Strengthen the Rights of the Child in Sweden states that it should be reviewed and followed up at regular intervals to ensure that it is effective and useful in strengthening the rights of the child in Sweden.<sup>26</sup>

No such follow-up has taken place. In its report to the Committee, the Swedish Government refers to the evaluation carried out by the Swedish Ombudsman for Children in relation to the mandate given by the Government to the Ombudsman to disseminate information on the strategy. The Swedish Institute for Human Rights would like to draw the Committee's attention to the fact that the evaluation was carried out in 2014, and that such an evaluation should form the basis for an action plan for further action. It should also be noted here that, by law, the Swedish Ombudsman for Children itself determines the detailed focus of its work, which is why the Swedish Government must ensure that periodic evaluations or follow-ups are also carried out by means other than through the Swedish Ombudsman.

The Swedish Ombudsman for Children's evaluations and follow-ups are of great importance, but

the Ombudsman does not have ultimate responsibility for the implementation of the CRC in Sweden.

Similarly, the Swedish Government has stated that the 2016 strategy for national human rights work will be monitored and evaluated on an ongoing basis.<sup>27</sup> In March 2022, a decision was made to commission the Swedish Agency for Public Management to follow up and analyse certain human rights-related initiatives.<sup>28</sup>

As mentioned above, there has been no follow-up of the strategy for strengthening the rights of the child. The Swedish Institute for Human Rights argues that it would be important for such follow-up to take place.

The strategy may, for example, require updating based on the incorporation of the CRC. Furthermore, it is important that an action plan with measures based on the strategy is drawn up in order to continue strengthening implementation of the CRC at all levels of society. Children and young people themselves, as well as civil society organisations, should be involved in such work.

In our dialogue with various actors during the spring of 2022, we have been able to note a development at government authorities, regions and municipalities, where work on children's rights has begun to be coordinated with general human rights work. The Swedish Institute for Human Rights sees this as a necessary and positive

<sup>25</sup> Bill 1997/98:182 *Strategi för att förverkliga FN:s konvention om barnets rättigheter i Sverige* [Strategy for the implementation of the UN Convention on the Rights of the Child in Sweden], which was in force between 1999 and 2010, and Bill 2009/10:232 *Strategi för att stärka barnets rättigheter* [Strategy to Strengthen the Rights of the Child], which remains in force.

<sup>26</sup> Bill 2009/10:232 *Strategi för att stärka barnets rättigheter i Sverige* [Strategy to Strengthen the Rights of the Child], p. 11.

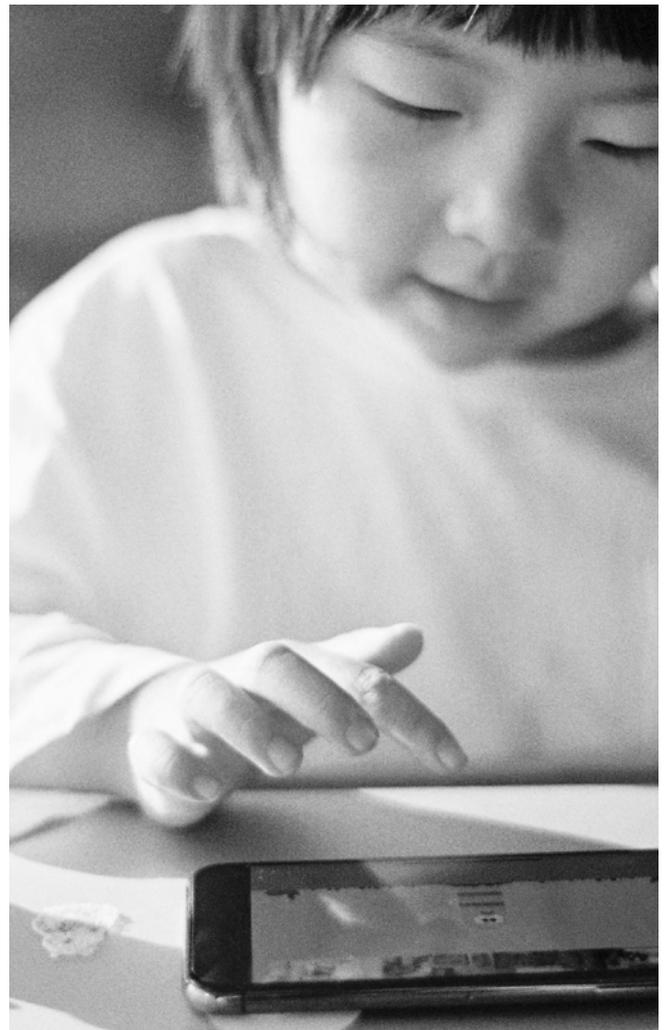
<sup>27</sup> Skr. 2016/17:29 *Regeringens strategi för det nationella arbetet med mänskliga rättigheter* [Government strategy for national human rights work] p. 39.

<sup>28</sup> A 2022/00390 *Uppdrag till Statskontoret att följa upp och analysera vissa insatser inom området mänskliga rättigheter* [Swedish Agency for Public Management's commission to follow up and analyse certain human rights-related initiatives].

development. In order to continue to support such a development and create opportunities for knowledge transfer between child rights work and human rights work, it would be wise to follow up The Strategy to Strengthen the Rights of the Child in parallel with the follow-up of certain efforts in the area of human rights. Such coordination would provide clearer national guidance for the work of government authorities, municipalities and regions. It might also be wise to coordinate with the follow-up of The Strategy for Disability Policy.

**SUGGESTED QUESTIONS  
AND RECOMMENDATIONS:**

- When will The Strategy to Strengthen the Rights of the Child be followed up?
- Will an action plan be developed, based on the strategy, to further strengthen the implementation of the CRC at all levels of society?
- Will the follow-up of the strategy to strengthen the rights of the child be coordinated with the follow-up of certain human rights-related initiatives and the follow-up of other strategies, such as The Strategy for Disability Policy?



## 5. Government follow-up of child rights work

**Reference to LoI II para. 5 (b) and CRC/C/SWE/CO/5 para. 12 and response to LoI II A para. 5 (b).**

The Committee on the Rights of the Child has recommended that Sweden establish a high-level mechanism with a clear mandate and with the power to ensure equal access to all rights at the regional and local level. The Committee also recommends that the necessary human, technical and financial resources be allocated for this to function effectively.

The Swedish Institute for Human Rights does not see that Sweden's response fully responds to the question in the LoI. At the same time, the Institute does not find the meaning of the question in the LoI and the recommendation given to Sweden in 2015 to be entirely clear.

### **QUESTION TO THE COMMITTEE:**

- The Swedish Institute for Human Rights would like the Committee on the Rights of the Child to clarify what is meant by the recommendation in CRC/C/SWE/CO/5 para. 12.

National,  
regional  
and local





## 6. Independence of the Swedish Ombudsman for Children

### Reference to LoI II para. 9 and response to LoI II A para.9.

Like the Swedish Institute for Human Rights, the Swedish Ombudsman for Children does not have the power to review individual complaints. Contact with the public is of great importance in order to learn about the shortcomings in safeguarding the human rights of both children and adults. The Institute is following with interest the Swedish Ombudsman's proposal to the Swedish Government on how a possibility to receive and investigate individual complaints from children and young people could be structured and how such a proposal will be addressed.

In this context, the Swedish Institute for Human Rights would like to raise the importance of an independent mechanism for monitoring the rights of the child also having real independence and sufficient resources to operate effectively. In order to guarantee independence, the Swedish Ombudsman's tasks are regulated in the Ombudsman for Children Act (1993:335).

This states, among other things, that the Swedish Ombudsman has the power to decide on its own organisation and the detailed direction of its work. Like the Swedish Institute for Human Rights, the independence of the Swedish Ombudsman for Children is crucial to enable them to monitor compliance with the CRC in society and to promote its implementation in municipalities, regions and authorities by drawing attention to shortcomings in the application of the CRC and proposing changes to laws and regulations to the Swedish Government.

The Swedish Ombudsman for Children was established in 1993 and is tasked with representing the rights and interests of children and young people based on the CRC. In 2002, the Swedish Ombudsman for Children's role as representative of the rights and interests of children and young people was clarified. The Ombudsman was given greater independence from the Government by having their mandate set by the Swedish Parliament in law and by being given certain legal powers. The changes were based, among other things, on the Paris Principles.<sup>29</sup>

It was also stated that for the Swedish Ombudsman for Children to be able to work effectively, sufficient resources must be made available to the authority. So-called naked annual appropriation directives are named in this context, meaning that, when transferring the appropriations set by the Swedish Parliament to the authority, no detailed specifications of how the funds are to be used in the coming years are given.

The Government argued at the time that a clearer regulation of the Swedish Ombudsman's tasks in law reduced the need for guidance in the annual appropriation directives. At the same time, it was stated that the increased independence does not prevent the Government, in consultation with the Ombudsman, from giving the authority commissions from time to time that do not interfere with the Ombudsman's role.<sup>30</sup> When we look at the annual appropriation directives to the Swedish Ombudsman for Children from recent years, we can see that the governance of the Ombudsman's activities has increased through commissions from the Swedish Government.

<sup>29</sup> Bill 2001/02:96 *En förstärkt Barnombudsman [A strengthened Ombudsman for Children]* p. 10–16.

<sup>30</sup> Bill 2001/02:96 *En förstärkt Barnombudsman [A strengthened Ombudsman for Children]* p. 15.

**SUGGESTED QUESTIONS  
AND RECOMMENDATIONS:**

- How is the independence of the Swedish Ombudsman for Children and their ability to define the direction of their work (as set by law) taken into account?
- How will the Swedish Government ensure that the Swedish Ombudsman for Children has sufficient resources to operate effectively?

**PROPOSED QUESTIONS TO  
THE SWEDISH OMBUDSMAN FOR  
CHILDREN IN CONNECTION WITH  
THE PRE-SESSION:**

- Does the Swedish Ombudsman for Children feel it has sufficient resources to operate effectively?
- Have the commissions given to the Swedish Ombudsman by the Government been given in consultation with the authority?



## 7. The best interests of the child in the legislative process

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

#### Reference to LoI II B para.12 and response to LoI II B para. 12

The Swedish Institute for Human Rights would also like to draw the attention of the Committee on the Rights of the Child to the fact that, in the context of the incorporation of the CRC, the Swedish Government made it clear that the provisions of the CRC would continue to be transformed into national legislation in order to give effect to the provisions of the CRC. The Government expressed that the continued transformation of the CRC's provisions in various areas of law is at least as important as incorporation in order to ensure that the best interests of the child are taken into account. Through transformation, constitutional provisions can clarify the meaning of rights, which increases predictability and provides further support to those applying the law in the interpretation and application of the CRC.<sup>31</sup>

The Swedish Government considered it essential that further transformation work contains a common starting point for how the provisions of the CRC should be interpreted. Since an act on incorporation will not indicate through preparatory work how the articles of the CRC should be interpreted, it is important that, for example, the principle of the best interests of the child is clear in other preparatory work. In order to ensure that the CRC has an impact and significance for the application of law, the Swedish

Government determined that the CRC should be made more visible in the preparatory work of legislation in which the CRC may be relevant. Furthermore, the Swedish Government found that the transformation work needs to continue and become more systematic in order to have a clearer link to the rights in the CRC, and that the focus in the continued transformation work should be on the principle of the best interests of the child as a rule of procedure and the right of the child to express their views and have them taken into account in relation to age and maturity.<sup>32</sup>

Against this background, an inquiry, Barnkonventionsutredningen [the CRC Inquiry], was set up with the task of mapping the extent to which Swedish legislation and practice correspond with the CRC, as also mentioned in Sweden's report to the Committee. In its report in 2020, the CRC Inquiry concluded that Swedish legislation was broadly in line with the CRC, with the exception of some 30 shortcomings in compliance.<sup>33</sup> However, Sweden's report to the Committee lacks a detailed account of the measures taken to remedy the shortcomings identified by the inquiry.

In its 2016 report, the Child Rights Inquiry, which investigated the incorporation of the CRC, stressed that the CRC should be reflected more in preparatory work and proposed that a provision be included in the Committee Regulation (1998:1474) to the effect that if proposals in a report have an impact on the rights of the child, the consequences in that respect should be stated in the report.<sup>34</sup>

<sup>31</sup> Bill 2017/18:186 *Inkopporering av FN:s konvention om barnets Rättigheter* [Incorporation of rights under the UN Convention on the Rights of the Child] p. 93.

<sup>32</sup> Bill 2017/18:186 *Inkopporering av FN:s konvention om barnets Rättigheter* [Incorporation of rights under the UN Convention on the Rights of the Child] p. 92–94.

<sup>33</sup> SOU 2020:63 *Barnkonventionen och svensk rätt* [The Convention on the Rights of the Child and Swedish law].

<sup>34</sup> SOU 2016:19 *Barnkonventionen blir svensk lag* [The Convention on the Rights of the Child becomes Swedish law] p. 320–323.

Such a provision has not been included in the Committee Regulation. However, public inquiries are sometimes instructed to take into account the child rights perspective or to analyse the impact of proposals on children.

The Swedish Institute for Human Rights was established on 1 January 2022 and has so far received only a few referrals. The Institute staff's past experience and experience from taking part in the Swedish Ombudsman for Children's referral responses on various issues has shown that there is often no analysis of the impact of the proposals on children, and especially on the human rights of the child. The basic principles of the CRC and sometimes other relevant articles of the CRC are often mentioned, but the actual analysis of how the rights are affected by the proposal is often inadequate or non-existent.

The Swedish Institute for Human Rights believes that a provision in the Committee Regulation along the lines proposed by the Child Rights Inquiry in 2016 would contribute to a more systematic transformation process. The Swedish Institute for Human Rights also believes that there is a need for guidance on how to conduct such impact assessments and intends to promote the development of such guidance.

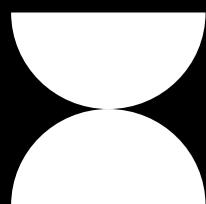


## **SUGGESTED QUESTIONS AND RECOMMENDATIONS:**

- How have the shortcomings identified by the CRC Inquiry in 2020 regarding Swedish legislation's compliance with the CRC been addressed?
- What initiatives have been taken to ensure that the work with further transformation of the provisions of the CRC into domestic legislation becomes more systematic?
- Elaborate on why a provision specifying that any proposals in a report that have an impact on the rights of the child must also state the impact in this respect has not been included in the Committee Regulation (1998:1474).
- Does the Swedish Government have any plans to develop guidance on how such impact assessments can be carried out?







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