

The UN Convention on the Rights of the Child

# Supplementary report - Sweden

The Ombudsman for Children in Sweden

Sweden's sixth and seventh periodic report

August 15<sup>th</sup> 2022



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# Introduction

## About the Ombudsman for Children in Sweden

The Ombudsman for Children in Sweden (“the Ombudsman”) is a government agency established in 1993 representing children’s rights and interests on the basis of the UN Convention on the Rights of the Child (“the Convention”). The agency is an independent national institution based on the Paris Principles that monitors the implementation of the Convention in municipalities, regions and government agencies. We identify weaknesses in the implementation of the Convention, propose changes to laws and ordinances, collect and disseminate knowledge and information about the situation of children and advocate and participate in the public debate. In our work we regularly meet with children, in particular children in vulnerable situations.

## About the report

The Ombudsman’s report is based on our role as an independent national institution for child rights.

Many children in Sweden have possibly a better situation than ever before in history. At the same time, gaps between different groups of children are increasing and access to education, protection and health service differs. New challenges are affecting vulnerable groups. The fact that the Convention has become national law is an important step for children to realize their rights even though the implementation has to be ensured.

There are many child rights issues that the Ombudsman would like to raise but due to the limits set for supplementary reports we have chosen to focus on the answers in the Government’s report. That does not mean other issues are not of importance.

## Overall comments on Sweden’s report

The Ombudsman notes with some concern that Sweden’s state report often fails to provide answers to the concrete questions that UN Committee on the Rights of the Child (“the Committee”) has posed. Instead, reference is made to various general efforts and regulations already in place before the beginning of the current reporting period.

The Government also repeatedly refers to other actors, including the Ombudsman, in a way that can give the impression that the responsibility for ensuring the implementation of the Convention has been delegated. The Ombudsman wants to emphasize that the responsibility for ensuring the implementation of the Convention rests with the Government, regardless of how the Swedish public administration is organised.

Although actions are being taken in many areas, there are still major shortcomings – mainly with regard to the application of the Convention.

## Four areas central to the future work on children’s rights in Sweden

Since the Committee’s previous review, the Convention has been incorporated into national legislation, which in several ways has strengthened the work on children’s rights in Sweden. However, the Ombudsman notes that a great deal of work remains and that recurring serious shortcomings have been noted during the reporting period in a number of areas that primarily concern the application of the Convention, but also national legislation.<sup>1</sup> It is of great importance to Sweden’s commitments and to the implementation of the Convention that efforts to remedy these shortcomings are high on the agenda in the upcoming reporting period. For clarity the Ombudsman will briefly describe areas where there is a particularly great need for action. The majority of the recommendations and comments that the Ombudsman makes in the report are linked to these four areas.

## **Children as rights-holders and the right to be heard**

Children's position as rights-holders in Sweden needs to be strengthened. Many decisions that affect children's lives are made without the child being allowed to be part of the process. An example of this is cases regarding custody and connected issues where children according to law are not party to the case and thereby also do not have their own counsel in the process. It also involves issues that significantly affect children without the matter directly targeting them, such as an eviction process against the child's guardian, or an overarching decision, such as the closure of a school, that is taken without children being involved in the process, having the opportunity to present their opinions or even receiving information on the matter. Many times, it is also up to the child's guardians as to whether the child should be given the opportunity to participate in a process. Some children have particular difficulty claiming their rights, including children with disabilities and children in alternative care. Rules regarding complaints are also often complicated where children need support and guidance to understand how, about what and to whom they can make a complaint. Furthermore, authorities with overall supervisory responsibility often do not conduct supervision in matters involving individual cases, but rather conduct overall supervision based on areas of activity. At the same time, there is no national authority that has the specific task of pursuing individual cases that are of significance to the implementation of the Convention. It is essential that there is a real possibility for all children to claim their rights. *See e.g. the responses to questions 2, 11 and 21.*

## **The Convention in the application of law**

The Ombudsman notes that there is not yet a systematic approach to the use of the Convention in the application of law in municipalities, regions and national authorities. It is central to the implementation of the Convention that steps are taken to ensure an adequate application of the Convention in accordance with international treaty law. Based on the importance of court cases as a guide in the application of law steps that need to be taken include initiatives in knowledge development in courts. *See e.g. the responses to questions 2, 4, 12 and 21.*

## **Child rights impact assessments and assessment of the best interests of the child**

Both the Government Inquiry that preceded the incorporation of the UN Convention of the Rights of the Child into law and the Ombudsman have pointed out the need for every decision that concerns children, from decisions in individual cases to national decisions regarding legislation, to be preceded by an assessment of the best interests of the child, but there are major shortcomings in this area. The Ombudsman is concerned that work on the implementation of Article 3 is progressing slowly. A legislation's history (preparatory work), especially government bills, is a very important source of law in the Swedish judicial system in interpreting and applying law. Together with what is described above regarding the application of law, the lack of acceptable and systematic assessments of the best interests of the child in preparatory work is even more serious. In this context, the major shortcomings the Ombudsman notes regarding the child's right to be heard are important to address. *See e.g. the responses to questions 2, 4, 12 and 21.*

## **Inequality needs to be mitigated**

The Ombudsman has repeatedly pointed out major differences in children's access to their rights under the Convention. This applies to several articles of the Convention, especially the right to be heard, the right to support and protection, the right to health and development and the right to education. There are major regional differences regarding access to medical care, social services and the national protection system, quality in education as well as how reports of suspected neglect or abuse are handled. The causes of these regional differences sometimes depend on the economic and geographical conditions of municipalities and regions, as well as differences in the level of knowledge and political will among decision-makers. But the child's personal circumstances also play a role. Children who belong to particularly vulnerable groups, e.g. children with disabilities, based on ethnicity, young LGBTQI people, children growing up in socio-economically disadvantaged areas, are less likely to be able to access their rights than other children. Regardless of the reasons for the large differences, they are unacceptable and Sweden needs to take strong action. Here, the Ombudsman would like to underline the Government's responsibility for ensuring the implementation of the

Convention for all children in Sweden regardless the organisation of the public sector *See e.g. the responses to questions 7 and 11.*

# I. New developments

2.

## 2 a)

Within the framework of a government assignment, the Ombudsman gathers judgments from the highest courts where the Convention is explicitly mentioned in the judgment. The Ombudsman notes that it appears there is not yet a systematic approach in the highest courts to applying the Convention. Application varies, including whether the Convention is mentioned at all and whether a child rights impact assessment and review of the best interests of the child have been carried out or not. The quality of the reasoning based on the Convention also varies.

The Ombudsman believes that interpretation and application of the Convention in the application of law require explicit strategies and in-depth knowledge. However, as far as the Ombudsman is aware, the Swedish National Courts Administration has not received any assignment from the Government regarding the application of the Convention.

The Government needs to ensure that the justice system has the knowledge and tools necessary for the Convention to be applied in an adequate manner and in accordance with international treaty law. The investigative responsibility of the courts needs to be clarified and it should be stated what is needed for the basis of the decision to be considered sufficient – especially in relation to assessments of the best interests of the child, but also in relation to other parts of the Convention. The Government should explore how the investigative responsibility can be clarified to strengthen the rights of the child, for example by ensuring that experts on violence against children are always consulted in cases where violence has occurred.

The Government should also consider the introduction of specialised courts, departments or judges for matters concerning children. This could ensure competence regarding application of the Convention in cases where children are involved. However, in such a consideration, it is important to emphasize the other courts', departments' and judges' continued obligation to apply the Convention. *Also refer to the response to question 4 and 31.*

### **Sweden needs to ensure full impact of the Convention in the Swedish application of law.**

#### *New government agency for human rights – continued lack of an authority that can pursue individual cases*

The Ombudsman welcomes the establishment of the new Swedish Institute for Human Rights but notes that this new government body lacks a mandate to pursue individual cases. The Ombudsman has also not been given such authority even though the Committee pointed out the need for this in the Concluding Observations from 2015.

### **Sweden should give a national authority a general mandate to pursue individual cases that are relevant to the application of the Convention.**

## 2 b)

The Ombudsman has examined the situation of children in connection with the COVID 19-pandemic and the emergency measures implemented nationally.<sup>2</sup> Two things were particularly clear: Firstly, there was essentially no information adapted to children in connection with national decisions and the introduction of restrictions; and secondly, several restrictions and decisions that affect children were implemented despite the fact that a child rights impact assessments or an assessment of the best interests of the child had not been carried out.

The decision to keep preschools and primary schools open during the pandemic was made with regard to what was considered to be the best interests of children. However, the decision to use distance learning for upper-secondary schools, was not preceded by a child rights impact assessment. That decision had a major impact on children, particularly children who were already vulnerable in different ways. The Ombudsman believes it is of utmost importance that the aforementioned issues be reviewed so that these mistakes are not repeated.

The Ombudsman also wants to emphasize how important it is that the Government carefully monitor how restrictions and other national decisions have affected children, especially more vulnerable groups of children, and promptly implement compensatory measures when needed. Decisions on distance learning negatively impacted children to varying degrees and this had clear ties to socio-economic backgrounds and situations.<sup>3</sup> There is also reason to review and follow up on how children's access to support from social services and healthcare has been affected due to the pandemic.

**Sweden needs to ensure that the national emergency preparedness is based on a child-rights perspective and is organised and carried out in accordance with the Convention.**

**Sweden needs to ensure that effective measures exist to counteract negative effects of societal crises on vulnerable groups of children.**

## 2 c)

Like several other actors, the Ombudsman has pointed out for many years the need for a complaint's procedure for children. As previously mentioned (see comment 2 a), we do not yet see a clear impact of the Convention in the application of law in the highest courts. Not all decisions concerning children can be appealed according to national law. The Ombudsman sees it as a given that children should be able to have these decisions reviewed based on their rights set forth in the Convention.

In the preparation of this report, the Government appointed a commission of inquiry on children's practical possibilities to appeal decisions and the issue of the ratification of the Third Optional Protocol.<sup>4</sup> The Ombudsman welcomes the inquiry and wants to emphasize the importance of its work.

However, The Ombudsman notes that the Government, in the inquiry's terms of reference, omitted the issue of whether an authority should be empowered to pursue individual cases. Considering that a child-rights perspective does not yet permeate the application of law and that the rights are not always given the significance they should have under the Convention the Ombudsman finds this omission unfortunate. The courts, especially the highest courts, set precedents in the application of law in general and in the exercise of authority in municipalities and regions as well as nationally. A national institution with a mandate to pursue individual cases of principle significance is an important tool for the successful implementation of the Convention.

**Sweden needs to accede to the Third Optional Protocol.**

**Sweden needs to ensure that all children have real possibilities of claiming their rights.**

**Sweden needs clarify the strategy to implement a national complaints authority.**

## 3.

The Ombudsman has nothing to add.



## II. Rights under the Convention and the Optional Protocols

### A. General measures for implementation (Articles 4, 42 and 44)

#### 4. Legislation

##### 4 a)

The decision to incorporate the Convention into national legislation was partly based on the fact that flaws in its application were observed.<sup>5</sup> Flaws linked to the application of the Convention remains and it is clear that further efforts are needed. In some cases, it may concern continued transformation, but in addition to this, there is a need to continue to stimulate and drive the impact of the Convention in other ways, such as through a strengthened focus on child rights impact assessments in preparatory work. *Also refer to the Ombudsman's response to question 2 a.*

**Sweden needs to ensure that the Swedish application of law does not violate the Convention.**

##### 4 b)

The Government's answer to the Committee's question on how the Convention was guaranteed priority in a potential legal conflict was that the incorporation of the Convention does not mean that it takes precedence over other legislation. Unlike the European Convention on Human Rights, the Convention on the Rights of the Child has not been given a higher legal status. Any contradictions between the Convention on the Rights of the Child and other legislation must therefore be determined using general legal principles of interpretation.

The general legal interpretation principles include that law of a higher rank takes precedence over law of a lower rank; special law takes precedence over general law and that law passed more recently takes precedence over older law. The Ombudsman considers it to be problematic that the Swedish general legal interpretation principles allow other legislation to take precedence over the Convention. The Vienna Convention sets forth that a state cannot set aside convention obligations in favour of regulations in the national legal system, which was also emphasized in the legislative proposal prior to incorporation.<sup>6</sup> The decision to incorporate the Convention into Swedish law was made in light of the fact that the Convention had not had enough impact in the application of law. In previous responses, the Ombudsman described the role of the courts and the need for development (*see responses under 2 a and 4 a*). It is the Ombudsman's opinion that, in the event of a conflict with other national legislation, the Convention shall be given priority.

**Sweden needs to ensure that the Convention is given priority in the event of a conflict with other law and that the Convention is applied in accordance with international treaty law.**

##### 4 c)

Swedish legislative work is often based on a Government inquiry. A Government bill is then drafted containing an analysis, legislative proposals and justification for the legislative proposals. The inquiry reports including legislative proposals are sent to government authorities, municipalities and courts (among others) for comment. In the Swedish application of law in courts, the preparatory work for these bills constitutes a very important source of law for the interpretation of laws and regulations.

In commenting on legislative proposals, the Ombudsman has noted that the preparatory work often shows major shortcomings regarding child rights impact assessments. In many cases, they are completely missing<sup>7</sup>. In other cases, there is a description of the Convention and relevant regulations, but without a clear connection to the bills that are subsequently presented and without an in-depth analysis. In order to ensure the impact of the Convention in Swedish law, work on child rights impact assessments needs to be deepened and more clearly linked to the subject area of the legislative work. In order to provide clear guidance to decision-makers

on how new regulations shall be interpreted in accordance with the Convention. Work on child rights impact assessments in the legislative work needs to be systematised and follow-up mechanisms need to be set up. Pursuant to the Convention, every legislative initiative, where children are affected, shall be preceded by a child rights impact assessment. This is accordingly a compulsory component. *Also refer to the response to questions 2 a and 12 a.*

**Sweden needs to ensure that the preparatory work systematically and consistently contains adequate child rights impact assessments in accordance with the Convention.**

#### 4 d)

Significant differences remain regarding children's access to their rights in different parts of the country, including access to high quality education, healthcare and good living conditions, such as a safe and permanent home. There are also large differences regarding assessments of the best interests of children and the possibility of children to be heard.<sup>8</sup> The Government has mentioned initiatives to improve knowledge of the Convention within national authorities, municipalities and regions, which the Ombudsman has welcomed. The Ombudsman has also recommended continued cooperation and support for the authorities that previously participated in this initiative, but no follow up assignment has so far been announced.

The Ombudsman believes that legislation needs to be strengthened and requirements introduced for municipalities and regions to always conduct a child rights impact assessment prior to decisions – in the same way that the Government must do in national decisions. Municipalities and regions can also to a large extent independently choose what services they offer to vulnerable groups, which creates significant inequalities. The regulations of social services and healthcare services should be reviewed to ensure equality in the implementation of the Convention.

**Sweden needs to ensure that assessments of the best interests of the child are conducted in relation to municipal and regional decisions. The regulations of services, including social and healthcare services, should be reviewed to ensure equality in the implementation of the Convention nationwide.**

## 5. Comprehensive policy, strategy and coordination

#### 5 a)

In 2010, the Swedish Parliament enacted the "Strategy for strengthening the rights of the child in Sweden". This strategy comprises nine points that child rights work in Sweden shall be based on. However, the strategy has no end date, no concrete action plan and it lacks a clear follow-up system. The strategy has never been updated even though several major changes have occurred, such as the incorporation of the Convention. The Ombudsman invites the Government to follow up the strategy and ensure that it is kept alive and relevant.

**Sweden needs to report on the progress of the strategic work on ensuring the implementation of the Convention.**

#### 5 b)

In its response, the Government referred to the Social Services Act, and to the Health and Social Care Inspectorate (IVO). However, IVO does not have as a task to monitor the equivalence of the implementation of the Convention, even if, within the scope of its mission, IVO could to some extent initiate such reviews. Both the Ombudsman and the Swedish Institute for Human Rights have the task of monitoring and promoting compliance to conventions, but neither of the aforementioned authorities have, or will have, a responsibility for ensuring compliance. With regard to the extensive variation in the application (*see e.g. the Ombudsman's response to question 4 d*), the Ombudsman believes that a mechanism for ensuring the equal implementation of the Convention should be added.

**Sweden needs to report on measures taken to establish a high-level mechanism in accordance with the question of the Committee.**

## 6. Allocation of resources

### 6 a)

The Ombudsman has previously pointed out the importance of starting from a child-rights perspective in both national and local government budget work, which includes budgetary cuts and changes. Special focus should be on ensuring the rights of children who are in vulnerable situations and that adequate resources are set aside for this.

Since the review of the Committee in 2015, the Ombudsman has repeatedly pointed out the inequality across the country in terms of children's access to their rights, this applies to every area of rights. Both the Government and the Swedish Parliament, as well as municipalities and regions, need to ensure, deepen and systematise their work with child rights impact assessments linked to the budget work.

The lack of resources in social services, school health services and psychiatric care services for children and adolescents has become particularly evident during the pandemic. Economic investments must be made and they must be based on well-conducted child rights impact assessments to ensure that the measures implemented are in accordance with the Convention and that equivalence is achieved.

**Sweden needs to ensure that the implementation of the Convention takes place equally across the country regardless of municipal and/or regional economic conditions.**

### 6 b)

The Ombudsman welcomes the Government's initiative.

### 6 c)

The Ombudsman has nothing to add. *Also refer to response to question 2 b.*

## 7. Data collection

The statistics presented by the Government in its report largely focus on separate isolated measures rather than general statistics for prevention purposes. Furthermore, some perspectives are completely missing, such as the socio-economic perspective.

Other groups of children also remain invisible in the statistics. This applies, for example, to statistics linked to racism, LGBTQI and children with disabilities, but also to children who reside in the country without abode and children who have been subjected to abuse. The Government urgently needs to implement measures that ensure access to all the data needed for the implementation of the Convention. Groups of children who are at an extraordinary risk of their rights not being ensured need to be visible in all kinds of statistics.

In connection with the review of the Committee in 2015, the Ombudsman emphasized the importance of good knowledge at various institutional levels of children's living conditions as a prerequisite for being able to implement appropriate measures and make the right decisions concerning children. In order to follow up children's living conditions over time, data collection and mapping also need to be conducted on a recurring basis. Robust and relevant knowledge and research are always the starting point for well-designed strategies and measures. The Government makes extensive references to other actors, such as municipalities and authorities. Here, the Ombudsman wants to emphasize that it is the State, and ultimately the Government, that is responsible for keeping relevant and accurate statistics on all the issues and fields that may have an impact on children's rights.

*Also refer to response to question 11 b.*

**Sweden needs to ensure that sufficient data on the living conditions for vulnerable groups of children is collected on a regular basis.**

## 8. Dissemination and awareness-raising

There is a need for further efforts to improve knowledge on the practical implementation of the Convention, especially regarding the fundamental principles – with a focus on Articles 2, 3 and 12. The Government needs to continue to allocate resources and implement measures to spread knowledge of the Convention and its application. A special effort should be made towards the judiciary to increase the impact of the Convention in the Swedish application of law (*see the response to question 2 a*).

The Ombudsman has previously pointed out that knowledge about the Convention and its application should be included as a compulsory element in training programmes for professional groups that come into contact with children. This need persists.

There is still a need for efforts in relation to child-adapted information linked to different disciplines. This applies not least to children who are in vulnerable situations, such as children in social care or in healthcare. The need for the development of information adapted to children's needs also became clear during the COVID-19 pandemic (*see the response to question 2 c*)

**Sweden needs to ensure that knowledge development regarding the application of the Convention continues, particularly in areas that specifically concern children.**

## 9. Independent monitoring

Neither the Ombudsman nor any other government agency has been given a mandate or authority to handle individual cases linked to the Convention (*see response under question 2 a*).

### *Independence of the Ombudsman*

The costs for the Ombudsman's office have increased due to several Government decisions on how authorities should source their administrative duties and how increased pension provisions shall be financed. The Ombudsman does not of course question the decisions as such but the effect is that in actual terms roughly one third of the total annual appropriation is affected.

The Government's strategy to ease the effects has been to use supplementary funding linked to specific government assignments. The development is worrying and in the long run affects the Ombudsman's role and function as an independent body as the ability to work strategically, independently and long term have diminished.

Regardless of the Government's priorities, the Ombudsman must be able to take initiatives to investigate, make surveys or doing in-depth analyses and monitoring where there is a need for efforts to promote or comply with the Convention. Based on current budgetary conditions, this is only possible to a very limited extent.

Pursuant to the Paris Principles, national human rights institutions must have an infrastructure that is well adapted for an effective implementation of their operations. It is particularly important to ensure adequate funding. The funding should allow the institution to be independent of the Government and not to be subject to financial control that may affect its independence. Stable funding is a fundamental prerequisite to independency.

**Sweden needs to ensure that the Ombudsman has sufficient resources to perform its mission as an independent ombudsman.**

## 10. Children's rights and the business sector

The Ombudsman has nothing to add.

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

### 11. Non-discrimination

#### 11 a)

The Ombudsman has nothing to add.

#### 11 b)

The Ombudsman has repeatedly pointed out shortcomings in relation to the unequal realisation of children's rights set forth in the Convention. Much of the decision-making, and thereby also the implementation of the Convention, takes place in regions and municipalities. The Ombudsman wants to emphasize that it is the Government that is responsible for ensuring the implementation of the Convention throughout the country, regardless of how the public administration is organised. The Government needs to ensure that all municipalities and regions have capacity to implement the Convention without distinction of any kind.

As the Ombudsman previously highlighted (*see the response to question 7*), there are shortcomings regarding data collection and statistics for particularly vulnerable groups. Access to detailed, recurring and relevant statistics is a prerequisite for being able to find both causes and adequate solutions to societal problems. This applies not least to issues linked to discrimination.

However, when it comes to the vulnerability of children there is also a great need for increased knowledge in Sweden, in addition to detailed statistics.<sup>9</sup> Very little research is being done in Sweden on risk factors linked to particularly vulnerable groups of children (*see the response to question 7*). Direct relationships between causes and effects cannot be discerned in a superficial review. Negative synergies and causal relationships need to be thoroughly studied in order for the measures and efforts that are decided to have the desired effect. In the autumn of 2021, the Ombudsman published a report on racism in relation to children.<sup>10</sup> Dialogues were conducted with children and young people living in socio-economically disadvantaged areas. Many of the children raised segregation and the housing situation as a major problem. Children also described unemployment among parents, concerns about their own future and insecurity and shortcomings in schools as important factors linked to discrimination and racism. In 2018, the Swedish National Agency for Education published a report on the importance of family background with regards to school results and differences between schools.<sup>11</sup> The report shows that children's socio-economic background has been of increased significance to school results in the past two decades, and that school segregation during the same period has increased as well as differences in school performance between different schools.

Studies have also shown that children's right to protection from domestic violence and neglect varies across the country. In disadvantaged areas, social welfare boards have a significantly more strained situation and can thereby be forced to prioritise more strictly among cases. Municipalities with high unemployment and a high proportion of disadvantaged areas often also have a more strained budget. Studies have shown that similar home conditions can generate completely different support efforts depending on the municipality. Studies also show that girls are granted support efforts to a greater extent than boys and that boys with a foreign background are granted support efforts to a lesser extent. One reason for the latter is reported to be parents to a lesser extent consenting to support efforts.<sup>12</sup>

Another important factor in the work against discrimination and socio-economic disadvantage is security, a calm study environment and well-functioning work on core values in schools. Children are most at risk of being subjected to racism in school.<sup>13</sup> In the national plan to prevent and combat racism and hate crimes<sup>14</sup>, the Government also identifies school as a key institution to promote core values that are based on everyone's equal value. In the case of other vulnerable groups of children, such as young LGBTQI people, school is reported to be a place for negative experiences linked to discrimination and offensive treatment.<sup>15</sup> Working with core values, human rights and attitudes is part of the school's mission to promote democracy and must be given greater impact.

Between 2009 and 2016, several studies were made on the school situation for children with disabilities. The Swedish National Agency for Education published a national study in 2016<sup>16</sup> that showed large differences between different school operators and schools regarding quality, that there are too few special needs teachers and large shortcomings among teachers regarding the educational consequences of different disabilities. Only half of the school operators include a disability perspective in their systematic quality assurance work. Similar conclusions and the finding that follow-up is too closely linked to individual cases emerged from the Swedish Schools Inspectorate's 2009 survey<sup>17</sup>. The school operators must improve their systematic and school-wide follow-up of the work. Statistics that provide the possibility of review or follow-up in relation to academic results are missing for children with disabilities. In September 2020, two expert agencies in this area in a joint letter<sup>18</sup> also called on the Government to implement measures to improve the statistics on children with disabilities.

Asylum-seeking children are not covered by compulsory schooling. The Ombudsman has on several occasions called on the Government to change this. The Inquiry on the Convention of the Rights of the Child also noted that the exemption from compulsory schooling for children who applied for a residence permit is not consistent with Article 28 of the Convention.<sup>19</sup> The Swedish Schools Inspectorate has previously estimated that about two thirds of asylum-seeking children attend school.<sup>20</sup> Compulsory schooling not only entails a guarantee of asylum seekers' children's right to education, but also constitutes an important arena for the detection of inequities.

**Sweden needs to ensure that data on vulnerable groups of children is continuously collected and presented in national statistics.**

**Sweden needs to increase and deepen the knowledge on vulnerable groups of children. In addition, funding for research in the area should be increased.**

**Sweden needs to ensure that children's access to equal protection against violence and neglect in the home does not depend on where the child lives, nor on the child's sex or socio-economic, ethnic or other background.**

**The Swedish school system's duty to promote democracy needs to be strengthened. Furthermore, Sweden needs to ensure all children's equal access to education and the possibility of good academic results regardless of where the child lives or the child's personal circumstances, such as having a disability.**

**Sweden needs to ensure compulsory schooling for children seeking asylum.**

**Sweden needs to describe what steps are being taken to ensure equal application of the Convention across the country and to combat segregation.**

#### **11 c)**

Regardless of which authority holds a mandate to pursue individual cases according to the Discrimination Act, the Government needs to ensure that children have a realistic possibility of filing a complaint if their rights are being violated in school.

There are several areas and issues where children can suffer from unequal treatment according to Article 2 of the Convention without being covered by the provisions of the Discrimination Act. Article 2 refers to non-discrimination for all children in relation to the rights in the Convention, while the Discrimination Act only applies to certain groups listed in the Act. Differences across the country, for example, regarding quality of education, access to child-adapted information, the right to safe housing and protection from violence linked to factors such as segregation, socio-economic background and (differing) municipal conditions are issues that cannot be tackled with the help of the Discrimination Act. To ensure that these rights are not disregarded, a national authority with a mandate to pursue individual cases according to the Convention is fundamental.

**Sweden needs a national authority that has a mandate to pursue individual cases based on the Convention.**  
*(Also refer to the response to questions 2 a and c)*

**Sweden needs to describe how the possibility for children to pursue individual cases based on Article 2 shall be strengthened.**

## 12. Best interests of the child

Significant shortcomings remain in the application and implementation of the Convention in many areas. This particularly applies to assessments of the best interests of the child. Even in cases where an assessment of the child's best interests has been conducted, decisions made often conflict with the best interests of the child, as other interests are considered to hold more weight. The Government needs to ensure a more equal application of the Convention.

### 12 a)

In its report, the Government has referred to the legislative proposal for the incorporation of the Convention into law and the need for continued transformation in national legislation. The Ombudsman, who has repeatedly pointed out shortcomings regarding assessments of the best interests of the child,<sup>21</sup> calls for measures to strengthen assessments of the best interests of the child, especially in light of the major shortcomings in the application of the Convention, including the application of law (*also refer to the response to question 2 a*).

One aim of the incorporation of the Convention into law was that work on child rights impact assessments in connection with preparatory work would be improved.<sup>22</sup> However, the Ombudsman has noted that inquiries that have presented their proposals after the incorporation of the Convention often lack a child-rights perspective in the proposals and documentation as well as relevant references to the Convention. There is no guidance for the legal practitioner in how the best interests of the child should be practically assessed in the area in question. In the Swedish application of law, preparatory work is one of the most important sources of legal guidance. An important factor for the child's best interests to be considered in decision-making is therefore that such assessments are clearly described in preparatory work and that this is systematised and is a compulsory part of preparatory work in matters concerning children. *Also refer to the response to questions 2b, 4 c and 12 b.*

The directives that set forth the investigative assignment for inquiries often do not stipulate a child-rights perspective and the implementation of child rights impact assessments, even though children are affected by the proposals.

**Sweden needs to ensure that all legislative work concerning children includes thorough analyses of consequences for children as well as assessments of the best interests of the child.**

### 12 b)

The Government has referred partly to the incorporation of the Convention into law and has tasked authorities to offer guidance and support. However, major shortcomings in the application of the Convention persist. The Government's response to question 4 b regarding the status of the Convention is also worrying – if the Convention is not regularly applied or is set aside based on interpretation principles, it is of the utmost importance that the legislator continues to transform the provisions of the Convention into Swedish national legislation. *Also refer to the response to question 2.*

**Sweden needs to ensure that Article 3 of the Convention has the impact in Swedish national law that an international convention on human rights according to the Vienna Convention shall have.**

### 12 c) and d)

The Ombudsman has repeatedly noted that the consideration of the best interests of the child is often deficient in individual cases. In some cases, decisions are not preceded by any assessment of the child's best interests at all; in other cases, an assessment of the child's best interests has been done, but it subsequently did not appear to affect the decision. This might concern, for example, children's right to a home, the right to an equivalent education or decisions in social childcare.<sup>23</sup> Adequate and systematic assessments of the child's best interests is a prerequisite for the implementation of the Convention. Assessments of the best interests of the child shall also take place without distinction of any kind. The differences in application that the

Ombudsman has noted, such as municipal and regional differences and differences between groups of children, are unacceptable. *Also refer to the response to question 2 a, and 21 b and c.*

**Sweden needs to ensure that every decision that concerns children is based on an assessment of the child's best interests.**

**Sweden needs to ensure that decision-makers have the capacity to conduct assessments of the best interests of the child regarding resources, guidance and training. Differences across the country linked to municipal and regional conditions are not acceptable.**

The Inquiry on the Convention of the Rights of the Child argued that the wording of the Parental Code in terms of the child's best interests in decisions on custody, living arrangements and contact<sup>24</sup> risks giving rise to assessments of a child's best interests that do not conform with the implications of Article 3.1 of the Convention. This is particularly true in light of the fact that the preparatory work for the Parental Code clearly states that close and good contact with both parents is generally in the best interests of the child. Furthermore, it is not deemed to be in line with Article 18 and Article 3.1, that the court cannot decide on joint custody with regard to the child's best interests in cases when both parents of a child have opposed joint custody.<sup>25</sup>

Children need to be a party in legal disputes regarding custody, living arrangements and contact and be given the right to a counsel of their own who represents and pursues the best interests of the child and the child's position. Furthermore, the Government needs to ensure that the Swedish courts have the expertise and knowledge necessary to conduct assessments of the best interests of the child in matters of custody, living arrangements and contact. A recent study of judgments in custody, living arrangements and contact cases shows serious shortcomings with regard to the Convention.<sup>26</sup> *Also refer to the response to question 21 b and c.*

In terms of the child's best interests in matters regarding alternative care, it is important that a recently proposed change of law introducing the child's best as an independent requirement in connection with the termination of alternative care.

**Sweden needs to ensure that the best interests of the child are always given priority in decisions on custody, living arrangements and contact.**

**Sweden needs to give children the status of parties with the right to their own counsel in cases of custody, living arrangements and contact.** *(Also refer to the recommendation under the response to questions 2, 4 and 21)*

**Sweden needs to ensure that no decisions in connection with alternative care or termination of such care are made in conflict with the child's best interests.**

### 13. Right to life, survival and development

The Public Health Agency of Sweden has established that one out of four deaths of children between the ages of 10 and 19 is caused by suicide. Nearly half of the girls who commit suicide had received psychiatric care in the year before their death. One out of four children who commit suicide were treated with prescribed medication.<sup>27</sup> In a 2017 survey, it was found that the suicide risk among unaccompanied asylum seeking children was nine times higher than that of their peers.<sup>28</sup> Another study shows that suicide attempts among young LGBTIQ people are more common than among other young people, that suicide occurs more often in socio-economically vulnerable areas and that school prevention internationally has had a good effect.<sup>29</sup>

Between 2017 and 2021, the number of children and young people in child and adolescent psychiatric services (BUP) increased by 14 per cent. In 2021, 40 per cent of the children and young people referred to BUP had to wait more than 30 days, which is the maximum time they should have to wait before being assigned a contact according to official guidelines. Only 69 per cent of the children who were to receive treatment were able to begin treatment within 30 days.<sup>30</sup> *Also refer to the response to question 24.*

**Sweden needs to describe concrete actions taken to combat suicide and mental illness among children. The Government's response to the question is too general given the very serious shortcomings.**



**The child and adolescent psychiatric services need to be permeated by a high degree of accessibility; the waiting times must be reduced.**

## 14. Respect for the views of the child

### 14 a), b) and c)

The Ombudsman has repeatedly pointed out major shortcomings in terms of the child's right to be heard and having his or her opinion considered. These shortcomings can be found throughout public administration, from school and social care to the legal system and in connection with the creation of new legislation or general municipal decisions. Children's opportunity to participate and influence decision-making differs across the country, as well as depending on their personal circumstances. Increased and in-depth knowledge is needed, both about the importance of children's participation and how it can be arranged. Work on children's participation needs to be systematised and the equal opportunity of children to make their voice heard needs to be ensured.

Swedish administration is structured in such a way that the majority of the decisions that affect children in their everyday lives are made by the municipality or region. Municipal self-government is a strong principle in the Swedish administrative system. The Government and the Swedish Parliament often have a limited possibility when it comes to regulating municipal and regional activities. However, the Ombudsman once again wants to point out that the Government is responsible for the implementation of the Convention. How a state has chosen to delegate responsibility and organise decision-making may not be used as a reason not to implement the Convention.

In 2022, the Ombudsman conducted a municipal survey regarding children's possibility of receiving information and making their voice heard in relation to central municipal decisions.<sup>31</sup> The results showed large differences between municipalities. A few municipalities have made a clear decision that the best interests of children should always be considered, while others have youth councils or employ special children's rights strategists. However, most municipalities lacked such structures or long-term predictable ways of child participation. Similar conditions were found regarding the presence of child-adapted information linked to decisions. The Ombudsman also investigated the possibility of participation in school and major differences emerged – both between municipalities and within the same municipality. As previously stated (*see, for example, the response to question 11*), the Ombudsman sees Article 2 on non-discrimination as one of the most important children's rights issues for Sweden in the future. The persistent and significant inequalities must be addressed.

Children's ability to make their voice heard in dealings with social services is often dependent on the consent of the guardians. The fact that children cannot be heard without the guardian's consent is problematic partly based on the child's right to integrity and privacy, and partly based on the risk that children who want to be heard are prevented from expressing their opinion. Furthermore, it can mean that social services do not become aware of situations that should have led to an investigation or intervention. *Also refer to the response to question 24.*

In order for children's right to be heard to be realised, professionals need relevant competence to assess the child's account. On several occasions, the Ombudsman has previously pointed out that knowledge of the Convention and its application should be included in the professional requirements for people who come into contact with children in their work; the same applies to knowledge of violence and characteristics of violence among children. This is especially true for the judiciary. (*Also refer to the response to question 2 a, 21 b and c and 31*)

Family law legislation contains a limitation of children's right to be heard – the child should be heard if it is not considered "inappropriate". The same wording can be found in Chapter 1, Section 11 of the Aliens Act<sup>32</sup>. The Committee has previously called on Sweden to remove this stipulation in the Aliens Act and family law legislation.<sup>33</sup> This has not happened. *Also refer to the response to question 21.*

With regard to children's right to be heard in custody cases, in particular at a court, we refer mainly to the Ombudsman's responses and recommendations to question 21 b. With regard to the question of the child's

possibility of being heard in matters concerning violence, please refer to the response to question 31. With regard to children's possibility of being heard in connection with alternative care, please refer to the response to question 22. Sweden must immediately implement measures to give the child's voice and position greater weight in these cases, which significantly affect the child's life.

**Sweden needs to ensure children's equal right to participation and needs to explain how the significant municipal and regional differences shall be equalised.**

**Sweden needs to ensure that children's right to participate is realised in matters that directly concern them, including in cases regarding custody, migration and social care. Sweden also needs to account for what action is being taken in this matter.**

**Sweden needs to ensure that children have the opportunity to express their opinion in all cases that concern them without the guardian's consent being a requirement. This particularly applies to cases involving social services.**

**Sweden needs to ensure that professionals have the knowledge and the resources needed to conduct assessments of the best interests of the child in accordance with the Convention. An assessment of the child's best interests presupposes that the child has been given an actual possibility of being heard and that the child's opinions have been considered.**

## C. Civil rights and freedoms (arts. 7, 8 and 13–17)

### 15. Statelessness and nationality

#### 15 a)

The change in law that the Government refers to in its report stipulates that the requirement of a permanent residence permit for citizenship does not apply to children who have been resident in the country for five years or for a total of ten years and have been granted a temporary residence permit. Although the Ombudsman was in favour of abolishing the requirement of a permanent residence permit for citizenship for children born stateless in Sweden, the Ombudsman believes that the preparatory work lacked an analysis of children's right to their family to an adequate extent. For example, even after the child has been granted Swedish citizenship, the child's siblings and parents may have temporary residence permits, which risks breaking families apart.

**Sweden needs to ensure that children born stateless in Sweden are given the possibility of citizenship and that they at the same time are not at risk of being separated from their family.**

#### 15 b)

The Ombudsman has nothing to add.

### 16. Access to appropriate information

#### 16 a)

The Ombudsman has nothing to add.

#### 16 b)

The Government has referred to the Swedish Police Authority's special investigation groups for Internet-related sexual abuse. However, a recently published report shows that major shortcomings are linked to the special investigation groups, regarding training among other aspects.<sup>34</sup> The Ombudsman believes that the work to protect children from online offences and abuse must be prioritised and that the resource allocation must reflect the increased prevalence.

**Sweden needs to report on what action is being taken to investigate online sexual abuse and violations.**

## D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

### 17. Torture and other cruel or degrading treatment or punishment

#### 17 a), b) and c)

There has been a number of studies<sup>35</sup> within the period of this report that has showed major challenges in the compulsory care of children, the challenges apply to psychiatric-care<sup>36</sup> as well as other compulsory care. Studies indicate that abuse of power, exploitation and violence against admitted children and young people has continued to occur. During the latter part of the period change work has been initiated but there is still work to be done.

In 2022 the Swedish Agency for Public Management released a report<sup>37</sup> on the conditions in "SiS-institutions"<sup>38</sup>. The conclusions of the report were that there is still a lot to be done in order to guarantee children's rights in SiS-institutions. Both JO<sup>39</sup> and IVO<sup>40</sup> have expressed serious criticism towards the operations at SiS. Among other things, the criticism concerns the staff's use of coercive measures which lack support in law and that the staff use more force than is justifiable and proportional.<sup>41</sup> The report also, among other things, states that there is a difference in quality between the care for girls and boys. According to the Swedish Agency for Public Management SiS-institutions need to improve the care for girls - girls feel unsafe to a greater extent than boys, they are more prone to separations and there are more reports of abuse that concern girls than boys.<sup>42</sup>

The Swedish Agency for Public Management concludes that although measures have been taken more has to be done and it has to be done rapidly. For example, SiS has to make sure that the staff has the right qualifications and knowledge, the mechanism for complaints has to be separated from the SiS-homes in order to provide a real possibility for children to complain. Reorganization of the special homes has to be done in order to provide care more adapted to the target group.<sup>43</sup>

**Sweden needs to report what measures are being taken to ensure that staff at care institutions have the right competence and training to carry out their assignment and that violence is not used in conflict with law or regulations.**

**The change work under way needs to be closely monitored to ensure conditions that enable achieving the intended effect**

**Sweden needs to ensure that children who are in alternative care have actual opportunity to assert their rights.**

*Also refer to responses to questions 2 (a) and (c), and 4 and 11 (c).*

### 18. Abuse and neglect

#### 18 a)

The Government refers in its report to a national survey of violence against children from 2016.<sup>44</sup> The study showed that 24 per cent were subjected to physical violence by an adult and 6 per cent were subjected to some form of neglect.<sup>45</sup> 9 per cent (of which the majority were girls) had been subjected to sexual abuse by an adult.<sup>46</sup> Overall, assessments in recent years show that the decrease in violence against children observed in earlier decades has come to a halt.<sup>47</sup>

A survey from 2019 of reports of suspected abuse or neglect showed that in 2018, approximately 331,000 reports were received by the social services. Of these reports, 38 per cent led to a decision to open an investigation. In recent years, the Swedish National Board of Health and Welfare has observed an increase in

the number of reports regarding younger children, girls, as well as reports that relate to the parents' or guardians' situation.<sup>48</sup>

Overall, violence and neglect persist as widespread problems. The Government's response does not address the question posed by the Committee concerning root causes and the allocation of sufficient resources to address the issue.

**Sweden needs to implement strong measures to ensure children's protection from violence.**

*Also refer to responses to questions 7 and 11 b about data collection and knowledge improvement.*

#### **18 b)**

The criminalisation of violence against children is not comprehensive. A special penal provision on psychological violence against children and neglect was considered in 2002.<sup>49</sup> The proposal was dismissed, mainly with reference to the principle of legality, and as the investigation questioned criminal law measures as an appropriate method to incentivise adults to treat children with respect. In October 2021, the Ministry of Justice decided to again investigate the criminal liability for psychological violence, the report will be submitted in August 2022. The Ombudsman welcomes this inquiry.

**Sweden needs to implement concrete measures to strengthen the child's protection against psychological violence and ensure that any new legislation has the intended effect.**

#### **18 c)**

As stated by the Government, the starting point for interventions by social services is to provide support to the family as a whole, rather than tailoring support to address children's individual needs. Family interventions often require consent from parents or guardians. In cases where a child may be subjected to violence by a family member, this approach is not sufficient to protect that child.

**The Ombudsman once again wants to highlight that children must be seen as rights-holders and that they should be assigned their own counsel who focus on the best interests of the child.**

*Also refer to the Ombudsman's response to questions 2 and 21.*

#### **18 d)**

A national survey of reports of suspected abuse or neglect in 2018 showed that nearly 60 per cent of reports to social services are made by the police, school or pre-school staff or health and dental care professionals. Despite the fact that professions with a duty to report suspicions of violence are filing more reports as overall, the survey indicates an underreporting among some of these professions, particularly healthcare staff.<sup>50</sup>

The Government refers to the fact that since 2017 some professions are required to have completed a course on intimate partner violence. Continuous training on how violence can be detected is of utmost importance in order for children who are mistreated to be able to receive the protection they are entitled to. This training needs to include specific focus on the impact of violence for children, early signs of exposure to violence, linked to the fact that children are in total dependence of their family environment.

The Swedish Gender Equality Agency's recently published survey of custody cases involving violence showed that knowledge of violence against children needs to be increased in the judiciary.<sup>51</sup> The Ombudsman shares this view and believes that professional groups who have an obligation to report concerns about violence also need greater knowledge of how violence, and maltreatment, affects children to ensure that no signs of violence are overlooked.

**Sweden should include knowledge on violence against children as a compulsory element in relevant university educational programmes.**

#### 18 e)

A survey in 2018 showed that the number of reports of suspected abuse or neglect has increased in the past decade.<sup>52</sup> In order for the social services to be able to meet this increase, financial and human resources must be ensured. The social services currently have a very high workload and the survey shows large differences between social services offices across the country as to how reports are handled; greater uniformity in the handling is required.

**Sweden must ensure that all children have equal access to support from social services.**

#### 18 f)

In its response, the Government points out that the municipalities are responsible for ensuring that children receive the protection they need. However, disadvantaged children often lack the possibility of asserting their rights and making their voice heard. There is also no independent body at the national level that can pursue these individual children's cases. *(Also refer to the responses to questions 17 c and 2 c)*

### 19. Freedom of the child from all forms of violence, including sexual exploitation

#### 19 a)

The Ombudsman welcomes the development of the new strategy for preventing and combating violence against children<sup>53</sup> and wants to point out the need for continuous follow-up in order for the strategy to have the desired effect.

#### 19 b)

The Government refers to the inquiry on the aforementioned strategy, which includes a review of the Barnahus operations. Ensuring that all children who have been subjected to violence, abuse and offensive treatment receive the right support and the possibility of redress should be a priority during the next reporting period. Today, there are large differences across the country in access to the specialised units that Barnahus offers. The latest review of Barnahus centres was conducted in 2018. Several shortcomings emerged, including that some children fall outside the target group of the operations and the geographical expansion of Barnahus centres seems to have stopped. In addition, the need for clearer national guidelines, uniform national governance and national coordination of operations was highlighted. According to the evaluation, differences between different regions entailed a risk of unequal treatment, support and protection.<sup>54</sup>

**Sweden must address the shortcomings that have already been identified regarding the Barnahus operations, including ensuring equal access to the support that Barnahus offers, and must closely follow the development so that children's rights are ensured.**

#### 19 c)

Regarding violations and online bullying, the Government refers to the Swedish Media Council and a campaign that aims to increase knowledge about racism and sexism among children. However, a recurring study done by the Swedish Media Council on the media habits of children and young people shows that the proportion of children aged 13-16 who have ever been subjected to online bullying has doubled since 2016.<sup>55</sup> The latest survey from 2021 also shows that victimisation is generally higher among girls and children with mental disabilities.<sup>56</sup> The results show that the measures implemented to protect children and young people from online violations are inadequate. The Swedish Schools Inspectorate's review from 2016 presents a similar picture, where an overall conclusion is that the majority of the reviewed schools need to improve their work against offensive treatment online.<sup>57</sup>

Regarding the situation in schools, the Government refers to current legislation and the supervision exercised by the Swedish Schools Inspectorate and the Equality Ombudsman. However, recurring reports show the need for proactive work to prevent offensive and humiliating treatment and to change norms.<sup>58</sup> Many pupils feel that school is not a safe environment: for example, pupils in grades 7-9 experience a higher degree of not

feeling safe compared with other age groups.<sup>59</sup> They also state to a greater extent that adults do not act upon offensive treatment, that respectful treatment is lacking and that differences are not respected. Girls experience the environment not being safe to a greater degree than boys – a difference that increases as students grow older.<sup>60</sup> Sexual harassment occurs on a daily basis in schools and girls, pupils belonging to sexual minorities and pupils with disabilities are particularly vulnerable.<sup>61</sup>

**Sweden needs to ensure children’s right to protection against online abuse.**

**Sweden needs to ensure that all children feel safe at school and that victimised children have access to redress.**

#### 19 d)

The Committee’s question concerns specifically the exposure of children – especially girls – to sexual and gender-based violence, including online abuse. In its response, the Government has referred to several general efforts to combat prostitution and human trafficking, but does not describe how these measures will lead to concrete change for children who have been subjected to sexual and gender-based abuse, despite the fact that girls in particular continue to experience a high degree of exposure to gender-based and sexual violence. A recurring study that focuses on young people’s sexuality, exposure to sexual abuse and sexual exploitation shows that the number of young people who have been subjected to some form of sexual violence has increased in recent years.<sup>62</sup> In the latest survey from 2021, one in four respondents stated that they had been subjected to abuse, compared with one in five in 2014. Girls are more vulnerable: 36 per cent of the girls had been subjected to some kind of abuse while growing up, compared with 12 per cent of the boys. The study also found that it was more common for girls to have been sexually exploited for compensation – which marks a change compared with previous studies on the subject. Online sexual exploitation and abuse have also increased during the reporting period, mainly against girls.

**Sweden needs to implement clear and effective measures to prevent and protect children from sexual abuse, especially online and to protect girls. The measures need to have children as a clear target group and be followed up to ensure effect.**

## 20. Harmful practices

#### 20 a)

The Ombudsman has nothing to add.

#### 20 b)

The Government refers to new legislation on harmful practices, as well as methodological support and training efforts. However, there are still very few prosecutions and convictions for crimes concerning child marriage and female genital mutilation (FGM), even though the number of police reports increased dramatically during the reporting period.<sup>63</sup> Since 2015, there have only been two convictions concerning FGM and since new legislation on child marriage was introduced in 2020, only one prosecution has been brought (which led to conviction). In all three cases, the sentences were lenient.<sup>64</sup>

It is difficult to assess how many children in Sweden have been subjected to child marriage or FGM, but the Swedish National Board of Health and Welfare estimated in 2015 that around 38 000 girls and women may have been subjected to the practice, of which 7 000 were girls under 18.<sup>65</sup> Another 19 000 girls were estimated to constitute a risk population for FGM. A report on the care offered to girls and women showed that in 2018, 52 girls aged 0-17 had been subjected to FGM, sought care and received a diagnosis.<sup>66</sup> Not one of these cases led to charges. At the same time, the number of unreported cases is assumed to be large.

**Sweden needs to ensure that crimes stated above against children – mainly girls – lead to prosecution and conviction. Issued sentences should also be in proportion to the seriousness of the crimes.**

## E. Family environment and alternative care (arts. 5, 9–11, 18 (1) and (2), 20, 21, 25 and 27 (4))

### 21. Family environment

#### 21 a)

The Ombudsman has nothing to add.

#### 21 b) and c)

Parental rights are strong in Sweden and, in several cases, severely limit the child's possibilities of having his or her rights fulfilled. This is particularly true of children's right to protection from violence (both psychological and physical). Processes concerning custody, living arrangements and contact must in a clearer and more systematic way be based on the child's perspective, and the child's best interests must always be given decisive importance in these matters.

#### *The child as a (non-) rights-holder*

For many years, the Ombudsman has pointed out that it is difficult for children who are in custody disputes to have their rights met. Although the legislation is written based on the child's right to his or her parents, not the parents' right to the child, there are major shortcomings in both assessments of the child's best interests and the child's right to be heard in the practical application. In custody cases, the focus is also often on the parents' conflict, not the child's best interests.<sup>67</sup>

A fundamental problem is that a child is not a party to the case concerning custody, contact and living arrangements, which means that the child lacks right to a counsel who has the responsibility to bring forward or pursue the child's perspective. The child is seen as an object that the guardians are in dispute about, even though the child is the person most affected by the decision. An example of how the child's rights are set aside in favour of the parents' rights is that only parents, not children, can demand contact, even though the Parental Code states that it is the child who has a right to contact with their parents.<sup>68</sup> The child thus lacks the possibility of claiming his or her right. A parent, on the other hand, can demand contact that can be enforced with the help of police – regardless of whether the child wants to, and even if the parent has committed a crime against the child. A new survey also shows that the principle of the child's right to contact with both parents has a greater impact in deciding these cases than the child's right to be protected from violence or other abuse.<sup>69</sup>

#### *The child's right to be heard and to protection against violence*

The Government has reported a number of recently implemented legislative amendments. The Ombudsman has welcomed the aforementioned legislative amendments, but major shortcomings remain in practice. This is particularly apparent from the Swedish Gender Equality Agency's recent survey (to which the Government has referred). In none of the 198 cases reviewed have children been heard in court and 57 per cent of the cases do not present the child's position on the matter at all. Only five of the 198 judgments reviewed refer to the Convention.<sup>70</sup>

One of the conclusions of the survey is that the courts need to obtain knowledge about violence against children, honour-based violence<sup>71</sup> and oppression, consequences of victimisation by violence and consequences of decisions on custody, living arrangements or contact. According to the survey the courts also need to develop and improve their work to fulfil their responsibility for children's rights. In order to apply the best interests of the child, a strong child rights perspective and well-founded risk assessments are needed, which the Council of Europe's expert group, GREVIO, highlights in its recommendations to Sweden.<sup>72</sup> It needs to be ensured that no other interests take precedence over the child's best interests.

The Ombudsman has previously called on the Government to remove the stipulation that a child should be heard if it is not deemed inappropriate<sup>73</sup> as this is not consistent with Article 12 of the Convention. Both the



Inquiry on the Convention of the Rights of the Child and the Inquiry on Children's Rights have stated that Swedish family law legislation is not in agreement with Article 12.<sup>74</sup>

In Sweden the court always tries to make the parents come to an agreement rather than the court deciding for them. In the survey by the Swedish Gender Equality Agency, it emerges that in 61 per cent of the reviewed cases, where there was information on violence or other abuse, courts have established agreements between guardians or parents.<sup>75</sup> Children's right to be heard should be ensured in these procedures as well.

The same survey, which included 814 court decisions in custody cases, also shows that there is no systematic approach to conducting risk assessments regarding violence and abuse, if indeed they are conducted at all. Furthermore, the survey shows that courts tend to misinterpret symptoms and signs of abuse and neglect and focus on parents' difficulties to cooperate more than on violence. In some cases, even measures that are a direct result of exposure to violence, such as a woman seeking sheltered housing with her children, are viewed as evidence of difficulties to cooperate rather than evidence that violence has occurred.

**Sweden must immediately ensure that the best interests of the child be given decisive importance in cases regarding custody, living arrangements or contact.**

**Sweden needs to ensure that children have the opportunity to be heard in proceedings regarding custody, living arrangements and contact. The Committee previously called on Sweden to remove the requirement regarding "appropriateness" in the Aliens Act. The Ombudsman believes that the same demand should be made regarding the Parental Code.**

**Sweden needs to ensure that children are party to cases regarding custody, living arrangements and contact and thereby may have his or her own counsel in the process.**

**Sweden needs to ensure that no child shall be forced to have contact with or reside with the perpetrator of abuse. In cases where there is information about violence, the child's right to protection must take precedence.**

**Sweden needs to strengthen the competence of the courts regarding children's rights and how violence affects children. In addition, both the courts' and the social services' competence and ability to assess children's stories need to be ensured.**

*Also refer to the responses to questions 2, 4, 21 and 31.*

## 22. Children deprived of a family environment

### 22 a)

The Ombudsman has nothing to add.

### 22 b)

From a survey of children of detained parents and their needs, 2018,<sup>76</sup> it is apparent that children do not have access to the support they need, for example in terms of information, support in maintaining good contact with the parent in safe formats and opportunities to talk with a professional about their situation. Furthermore, the study shows that a majority of municipalities have neither specific efforts nor developed prevention work for children of detainees.<sup>77</sup> The Swedish Prison and Probation Service have taken measures, i.e. during the covid-19-pandemic they were one of the first authorities to act and making temporary changes so children could stay in contact with a parent. The largest part of the support available for the target group is however provided by NGOs. Sweden's efforts to support children of detainees must be improved; the social services need greater knowledge about the target group. The fact that all the aforementioned needs remain is stated in another report published in 2021.<sup>78</sup>

In its response the Government has referred to the social services' responsibility, the national strategy for parenthood support and funding for the non-profit sector. However, neither the social services nor the non-

profit sector can alone solve the problem. It is the Government's responsibility to ensure all children's equal access to their rights. *Also refer to the Ombudsman's response to question 2 b.*

**Sweden needs to clarify what measures are being taken to ensure access to equivalent support for children of detainees.**

22 c)

Children in alternative care often suffer from mental health issues. Many children testify to self-harming behaviour, suicidal thoughts and attempted suicide. They also talk about sleeping difficulties, PTSD, anxiety, depressions and being diagnosed with neuropsychiatric disorders. The children often have extensive need for support services. It is of the utmost importance that children placed outside the home have access to all the care and support they need for their safety, health and development.

Children in alternative care have been the focus of several investigations in recent years.<sup>79</sup> The studies show major shortcomings: substandard investigations, that children are not heard, poor follow-up, placements that are not individually adapted and serious shortcomings, such as occurrence of violence and abuse. Children whom the Ombudsman has met often talk about poor contact with their social worker. Among other things, the testimonials are about too little time with the social worker, not being listened to, not being able to express their own thoughts on treatment, not being informed what will happen and many relocations.<sup>80</sup>

A study from 2017 shows that a social worker responsible for child investigations has an average of one hour a day for contact with children, young people and guardians. Only a small part of this hour is used for individual discussions with children.<sup>81</sup> According to a recent study by the Swedish National Board of Health and Welfare, children's participation in decisions and planning of efforts at the social services is low. Less than half of the municipalities have a standard procedure to provide children in alternative care information on their rights and contact information to responsible authorities.<sup>82</sup>

In its response to the Committee, the Government refers only to the responsibilities of the municipalities. As have been stated before, when the municipalities do not live up to their responsibilities, the Government must act.

**Sweden urgently needs to implement all necessary measures to ensure children in alternative care their right to support and the care providers' capability to provide support. *Also refer to the response to question 24 a.***

**Sweden needs to report on what steps are being taken to strengthen the social services so that cases concerning children are handled by social workers who have enough time and resources to meet the child and conduct qualitative investigations. The question is relevant to all child investigations, not just in relation to children in alternative care.**

## F. Children with disabilities (art. 23)

23.

### 23 a)

The Ombudsman's 2016 report on children with disabilities showed clear shortcomings in terms of children's right to information and participation. Children lack information about their disability, and they do not feel involved in decisions that concern them. This may involve, for example, medicines that are administered without the child being told the purpose or possible side effects, that care visits are scheduled during school hours or that the child cannot influence when he or she has the possibility of going to the restroom including who accompanies him or her.<sup>83</sup>

These problems also permeate decisions on children's right to support. The Government refers to the Swedish National Board of Health and Welfare's follow-up of how the principle of the best interests of the child is used in assessments, decisions and planning of efforts according to LSS, which showed major shortcomings.<sup>84</sup> The Swedish National Board of Health and Welfare describes that case officers experience difficulties in involving children in decisions and assessing what is in the best interests of the child. Lack of knowledge about disabilities and communication with children who have reduced communicative ability also poses difficulties.

The Government does not present clear measures to increase the competence of case officers despite the report's conclusions. All in all, the shortcomings mean that some of the most vulnerable children in society are also those who have most difficulties in making their voices heard.

**Sweden needs to describe what steps are being taken to ensure that children with disabilities are given an actual possibility of influence and participation in decisions that concern them.**

### 23 b)

Children's access to support is often dependent on their parents' resources, which risks leading to unequal access to healthcare, social care and support. Studies show that many parents of children with disabilities devote a lot of time and resources to the coordination of contacts, education, information and administration that concern the child.<sup>85</sup> Many people have reduced working hours due to the fact that care and administration concerning the child take so much time.<sup>86</sup> This clearly shows the need for support to these families.<sup>87</sup>

Many children with disabilities grow up in strong dependency of adults around them. The Ombudsman believes that it is of great importance that there is transparency in the efforts provided according to the LSS; follow-up should take place continuously and children need to be enabled to participate in the process. A difficulty linked to participation is that the guardian does not always consent to the LSS case officer being allowed to speak directly with the child, often as a means of protecting the child.

The possibility of questioning the child without consent from guardians, when this is deemed appropriate, should be introduced for social services to secure children's right to participation in decisions that affect them.

**Sweden urgently needs to ensure that children with disabilities have the same access to social care, medical care, education and support regardless of what resources the parents have and where in the country the child lives. Children should also be given the opportunity to talk directly with LSS case officers to a greater extent.**

### 23 c)

The Ombudsman has nothing to add.

### 23 d)

The Ombudsman welcomes the new curriculum in the teacher training programmes with the aim of improving schools' conditions to meet pupils with neuropsychiatric difficulties. Children have in meetings with the Ombudsman, among other things, described a need for increased knowledge in schools about children's rights and living conditions.<sup>88</sup> This particularly concerned children with neuropsychiatric disorders. The lack of

knowledge leads to children being at risk of missing out on support. For example, boys are three times more likely to be diagnosed with disorders such as ADHD and autism, compared to girls. Studies indicate that the difference is due to the fact that several of the criteria for the diagnoses are coded according to boys' more extrovert symptoms, which risks leading to an underdiagnosing of girls who thereby do not receive the support they need.<sup>89</sup>

**Sweden needs to ensure sufficient expertise in schools so that children with disabilities receive the right support.**

**23 e)**

As the Committee has pointed out on several occasions, Sweden should immediately implement measures to ensure access to good quality statistics regarding exposure to violence among children with disabilities. The lack of statistics on children with disabilities also refers to other areas.<sup>90</sup> Refer to the responses and recommendations to questions 7 and 11.

## G. Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33)

### 24. Health, including mental health, and health services

#### 24 a)

The Government refers to applicable law and that all citizens shall be offered services of equal quality. However, the health of children who live in some form of disadvantage is generally worse than other children. Socio-economic disadvantage is a factor that increases the risk of mental illness.<sup>91</sup> Children in alternative care also feel significantly worse than other children,<sup>92</sup> 71 per cent of children living at homes for care or residence (HVB) have at least one psychiatric diagnosis.<sup>93</sup> The prescription of psychotropic drugs to children and adolescents in placement is very high compared with other children. There is also a high degree of serious self-harming behaviour problems and attempted suicide.<sup>94</sup> Mortality is nearly five times as high among children and young people in alternative care compared with other children and young people.<sup>95</sup> Despite this, children in alternative care often lose out on the continuous healthcare they are entitled to. Less than half of the municipalities surveyed have routines to examine the physical and oral health of these children.<sup>96</sup>

Access to care for children who are not reached through traditional services, such as unaccompanied minors and children without abode, is still deficient.<sup>97</sup> The awareness of the fact that asylum seeking children and young people in alternative care should be offered health exams is generally low.<sup>98</sup> At the same time, many newly arrived and unaccompanied minors experience a high degree of ill health, especially mental illness.<sup>99</sup>

**Sweden needs to ensure good health for all children regardless of socio-economic background.**

**Sweden needs to ensure the right to healthcare for children in alternative care and implement measures to ensure that placements are adapted to the individual child's specific needs.**

**In addition, there is a need for efforts to improve awareness amongst employees in healthcare and social services on the right to health care for asylum seeking children to ensure that all children are guaranteed the right to good health.**

#### 24 b)

The Ombudsman has nothing to add.

#### 24 c)

In recent decades, the proportion of children and young people who experience mental illness has doubled.<sup>100</sup> The waiting times are long and the aim for children to have an initial appointment, an examination and treatment within 30 days is only reached in 50 per cent of the cases.<sup>101</sup> In this context, reduced and geographically unequal access to school health services should also be mentioned.<sup>102</sup>

The Government refers to an agreement with the Swedish Association of Local Authorities and that the funds, for example, can be used to develop support for children, including children with disabilities who suffer from psychosomatic disorders and mental problems. However, these measures are not sufficient. *Also refer to the response to question 24 f.*

#### 24 d)

The Ombudsman has nothing to add.

#### 24 e)

In its response, the Government again refers to the agreement between the State and Swedish Association of Local Authorities and that these funds could, for example, be used to develop support for children who have neuropsychiatric disorders. However, this agreement does not address the specific problem that the Committee highlights in the question. *Also refer to responses and recommendations under questions 23 a and 24 f.*

## 24 f)

The Government refers to general measures to address the extensive problem of accessibility and long waiting periods for child and adolescent psychiatric services. The Ombudsman wants to underline that more targeted measures are needed to reach vulnerable groups. These measures also need to be systematically followed up to ensure that the effect is achieved.

Girls continue to be overrepresented among children and youth who experience mental illness and this only increases as they grow older.<sup>103</sup> Girls and young women are also more often treated for attempted suicide and self-harming behaviour. The largest differences exist in the 10-19-year age group, where girls were treated four times as often as boys, according to the Public Health Agency.<sup>104</sup>

Children and young people seeking asylum also experience a very high degree of mental health issues; the suicide risk among unaccompanied asylum-seeking refugee children in 2017 was, for example, nine times higher than the corresponding number among their peers in Sweden.<sup>105</sup>

Children who identify themselves as LGBTQI also continue to experience a higher degree of mental health issues.<sup>106</sup>

**Sweden needs to ensure that children have access to school health services and psychiatric care on equal terms throughout the country. Shortening the waiting times for psychiatric care for children should be prioritised. Also refer to the Ombudsman's response to question 13.**

**Sweden needs to present concrete actions taken or planned.**

## 25. Standard of living

### 25 a)

A large number of children in Sweden live in financial vulnerability.<sup>107</sup> Significant inequalities remain between different municipalities and between different groups of children. Two groups stand out – children of single parents and children of foreign-born parents. The financial vulnerability is four times as high among the children of a single mum compared with the children of parents who are living together and four out of five children in financial vulnerability in Sweden have at least one foreign-born parent. A common reason for the financial disadvantage of children with a foreign background is that the parents have not yet established themselves in the labour market.<sup>108</sup>

Children in Sweden today have fundamentally different prerequisites and living conditions depending on their parents' or guardians' situation and background. These differences are unacceptable. *Also refer to the response to question 11 b.*

**Sweden needs to ensure that children do not grow up in financial disadvantage, regardless of background and family circumstances and describe concrete actions to ensure this.**

### 25 b)

In its response, the Government refers to the county administrative boards being tasked with supporting the municipalities and that the Swedish Enforcement Authority has developed methodological support for municipalities and housing companies. This is far from sufficient measures to combat the housing shortage and growing inequality.

The Swedish Enforcement Authority continuously publishes statistics on the number of children affected by eviction in Sweden, where families with children who have had a first-hand contract and have been evicted are made visible.<sup>109</sup> However, the large group of homeless are families with children who are outside the regular housing market and they are thus not covered by these statistics.<sup>110</sup> The statistics can, however, provide an indication of the housing situation for families with children. The number families with children evicted increased from 188 in 2018 to 298 in 2021. Three out of four evictions of families with children concerned single parents, mainly mothers.<sup>111</sup> A large majority – 87 per cent – were due to unpaid rent and it was primarily

families with long-standing financial problems that were affected. The number of affected children has gradually increased in recent years, from 387 in 2016, which was the lowest figure, to 572 in 2021.<sup>112</sup>

**Sweden needs to ensure that no child is evicted into homelessness.**

25 c)

The Ombudsman's 2022 Annual Report focused in part on the housing situations. Despite efforts to improve children's housing situation, thousands of children are in homelessness, a large part of them in so-called acute homelessness. Some live with a relative or are lodgers with strangers, while others live in shelters together with adults who in many cases are struggling with substance abuse and mental illness.<sup>113</sup>

In 2016, 24 000 children had parents who were in some form of homelessness.<sup>114</sup> One fifth of them were in acute homelessness.<sup>115</sup> The National Board of Health and Welfare's surveys also show that the proportion of parents – especially women – with children under 18 who were in acute homelessness increased between 2011 and 2016.<sup>116</sup> A common reason that women end up in acute homelessness is that they have been subjected to violence by a partner.<sup>117</sup> In many cases, women who find their way to sheltered housing also have children.<sup>118</sup> Recent measures have been taken to strengthen the children's right to protection and education. Children testify that they do not receive enough information and that they do not feel heard.<sup>119</sup>

**Sweden needs to ensure that all children, without distinction, have a safe and permanent home.**

**Sweden urgently needs to ensure that every municipality can provide child-adapted emergency housing for the children who need it. A time limit also needs to be introduced so that children may be placed in emergency housing for a maximum of 14 days.**

## 26. Impact of climate change on the rights of the child

The Ombudsman has nothing to add.

## H. Education, leisure and cultural activities (arts. 28–31)

### 27. Education

#### 27 a) and b)

The quality of education and children's academic performance vary widely between different schools. Parents' educational background and country of birth often play a crucial role for how children perform at school.<sup>120</sup> Analyses show that the school's socio-economic composition has generally gained greater significance for academic performance.<sup>121</sup> The parents' level of education has the most impact on children's performance, but at the same time the parents' income has become increasingly important.<sup>122</sup> Income is highlighted as the main explanation of the increased importance of socio-economic background when it comes to grade results. However, other factors also play a role – when it comes to unexcused absences, for example, children with neuropsychiatric disorders and children of parents with substance abuse or mental illness are overrepresented.<sup>123</sup>

Children with disabilities feel that the school has low expectations of them, that teaching is poorly adapted to their needs and that they are not challenged in their learning.<sup>124</sup> Among other things, the Government refers to new graduation targets in the teacher training programmes so that schools will get better at meeting children and pupils with neuropsychiatric disorders. However, to be able to follow up the outcome of various measures and efforts, including this, better statistics are needed regarding children with disabilities. *Also refer to the Ombudsman's response to question 24 (c) and (e).*

The single most important success factor for children in alternative care is how well they do in school.<sup>125</sup> Even if there has been a positive development in recent years, shortcomings in the education for children in alternative care remain, including low amount of teaching hours, high absences and inequalities in education. Girls' needs also need to be met in a better way.<sup>126</sup>

It is unacceptable that pupils' opportunities in school are largely determined by their background and personal circumstances.

**Sweden needs to implement targeted measures to ensure that all children have equal access to quality education. These measures must be implemented and followed up systematically.**

#### 27 c)

The inquiry into a more equivalent school handed over its report in April 2020.<sup>127</sup> The Ombudsman agreed with the inquiry's assessment of the importance of systematically and continuously monitoring school equivalence and compensatory capacity. In its report, the Government refers to the inquiry report being handled within the Government Offices. Since inequality in the educational system needs to be addressed immediately, the Ombudsman wants to emphasize that the inquiry's proposals should be acted upon as soon as possible.

#### 27 d)

The Ombudsman has nothing to add.

#### 27 e)

Between 2015 and 2017, the Swedish Schools Inspectorate conducted an audit of the preschool activities on behalf of the Government. Overall, the Swedish Schools Inspectorate found that the quality in preschool varies too much and that the preschool's compensatory assignment has been put at risk.<sup>128</sup> It was also found that less than 40 per cent of the staff were licensed preschool teachers and that recruitment difficulties were expected to persist for a long time to come. In its response, the Government refers to a number of measures taken to



address the problem, but also states that the desired effects have not all been achieved. More steps need to be taken and close follow-up is needed in relation to the desired effect.

**Sweden needs to ensure an equivalent quality of education in preschools.**

**27 f)**

In its response, the Government refers to the Swedish Schools Inspectorate's supervisory responsibility. The Ombudsman wants to underline that supervision does not guarantee equivalent education of good quality. Schools are deficient in their compensatory mission and the system of independent schools has contributed to increased school segregation.<sup>129</sup> The system enables for profit actors to cut back on the school's costs – including number of teachers and their salaries, as well as the school's premises and other costs. The Swedish Schools Inspectorate has noted shortcomings in selection and reception when it comes to independent schools, including that schools request information that is not necessary, about, for example, the pupil's mother tongue, previous special education efforts and need for support.<sup>130</sup>

**Sweden needs to ensure all children's equal access to good education in schools.**

**27 g)**

The Ombudsman has nothing to add. Also refer to the Ombudsman's responses to questions 4 c and 6 c

## **28. Rest, leisure, recreation and cultural and artistic activities**

**28 a)**

Children often describe the importance of access to leisure activities in the nearby area.<sup>131</sup> However, children do not have an equal opportunity to participate in activities – for example, children in sparsely populated areas do not have the same opportunities for leisure activities, both on the basis of offerings and the possibilities of getting to them.<sup>132</sup> Financial disadvantaged children also have less opportunities for active leisure time.<sup>133</sup> Girls' sports and other leisure activities are also more limited than boys'. For example, leisure centres are visited more often by boys than girls.<sup>134</sup>

**Sweden needs to closely monitor this development and implement measures to ensure all children's right to a meaningful leisure time.**

**28 b)**

In its response, the Government writes that the Swedish sports movement work to incorporate norm-conscious perspectives into the activities at different levels and training. However, studies show that more needs to be done to ensure the safety of children and young people. A report on abuse showed that sexual abuse is a general problem in sports, that policies need to be clarified to strengthen protection against sexual abuse in sports and that the sports movement lacks clear and solid routines.<sup>135</sup> This is confirmed by another study from the Swedish Sports Confederation that shows that few or no steps to explicitly address sexual abuse of children and adolescents have been taken by the ten largest specialist sports associations in children's and youth sports.<sup>136</sup>

**Sweden needs to ensure that children can exercise sports in a safe environment.**

# I. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40)

## 29. Asylum-seeking, refugee and migrant children

### 29 a)

In its response, the Government refers to the fact that the Act (2016:752) on Temporary Limits to the Possibility of Receiving Residency Permits in Sweden expired on 20 July 2021. However, on the same day, permanent legislative amendments entered into effect instead, largely based on the temporary legislation from 2016. The Ombudsman strongly opposed this bill in its entirety and pointed out in rounds for comment<sup>137</sup> that the inquiry had failed to analyse the consequences from a children's rights perspective, despite clear directives to that regard. The legal certainty for children in asylum processes was not highlighted in any way by the inquiry, even though government investigations<sup>138</sup>, the Swedish Migration Agency's own analyses<sup>139</sup> and the Ombudsman's reviews<sup>140</sup> show major shortcomings in legal certainty for children in asylum processes. It is particularly remarkable that lack of time and lack of resources are mentioned as obstacles to an adequate assessment of the child's best interests.<sup>141</sup> The Ombudsman does not believe that the current legislation guarantees an asylum process for children that meets necessary requirements when it comes to predictability and rule of law.

**Sweden needs to describe how the asylum process will be improved from a child-rights perspective.**

### 29 b)

In 2016, the Ombudsman was inquired to investigate the situation of unaccompanied minors who went missing, and found that 1,736 children disappeared during the period January 2014 until October 2017.<sup>142</sup> Only a fraction of these children have returned or been found. The investigation showed that the needs of unaccompanied minors were not sufficiently investigated when they were taken into alternative care and that their needs were often neglected. Unaccompanied minors who go missing are also not searched for by authorities in the same way as other children; many who went missing testify to experiences of sexual abuse and exploitation.<sup>143</sup>

**Sweden needs to ensure that unaccompanied minors are protected against abuse and exploitation, that alternative care meets the child's needs, and that all children who go missing are searched for.**

### 29 c)

As the Government notes in its response, there is no legislation regarding child-specific persecution, even though the Swedish Migration Agency's legal position on the assessment of the best interests of the child includes examples of child-specific grounds for asylum and child-specific persecution. The Ombudsman believes that the possibility of introducing child-specific grounds for asylum into the legislation should be investigated.

Several investigations and reports<sup>144</sup> have shown that there are major shortcomings in the child's right to be heard in asylum cases when children seek asylum together with parents or guardians – even though the children's own grounds for asylum must be investigated. It leads to an uncertain and arbitrary legal application in migration cases for children.

As regards the issue of children who have been forcibly detained due to exposure to, for example, violence, abuse or lack of care, the Government's response is inadequate. Today, an asylum-seeking child who is in alternative care because the parents have not exercised parental responsibility can still be expelled together with the same parents – even though the need for protection persists. Measures need to be implemented immediately. *Also refer to the Ombudsman's response to question 14 a.*

**Sweden needs to ensure that thorough assessments of the best interests of the child are carried out in processes regarding asylum and migration.**

**Sweden needs to ensure children’s right to be heard in asylum processes and ensure that children’s own grounds for asylum are investigated.**

**Sweden needs to ensure that the right to protection of children in alternative care is not compromised in the expulsion of their guardians.**

29 d)

The Ombudsman has nothing to add.

29 e)

The processing times at the Swedish Migration Agency are often very long. Statistics for 2019 show that the average processing time for unaccompanied refugee children was 215 days; large variations exist based on the original country of origin – from 18 to 829 days.<sup>145</sup> For children, the long processing times cause deteriorating health, including mental illness and sleeping difficulties, and challenges in acquiring education.<sup>146</sup>

Asylum-seeking children have the right to attend school on the same terms as other children in Sweden while their case is being handled.<sup>147</sup> However, they are not covered by compulsory schooling, which means that the municipalities have no outreach responsibility and that it is the child’s guardian or his or her legal representative who decide if they want to let the child utilise the right to education. In the Ombudsman’s dialogue with the Swedish National Agency for Education on follow-up of children who stop attending school, it was also noted that the schools do not follow-up school absences among asylum seekers in the same systematic way as for children covered by compulsory schooling. The compulsory schooling also does not apply to children who have been granted a residence permit with temporary protection or who are undocumented. Many of the asylum-seeking children and young people that the Ombudsman has met have testified that they have had to wait a long time to start school – up to six months.<sup>148</sup> *Also refer to the Ombudsman’s response to question 24 a.*

**Sweden needs to ensure that children’s asylum applications are handled promptly and with legal certainty and that the children’s right to care and education is met during the application period.**

29 f)

The process for age assessments must be legally certain and transparent. Age assessments must not only be based on medical assessments, but psychosocial age assessments need to be carried out as well. The principle of "benefit of the doubt" must always be respected. However, the Swedish Migration Agency’s own analyses and reviews in the media show major shortcomings in the implementation of age assessments.<sup>149</sup>

**Sweden needs to ensure that age assessments always take place in a legally certain way.**

## 30. Administration of child justice

30 a)

A study in 2015<sup>150</sup> showed that 20 per cent of young people in custody had not understood, or had found it difficult to understand, the information they received. Most had understood why they were in custody, significantly fewer had understood other information, such as that they could appeal some decisions regarding restrictions or the purpose of the personal investigation (which forms the basis for the design of continued efforts). Many stated language difficulties as the reason that they did not understand the information. *Also refer to the Ombudsman’s response to question 30 d about children’s right to counsel.*

**Sweden needs to ensure that children and young people in detention have access to information in a way that they can understand.**

30 b) and c)

Developments in Sweden in the past decade, with increased juvenile delinquency involving younger children, are of concern. The proportion of young boys involved in serious crime that includes grave, sometimes fatal, violence is increasing. Socio-economically disadvantaged children are particularly vulnerable both as perpetrators and victims. This development must urgently be curbed.

During the reporting period, a number of legislative measures have been proposed and enacted, such as stricter sentences and greater possibilities for law enforcement agencies to implement measures that invade the privacy of individuals. However, there is no evidence that harsher sentences and increased possibilities of resorting to different coercive measures show results. According to a government inquiry<sup>151</sup> research rather shows the opposite – increased mandate to use coercive measures against children do not protect them from being exploited in criminal activities. According to the Swedish Prison and Probation Service, based on a study on the effects of more stringent punishments, the results are so varying that it is not possible to determine if more stringent punishments are an effective means to curb crime.<sup>152</sup>

Despite the lack of evidence, the Swedish Government has decided on a number of legislative amendments that involve a tougher and more repressive crime policy, without evaluating the effects of previous legal changes first.

The Ombudsman welcomes that a time limit for children under 18 placed in pretrial detention has been introduced, but believes that three months is far too long.

The Ombudsman is concerned about the rapid shift towards a tougher approach to curb the developments. As increasingly younger children are being recruited and exploited, including children with disabilities, there is an urgent need to focus on preventive measures as well, including early interventions by schools, social and health services as well as interventions for families. *Also refer to the Ombudsman's response to questions 28, 11 and 27.*

**Sweden must ensure that the steps taken to curb children's and young people's participation in crime are preceded by solid child rights impact assessments. Preventive measures and early interventions by relevant actors are needed to stop recruitment. In the selection of measures, careful trade-offs must be made based on the child's best interests and proportionality.**

### 30 d)

In its response, the Government refers to current regulations that state that public counsel shall be appointed unless it is considered clearly unnecessary. The Inquiry on the Convention of the Rights of the Child found that the regulations on children's rights to legal counsel in the event of suspicion of crime are not fully consistent with the Convention in that there is no absolute requirement for legal counsel.<sup>153</sup> The Ombudsman shares that opinion. Children suspected of crime must always have access to counsel.

**Sweden needs to ensure that children suspected of crime always have access to counsel throughout the entire process.**

## 31. Children who are victims and witnesses of crimes

### 31 a)

In general, there are few cases of violence and abuse against children that lead to prosecution; even fewer lead to conviction. In 2021, 24,310 assault offences were reported against children under the age of 18, which corresponded to 30 per cent of all reported assault offences.<sup>154</sup> The percentage of solved cases is between 5 and 7 per cent.

**Sweden needs to ensure that more cases of violence and abuse of children lead to prosecution and conviction.**

#### *Barnahus*

Barnahus centres are not available throughout the country, the support offered at the Barnahus centres varies and there are differences in which children are considered to be included in the target group of the activities.

The Government does not describe how all children shall have access to the support and expertise that the Barnahus centres offer. *Also refer to response to question 19 b.*

**Sweden needs to ensure that all children who are victims of or have witnessed violence shall have equal access to the support that the Barnahus centres offer.**

#### *The courts' competence in child law*

The child rights perspective in legal processes needs to be strengthened. Several inquiries<sup>155</sup> have highlighted the importance of ensuring that legal professionals – especially judges – have the necessary competence and knowledge about children and children's rights, not least to ensure that children's account can be assessed and evaluated correctly. Today, high demands are placed on children who have been subjected to crime to be able to testify about this in a way that meets general criteria for evidence evaluation. The Inquiry on Children's Rights noted that there were shortcomings in both the prerequisites for a child to be heard and the manner in which the child had been heard. The inquiry noted that training efforts were carried out for police officers who work with investigations concerning children, but that the corresponding efforts were not made for the judiciary. Judges may therefore be faced with evaluating a child's account without having knowledge of children's psychological development, memory functions and ability to tell, and without engaging experts.<sup>156</sup>

Today, Sweden is the only Nordic country that does not require special expertise on children for judges in first instance courts and several actors – including the Ombudsman – have proposed that the need for specialised judges, courts or departments for cases concerning children should be investigated.<sup>157</sup>

**Sweden needs to ensure that judges who handle cases concerning children have the right competence to do so. Sweden also needs to clarify the courts' investigative responsibility and clarify a duty to bring in expertise when necessary in cases that concern children. The possibility of establishing specialised courts, departments or judges for cases concerning children should be investigated.**

#### *Right to legal counsel*

In its response, the Government states that there is a very strong presumption that children who have been subjected to sexual crime shall be appointed a counsel. The Ombudsman believes that all children who have been subjected to violent or sexual crime, without exception, shall be offered a legal counsel who can protect the child's interests.

Children often participate in parallel processes within the justice system, processes that are not always coordinated. In some cases, the child may have different lawyers in the different processes, even though the processes may essentially be about the same thing. This may apply, for example, to a process of custody according to the Care of Young Persons (Special Provisions) Act in parallel with a criminal-law process against the child's guardian due to violence. It is of utmost importance that these are coordinated as far as possible and that the child has the same counsel.<sup>158</sup>

**Sweden needs to ensure that all children who have been subjected to violent or sexual crime are offered legal counsel and that children who participate in parallel legal processes are represented by the same counsel if it is deemed to be in the best interest of the child.**

#### **31 b)**

The Government refers to current regulations regarding prompt processing in cases where children are the injured party. In practice, however, many children have to wait longer than the statutory three months. Save the Children has investigated what the actual processing times are for crimes against children and established that one in three children had to wait longer than three months.<sup>159</sup> The report also shows large differences between different prosecutor offices.

**Sweden should ensure that all cases concerning children subjected to crime are investigated promptly.**

#### **31 c)**

In its response, the Government refers to the fact that the Swedish Police Authority has recruited new investigators with expertise to investigate crimes of sexual abuse, crimes in close relationships and crimes against children. A corresponding increase in competence is needed within the rest of the legal system,

including the courts (*also refer to the response to question 31 a*). This applies not least to cases where children with disabilities are the injured party; courts rarely bring in experts who can inform the court about what various disabilities can mean for the child. This entails a risk that these children are discriminated against and do not get access to the redress or the protection they are entitled to.<sup>160</sup>

In general, the number of charges filed for sexual abuse crimes against children is still low relative to the number of complaints made to the police. Of reported rape offences in 2020, 46 per cent concerned children, mainly girls, which is an increase of 21 per cent compared with 2019.<sup>161</sup> The rate of solved cases was between 13 and 30 per cent depending on the child's age, with the lowest percentage for the oldest group.

**Sweden needs to ensure that there is adequate knowledge about crimes of sexual abuse against children. Children with disabilities must be given the same possibility of redress and protection as other children.**

## J. Optional Protocol on the sale of children, child prostitution and child pornography

32.

32 a), b) and c)

### *Sexual exploitation of a child*

Legislation prohibiting the purchase of sexual acts from a child was introduced in 2005 but the classification changed in 2020 to "exploitation of a child through the purchase of a sex act". In connection with this, the punishment range was increased. However, a new study from the National Council on Crime Prevention shows that harsher sentences rarely occur for the crime of purchasing sexual acts from a child.<sup>162</sup> At the same time, the study shows that the crimes in question often concern serious sexual exploitation, where the child's limits have been pushed through gradual manipulation and normalisation, and that the perpetrator exploits the unequal power relationship that exists between children and adults. These facts, coupled with other circumstances such as the victim's position of dependence, alcohol or drugs influence or mental illness, should mean more stringent sentencing in the same way as applies in other sexual abuse crimes. In the National Council on Crime Prevention study, such circumstances are common<sup>163</sup>, but prison sentences have still not been imposed in any of the cases studied where exploitation of a child through the purchase of a sexual act constitutes the principal crime.<sup>164</sup> The Ombudsman therefore considers that the more stringent sentencing that has recently been proposed<sup>165</sup> is justified.

The National Council on Crime Prevention further notes that the rape legislation is rarely applied when children have been sexually exploited for compensation, even though, according to the report, it can in many cases be questioned if the children participated voluntarily.<sup>166</sup> The Ombudsman wishes to point out that these cases should be investigated as rape to a much greater extent.

Several studies also show that the proportion of young people who have been sexually exploited for compensation is significantly higher than the number of reported crimes.<sup>167</sup> However, the police are only working to a limited extent to discover sex purchase crimes against children and the number of unreported cases is large.<sup>168</sup> More resources for the outreach work should be prioritised.

**Sweden needs to ensure that sexual exploitation of children is seen as serious crime and prioritised by the police and the legal system. Range of punishments and crime classifications must reflect the gravity of the crimes.**

### *Protection for children aged 15-17.*

In several respects concerning crimes of sexual abuse, children between the ages of 15 and 17 are treated as adults. The Ombudsman has repeatedly pointed out that 15-17-year-olds are children and are covered by the Convention, even if they have reached the age of sexual self-determination.<sup>169</sup> The Ombudsman believes that Chapter 6 of the Swedish Penal Code<sup>170</sup> needs to be reviewed in its entirety in order to strengthen the protection of children in this age group, but especially in terms of the crime of exploitation of children through the purchase of sexual acts.<sup>171</sup> Today, the legislation on sexual abuse is partly based on whether the perpetrator was negligent in terms of the child's age rather than the child's actual age. Despite the fact that the legislation on negligence was tightened in 2018, this still means that the negligence assessment can partly be based on the child's physical development. The Ombudsman believes that assessments of this kind can be viewed as a second violation of the child.

**Sweden needs to ensure that 15-17-year-olds enjoy strong protection against sexual abuse in accordance with the Convention. Furthermore, Sweden needs to ensure that every child, regardless of physical development, enjoys equal protection.**

### *Child pornography*

The crime of child pornography is still placed in Chapter 16 of the Criminal Code (crimes against public order) and is therefore not legally considered sexual abuse.<sup>172</sup> This means that children depicted in child pornography are not necessarily considered to be injured parties. Furthermore, not all children are protected by the penal regulation on child pornography, as it must be apparent from the child's pubertal development or the circumstances surrounding the picture that the person depicted is under the age of 18.

In addition, the Ombudsman has pointed out in several comments to law proposals that the statute of limitations should be abolished for the distribution of child pornography.<sup>173</sup> For a child who has been subjected to sexual abuse which has been documented, the distribution of the images or films where a child appears is a very serious violation and one that risks being repeated as pictures are shared over and over again.

**Sweden needs to ensure redress for children who have been exploited in child pornography and that the crime is legally considered a form of sexual abuse. The legislation on child pornography must also be stricter so that all children depicted in child pornography material are protected, regardless of their pubertal development or other circumstances.**

### *Grooming*

The Ombudsman believes that it is a very serious crime to contact children for the purpose of abusing them. Today, the range of punishments for the crime of "contact to meet children for sexual purposes" is a fine or maximum imprisonment for two years. The Ombudsman believes that the range of punishment should be tightened to reflect the gravity of the crime.

33.

The Ombudsman has nothing to add.

### 34 – 48. Statistics

The Ombudsman refers to the responses to questions 7 and 12 about data collection and knowledge improvement.



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- 1 Swedish Government Official Reports, SOU 2020:63, "The Convention on the Rights of the Child and Swedish Law", English summary – Appendix 1.
  - 2 See, among others, the Ombudsman for Children in Sweden, Annual Report 2021 "Alla tar ju inte ansvar" (Not everyone takes responsibility).
  - 3 See the Swedish Schools Inspectorate, Annual Report, 2021.
  - 4 The Government Offices, "Barns möjligheter att klaga och utkräva sina rättigheter enligt barnkonventionen" (Children's opportunities to complain and claim their rights according to the Convention on the Rights of the Child), Dir 2022:35
  - 5 Government Bill, prop. 2017/18:186 p. 75.
  - 6 Article 27 of the Vienna Convention and Government Bill, prop. 2017/18:186 p. 59.
  - 7 Article 27 of the Vienna Convention and Government Bill, prop. 2017/18:186 p. 59.
  - 8 The Ombudsman for Children in Sweden Annual Report 2022, "Blir det nå skillnad – eller säger vi det här helt i onödan?" (Will there be any difference – or are we saying this in vain?).
  - 9 See the Swedish Agency for Youth and Civil Society report, 2022, "Jag är inte ensam, det finns andra som jag" (I am not alone, there are others like me) and the Ombudsman for Children, 2021; "Om barns och ungas utsatthet för rasism" (About the exposure of children and young people to racism).
  - 10 The Ombudsman for Children in Sweden, 2021, "Om barns och ungas utsatthet för rasism" (About the exposure of children and young people to racism).
  - 11 The Swedish National Agency for Education, 2018, "Analyser av familjebakgrundens betydelse för skolresultaten och skillnader mellan skolor: En kvantitativ studie av utvecklingen över tid i slutet av grundskolan" (Analyses of the importance of family background to school results and differences between schools: A quantitative study of the development over time at the end of compulsory school).
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  - 13 Save the Children, 2021, "Vuxna – vad gör dom?" (Adults - what are they doing?).
  - 14 Swedish Government, 2016, "Samlat grepp mot hatbrott och rasism" (Collective approach against hate crimes and racism).
  - 15 See the Swedish Agency for Youth and Civil Society, 2022, "Jag är inte ensam, det finns andra som jag" (I am not alone, there are others like me) and the Ombudsman for Children in Sweden, 2019, "Erfarenheter från unga transpersoner samt från barn och unga med intersexvariationer" (Experiences from young transgender people and from children and young people with intersex variations).
  - 16 The Swedish National Agency for Education, 2016, "Tillgängliga lärmiljöer? En nationell studie av skolhuvudmännens arbete för grundskoleelever med funktionsnedsättning" (Accessible learning environments? A national study of the work of school operators for comprehensive school pupils with disabilities).
  - 17 The Swedish Schools Inspectorate, 2009, "Kvalitetsgranskning: Skolsituationen för elever med funktionsnedsättning i grundskolan" (Quality review: School situation for pupils with disabilities in compulsory school).
  - 18 The Swedish Schools Inspectorate, 2009, "Kvalitetsgranskning: Skolsituationen för elever med funktionsnedsättning i grundskolan" (Quality review: School situation for pupils with disabilities in compulsory school).
  - 19 Swedish Government Official Reports, SOU 2020:63, "The Convention on the Rights of the Child and Swedish Law", p. 1138.
  - 20 The Swedish Schools Inspectorate, 2013, "Asylsökande barns rätt till utbildning: Nationell sammanställning från flygande inspektion" (Asylum-seeking children's right to education: National compilation from mobile inspections).
  - 21 The Ombudsman for Children in Sweden, Annual report, 2020, "Alla tar ju inte ansvar" (Not everyone takes responsibility") and Annual report, 2022, "Blir det någon skillnad eller säger vi det här i onödan?" (Will there be any difference – or are we saying this in vain?).
  - 22 See Government Bill, prop. 2017/18:186.
  - 23 The Ombudsman for Children in Sweden, Annual report, 2019, "Vem bryr sig?" (Who cares?) and Annual report, 2022, "Blir det bli nå skillnad - eller säger vi det här helt i onödan?" (Will there be any difference – or are we saying this in vain?).
  - 24 Chapter 6, Section 2 a of the Parental Code.
  - 25 Swedish Government Official Reports, SOU 2020:63, "The Convention on the Rights of the Child and Swedish Law", p. 255.
  - 26 The Swedish Gender Equality Agency, 2021, "Uppgifter om våld är inget undantag" (Information about violence is no exception).
  - 27 The Public Health Agency in Sweden, 2021, "Ett kunskapsstöd om suicid bland barn" (A knowledge material on suicide among children).
  - 28 The National Board of Health and Welfare, 2018, "Kunskapscentrum för ensamkommande barn: Delredovisning" (Knowledge centre for unaccompanied minors: Interim report).
  - 29 The Public Health Agency, 2018, "Suicid förekommer oftare i socioekonomiskt utsatta områden" (Suicide occurs more often in socio-economically vulnerable areas), 2019, "Suicidförsök vanligare bland unga hbtq-personer" (Attempted suicide more common among young LGBTQ people), and 2017, "Flera insatser kan förebygga självmord" (More efforts can prevent suicide).
  - 30 The Swedish Association of Local Authorities and Regions, 2021, "Psykiatri i siffror – Barn- och ungdomspsykiatri" (Psychiatry in numbers – Child and adolescent psychiatry).
  - 31 The Ombudsman for Children in Sweden, Annual report, 2022, "Blir det bli nå skillnad - eller säger vi det här helt i onödan?" (Will there be any difference – or are we saying this in vain?).

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32 SFS 2005:716

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34 The Swedish National Audit Office, 2021, "Internetrelaterade sexuella övergrepp mot barn – stora utmaningar för polis och åklagare" (Internet-related sexual abuse of children – major challenges for police and prosecutors).

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36 For more information: see respond to question no. 24.

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40 The Health and Social Care Inspectorate.

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42 Ibid, p. 41.

43 Ibid, p. 21 f.

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46 Ibid, p. 18.

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59 Swedish Government, 2021, "Nationell plan för trygghet och studiero" (National plan for security and a calm academic environment), Ds 2021:13 p. 75.

60 See, for example, the Swedish National Agency for Education "Attityder till skolan 2018" (Attitudes to the school in 2018) and the Swedish Schools Inspectorate, "Resultat från Skolenkäten 2017–2018" (Results from the school survey 2017–2018).

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<https://www.hedersfortryck.se/hedersrelaterat-vald-och-fortryck/arenden-i-sverige/>

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69 The Swedish Gender Equality Agency, 2021, "Uppgifter om våld är inget undantag" (Information on violence is no exception) p. 53 ff.

70 The Swedish Gender Equality Agency, 2021, "Uppgifter om våld är inget undantag" (Information on violence is no exception) p. 72.

71 <https://www.justiceinspectors.gov.uk/hmicfrs/our-work/article/so-called-honour-based-violence/>

72 Grevio/Inf (2018) 15, p. 171.

73 See Chapter 6, Section 19 of the Parental Code. The stipulation is worded as follows: "If it is not inappropriate, the person conducting the investigation shall interview the child and report the child's opinions to the court and submit proposals for a decision."

74 See CRC/C/GC/12, p. 19 f, Swedish Government Official Reports, SOU 2016:19, "Barnkonventionen blir svensk lag" (Convention on the Rights of the Child is becoming Swedish law) p. 178 ff and Swedish Government Official Reports, SOU 2020:63, "Barnkonventionen och svensk rätt" (Convention on the Rights of the Child and Swedish Law) p. 452.

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- 157 The Ombudsman for Children in Sweden, Annual report, 2020, "Dom tror dom vet bättre" (They think they know better).
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- 159 Save the Children, "Brott mot barn 2016 och 2017" (Crime against children in 2016 and 2017).
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- 161 The National Council on Crime Prevention, statistics <https://bra.se/statistik/statistik-utifran-brottstyper/valdtakt-och-sexualbrott.html>
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- 163 Ibid p. 75–77.
- 164 Ibid p. 88. This applies to crimes committed both before and after the sentence reform in 2020.

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165 See Government Bill, prop 2021/22:231.

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167 The Children's Welfare Foundation Sweden, 2021, "Unga, sex och internet efter #metoo" (Young people, sex and internet after #metoo), p. 15 ff and the National Council on Crime Prevention, 2022, "Utnyttjande av barn genom köp av sexuell handling: En uppföljning av lagens tillämpning" (Exploitation of a child through the purchase of a sex act: A follow-up of the law's application).

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169 For example The Ombudsman for Children in Sweden, referral response

<https://www.regeringen.se/4a74cb/contentassets/c492e7528a4d4f22a67a576df10bac35/barnombudsmannen.pdf>

170 SFS 1962:700

171 For more information see The Ombudsman for Children in Sweden, Referral response:

<https://www.barnombudsmannen.se/stallningstaganden/remissvar-och-skrivelser/ett-starkt-strafrattsligt-skydd-mot-kop-av-sexuell-tjanst-och-utnyttjande-av-barn-genom-kop-av-sexuell-handling-m.m/> and the Ombudsman, 2013, "Skärpt lagstiftning krävs för att skydda barn från sexuell exploatering" (Stricter legislation in the purpose of protecting children from sexual assault on the internet).

172 There has been a proposal to transfer the crime of child pornography to Chapter 6 of the Swedish Penal Code (see Ds 2018:23, Some questions about the crime of child pornography and about abolished limitation for serious crimes against children), but as far as the Ombudsman can see, the Government has not yet moved on with this proposal.

173 For example The Ombudsman for Children in Sweden, referral response:

<https://www.barnombudsmannen.se/stallningstaganden/remissvar-och-skrivelser/en-oversyn-av-den-strafrattsliga-regleringen-om-preskription/>