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# ALTERNATIVE REPORT

## to Sweden's 22nd and 23rd Periodical Reports to the Committee on the Elimination of Racial Discrimination

SUBMITTED BY THE UNITED NATIONS ASSOCIATION OF SWEDEN\*  
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## **Introduction**

This alternative report is a complement to Sweden's 22<sup>nd</sup> and 23<sup>rd</sup> periodic reports to the United Nations Committee on the Elimination of All Forms of Racial Discrimination. It has been developed with input from non-governmental organisations active in Sweden. These organisations work regularly with people who face discrimination and associated disadvantage. The report cites extensive research to demonstrate areas where the Swedish government fails to meet its state obligations under the Convention on the Elimination of All Forms of Racial Discrimination.

Since the United Nations Association of Sweden's last report to the Committee on the Elimination of Racial Discrimination in 2013 public support for populist radical-right parties in European countries has increased and is now higher than it has been at any time over the past 30 years. This goes for Eastern as well as Western Europe. Equally alarming is the activity of racist organizations, both on the Internet and on the streets of European cities. Religious, ethnic and other minority groups are being attacked. Sweden is no exception.

In Sweden, the activity of racist organizations tends to rise before and during election years. In 2017, Swedish nazis were demonstrating around the country. Nazi parties and associated organizations took part in major cultural and political events. In this report, UNA Sweden argues that more targeted and effective measures must be taken by central and local Police authorities to use existing legislation to combat racist and nazi activities. This is vital to uphold public safety, and to protect Swedish citizens in general and vulnerable groups in particular.

As in earlier reports to the Committee, UNA Sweden presents facts and statistics on critical issues such as hate crime, the situation for people with other ethnic background on the labor and housing markets and the situation for national minorities with regards to the convention. We argue that the establishment of a national independent human rights institution must be pushed ahead and we have presented a road forward to the Swedish Government.

The International Convention on the Elimination of All Forms of Racial Discrimination is a key document in the protection of basic human rights. It is our hope that this report will contribute to a better implementation of the convention in Sweden.

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## **Executive Summary**

This is an alternative report to Sweden's 22<sup>nd</sup> and 23<sup>rd</sup> periodic state report to the United Nations Committee on the Elimination of Racial Discrimination. To avoid reiterations, this report raises issues relevant to Articles 3, 6 and 7 under the sections on minorities and vulnerable communities covered by Article 2, as well as under relevant socio-economic areas covered by Article 5.

Article 2.1: This section presents the implications on the absence of a Swedish independent national human rights institution, the incidence of hate crime in Sweden and the need for a balanced assessment of the legal and social consequences of the removal of the term race from the Discrimination Act. The report shows that Swedish law enforcement, including the justice system, fail to effectively handle hate crimes. Several institutional measures are suggested to counteract this continuing concern. These measures include establishing a common definition for hate crime used by all law enforcement authorities across the country, more effective implementation of existing hate crime legislation and consistent investigation into the motives behind criminal offenses. Best practices should be replicated.

Article 2.2: This section highlights communities that are especially vulnerable and subject to ethnic discrimination and the need for legislation on affirmative action based on ethnicity. In addition to discrimination against Sweden's five national minorities, it also looks at the human rights situation for persons with African descent. (The situation for Muslims is addressed under article 5.) The issue of discrimination is examined in regards to the workplace, education, housing, indigenous land rights, education and language as well as social services and health. Of particular note is the fact that Sweden still has not taken concrete measures to ratify ILO Convention No. 169, despite strong recommendations from the CERD Committee to accelerate the work to ratify. A comprehensive list of concrete recommendations is provided at the end of each subsection.

Article 4: This article requires countries to condemn and penalize all dissemination of propaganda and organisations based on ideas of superiority of one race or ethnic origin, or which incite racial hatred or violence. Our report shows that Sweden is still in violation of its obligations under Article 4 and does not follow the repeated recommendations by the CERD Committee to implement a ban on racist organisations. There is continued promotion and incitement to acts of racial discrimination that go unpunished in Sweden. Racist propaganda is spread openly without restriction, targeting vulnerable groups, such as young people who are the largest recruitment base for racist and Nazi organisations. Existing complaint mechanisms in Sweden do not provide for an effective remedy to such violations. It is critical that Sweden complies with its international legal obligations and in accordance with the rights guaranteed under ICERD. Sweden must implement the existing national legislation prohibiting violence or intimidation motivated by racial, national, ethnic or religious hatred. To guarantee its implementation, we urge the Swedish government to conduct a parliamentary investigation why the existing legislation is not respected in Sweden.

Article 5: Regarding certain rights that should be guaranteed to everybody, we note significant deficits in Sweden's implementation of securing the right to equal treatment before the law, including in the areas of employment, education and access to public services. This section is divided into several subtopics that cover discrimination in the legal system including indirect and direct discrimination in the judicial processes and racial profiling; employment; housing; education; freedom of religion, and healthcare. Although this section examines key areas separately, it is important to note that discrimination in one area can and does impact another area.

## **1. ARTICLE 2: Structural and institutional measures to counteract ethnic discrimination**

This chapter is divided into different sections dealing with various issues covered by Article 2. The first part of the chapter deals with structural measures and highlights the absence of a Swedish independent national human rights institution, the incidence of hate crime in Sweden and the need for a balanced assessment of the legal and social consequences of the removal of the term race from the new Discrimination Act.

The second part of the chapter provides information on communities that are especially vulnerable and subject to ethnic discrimination and the need for legislation on affirmative action based on ethnicity. In addition to discrimination against Sweden's five national minorities, it also looks at the human rights situation for persons with African descent, while the situation for Muslims as a religious minority is addressed under article 5. A list of concrete recommendations is presented at the end of each section.

### **1.1. Article 2.1 General institutional measures to counteract ethnic discrimination**

#### Article 2.1

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

#### **1.1.2. Lack of a Swedish independent national human rights institution**

##### Main concerns

- Sweden has not established an independent national institution on human rights.
- Full compliance with international human rights obligations is not given priority.
- Broad discretion given to local self-governments leads to inconsistent fulfillment of human rights obligations, including in ensuring equal access to education.
- Immigrant and minority women run the highest risk of being isolated from protection against violence and other types of human rights violations.
- Multiple forms of discrimination do not receive adequate attention.



According to the “Paris Principles”, recommendations adopted by the UN in 1993, all member states should establish independent national human rights institutions in order to strengthen the human rights work at the national level. The national human rights institution (NHRI) should have a broad human rights mandate, it should be established by law, work independently from the government, report to the parliament and work closely with NGOs and other human rights actors. The main task of the NHRI should be to promote human rights and analyze the state’s compliance with international human rights obligations.<sup>1</sup>

In 2015, the Universal Periodic Review of Sweden resulted in several recommendations from the Human Rights Council on the need of an independent Swedish human rights institution.<sup>2</sup> These recommendations were echoed in the proposed new strategy for human rights in Sweden.<sup>3</sup> However, the actions taken by the Swedish government towards the establishment of a NHRI have failed so far.<sup>4</sup> One of the main concerns is the choice of principal for the NHRI and where it should be placed in relation to the Swedish governmental structure. Despite the feature of impartiality being one of the corner stone’s outlining a NHRI,<sup>5</sup> the State has suggested that the issue could be handled by already existing governmental agencies. However, this suggestion risk compromising the very grounding idea of a NHRI as the issues coupled with its establishment would not be given priority nor be handled efficiently. An independent NHRI separate from other government agencies is fundamental in order for the institution to be able to examine the work of the government and other agencies.

Together with the support of other human rights organizations active in Sweden<sup>6</sup>, UNA Sweden has addressed the Swedish government with concrete suggestions of the establishment of an impartial NHRI in Sweden. We strongly believe that a Swedish NHRI is a fundamental structural measure to better tackle all forms of racial discrimination and ensure compliance with the ICERD. For example, it would be able to provide support to employees working in municipalities and county councils on their daily encounters with citizens, lend support to agencies and courts in ensuring that Swedish laws are interpreted in accordance with international law, as well as assist in assessment of situations where different rights

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<sup>1</sup> UNGA res. 48/134. *National institutions for the promotion and protection of human rights*, A/RES748/134, 20 December 1993 and annexed. *Principles relating to the status of national institutions*, paras.1-3. See also: HRC, res. 27/18. *National institutions for the promotion and protection of human rights*, A/HRC/RES/27/18, 7 October 2014; UNGA, *National institutions for the promotion and protection of human rights*. Report of the Secretary-General, A/68/208, 4 July 2013

<sup>2</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Report: Sweden*, A/HRC/29/13, 13 April 2015, paras. 145.10-145.16

<sup>3</sup> The Swedish Government, *Governmental strategy for the national work on human rights*, 2016/17:26, 13 October 2016

<sup>4</sup> See for example the conclusion of the investigation at the initial request of the Committee on the Constitution; Axberger. Hans-Gunnar, *The Parliamentary Ombudsmen (JO) as Institution for Human Rights?*, 13 June 2017. See initial request; The Committee on the Constitution, *Investigation regarding the establishment of a national human rights institution*, 26 January 2017.

<sup>5</sup> See UNGA res. 48/134, para. 2

<sup>6</sup> RFSU, Lika Unika, Raoul Wallenberginstitutet, Funktionsrätt Sverige, Civil Rights Defenders, Fonden för mänskliga rättigheter

stand in conflict. One current debated topic in Sweden has been balancing the right to freedom of expression and association and the prohibition of violence or intimidation motivated by racial, ethnic or religious hatred. More specifically, the actions of the Swedish Police towards racist and Nazi organizations in Sweden have been questioned. This issue will be discussed further in depth in this report under the heading “Article 4”.

The overall function of a Swedish NHRI would be to promote human rights in Sweden and ensure that the State fulfils its legal human rights obligations. Moreover, the NHRI would also educate, research and develop competence on human rights on a daily basis. In order to promote, protect and monitor compliance of human rights obligations, the duties of the NHRI would likewise analyze new law proposals, regulations and other legal directives of the government from a human rights law perspective. To guarantee the impartial character of the institution, a board of trustees could be placed comprising of fifteen members nominated and selected by various actors in the society. Moreover, to the board’s support, a human rights council should be elected responsible for providing expertise to the daily work of the NHRI.<sup>7</sup>

### **Broad discretion given to local self-government**

According to national law on local self-government, municipalities have the responsibility as well as the discretion in implementing Sweden’s human rights obligations.<sup>8</sup> This discretion results in discrepancies in the way human rights, including CERD obligations, are implemented.<sup>9</sup>

In its recent report, the Swedish School Inspectorate revealed that elementary schools vary greatly both between different municipalities, as well as within the schools, regarding education to newly arrived migrants. When examining the schools in the various municipalities, the School Inspectorate concludes that the schools fail in all phases of planning, carrying out and accommodate education in accordance with the conditions and needs of the newly arrived migrants. The schools also fall short in giving pupils the trust in their own abilities. Less than 25 percent of all pupils involved in the examination by the School Inspectorate received an education in all subjects accommodated in accordance with their own conditions and needs and which give them trust in their own ability, motivation and impact. Although there are examples of existing teachers in many schools who make an effort to give newly arrived migrants an education in accordance with their conditions and needs, such instances should rather be seen as specific cases of teachers and on an ad hoc basis. The schools lack structure, cooperation and guidance in the support of a common responsibility in the education of newly arrived migrants.<sup>10</sup>

One identified issue with the lack of planning, conducting and to accommodate the education in accordance with the needs and conditions of the newly arrived migrants is the shortage of sufficient analysis on the specific and individual need of each pupil. Newly arrived migrants

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<sup>7</sup> Ibid.,

<sup>8</sup> State Official Investigations, *New structure for the protection of human rights*, SOU 2010:70, 2010, p. 212

<sup>9</sup> Ibid.,

<sup>10</sup> Swedish Schools Inspectorate, *Education for newly arrived students*, Report 2014:03, 2014 p. 6-7

hold great differences in experiences of previous education. For the continuous development and learning of the pupils, it is crucial that the school finds out about their education history as early as possible and accommodates the education accordingly. However, what has been noted instead of these measures is that to a majority of teachers and principals, learning the Swedish language have been greatly prioritized for newly arrived migrants during their first period of time attending school. As such, many schools have established special language courses or “introductory courses”. The examination by the School Inspectorate has identified that this alone is insufficient to allow for a prosperous education start in Sweden for the newly arrived migrants. Some pupils involved in the examination had been enrolled in such introductory class for more than two years, resulting in pupils had lost much of their previous knowledge and their continued development were stalled. Rather than the constrained priority on learning the Swedish language proficiently and in isolation, the focus should be on the way the education is being performed in the introductory course. This way, the pupils would be exposed to education in various subjects which enriches both their teaching as well as their development of the Swedish school language.<sup>11</sup>

### **National machinery for women’s rights and multiple forms of discrimination**

Just as discrepancies exist between municipalities in the area of education, not all local self-governments undertake coherent and necessary measures with regard to women’s rights. With regard to the present issue of analysis, the Committee of CEDAW has emphasised its concerns regarding existing barriers in the legal framework addressing multiple and intersecting forms of discrimination against women, as well as the national machinery for the advancement of women and gender mainstreaming.<sup>12</sup>

With reference to the restricted list of prohibited grounds of discrimination incorporated in the Swedish Discrimination Act,<sup>13</sup> the CEDAW Committee has stated that the Discrimination Act might not comprehensively address multiple and intersecting forms of discrimination against women. The Committee has therefore urged the Swedish government to evaluate the Discrimination Act, and if found necessary, to amend the scope of protection to ensure that a definition of discrimination in the Act is in accordance with Art. 1 of the CEDAW Convention as it encompasses intersecting forms of discrimination against women.<sup>14</sup>

Access to justice for women victims of human rights violations is another identified issue resulting from the Discrimination Act. Although visible active measures have been made by the government in terms of allocating increased resources to local anti-discrimination offices, the complexity of the legal proceedings grounded in the Act negatively impact access to justice for women exposed to violations of their rights. This is particularly the case for

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<sup>11</sup> Ibid., p. 7

<sup>12</sup> CEDAW, *Concluding observations on the combined eighth and ninth periodic reports of Sweden*, C/SWE/CO/8-9, 10 March 2016. See also UN Committee of CRPD, *General comment No.1. Article 12: Equal recognition before the law*, CRPD/C/GC/1, 19 May 2014, para. 35. The CRPD emphasizes the multiple and intersectional forms of discrimination women with disabilities may be subject to based on gender and disability.

<sup>13</sup> *Discrimination Act 2008:567*, Chapter 1 §§ 1, 4-5

<sup>14</sup> CEDAW, C/SWE/CO/8-9, paras. 14(b), 15; See more UNGA, *Convention on the Elimination of All Forms of Discrimination against Women*, 10 December 1979, Article 1

disadvantaged groups of women, including Sami, Roma, women with disabilities, migrants, asylum-seekers and refugees. The Swedish government must actively take all necessary measures to remove the barriers faced by women victims of discrimination and enable them to use legal measures to claim their rights. This includes allocation of adequate human, technical and financial resources.<sup>15</sup>

Criticism can also be raised towards the State in relation to its work on elaborating a national system for the advancement of women and gender mainstreaming, a chief responsibility of the Ministry of Health and Social Affairs. It is evidenced that the coordination and management of gender mainstreaming efforts are unclear and incoherent, and the monitoring and impact evaluation of measures taken are not comprehensive enough. The existing discrepancy in the practical implementation of the gender mainstreaming strategy between municipalities and regions in Sweden is worrying.<sup>16</sup>

Specific areas of concern where disadvantaged groups of women face high degree of discrimination include education, health and participation in political and public life. With regard to education, migrant girls and girls belonging to minority groups, especially the Roma and Sami, face continuous difficulties in gaining access to education. The CEDAW Committee has urged the Swedish government to combat discrimination against disadvantaged groups of women and girls in securing their access to education as well as ensure the effective monitoring and evaluation of such efforts, including the support of remedial action.<sup>17</sup>

Although there is a high representation of women in the political and public life in the Swedish society, it does not reflect an accurate representation of all groups of women in the society. During the past two elections, there has been an insufficient representation of disadvantaged groups of women, including women belonging to minority groups and especially Roma, Sami and women of other ethnic origin, in decision-making positions.<sup>18</sup>

Minority and migrant women continue to face difficulties in gaining access to sexual and reproductive health services and information. Free access to adequate sexual and reproductive health services must be ensured by all women and girls, including those belonging to disadvantaged and marginalised groups.<sup>19</sup>

### **Recommendations**

- Establish an independent national human rights institution in Sweden.
- Ensure local governance is coherent across the country and in compliance with Sweden's international human rights obligations.
- Remove identified barriers in the legal framework hindering addressing multiple and intersecting forms of discrimination against women, including their access to justice.

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<sup>15</sup> Ibid., paras. 16-17

<sup>16</sup> Ibid., paras. 18-19

<sup>17</sup> Ibid., paras. 32, 33(c)

<sup>18</sup> Ibid., para. 30

<sup>19</sup> Ibid., paras. 36, 37(d)

- Establish targeted measures ensuring that underrepresented groups of women are represented in political and public life, including in decision-making positions.
- Design and install concrete measures ensuring all women and girls, especially those belonging to marginalized and disadvantaged groups, have access to education and free sexual and reproductive health services.

### 1.1.3. Legislation on hate crime

#### Main concerns

- Hate crimes remain high.
- Few reported hate crimes lead to indictment.
- Laws to combat hate crimes are not effectively implemented and the so called stricter sentencing rule is being seldom used by Swedish courts.
- There is no common application on the definition of hate crime. The judicial system, the police and the authorities working on these issues have different interpretations of the definition and different views on which offenses qualify as hate crime. This leads to non-uniform hate crime statistics, many hate crimes remaining unrecorded and discrepancies in implementation of the law.
- Methods used by law enforcement officials to investigate hate crimes are inadequate. This, coupled with a general mistrust of judicial authorities, results in a decreased incidence in hate crime reporting.

Hate crime constitutes a breach of human rights and is characterized by a lack of respect for everyone's fundamental equal value. In 2015, Sweden experienced its highest number of reported hate crimes. In one year only, the number of reported hate crimes increased with 11 % from 2014 to 2015.<sup>20</sup>

The legal framework defining what a hate crime constitutes is found in the regulation on agitation against an ethnic group,<sup>21</sup> the regulation on unlawful discrimination,<sup>22</sup> and the regulation on sharpened penalty for crimes.<sup>23</sup> According to Penal code 29:2(7), a crime will constitute a hate crime if the motive is to violate a person, or an ethnic group or a similar group of people on the basis of race, color, nationality or ethnic origin, religious or conscious belief, sexual orientation or any other similar circumstance.<sup>24</sup> In conclusion, a hate crime is not a specific crime but a collection of terms, as indicated by the above mentioned legal framework.

According to the National Council for Crime Prevention (BRÅ) latest report, xenophobia/racism has been the most prevailing motive for hate crimes the last four years (2013-2016) in Sweden. The latest number indicated that approximately 145 000 people had experienced 225 000 crimes of this kind. Of these, only 17 percent were recorded to the

<sup>20</sup> The Nation Council for Crime Prevention (BRÅ), *Hate Crimes 2015*, Report 2016:15, p.9. Available at: [https://www.bra.se/download/18.3c6dfe1e15691e1603eb65e3/1474958157817/2016\\_15\\_Hatbrott\\_2015.pdf](https://www.bra.se/download/18.3c6dfe1e15691e1603eb65e3/1474958157817/2016_15_Hatbrott_2015.pdf)

<sup>21</sup> *Penal code* 1962:700, 16 chapter 8 §

<sup>22</sup> *Penal code* 1962:700, 16 chapter 9 §

<sup>23</sup> *Penal code* 1962:700, 29 chapter 2(7) §

<sup>24</sup> *Ibid.*,

police. Moreover, an estimation of 47 000 people had experienced 81 000 hate crimes with an anti-religious motive, whereby only 26 percent were reported to the Police.<sup>25</sup>

Statistics on hate crime reveal a striking gap between the number of reported hate crimes and the numbers of hate crime related offences which lead to indictment.<sup>26</sup> Legal as well as practical obstacles need to be resolved in order to increase the number of reported hate crimes leading to indictment.

### **Failure to effectively address hate crimes**

There is a high number of hate crimes that are not reported. The latest figure estimates 6 415 hate crimes had been reported to the police. Like previous years, the majority of these hate crimes (72 percent) had a xenophobic/racist motive. The most common manifestation of these crimes was unlawful threats/molestation, whereby this type constituted almost 50 percent of the reported crimes in total. Of the identified reported hate crimes in 2015, only 4 percent had resulted in indictment in May 2017, meaning that a person has been connected to the reported crime by prosecution, penalty or judgment without prosecution or trial.<sup>27</sup> In 48 percent of all reported cases of hate crimes, an investigation had begun, whereas 47 percent of the reported cases were dismissed without investigation never been initiated.<sup>28</sup>

Partly, this can be explained in terms of a failure to raise awareness among law enforcement on the definition and motive of a hate crime. According to BRÅ, it is generally difficult to connect the police recorded hate crime to a suspect, regardless if the crime has a hate crime motive or not. This is especially said to be true in manifested cases such as graffiti and public damage where there are missing witnesses or other tracks, an unknown person is screaming something in a public crowd, crimes committed on the internet or unlawful discrimination where the investigation ends up with one word against another. There are also instances where some crimes, despite having a potential hate crime motive, are regarded as minor in relation to other crimes where the police might consider the price of investigating hate crime motives too high and unbeneficial in relation to the prospect of connecting a suspect to the crime in question.<sup>29</sup> In addition, many cases of hate crimes are dismissed because of the requirement of the injured party to bring the crime to prosecution, as opposed to the situation of many other types of crimes where this is under the duty of the prosecutor.<sup>30</sup> Previous studies have evidenced that the regulation on sharpened penalty for crimes<sup>31</sup> is rarely being used and that hate crimes seldom lead to stricter sentences.<sup>32</sup>

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<sup>25</sup> The Nation Council for Crime Prevention (BRÅ), *Hate Crimes 2016*, Report 2017:11, p.9. Available at: [https://www.bra.se/download/18.4c494ddd15e9438f8ada9786/1513175214923/2017\\_11\\_Hatbrott\\_2016.pdf](https://www.bra.se/download/18.4c494ddd15e9438f8ada9786/1513175214923/2017_11_Hatbrott_2016.pdf)

<sup>26</sup> *Ibid.*, p.66

<sup>27</sup> *Ibid.*, p.50, 56-58

<sup>28</sup> *Ibid.*, p. 9. Latest figure states an estimation of only 6 415 hate crimes had been reported to the police.

<sup>29</sup> *Ibid.*, p. 57

<sup>30</sup> *Ibid.*, p. 58

<sup>31</sup> *Penal code* 1962:700, 29 chapter 2(7) §

<sup>32</sup> BRÅ, Report 2016:15, p. 126

It is difficult to get a comprehensive perception of the existence of hate crimes, mainly resulting from the fact that there is no specific definition of the crime in the Penal code as such. Hate crimes are defined on the basis of the perpetrator's motive, that is, attitudes and opinions, rather than on objective criteria. Furthermore, hate crimes target people who usually find themselves in a vulnerable position or belong to a minority group in the Swedish society, and as such, may experience limitations in knowledge of their rights. These people often avoid contact with government agencies, including the judicial system, and consequently to report exposure to hate crimes.<sup>33</sup> The issue of avoiding reporting these types of harassments is additionally a factor contributing to the estimated figure of existing hate crimes. According to the results evidenced by the most recent survey made by the EU Agency on Fundamental Rights on minorities and discrimination, the lack of faith in the police or other authorities/services to remedy the incident if reported was the most common reason why only 10 percent amongst the victims involved in the survey had reported their most recent exposure to such incident.<sup>34</sup>

### **Government agencies combating hate crimes**

In March 2014, the Swedish National Police Agency was assigned by the government to develop the work of the Police in combating hate crimes. In collaboration with the Swedish Prosecution Authority and the National Council for Crime Prevention, the assignment aimed to work for a more coherent practical application of the term hate crime, to strengthen the knowledge of hate crime within the police force and to strengthen the trust for the police within groups of people who are especially vulnerable for exposure to hate crimes.

In 2015, the police established a strategic initiative in combating hate crimes which included working against crimes against fundamental rights and freedoms. In the metropolitan city regions Stockholm and South Sweden (Malmö), special groups were established with the responsibility to investigate hate crimes, and in region West (Gothenburg) a similar group was initiated. In addition to the mentioned efforts in the targeted regions, there exists a special contact person responsible to strengthen the ability to prevent and investigate hate crimes.<sup>35</sup>

In order to map the above mentioned initiative by the Police Agency and their work against hate crimes, the National Council for Crime Prevention carried out a survey involving all seven police districts in the regions. According to the survey, five of seven districts have undergone education on hate crimes during 2015. At the same time, many districts expressed their existing lack of ability to detect, investigate and prosecute hate crimes and aimed to increase such efforts. In addition, districts also stated their aim to increase the probability to record experienced hate crimes and the trust for the police among especially vulnerable groups of people. The need of providing justice and support for victims exposed to hate crimes is also something being prioritized in the work of the Police districts in their combat

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<sup>33</sup> BRÅ, Report 2016:15, p. 125

<sup>34</sup> European Union Agency for Fundamental Rights (FRA), *Second European Union Minorities and Discrimination Survey: Main results*, December 2017, p. 62

<sup>35</sup> *Ibid.*, p. 126-127

against hate crimes.<sup>36</sup> These are basic obligations of democratic societies based on the rule of law and specific obligations under ICERD.

### **Lack of a uniform interpretation and assessment of hate crime related offences**

As noted above, Penal Code 29:2(7) regulates stricter sentencing for crimes, including for exposed hate crimes under this penal code. Numerous law enforcement authorities, i.e. the police services, the prosecutor and the courts, are involved in the process of assessing whether a specific offence constitutes a hate crime. The recognition of the motive affects how crimes are recorded and investigated.<sup>37</sup> Within this process, authorities tend to interpret critical terms differently and the level of knowledge of what constitutes a hate crime varies. As have been noted in our previous alternative reports to CERD, there is a need for a common definition and education to ensure a correct handling of reports that could be linked to hate crime motives.<sup>38</sup> Police officers, for example, generally tend to use a wider interpretation of the term hate crime while the prosecutor and Swedish courts tend to use a stricter interpretation. This affects the high discrepancy between the number of registered hate crimes and the number of hate crimes leading to prosecution.<sup>39</sup>

There is an urgent need of developing a coherent and uniform definition of what hate crimes constitute throughout the whole legal chain, as well as compilations of praxis of court judgments in cases of hate crimes, which the police and prosecutors can use as a starting point when they investigate crimes with hate crime motives.<sup>40</sup>

### **Recommendations**

- Establish a common definition and coherent understanding of hate crime.
- Develop a uniform interpretation of important terms which underpins the assessment whether a specific offence constitutes a hate crime.
- Take measures to ensure effective implementation and monitoring of existing legislation on hate crime.
- Make training mandatory for personnel in all areas of law enforcement, including the police, prosecutors and judges on legislation on hate crimes and its application.
- Take measures to reduce the number of unrecorded and unreported hate crimes.
- Raise awareness amongst the public on hate crimes.

#### **1.1.4. The new Discrimination Act**

##### **Main concern**

- The term *race* has been intentionally removed from the new Discrimination Act. Whether or not this development might abate the possibility to fight discrimination on

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<sup>36</sup> Ibid., p. 127-128

<sup>37</sup> Penal code 1962:700, 29 chapter 2(7) §

<sup>38</sup> BRÅ, Report 2016:15, p. 115 - 116

<sup>39</sup> The National Council for Crime Prevention (BRÅ), *Hate Crimes 2011*, Report 2012:7, p.23.

<sup>40</sup> BRÅ, Report 2016:15, p. 128



all grounds is unclear, but a holistic understanding of the consequences or potential consequences of the removal is not reflected in the law.

### **Removal of the term race**

When drafting the new Discrimination Act, the legislature intentionally removed the term race. The underlying argument from the legislature was that there is no scientific basis to divide human beings into different races and, consequently, from a biological point of view, no basis to use the term race to describe human beings. In addition to removing the term in the Swedish legislation, the legislature also urged the government to work against the usage of the term in official texts in international contexts. The Swedish government expressed similar point of view. They argued that the new Discrimination Act should reflect modern values and views as well as correspond to the high expectations on the legislature. Furthermore, the government was of the view that the use of the term race in the legislation risked counteracting discrimination and prejudice by legitimizing racists' perceptions and consolidate race as an existing category. As such, the government suggested that the term was not desirable in the Swedish legislation.<sup>41</sup>

The reformation of the Swedish constitution, the Instrument of the Government, also included a removal of the term concerning specifically the regulations of race being a ground for protection against individual right to non-discrimination as well as restrictions on freedom of association where agitation aim to target groups of people based on the this ground. The government proposed that the term should be replaced with "ethnicity, color or other similar circumstance".<sup>42</sup>

In its process of making the above mentioned changes, the Swedish State did not thoroughly take into account the critical voices of removing the term race from the legislation.<sup>43</sup> During several years prior to the legal amendments, bodies had recommended not to remove the term race from the legislation. Dating back as far as in 2002, a special Committee was assigned by the Swedish government to review the Swedish legislation concerning discrimination. Their mandate included more specifically to evaluate if, and to what extent, the term could be removed from the legislation.<sup>44</sup> In 2006, the Committee's review landed in the conclusion that the term race should not be removed from the Swedish legislation. They argued that the term exists in the legislation to fulfill international ratified conventions, whereby race is used to protect people *from* actions grounded in the belief that there are different races of human beings, rather than the belief that there *are* different races or to support such a belief. Furthermore, the Committee also concluded that removing the term race from the legislation would compromise undermining the protection against discrimination. In line with the Committee, there is no question that racism and systematic discrimination of human beings on the basis of race is a reality in many societies in the world, including the Swedish society. As such, the governing legislations must be formed accordingly.<sup>45</sup>

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<sup>41</sup>The Swedish Government, *Legislative bill 2007/08:95 A stronger protection against discrimination*, 6 March 2008, p. 119-120

<sup>42</sup>The Swedish Government, *Legislative bill 2009/10:80 A reformed constitution*, 8 December 2009, p. 150-151

<sup>43</sup>For a general discussion regarding the perception of race and the need of race theory in the analysis of discrimination in Sweden, see State Official Investigations, *Beyond We and Them: Theoretical reflections on power, integration and structural discrimination*, SOU 2005:4, (Stockholm 2005), p. 95-97.

<sup>44</sup>State Official Investigations, *A coherent discrimination legislation: Part I*, SOU 2006:22, (Stockholm 2006), p. 123-124.

<sup>45</sup>*Ibid.*, p. 308-309

### **The use of the word to protect against discrimination**

According to ICERD, the term race is not being understood as a belief that human beings belong to different races, nor does it support such a belief. Rather, the preamble to the Convention clearly use the term as a legal protection and dismisses prevailing theories dividing human beings into different races by stating “Convinced that any doctrine of superiority based in racial differentiation is scientifically false, morally, condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,”. The focus on State parties to the Convention to combat discrimination based on race is evident by the urge to “...adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,”<sup>46</sup>

Moreover, the European Commission against Racism and Intolerance (ECRI) has also explicitly recognized the need to use the word to protect individuals from actions grounded in the falsified perception that human beings belong to a certain race. In its General Policy Recommendation No. 7, it has stated “Since all human beings belong to the same species, ECRI rejects theories based on the existence of different ‘races’...but uses the term to ensure that those persons who are generally and erroneously perceived as belonging to ‘another race’ are not excluded from the protection provided for by the legislation”<sup>47</sup>.

The Swedish Language Council has also dismissed the removal of race in the Swedish legislation and emphasized that verbal reforms seldom result in real changes. The fact that the word is commonly used in international contexts constitutes another reason against a removal for the word in Swedish official texts as this would compromise Sweden’s liability to its international human rights obligations. The negative implications of removing the word race on a word such as “antiracism” aimed to work against racial discrimination were also brought forth by the Council. Since the word race is being used by racists, there are strong arguments to likewise to use the word in official texts designed with the purpose to combat racism and theories thereof.<sup>48</sup>

### **Recommendations**

- Conduct a thorough and balanced assessment of the legal and social consequences of the removal of the term race from the Discrimination Act.
- While removing the term race from legislation, establish appropriate alternative measures combating racism effectively.

### **1.2. Article 2.2 The adoption of special and concrete measures for the protection of certain racial groups**

#### Article 2.2

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups

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<sup>46</sup> ICERD, 21 December 1965, Preamble

<sup>47</sup> European Commission against Racism and Intolerance (ECRI), *General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination*, 13 December 2002, Art. 1 (see footnote)

<sup>48</sup> SOU 2006:22, p. 288-289.

or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### 1.2.1. Absence of Provisions on Affirmative Action Based on Ethnicity

#### Main concern

- The Discrimination Act lacks any provisions providing for the adoption of special measures based on ethnicity. The Swedish government notes that measures being undertaken to promote equal rights and opportunities are comparable to special measures. These measures, however, are not comparable and are ineffective in practice.

The Discrimination Act does not refer to the adoption of special measures, more commonly known as affirmative action, based on ethnicity. According to the government, various measures with the aim of strengthening and accelerating the development of equal rights and opportunities are being undertaken in Sweden. The provisions present in the Discrimination Act concerning active measures are within the area of employment and education.<sup>49</sup>

The provisions concerning active measures are rarely effective in practice. A thorough analysis conducted by the State Official Investigations has revealed a low level of enforcement of those provisions, not least within the labour market. It has been evidenced that working with active measures within organisations, in general, is quite limited. It cannot be stated that the active measures provisions have had any actual effect on promoting equal rights and opportunities.<sup>50</sup>

The Swedish government has presented several arguments on why affirmative action based on ethnicity should not be permitted, both principal stands as well as practical kinds. Firstly, the government has referred to the lack of evidence of any positive intended results on affirmative action based on gender. Moreover, they have pointed to practical issues with the difficulties in defining which groups should be targeted by affirmative action based on ethnicity. Unlike gender categories, they have argued that there are several ethnic groups and as such, it is problematic who should be prioritized over another. Another central argument against incorporating affirmative action based on ethnicity by the State is the necessity of gathering data based on ethnicity and other grounds, and that collection of such data would violate protection of privacy and integrity.<sup>51</sup>

This latter argument is most problematic as it contradicts Sweden's obligations under international human rights law, including ICERD, to gather statistics. It is also contrary to effective practices of data collection in other countries in Europe and around the world where privacy and integrity are protected in gathering data on race or ethnicity. The Committee of

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<sup>49</sup> *Discrimination Act* 2008:567, Chapter 2 § 1-2, Chapter 2 § 5-6

<sup>50</sup> State Official Investigations, *Active measures to promote equal rights and opportunities – a systematic work targeting three areas of society*, SOU 2010: 7, p. 45

<sup>51</sup> Legislative bill 2007/08:95, p. 170.

CERD has recognized that such data is essential to identify where potential direct or indirect discrimination is occurring and to develop effective measures to remedy the problem.<sup>52</sup>

### **Recommendations**

- Enhance the effectiveness of measures undertaken in the work of promoting equal rights and opportunities for all, irrespective of ethnic origin.
- Establish provisions enabling the adoption of affirmative action based on ethnicity, equivalent to existing legislation on affirmative action based on gender.
- Gather data on ethnicity in a manner that is consistent with obligations under ICERD and that protect an individual's privacy and integrity.

### **1.2.2. National minorities and indigenous peoples**

The Saami people, also recognized as indigenous, the Roma, the Jewish minority, the Tornedalians and the Sweden Finns are all national minorities in need of special protection in relation to the enjoyment of their rights and freedoms and in accordance with Article 2.2 of ICERD. This section will illustrate how the national minorities are discriminated against in Sweden and state key recommendations to the Swedish State. It will also cover the situation of persons with African background, while the situation of Muslims as a religious group is discussed under the part of the report analyzing Article 5.

#### **1.2.2.1. The Saami**

##### **Main concerns**

- Under international law, indigenous people have the right to their traditional land, waters and natural resources. Sweden has failed to introduce any policy or special measures acknowledging the Saami people's this right, and maintains that all land and natural resources in the Saami territories belong to the State, unless privately owned.
- The administration of land user rights and land use in the reindeer husbandry area, issues that are often linked to disputes with other stakeholders, have not been transferred to the Saami.
- The rate of interest-driven exploitation of natural resources that directly impacts and affects Saami livelihoods and land use is continuing in Saami areas. The consequences of such developments can be devastating for the Saami communities since conditions to sustain their livelihoods are compromised. Saami rights to traditional land use are rarely considered in the evaluation of permits for these activities.
- Land disputes between Saami and non-Saami in courts are ongoing and remain severe in many areas. Due to ambiguous legislation and a reluctance to demarcate which areas traditionally have been used for reindeer husbandry, there has been a lot of room for interpretation and questioning of Saami traditional land rights.
- Saami women continue to face discrimination due to legislation and Sweden has failed to effectively address this situation.

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<sup>52</sup> UN CERD, *General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination*, 24 September 2009, CERD/C/GC/32, para. 37

- According to an evaluation carried out by the Swedish School Board, Swedish school literature inadequately describes the Saami population. When mentioned, the Saami are described in stereotypical terms that can be experienced as highly offensive and discriminatory. Saami are also denied their right to be taught in their mother-tongue.
- Sweden has still not taken concrete measures to ratify ILO Convention No. 169, despite numerous previous recommendations from the CERD Committee.
- The negotiations on a Nordic Saami Convention recommended in 2010 must ensure the active involvement and participation of the Saami community.

### **Contemporary structural racism against the Saami**

Racism against the Saami is one form of racism prevailing in the Swedish society.<sup>53</sup> Spokesperson from the Saami political community argues that the Swedish government and parliament continue neglecting the rights of the Saami. One main issue has been referred to the establishment of the Saami Parliament, whereby it has been expressed an unfortunate that many fundamental issues regarding hunting, reindeer husbandry and the EU were left out the Parliament's area of responsibility but continues being situated within the territory of the county governments. This negatively impacts their possibility to take part in the formation of the Swedish society at large and especially hinders them from participating and having their voices heard in areas of issues where they experience specific discrimination and denial of their human rights.<sup>54</sup>

According to an investigation by the Ombudsman against Ethnic Discrimination in dialogue with Saami people, they face discrimination in all areas of society including education, exercise of authority, working life, the service sector and the media.<sup>55</sup> Several factors have been brought forth as feeding the hate against the Saami society, such as commentaries on social media, exploitation destroying grazing land, the issue of animal predator, and the non-existence on knowledge goals of the Saami in the school. Critics have also raised the urgent need of installing measures ensuring a coherent indigenous policy, a more effective legislation combating racism, hate crimes and discrimination and intensified efforts to strengthen the democracy in the Saami Parliament.<sup>56</sup>

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<sup>53</sup> The Swedish Government, *Collective action against racism and hate crimes: National plan against racisms, similar forms of hostility and hate crimes*, 2016, p. 11

<sup>54</sup> The Swedish Government, "Collective action against racism: The hate against the Saami", 17 December 2015. Available at: <http://www.regeringen.se/artiklar/2015/12/samling-mot-rasism-hatet-mot-samer/>

<sup>55</sup> Ombudsman against Ethnic Discrimination (DO), *Discrimination of the Saami – the rights of the Saami from a discrimination perspective*, 2008:1, p.24

<sup>56</sup> Individual represents from the Saami party, see article above The Swedish Government, 17 December 2015

## The Swedish colonial past

According to international law, states are obligated to remedy discrimination caused by historically institutionalized discriminatory policies. Sweden is bound under these provisions to address the historic discrimination of the Saami people. Furthermore, it is established under international law that indigenous peoples, because of their special attachment and priority in time to their ancestral land, have particular rights to their traditional land, water and natural resources.<sup>57</sup> United Nations treaty monitoring bodies have repeatedly addressed Sweden and other Nordic countries that continued access to these lands and resources is a prerequisite for Saami people to maintain and develop their culture. The UN has on numerous occasions expressed concern over the ongoing violations of the Saami people's human rights.<sup>58</sup>

Viewed as an inferior nomadic culture, the Saami were historically not entitled to own land. Over the years, ownership of their traditional land has systematically been given to non-Saami settlers, sold to private interests for resource extraction or taken over by the Swedish state. The Saami were relocated by force and they were for a long time not allowed to use their language or practice their religion.<sup>59</sup>

In 1977, the government officially recognized the Saami as an indigenous people, and in 2011, this was also declared in the constitution.<sup>60</sup> Despite Sweden's international obligations,

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<sup>57</sup> See ILO, *Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries*, 27 June 1989, Arts. 14-15 and ILO Convention no. 169's predecessor, ILO Convention No. 107 Art.11, Art. 27 of the ICCPR and the findings of the Human Rights Committee, which on several occasions has pointed out that cultural rights pursuant to Art. 27 include a right to traditional land and territories, means of subsistence and participation rights. See for example *Bernard Ominayak, Chief of the Lubicon Lake Band vs. Canada*, Report of the Human Rights Committee, 45 UN GAOR Supp. (No. 43), UN Doc. A/45/40, vol. 2 (1990), *Kitok vs. Sweden*, Report of the Human Rights Committee, 43 UN GAOR Supp. (No. 40) UN Doc. A/43/40 and *I. Länsman et al vs. Finland* (Communication No. 511/1992), CCPR/C/52/511/1992, General Comment No. 23 (50) (art 27), adopted by the Human Rights Committee at its 1314<sup>th</sup> meeting (15<sup>th</sup> Session) and Concluding observations of the Human Rights Committee: Australia 28/07/2000, CCPR/CO/69/AUS. (Concluding Observations/Comments), para.10 and 11. We refer also to the Inter-American Commission on Human Rights (the "IACHR"), Art. 30 of the Convention on the Rights of the Child and the United Nations Expert Seminar on Practical Experience Regarding Indigenous' Land Rights and Claims.

<sup>58</sup> Committee on Economic, Social and Cultural Rights' Concluding Observations on Sweden, E/C.12/1/Add. 70, para. 28; CERD Committee's Concluding Observations on Sweden, the Human Rights Committee's Concluding Observation on Sweden (UN document CCPR/CO/74/SWE para. 15.) and Norway (UN document CCPR/C/79/Add.112 ), and the CERD Committee's Concluding Observations regarding the 16<sup>th</sup> Periodic Report of Finland (UN document CERD/C/63/CO/5, para. 11) and Norway (UN document CERD/C/63/CO/9 para. 19).

<sup>59</sup> Based on the argument that a people belonging to an inferior nomadic culture are not to acquire title to land, the Saami people's traditional lands were declared to be the property of the Swedish crown in 1886. Henceforth, the Saami could only pursue reindeer husbandry in the traditional territories. They were, however, not allowed to establish residence by building houses, which was a right reserved for persons of Swedish decent. Substantial areas of traditionally Saami territories were systematically given to non-Saami settlers. It was not until the 1960-70 that this discriminatory system was eased as to the right to housing. But even with the introduction of new policies the Saami were not allowed to represent themselves in administrative issues concerning their traditional lands. See, Lundmark, Lennart, *Lappen är ombytlig ostadig och obekväm, Svenska Statens Samepolitik i Rasismens Tidevarv*, Umeå (2002), p. 57-58, p. 120; Lundmark, Lennart., *Så länge vi har marker, Samerna och staten under sexhundra år*, Falun (1998), p. 74; DO, 2008:1, p. 19.

<sup>60</sup> *Legislative bill 2009/10:80*, p. 188-191; The Saami Parliament, "Samerna i Sverige" available at: <https://www.sametinget.se/samer>, (updated 2016-05-11).

little has been made to reverse the effects of past policies. Sweden still adheres to policies and perceptions regarding the Saami people's right to traditional land and resources that evolved during the 1800s. Sweden still holds self-evident that all land and natural resources in the Saami territories belong to the state, unless privately owned.

### **Right to land and reindeer husbandry**

Laws from the 1920s defined Saami as a nomadic reindeer-herding people, thus not granting Saami their rights unless they herded reindeer.<sup>61</sup> The Reindeer Husbandry Act (1971:437) states that the Saami are entitled to use land and water in the maintenance of their reindeer husbandry. This right has for a long time been based on immemorial custom. The legislation on reindeer grazing has, in general, been criticized for its complexity and deficiency.<sup>62</sup>

Lack of clarity in the law has resulted in numerous disputes between Saami villages and private landowners, both claiming rights to specific land. The Saami are overwhelmingly disfavored by law enforcement when it comes to their rights to land and water use through reindeer husbandry.<sup>63</sup> However, in 2016, the district court in Gällivare decided in favor of the Saami in a case involving the Saami village of Girjas who was granted all rights reserved to hunting and fishing within the village borders. The verdict states that the Swedish government does not have the mandate to deed hunting and fishing rights within the borders of the Saami village of Girjas. The case was brought up to challenge the state in 2009.<sup>64</sup> The case of Girjas vs. the State is the second case to be ruled in favor of the Saami in question of right to land.<sup>65</sup>

In addition to land disputes between Saami communities and private landowners, public and private companies are exploiting and expanding into the reindeer grazing lands. The Saami culture and livelihood are directly connected with their traditional environment and use of land and water.<sup>66</sup> Saami livelihood is affected negatively when expanding industries like forest, infrastructure and tourism are narrowing the access to the Saami's traditional environment.<sup>67</sup> If Saami rights to these traditional lands are denied, the greater part of their culture, such as reindeer herding, hunting and fishing, is endangered.

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<sup>61</sup> DO, 2008:1, p. 20-21; According to the Saami Parliament, approximately 20 000 – 35 000 Saami currently live in Sweden. Of these, an estimation of 2 500 subsist on reindeer husbandry, see State Official Investigations, *Responsibility for the maintenance of the state's reindeer husbandry structures*, SOU 2011:62, p. 23.

<sup>62</sup> Discussions presented in the report, see DO, 2008:1, p. 22

<sup>63</sup> Brännström. Malin., "Forestry and Reindeer husbandry on the same land - A jurisprudence study of ownership and reindeer husbandry law", (Umeå University, 2016)

<sup>64</sup> Gällivare District Court, *Case concerning Girjas Saami village v. State*, Judgment, 3 February 2016. Available at: <https://www.sametinget.se/100329>

<sup>65</sup> SVT, "Five conflicts that has shook Sápmi", 26 May 2015. Available at: <https://www.svt.se/nyheter/lokalt/norrbottn/femte-stora-samebymalet>

<sup>66</sup> The Sustainable Development Working Group of the Arctic Council, *Circumpolar Information Guide on Mining for Indigenous Peoples and Northern Communities*, 2011, p. 14.

<sup>67</sup> The Arctic Council and the Association of World Reindeer Herders (EALAT Project), *Reindeer herding, traditional knowledge and adaptation to climate change and loss of grazing land*, 2011, p. 48-49.

## **Burden of proof**

Sweden has been criticized for applying a too heavy burden on the indigenous people in court cases when assessing the traditional lands and this has been characterized as discriminatory against the Saami.<sup>68</sup> The Saami and the private landowners are not seen as equally treated in these cases. The Saami traditions are oral, not written, and the Saami can often not present adequate written documentation on their customary use of land. Since the burden of proof lies with them to show that they have traditionally used or possessed the land in question, as opposed to the private landowner proving that immemorial custom is not applicable, which is the case in Norway, it is very difficult for the Saami to succeed in court cases.<sup>69</sup> The burden of proof combined with the hardship of presenting adequate documentation causes lengthy and costly processes.

## **The threats of animal predators to reindeer husbandry**

The former UN Special Rapporteur on indigenous peoples, James Anaya, has emphasized the great threat predator animals are causing to reindeer husbandry as extractive industries. The number of reindeers being killed by predators in certain herding areas has been described by the former Special Rapporteur as an “imminent risk” as the herds no longer have the ability to reproduce themselves. As a result, the herd might collapse within the nearest future. Furthermore, criticism can be addressed to the government both in terms of having regulations which severely restrict the reindeer herders rights in protecting their herds from such predators, as well as only providing compensating covering parts of the costs of the damage caused to the reindeer herders by the predators.<sup>70</sup>

## **Discrimination against Saami women**

The Reindeer Husbandry Act (1971:437) is formally gender neutral, but in practice it promotes the rights of the reindeer herding man. There are women at decision-making positions within the Saami Community. However, Saami women are often excluded from decision-making in their communities after they marry.<sup>71</sup> In cases of divorce, women run the risk of being excluded from the community and thereby also excluded from decision-making processes dealing with land disputes. In consultation with the Saami, the legislative branch in Sweden has a duty to reformulate current legislation so that no parts allow for an interpretation excluding women.<sup>72</sup>

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<sup>68</sup> Sweden has received criticism from the various UN bodies numerous times on the matter, see for example UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, A/HRC/18/35/Add.2, 6 June 2011, para. 51; UN Human Rights Committee, *Concluding observations to Sweden under Article 40 of the ICCPR*, CCPR/C/SWE/CO/6, 7 May 2009, para. 2. For further discussion on the matter, see Bernitz, Hedvig., “Protection of fundamental rights of the Saami - towards a European standard?”, Judicial Publication no. 3, 2010/11.

<sup>69</sup> Ibid. p. 583; The Saami Parliament, “Reindeer Husbandry Act”, updated 22 August 2016, available at: <https://www.sametinget.se/1125>

<sup>70</sup> UN Human Rights Council, A/HRC/18/35/Add.2, 6 June 2011, para. 62

<sup>71</sup> Wik Karlsson, Jenny., Swedish Saami Association (SSR), “Reindeer Husbandry Act and Equality”, 2016, available at: [http://www.sapmi.se/wp-content/uploads/2016/08/Ren\\_o\\_Jamn\\_2012\\_webb.pdf](http://www.sapmi.se/wp-content/uploads/2016/08/Ren_o_Jamn_2012_webb.pdf)

<sup>72</sup> Brännström, Malin., (legal representative for Swedish Saami Association) in a presentation on the Reindeer Husbandry Legislation in the Swedish Parliament, 5 December 2007



The Reindeer Husbandry Act has been criticized for being established without the active participation and involvement of the Saami community. The raised policy issues by the State concerning the Saami have been initiated by the State without the possibility of the Saami community having the possibility to influence actual issues. As such, the consequence of the contemporary legislation impacting the individual, both positively and negatively, is a direct effect by government policy. Not infrequently when discussing the rights of the Saami, the focus tend to be on the Reindeer Husbandry Act and issues connected to how land and natural resources can be herded in relation to another use of land. Issues relating to the individual's right are seldom raised or discussed. This is especially the case concerning issues related to the consequences of the legislation for the individual from a gender perspective, whereby relevant research is undoubtedly scarce. Critics have argued that the Swedish State does not seem to have any interest in discussing and raising issues related to gender equality and the right of the individual seems to fall short in the hands of those politician's responsible for the Saami issues.<sup>73</sup>

### **Failure to ratify ILO convention 169**

Sweden has received ongoing criticism, including in its latest concluding recommendation by the CERD Committee, for not ratifying ILO Convention No. 169 on indigenous and tribal peoples.<sup>74</sup> Article 14 of the Convention obligates State parties to recognize indigenous peoples' rights of ownership and possession over the lands that they traditionally occupy, as well as safeguard the rights to use lands they traditionally have had access to, for their subsistence and activities, but which they don't exclusively occupy.<sup>75</sup> Though the debate on ratifying the ILO convention No.169 is still ongoing, the Swedish government has failed to ratify the convention since the latest CERD reporting.<sup>76</sup>

### **The Nordic-Saami convention**

Finland, Norway and Sweden signed a unified Nordic agreement on indigenous Saami rights and culture on the 13<sup>th</sup> of January 2017. The agreement could be seen in the light of a cross-border effort to develop a conclusion of the Nordic Saami. The Convention states that the Saami people has a right to self-determination, as well as a right to land and water ownership in order to maintain the Saami culture. If ratifying the convention, it would mean that the Nordic governments, Sweden included, would be obligated to negotiate with the Saami parliaments in issues concerning Saami interests.<sup>77</sup>

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<sup>73</sup> Wik Karlsson. Jenny., 2016, p. 2

<sup>74</sup> For example, see UN Human Rights Council, A/HRC/18/35/Add.2, 6 June 2011, para. 26; DO, "The Sámi indigenous people in Sweden and the Right to Participate in Decision-Making", 24 February 2010, available at: <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/docs/contributions/SwedishEqualityOmbudsman.pdf>; UN CERD, *Concluding observations of on the combined ninetheenth to twenty-first periodic reports of Sweden*, adopted 12-30 August 2013, para. 19

<sup>75</sup> ILO, 27 June 1989, Article 14

<sup>76</sup> For more detailed criticism, see article on Sweden's Television, "Voted no to extended Saami rights", 8 april 2015, available at: <https://www.svt.se/nyheter/lokalt/norrbotten/idag-rostar-riksdagen-om-ilo-169>

<sup>77</sup> Nordic Saami Convention, available at: <https://www.sametinget.se/1516>

The Nordic Saami convention is still to be validated by the Saami communities within the Nordic countries before the governments in question can proceed the work on possibly ratifying the convention.

### **Recommendations**

- Ensure the Saami people their rights as an indigenous people.
- Revise the burden of proof in cases on right to land.
- Consult with the Saami community on appropriate measures to maintain predator populations in reindeer herding areas according to appropriate levels.
- Include the Saami community and their active participation in all decisions concerning their interests, including reformation of legislation.
- Adopt an analysis approach ensuring the individual's right is being ensured, and include a gender perspective in the analysis.
- Ratify ILO Convention 169.
- Ensure the Saami community is involved and participated equally in the political process concerning the Nordic-Saami convention, when approved by the Saami Parliament.

### **1.2.2.2. The Roma**

#### **Main concerns**

- Structural discrimination and marginalisation of the Roma community is so widely spread that Roma, for the most part, stand outside the democratic process. New initiatives have not been able to counteract discrimination against the Roma communities in all areas of social, economic and political life.
- Roma continue to encounter severe discrimination of their socio-economic rights, particularly with regard to employment, housing and in the education system.
- Regarding education in general, the schools have not made any efforts in including the culture, language and history of the Roma as a minority. The Swedish School Authority has concluded a need of improvement regarding the school's consideration of Roma as a national minority with specific rights.

#### **Discrimination and marginalization**

The Roma community has for centuries experienced discrimination and socio-economic marginalization in Sweden. This involves structural discrimination, forced sterilization and segregation.<sup>78</sup> In its latest recommendation to the Swedish government, the CERD Committee expressed concern over the lack of progress in ensuring equal enjoyment of rights by Roma and the ongoing stigmatization and discrimination against Roma in access to services. Furthermore, the Committee also addressed their continuing unstable socio-economic situation and specifically referred lack of access to housing, education and employment. As such, the Committee once again had to emphasize that Sweden enhance and

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<sup>78</sup> The Swedish Government, *The dark and unknown history – White book on abuses and rights violations against the Roma during the 20th century*, Ds 2014:8, 2014

accelerate its efforts to combat the discrimination against Roma experiences in the mentioned areas.<sup>79</sup>

### **Discrimination in employment**

Due to lack of official data based on ethnicity, the estimated number of individuals who identify themselves as Roma in Sweden varies. The official number of Roma in Sweden is roughly 50,000 individuals.<sup>80</sup> Out of people in working age, an estimation of 90 percent are unemployed.<sup>81</sup> This is an alarming unemployment rate, which have received international critic, including by UN bodies. In its latest recommendation to Sweden in 2016, the Committee on Economic, Social and Cultural Rights (CESCR) stated its concern that Roma disproportionately face unemployment and urged the government to install targeted measures to reduce the vulnerability of Roma to unemployment, including adopting temporary special measures and strengthening financial incentives for employers.<sup>82</sup>

Despite the lack of studies regarding the situation of Roma in the employment sector in both Sweden and internationally, a general conclusion can be made: the Roma constitutes the most vulnerable group among national minorities in the risk zone of being outside the employment system throughout Europe and in Sweden. The main reason of the situation faced in the employment sector is prejudice and discrimination against Roma.<sup>83</sup>

Although the Roma community has agreed to discrimination being the main factor to the exclusion in the employment sector, other reasons contribute equally to the critical situation. The lack of completed elementary school for the majority of all Roma children and youths and the exclusion of society at large are additional identified factors affecting the prospect of entering the employment sector. The exclusion of Roma from the Swedish society at large is highly visible, for instance by the fact that they are not having the same network as other people in Sweden and as such, face severe difficulties in entering the job market. The widespread lack of knowledge by the Swedish municipalities and other actors regarding the rights of Roma as a minority is another obstacle in strengthening their position in the society. Their exclusion is also manifested by the fact that the knowledge the Roma have rarely is documented and as such, they cannot meet employment criteria as required experience.<sup>84</sup>

According to *A Coherent and long-term Strategy of Roma inclusion 2012-2032*, employment constitutes a central issue of action to break the cycle of Roma exclusion in society at large. The Delegation's proposals include increased ability of Roma to earn their own living, eliminate discrimination of Roma at workplace, increased number of Roma starting and running businesses, working within the government sector and in municipalities, including increased number of Roma women in the employment market, that Roma should not

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<sup>79</sup> UN CERD, CERD/C/SWE/CO/19-21, para. 20

<sup>80</sup> State Official Investigations, *Roma Rights – a strategy for Roma in Sweden*, SOU 2010:55, p. 116

<sup>81</sup> *Ibid.*, p. 367

<sup>82</sup> UN CESCR, *Concluding observations on the sixth periodic report of Sweden*, E/C.12/SWE/CO/6, 14 July 2016, paras. 23-24

<sup>83</sup> State Official Investigations, SOU 2010:55, p. 373

<sup>84</sup> *Ibid.*, p. 375, 379, 381

disproportionately represent the average unemployment rate in Sweden and Roma youths should be equally represented in the job market as youths in general. To achieve any real changes regarding the situation of Roma in employment, responsible government authorities, as well as municipalities, need to pay special attention of the situation faced by Roma and identify specific measures targeting Roma.<sup>85</sup>

### **Discrimination in education**

The insecurity regarding Roma children and students situation during primary-, elementary- and upper secondary school is still a fact. This is partly explained due to the fact that many do not openly express themselves as being Roma and the schools does make an effort in finding out the background of the Roma children. As part of the five pilot municipalities included in the 2012-2032 Roma Inclusion Strategy, Stockholm County has reported a progress regarding education for Roma children. According to Roma parents and school teachers, an increased number of Roma children have been noticed enrolled in primary schools, more Roma students are completing elementary school and upper secondary school becomes more important for students.<sup>86</sup>

At the same time, special measures to increase Roma students' presence, the number of students who complete elementary schools with passing grades, and follow through upper elementary school is generally lacking in the municipalities. Regarding education in general, the schools have not made any efforts in including the culture, language and history of the Roma as a minority, despite this being asserted in the curriculum. The Swedish School Authority has concluded the need of improvement regarding the school consideration of Roma as a national minority with specific rights. The existing absence of special measures indicates a low knowledge of both international rights and national legislation on the rights of national minorities at the Swedish schools. As such, the Swedish School Authority argues that the school needs to take a bigger responsibility in developing a better relation between Roma families and schools.<sup>87</sup>

### **Discrimination in housing and forced evictions**

The Roma community continues to experience significant discrimination with regard to the right to housing and is especially vulnerable to forced evictions. In its latest recommendation, the Committee of CESCR criticized Sweden for the shortage of housing in the country and the limited access to affordable tenancies and lack of social housing resulting in homelessness. The Committee specifically addressed the concern regarding existing de facto residential segregation affecting Roma who are citizens of other EU countries. As such, the Committee urged the Swedish government to increase availability of affordable tenancies and consider allocating resources to social housing which accommodate the demand of those in

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<sup>85</sup> The Swedish Government, *A Coherent and long-term Strategy of Roma inclusion 2012-2032*, 2011/12:56, 16 February 2012, p. 43, 46

<sup>86</sup> Stockholm County Authority, *Detailed description of obstacles and opportunities on Roma rights*, 2014: 22, 2014, p. 8

<sup>87</sup> *Ibid.*,

need, including the Roma, and install targeted measures aiming at eliminating de facto residential segregation affecting Roma.<sup>88</sup>

Criticism has also been put forth concerning the increased incidence of forced evictions in Sweden affecting Roma (citizens of other EU countries) living in informal settlements. The recent years proposals on legislative changes on evictions procedures is worrying since it would further weaken the already vulnerable position of those subject to eviction, including the Roma, and accelerate the eviction process from informal settlements. The Committee of CESCR has therefore recommended Sweden to address the root causes resulting in Roma being vulnerable to forced evictions. The government should take active measures in facilitating access to adequate housing, as a State obligation under Article 11 of the ICESCR, by Roma and effectively take steps to ensure discriminatory obstacles in access to housing by the Roma are diminished. Such measures would in turn prevent the expansion of informal settlements.<sup>89</sup>

### **Recommendations**

- Undertake effective measures in order to enhance Roma people's trust for authorities in Sweden. Such measures are important in order to increase the number of cases of discrimination against the Roma people that actually are being reported.
- Install measures which combat imbedded and widespread discrimination against the Roma community, using legal measures as well as through policies and awareness-raising.
- Dismantle stereotypes of Roma in Swedish society through effective awareness-raising campaigns.
- Adopt targeted measures with the aim of eliminating de facto residential segregation of Roma.
- Establish targeted measures specifically addressing the need and situation of Roma to enhance their ability entering the employment sector.

### **1.2.2.3. The Jewish minority**

#### **Main concerns**

- One out of five high school students has a negative attitude towards Jewish people
- Thirty percent of hate crimes with a religious motive are anti-Semitic.

A recent study by Expo indicates that the Jewish minority experience a low level of daily discrimination with regards to housing, employment or government encounters. At the same time, a majority in the same study acknowledged being subject to daily prejudice and intolerance. In other words, various forms and expressions of hate crimes are more commonly faced by the Jewish minority.<sup>90</sup>

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<sup>88</sup> UN CESCR, E/C.12/SWE/CO/6, 14 July 2016, paras. 19-20, 37-38

<sup>89</sup> Ibid., paras. 39-40

<sup>90</sup> Expo (text by Maria-Pia Cabero, Sara Duarte and Meral Onmaz), *Closed Doors*, 2015, p. 41

According to the latest estimation by the National Council for Crime Prevention, a number of 180 hate crimes with anti-Semitic motives were reported to the police. This is an increase with 34 percent from previous year, 2015. At the same time, there are great individual differences between different years, why the estimated number should be interpreted in light of the development over recent time period rather of analyzing one year to another. In this respect, the reported hate crimes with identified anti-Semitic motives from 2008-2016 have relatively been on the same level, with exceptions in the years of 2009, 2014 and 2015 which showed higher levels of reported crimes.<sup>91</sup>

The most common type of hate crime with this motive reported to the police in 2016 was unlawful threats and molestation, making up approximately half of all reported crimes. Agitation against ethnic group constituted the second most common type, an estimated number of 27 percent, resulting in hate crimes with an anti-Semitic motive being relatively high in relation to other hate crime motives.<sup>92</sup>

Hate crimes conducted on the internet is especially common against the Jewish minority. There are not only numerous Nazi websites on the internet but also many sites that are spreading myths on a world “Zionist” network. Despite that websites are being reported to the police and a few lead to prosecution, the internet persists in being a crime of place where Jewish people as a group are being agitated against and where individual Jewish persons and actors are being targeted.<sup>93</sup>

Jewish congregations are often subject to letters and emails of threats, but due to the fear of increased threats of hate, they rarely go out with the information in public. According to the study made by Expo, leading representatives within Jewish congregations in all bigger cities in Sweden are testifying a continuous threat of hate against them and the members of their congregations. In addition, their premises are vandalized and synagogues and burial graves are damaged. Jewish people have been exposed to both physical and verbal attacks. People’s homes have furthermore been subject to vandalism. It has been noted that the threats are intensifying in connection to the occurrence of international conflicts involving Israel.<sup>94</sup>

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<sup>91</sup> BRÅ, Report 2016:15, p.83

<sup>92</sup> Ibid., p. 82

<sup>93</sup> Ibid., p. 42

<sup>94</sup> Ibid., p. 45; Committee on state aid to religious communities (SST), *Xenophobic acts against religious assemblies*, 2014, p. 7

## Recommendations

- Enhance measures to prevent and respond to hate crimes with an anti-Semitic motive.
- Ensure adequate development and protection of the Jewish minority, including protection of religious institutions.

### 1.2.2.4. Tornedalians and Sweden Finns

#### Main concerns

- Language rights of Tornedalians and Sweden Finns are not adequately guaranteed.
- Tornedalians and Sweden Finns have a poorer physical health compared to the rest of the Swedish population.

The minority status of the Tornedalians implies the recognition of Meänkieli as one of the acknowledged minority languages in Sweden. The Tornedalians are descendants of Scandinavian and Fennoscandian Finnic Kvens, as well as Finns who several hundred years ago settled to the area of today's Northern Sweden and the Torne Valley region near the present-day Swedish-Finnish border and its west.<sup>95</sup>

Sweden does not distinguish minority groups in population censuses, however, the number of people who identify themselves as Tornedalians is usually estimated to be between 30 000-150 000, whereby 50 000 of them live in Sweden.<sup>96</sup>

Sweden Finns are immigrants of Finnish origin and their descendants living in Sweden, some of whom still speak Finnish in addition to Swedish. In 2012 there were about 426 000 people in Sweden, 4,46 percent of the total population, who were either born in Finland or had at least one parent who was born in Finland. Since only the country of birth is registered in Sweden, not ethnicity or language, a considerable number of those registered as being of Finnish origin are actually of Finland-Swedish descent.<sup>97</sup>

According to legislation on special minority language rights in certain areas of Sweden, pre-school activities should be offered to children in Finnish and in Meänkieli.<sup>98</sup> The Swedish School legislation also states that the primary school should contribute to children with other mother tongue than Swedish are ensured both the possibility to develop the Swedish language as well as the mother tongue in question.<sup>99</sup> However, several municipalities do not respect the provisions on language rights, leaving the minority children without pre-school education in their own language.

National minorities in Sweden in general have a poorer health compared to the rest of the population. The poor health situation among those minorities is often rooted in factors such as unemployment, the sense of exclusion from the society and discrimination. Studies show

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<sup>95</sup> The Swedish Administrative County Authorities, "Information from the Swedish Administrative County Authorities", available at: <http://www.lansstyrelsen.se/sv/Pages/default.aspx>

<sup>96</sup> *Ibid.*; Gävleborg Administrative Country Authority, "The Administrative County Authority recognizes the day of the Tornedalians", 14 July 2017, available at: <http://www.lansstyrelsen.se/Gavleborg/Sv/nyheter/2017/Sidor/lansstyrelsen-uppmarksammar-tornedalingarnas-dag-15-juli-genom-att-hissa-den-tornedalska-flaggan.aspx>

<sup>97</sup> *Ibid.*,

<sup>98</sup> *Law on national minorities and minority languages* 2009:724, Chapter 1 §§ 1-2

<sup>99</sup> *School legislation* 2010:800, Chapter 8 § 10

that both Tornedalians and Sweden Finns have a poorer physical health compared to the population as a whole.<sup>100</sup>

### **Recommendations**

- Examine whether the municipalities in appointed administrative areas comply with their legal obligations to offer primary education in their mother tongue, Meänkieli and Finnish, respectively.
- Ensure that active measures are implemented aiming at improving the health conditions of the Tornedalians and Swedish Finns.

### **1.2.2.5. Persons of African descent**

#### **Main concerns**

- Persons of African descent are particularly subject to racism and hate speech
- Negative stereotyping and portrayal of Afro-Swedes are widespread in Sweden
- Knowledge of Afro-Swedes exposure to hate crimes and discrimination is low

#### **Racism and hate speech**

The most recent concluding observation to Sweden by the UN Human Rights Committee (HRC) presents criticism towards the government for the continuously reported hate speech, including on the internet, and the racist and xenophobic violence against Afro-Swedes in Sweden.<sup>101</sup> The Committee went as far as requesting the Swedish government to “redouble its efforts, both through law enforcement activities and awareness-raising, to combat hate speech, including on the Internet, racist and xenophobic violence against and negative stereotyping and portrayal of ethnic or religious minorities...”. Moreover, all cases of manifested racism, hatred and xenophobia should be thoroughly investigated, suspected perpetrators should be prosecuted where appropriate, and if resulting in conviction, punished as well as providing victims with adequate redress.<sup>102</sup>

According to the National Council for Crime Prevention, the afro-phobic motive constituted 20 percent of the total hate crimes with xenophobic/racist motive in 2016. The recent number estimates that 910 hate crimes with afro-phobic motive were recorded to the police. Though increased from the previous year, it is still the same estimation as in 2012.<sup>103</sup>

Afro-Swedes are specifically subject to xenophobia and racism in the Swedish society due to the multiple ways they might be exposed to such discrimination, including ethnicity, color and nationality. This can be manifested in various ways, for example by verbal violations, physical damage on premises or direct abuses and threats against individuals. Critics have stated that the knowledge concerning afro-Swedes vulnerability of being exposed to hate crimes and discrimination is relatively limited. Sometimes, afro-Swedes are regarded as a

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<sup>100</sup> Public Health Authorities, *Consultation and dialogue with national minorities and indigenous people with the aim of improving the health conditions of the groups*, November 2017, available at: <https://www.folkhalsomyndigheten.se/contentassets/a25da39eacc9461caf2a34fe53b258ea/samrad-nationella-minoriteter-urfolk.pdf>

<sup>101</sup> UN HRC, Concluding observations on the seventh periodic report of Sweden, CCPR/C/SWE/CO/7, 28 April 2016, para. 16

<sup>102</sup> Ibid., para. 17

<sup>103</sup> BRÅ, Report 2016:15, p.68



coherent group, when in reality, it consists of many different ethnic groups with roots in one large continent and where the vulnerability might differ between different ethnic groups.<sup>104</sup>

### **Recommendations**

- Effectively install measures combating all manifestations of racism, hatred and xenophobia, including implementation of both legal policy frameworks.
- Provide adequate remedies to victims of such human rights violations and abuses.
- Enhance measures to protect individuals against different acts of manifestations of racial hatred.

## **2. ARTICLE 4: Racist Propaganda and racist organizations**

### Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 4 requires State parties to condemn and penalize all dissemination of propaganda and organisations that are based on ideas of superiority of one race or ethnic origin, or which incite racial hatred or violence. Moreover, legislative measures should be installed to ban racist organisations, racist propaganda, memberships in racist organisations as well as the financing of these structures.

### **Main concerns**

- Sweden is in violation of Article 4(b) of the Convention by permitting racist organisations to exist.
- There is a proliferation of racist propaganda over the Internet, promoting and inciting acts of racial discrimination. There has also been an increase in reported hate crimes over the Internet.
- Populist and nationalist agendas, including ones with anti-immigrant overtones, are gaining ground in politics in Sweden.
- While the provision on agitation against a national or ethnic group states that speech intended to cause imminent violence may be penalized, it is only under

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<sup>104</sup> Ibid.,

certain narrow circumstances that this is implemented. An appeal for prosecution on such charges and any instructions on the restriction of freedom of speech can only be initiated by the chancellor of justice.

- Requirements in complaint mechanisms impede access to effective remedies in cases of racial discrimination.

## 2.1 Countering racist organizations

As the following examples will indicate, there is cause for concern in terms of the promotion of and incitement to acts of racial discrimination in Sweden. Racist organisations are flourishing, their propaganda is spread openly, especially on the Internet and in schools. Moreover, it is of utmost concern that racist organisations are allowed to expand their operations. Regretfully, the effectiveness of existing legislation and measures taken to address racist violence are not sufficient to counteract developments in racial violence nor do they provide protection to victims of racist propaganda and, by racist organisations agitating violence.

This section has been divided into four subsections that cover the main areas of concern, namely: racist organisations and the White power movement, platforms for racist propaganda, nationalist and populist influence in politics, the chancellor of justice as sole prosecutor in constitutionally protected media.

### **Racist organizations and the White power movement**

With respect to Article 4, the Swedish Government insists that, consistent with the limitations of the Fundamental Law on Freedom of Expression and Association, Sweden has enacted laws that prohibit violence or intimidation motivated by racial, ethnic or religious hatred. Sweden continues to uphold that while criminal acts committed by individual members of racist organisations may be penalized, the existence of and participation in such racist organisations cannot. In its current and previous periodic report to the Committee, Sweden refers to Parliamentary and Government opinions that the current legislation is effective in banning racist expression; and that the State does not see a need for legislative measures to ban racist organisations, as the activities of such organisations are countered through existing legislation, such as the legislation on agitation, unlawful military activity and others.<sup>105</sup>

Since the recent reporting to the CERD Committee, the number of traditional activities registered by the White Power movement has increased. Between the years 2011 – 2015, there was an increase of 51% of activities by the White Power movement.<sup>106</sup> According to Expo, the number of traditional activities registered by the White power movement has increased every year 2013-2016, with an exception of 2015. However, after 2015 the number

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<sup>105</sup> Swedish Government, *Periodic State Report of Sweden to the CERD Committee 22<sup>nd</sup>-23<sup>rd</sup> periodic reports*, CERD/C/SWE/22-23, 1 February 2017, paras. 95-98; See also previous similar argumentation regarding the matter, Swedish Government, *Periodic State Report of Sweden to the CERD Committee 19<sup>th</sup>-21<sup>st</sup> periodic reports*, CERD/C/SWE/19-21, 5 November 2012, para. 95-98

<sup>106</sup> Expo, *The politics of Hate – A conclusion of race ideological activities 2016*, 2017, p. 4

of activities by this movement rose again and peaked in 2016, to the highest registered number since 2008. Expo documented a total of 4064 registered activities by the White power movement that year.<sup>107</sup> Traditional activities include arranging demonstrations, holding lectures, distributing racist propaganda and holding paramilitary activities. As the number of traditional number of activities increase, White Power organizations continue to develop new methods that are less easily discovered and registered.<sup>108</sup>

The most active organization in 2016 was The Nordic Resistance Movement (NMR), who has openly denied the holocaust and advocates an immigrant critical agenda. In 2016 the movement held 2759 activities.<sup>109</sup> In September 2017, the NMR was granted permission to demonstrate on the Jewish holiday Yom Kippur, one of the most important and celebrated holidays for the Jewish community.<sup>110</sup> The duration of the demonstration was large enough to be acknowledged in international media, for example, in the Israeli newspaper Haaretz.<sup>111</sup>

The Swedish Security Service (Säpo) draws the conclusion that considering their access to heavy armor, weapons, knowledge and use of violence, White power organizations could pose a severe threat to democracy if such intentions were imminent. Säpo notes that their violent activities continue to be harmful on an individual level.<sup>112</sup>

Article 4b of ICERD asserts an absolute ban on racist organizations. As a State party to the Convention, and without making any reservation to the specific provision, Sweden is under the obligation to respect its state obligations under the stated Article. What has been presented above concerning continuous and growing racist organizations and White Power movements in the Swedish society clearly evidence that the current legislation, and hence the repeated arguments of the government to the CERD Committee, are highly questionable. As a result, the UNA Sweden urges the Swedish government to implement the existing legislation concerning hate crimes and ensure its full enforcement. In practice, this should be made by establishing a parliamentary investigation responsible for examining why existing legislation is not applied.

### **Platforms for racist propaganda**

Spreading its race ideology through propaganda has been evidenced as the most common use of activity by the White Power movement. Following pattern of recent years, as much as 80 percent of all propaganda activities manifested in 2016 were through hand-outs of flyers,

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<sup>107</sup> Poohl. Daniel., Leman. Jonathan., (Expo), "More activities than ever - How 2016 became the record year of the Nazis, 3 May 2017, available at: [http://expo.se/2017/fluor-aktiviteter-an-nagonsin---sa-blev-2016-nazisternas-rekordar\\_7354.html](http://expo.se/2017/fluor-aktiviteter-an-nagonsin---sa-blev-2016-nazisternas-rekordar_7354.html)

<sup>108</sup> Expo, 2017, p. 1-2

<sup>109</sup> Poohl. Daniel., Leman. Jonathan., (Expo), 3 May 2017

<sup>110</sup> Håkansson. Axel., "Upset Feelings Amongst the Jewish Congregation in Gothenburg", SVT, 17 September 2017, available at: <https://www.svt.se/nyheter/lokalt/vast/upprorda-kanslor-i-judiska-forsamlingen-i-goteborg>

<sup>111</sup> Stavrou. David., *Riots and Violence as neo-Nazis March in Sweden on Yom Kippur*, Hareetz, 30 September 2017, available at: <https://www.haaretz.com/world-news/europe/1.815007>

<sup>112</sup> Swedish Security Service (Säpo) and National Council for Crime Prevention (BRÅ), *Violent political extremism*, Report 2009:15, 2009, p. 15

posted stickers or other forms of expressions aiming to visually be noticed on the streets or spreading propaganda.<sup>113</sup>

Swedish legislation provides space and opportunities for organizations to operate freely and publish racist propaganda on the Internet. In fact, the Internet is one of the most powerful tools for increasing activity for right-wing extremist and racist organisations active in Sweden. Latest figure shows that 9 percent of all hate related crimes recorded to the police were carried out on the internet.<sup>114</sup>

The main forums in which propaganda is spread is through the official websites of different White Power movements, internet based forums that are open for discussion and through social media such as twitter and facebook.<sup>115</sup> Nordfront is one example of an official website that is also the political party NMR's official website. Active users of the website has had a steady increase and is currently the biggest forum in count of active visitors.<sup>116</sup> During the year of 2015 podcast turned out to be a new method to use when spreading racist propaganda.<sup>117</sup>

According to Expo, there is an increasing trend of arranging social actions by the White Power movement. These types of manifestations are not traditional in the sense of gatherings with flags and strict lines, but differ in form and strategy. The NMR has acted both as night watchmen and life guards when intensive debates blossomed in Sweden regarding sexual harassments connected to immigration. The Nordic Youth party has also participated in hand-outs of food to homeless people in Stockholm, an initiative starting as a protest against the debate regarding EU-migrants in which it was argued that homeless "ethnic" Swedes were bypassed. The strategy of stepping in to the society as a benefactor and a replacing actor of an absent State is not new. However, the latest trend evidences an alarming increase in not only the implementation of this strategy but that it also works as a method to gain more supporters.<sup>118</sup>

### **Nationalist and populist influence in politics**

To gain respect in the public sphere, many White Power organisations adopt what resemble traditional party platforms, many with populist and nationalist agendas: they create political parties, recruit members and get financial support through political campaigns, publishing newspapers and run Internet shops. Over time, such activities legitimize the organisation in the public eye, and they are able to enter the public political sphere where they gain greater possibilities to influence people through the mass media.

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<sup>113</sup> Poohl. Daniel., Leman. Jonathan., (Expo), 3 May 2017

<sup>114</sup> BRÅ, Report 2017:11, p.53

<sup>115</sup> Swedish Agency for Youth and Civil Society, (MUCF), *Young and extreme - Violent far-right extremism*, 2016, p. 20 (39)

<sup>116</sup> Swedish Defence Research Agency (TOI), *The white hate*, 2017, p. 54

<sup>117</sup> Expo, "Internet – the new battle ground", 19 May 2017, available at: <http://expo.se/hatetspolitik/natet-det-nya-slagfaltet/>

<sup>118</sup> Poohl. Daniel., Leman. Jonathan., (Expo), 3 May 2017

The populist party The Sweden Democrats polled 5,70 percent and won 20 parliamentary seats in the 2010 election. During the latest election in 2014, the party polled 12,86 percent, resulting in 49 seats in parliament. Over one election only, the party increased with a double percent rate. It also results in them constituting the third largest political party in Sweden.<sup>119</sup>

Since 2015, the Nordic Resistance movement (NMR) has been registered as a political party running for all Swedish elections, including to Parliament.<sup>120</sup> The NMR has been dominating public venues and places the past recent years and constitutes a significant reason of why Sweden is currently experiencing an alarming increase of radical right-wing extremism.<sup>121</sup> The party is openly regarded as a Nazi organization active in Sweden,<sup>122</sup> and numerous violent activities are continuously experienced in the Swedish society by the organization as well as belonging representatives.<sup>123</sup> The reason for NMR's expansion can be greatly explained by the un-success of the former party, The Swedish Resilience movement, to win any mandate at all in the latest election 2014. This paved the way to establish a new organization gaining ground across the country, and the establishment of the NMR. In this regard, it should be noted that the NMR has been able to recruit many of the members formerly active in the former Swedish Resilience movement. However, as already been stated, the organization has received a growing number of members, and more importantly, opened up for a wider group of supporters.<sup>124</sup>

Although the party does not have any seats in parliament yet, the expansion of propaganda and mobilization during the recent years, together with the upcoming election in fall 2018, strongly indicates that the party will only continue to grow and increase its activities to gain more ground in the Swedish society. A spokesperson from the Swedish Security Service (Säpo) has addressed this situation as alarming seen from a democratic perspective, whereby it could result in long-term consequences if people experience threats to their fundamental rights and freedoms governed by law.<sup>125</sup>

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<sup>119</sup> Swedish Election Authority, "Election to Parliament 2014 – Votes", 19 September 2014, available at: <http://www.val.se/val/val2014/slutresultat/R/rike/index.html>; Swedish Election Authority, "Election to Parliament 2010 – Votes", 23 September 2010, available at: <http://www.val.se/val/val2010/slutresultat/R/rike/index.html>

<sup>120</sup> Swedish Election Authority, "Registered Party Labels", available at: [http://www.val.se/det\\_svenska\\_valsystemet/partier/lista\\_registrerade\\_partibeteckningar/index.html](http://www.val.se/det_svenska_valsystemet/partier/lista_registrerade_partibeteckningar/index.html) (accessed 2 February 2017)

<sup>121</sup> Poohl. Daniel., Leman. Jonathan., (Expo), 3 May 2017

<sup>122</sup> Ibid.; Mokhtari. Arash., (SVT), "Four facts concerning NMR", 29 September 2017, available at: <https://www.svt.se/nyheter/inrikes/fyra-saker-du-behover-veta-om-nmr>;

<sup>123</sup> See for instance numerous reporting by Swedish independent media; SVT, "25 people detained during Nazi demonstration", 12 November 2016, available at: <https://www.svt.se/nyheter/lokalt/stockholm/flera-gripna-for-valdsamt-motstand-under-nazistdemonstration> ; Mahovic. Amela., (SVT), "Leader of the Nordic Resistance movement sentenced for Nazi-salut", 2 January 2018, available at: <https://www.svt.se/nyheter/lokalt/stockholm/nordiska-motstandsrorelsens-ledare-doms-for-nazisthalsning>

<sup>124</sup> Poohl. Daniel., Leman. Jonathan., (Expo), 3 May 2017

<sup>125</sup> Holmberg. Carina., (Swedish Radio, SR), "Säpo: NMR will increase its activity", 29 September 2017, available at: <http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6788091>

### **The chancellor of justice as sole prosecutor in constitutionally protected media**

While the provision on agitation against a national or ethnic group states that speech intended to cause imminent violence may be penalized,<sup>126</sup> recent events indicate that this provision is an area of Swedish legislation rarely implemented in practice. The provision continues being used only under certain narrow circumstances. Where the agitation manifested physically by print, verbally by recording, or in any other similar way considered as constitutionally protected media, an appeal for prosecution on such charges, as well as any instructions on the restriction of freedom of speech, can only be initiated by the Chancellor of Justice.<sup>127</sup> By assigning one prosecutor, whose possibilities to start proceedings are significantly restricted,<sup>128</sup> upholding a society governed by rule of law is greatly compromised and access to justice restricted. A public court proceeding would encompass the elaboration of a clearer praxis in the issue.

The most recent annual report from the chancellor of justice evidences a total of 263 reported cases in 2016 concerning issues related to freedom of speech and press. Out of these, only 12 had resulted in preliminary inquiries. A total of 5 cases concerned agitation against nationality or certain ethnic group, and 4 of these cases led to prosecution. Verdicts of a majority of these cases constituted a smaller fine.<sup>129</sup>

### **Recommendations**

- Sweden must comply with its international legal obligations under ICERD and implement the existing legislation concerning hate crimes and ensure its full enforcement. In practice, this should be made by establishing a parliamentary investigation responsible for examining why existing legislation is not applied.
- Install appropriate and effective measures combating racist and White Power movement propaganda, including over the Internet.
- Undertake awareness raising and other effective measures to combat the increasing influence of racist and populist parties in Swedish politics.
- Re-examine the role of Chancellor of Justice as sole prosecutor in crimes related to agitation against national and ethnic groups in matters concerning constitutionally protected media and re-consider other effective ways of handling such cases.

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<sup>126</sup> See above in this report concerning legislation on hate crimes against certain national or ethnic group

<sup>127</sup> *Fundamental Law on Freedom of Expression* (1991:1469), Chapter 7 § 1; State Official Investigations, *New Fundamental Law of Freedom of Expression?*, SOU 2010:68, p. 48

<sup>128</sup> As per instructions stated in *Fundamental Law on Freedom of Expression* (1991:1469), Chapter 1 § 5 and in *Freedom of Press Act* (1949:105), Chapter 1 § 4

<sup>129</sup> Chancellor of Justice, *Annual Report 2016*, 31 December 2016, p. 20-21

### 3. ARTICLE 5: Equal rights

#### Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d) Other civil rights, in particular: (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; (iv) The right to marriage and choice of spouse; (v) The right to own property alone as well as in association with others; (vi) The right to inherit; (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression; (ix) The right to freedom of peaceful assembly and association; (e) Economic, social and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade unions; (iii) The right to housing; (iv) The right to public health, medical care, social security and social services; (v) The right to education and training; (vi) The right to equal participation in cultural activities; (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

The present chapter is divided into subtopics which deal with issues covered by Article 5 of ICERD. It begins with addressing the issue of equality before the law, whereby immigrants and persons with other ethnic background have been identified disproportionately affected by the Swedish legal system as well as overrepresented in crime statistics. The following issue regards racial profiling. The second part of the chapter outline issues of economic, social and cultural rights, and include subtopics highlighting key problems related to employment, housing, health, education and religion.

#### 3.1. Discrimination in the legal system

##### Main concern

- Discrimination against persons with other ethnic background is prevalent throughout the Swedish judicial system, resulting in racial profiling, and overrepresentation in crime statistics and lack of effective legal remedies.

In 2006, the government assigned the Swedish National Council for Crime Prevention to examine the occurrence of discrimination within the Swedish judicial system. By gathering knowledge, experiences of those people affected and attitudes among prosecutors, lawyers, judges and court interpreters towards persons with other ethnic background and minorities, a

few years later BRÅ concluded a report illustrating how suspected persons and victims of abuses with other ethnic background and minorities can be mistreated in the judicial process.<sup>130</sup> The report revealed that people belonging to these groups face discrimination in all aspects of the judicial system, both through indirect discrimination as well as by direct discrimination in the judicial process. The indirect discrimination by the judicial system includes an inability to respect the language differences as well as unrealistic expectations and lack of mutual understanding in the judicial process. With regard to the direct discrimination towards people with other ethnic background and minorities, the report highlighted the widespread stereotyping existing within the judicial system. The prevailing attitudes and stereotyping regarding these groups of people revealed an example which negatively affected them in the judicial system's assessments.<sup>131</sup>

Ten years has passed since the report but much of the revealed information holds true today. A recent study confirms that government authorities and politicians in Sweden lack the competence in meeting minorities and understand their situation and needs. As a result, many people belonging to such groups have little, or lack total, trust and confidence to Swedish authorities. In this respect, many are especially critical to the Ombudsman against Ethnic Discrimination (DO) concerning the feeling of lack of assistance in redress when exposed to discrimination and the fact that few cases actually lead to court. Moreover, many people have revealed that they seldom report incidents of faced discrimination to the DO because of the lack of trust it would lead somewhere. Others also testify that they refrain from having any contact with government authorities at all.<sup>132</sup>

The most recent survey on minorities and discrimination by the EU Agency for Fundamental rights from 2017 also concludes that there is a general distrust in the police amongst certain minority groups in Sweden. More specifically, the levels of trust in the police amongst immigrants and descents of immigrants from Sub-Saharan Africa are significantly lower compared to the general population in Sweden.<sup>133</sup>

### **Racial profiling**

Studies have confirmed that individuals experience disproportionate exposure to controls by Swedish police on the basis of their ethnic background or belonging to a minority group, that they have been registered as suspects on looser grounds and for minor causes, in relation to other Swedes. The research and experiences of those people affected have confirmed that the police's discretion can be used in a discriminatory way. This is certainly true for the grounds of charges the targeted people subject to control, as well as the cases the police choose to continue investigating. Moreover, in these instances, the police regularly assert a quick conclusion on a presumptive suspect without gathering enough information grounding a correct assessment of the situation. As a result of this, many have testified that the suspicion

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<sup>130</sup> The National Council for Crime Prevention (BRÅ), *Discrimination in the judicial system*, Report 2008:4, p. 18-19

<sup>131</sup> *Ibid.*, p. 66, 77-85

<sup>132</sup> Expo, *Closed doors*, 2015, p. 29

<sup>133</sup> European Union Agency for Fundamental Rights (FRA), *Second European Union Minorities and Discrimination Survey: Main results*, December 2017, p. 100



of alleged crimes have been confirmed more hastily than the situation would have allowed for had there been a suspicion of alleged crimes conducted by other Swedes. Others have also described how the suspicion has led to the police being less accurate in its investigations, including examining other potential criminal suspects. Some experience that the presumption of suspicion has had a bearing effect on how the police treat them.<sup>134</sup>

## **Recommendations**

- Actively recruit legal and associated staff with various ethnic background to increase awareness on ethnic and cultural differences. This would assist persons with other ethnic backgrounds who come in contact with law enforcement authorities to feel safer and build trust and confidence to the judicial system.
- Install educational initiatives for the judicial system and its staff to counteract ethnic and minority discrimination. Encourage cooperation between the judicial system and organizations that represent persons with other ethnic background and minorities.
- Create conditions in the judicial system aiming to ensure that persons with other ethnic background and minorities can exercise their right to a fair trial and right to effective remedy on equal terms as others in the Swedish society.
- Conduct an integrated diversity and equality analysis on political initiatives in the penal field. It is important to analyze the effects of new laws, working methods and strategies and whether these new initiatives lead to additional disadvantages for persons with other ethnic background. Review the impact of political initiatives on different minorities in the judicial system.
- Develop qualitative and quantitative social justice markers to monitor the judicial system's activities to counteract racial profiling and ensure equal treatment in law.
- Implement measures to increase sensitivity within the judicial system towards groups that are marginalized. Prohibit and punish all forms of racial profiling by the police and other law enforcement bodies.

## **3.2. Freedom of religion**

### **3.2.1. Discrimination against Muslims**

#### **Main concerns**

- Latest figure estimates 440 reported hate crimes with anti-religious motive were deemed as Islamophobic in 2016.
- Members of the Muslim congregations are exposed to assaults and physical violence.
- School literature presents stereotypes and discriminatory attitudes towards Muslims.

Muslims remain disproportionately targeted by harassment, verbal threats, sabotage and vandalism. A 2014 study by the Ombudsman against Ethnic Discrimination (DO) highlights two main components in Islamophobia which makes it prevailing in today's society. One

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<sup>134</sup> BRÅ, Report 2008:4, p. 57-58, 83

component is explained in terms of fear by the West, who perceives Islam and Muslims as a security threat. Another component is referred to “the Muslim culture” constituting a threat to the values that people in the West associates themselves with. Furthermore, the study conducted by DO illustrated a general dislike of Muslims in Sweden and a prevailing intention amongst people in Sweden to distance themselves from Muslims.<sup>135</sup>

According to the latest estimated figure presented by the National Council for Crime Prevention, as many as 440 reported hate crimes were deemed having an Islamophobic motive. In only six years, the number has increased with 43 percent. No more than 4 percent of the total reported crimes in 2015 had resulted in prosecution in 2017.<sup>136</sup>

What should be born in mind when analyzing hate crimes with Islamophobic motives is that these types of motives often overlap with xenophobic/racist motives. According to the statistics presented by BRÅ, an Islamophobic motive is regarded accordingly if, at the time of reporting, is confirmed that the victim’s Muslim faith or belonging played the main reason of the conducted crime. If this cannot be clarified, the act of hate is not deemed as Islamophobic but Xenophobic/Racist. As such, the reported hate crime with an initial thought of having a xenophobic/racist motive might in further investigations prove to be Islamophobic.<sup>137</sup>

Representative for Muslim congregations in Sweden experience increasing numbers of threats against mosques and similar premises. In a recent report, representatives declare the need of more resources in order to protect themselves and their members. Many also confirm that the attacks are dramatically increasing in the crossroads of racists debating in media or society in general, or when Islamist terrorists are conducting acts of violence. In addition, people declare a more common experience of negative discrimination by the police, and that the police are more interested in violent extremism than cooperating with different Muslim congregations.<sup>138</sup>

As in the case previously presented in this report with regards to Anti-Semitism, Islamophobic attitudes and expressions are strongly dependent on the occurrence of certain events and often thrive in connection to world events. Representatives from the Muslim community in Sweden have expressed an exposure of such attitudes in relation to both occurring international conflicts as well as local activities. The consequence results in the expectation of Swedish Muslims having to take responsibility for political activities and violent Islamist extremism. Furthermore, the role of the media should also be highlighted with regards to prevailing attitudes and conceptions of reality. The media reporting regarding Islam and Muslims is not considered nuanced, whereby Muslims feel that the portrayal of events is not neutral but full of prejudice and presents a superficial perspective on Islam and Muslims.<sup>139</sup>

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<sup>135</sup> Ombudsman against Ethnic Discrimination (DO), *Research on Discrimination Against Muslims in Sweden*, 2014, p. 10-11

<sup>136</sup> BRÅ, Report 2017:11, p. 88

<sup>137</sup> Ibid., p. 89

<sup>138</sup> Expo, *Closed doors*, 2015, p. 50

<sup>139</sup> Ibid., p. 48

## Recommendations

- Monitor and evaluate the difficulties faced by religious minorities who are especially subject to indirect and direct discrimination. The evaluation should result in effective measures to combat their experiences of marginalization and discrimination.
- Follow up hate crimes with anti-Muslim motives.
- Conduct awareness raising campaigns counteracting existing anti-Muslim prejudices, attitudes, stereotyping and norms in the Swedish society.

### 3.3. Discrimination in the employment sector

#### Main concerns

- Ethnic discrimination is prevalent within the Swedish labor market, despite legislation prohibiting it.
- People born outside Europe are at higher risk of being unemployed despite their level of education, which is normally a factor lowering the rate of unemployment.
- Segregation in the labor market is extensive in Sweden, implicating also Article 3 of the Convention.
- Ethnic discrimination in employment recruitment processes is common, hampering entry into the labor market.
- Provisions concerning active measures in the labor market, present in the new Discrimination Act, need to be effectively implemented.

#### Impact of a foreign name

In the two previous alternative reports to the Committee by UNA Sweden, we emphasized that employment discrimination is widespread in Sweden. This is a continuing and ongoing problem, and Sweden has received recent international criticism from the UN with regard to the issue. In its concluding observation to Sweden in 2016, the Committee of CESCR expressed its concern that unemployment, on a continuous basis, disproportionately affects people from belonging to ethnic minorities. The Committee urged the government to adopt targeted measures aimed to reduce the vulnerability of ethnic minorities to unemployment, including installing temporary special measures and strengthening financial incentives for employers, such as tax incentives.<sup>140</sup>

A recent comprehensive study from 2017 conducted by the Statistics Sweden illustrates that the difference in treatment between people with other ethnic background and other Swedes in Sweden has barely made any progress since the previous study was concluded seven years ago. Furthermore, the study also shows that the unemployment rate is higher amongst people from non-European countries than those people from Europe. In this regard, people with an Asian and African background are particularly vulnerable to unemployment and discrimination.<sup>141</sup> While a higher level of education generally has a positive effect on employment, this does not hold true for people born outside of Europe: their unemployment rate is lower regardless of level of education.<sup>142</sup>

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<sup>140</sup> UN ESCR, E/C.12/SWE/CO/6, 14 July 2016, paras. 23-24

<sup>141</sup> Statistics Sweden (SCB), *Integration – matching of people with foreign background on the Swedish employment sector*, 2017, p. 11-15

<sup>142</sup> *Ibid.*,

In a report conducted by the Ombudsman against Ethnic Discrimination (DO) it was noted, once again, that the majority of the reported cases concerning faced discrimination in the labor market were related to ethnic discrimination. Studies show that job applicants with a Swedish name were twice as likely to be invited to an interview compared to job applicants with an Arabic name. The DO has also confirmed that a person with an Arabic name has to apply to three times as many jobs as a person with a Swedish name in order to be invited to an interview.<sup>143</sup>

### **Recommendations**

- Identify and implement targeted special measures to reduce ethnic discrimination within the employment sector, including in all stages of recruitment.
- Ensure effective implementation of the Discrimination Act in areas concerning employment, including the provisions concerning active measures.
- Raise awareness amongst the public and particularly persons of other ethnic background and minorities concerning their right to non-discrimination in the labor market. Encourage and enable reporting of faced discrimination in the labor market, including in the recruitment process.

## **3.4. Discrimination in the housing sector**

### **Main concerns**

- Ethnic discrimination in the housing sector, particularly concerning access and quality of housing, is significant. Individuals face systematic discrimination from landlords, housing authorities, and money lending institutions based on their ethnic or religious background. Their ability to buy or rent apartments is limited. Segregation in housing based on ethnicity is widespread, especially in larger cities.
- Ethnic minorities are discriminated against in housing as a result of social exclusion and poverty. Homelessness rates are high, especially amongst immigrant women.
- Private housing companies and realtors apply arbitrary measures that result in direct or indirect discrimination.

### **Direct and indirect discrimination**

Discrimination in the housing sector is significant, particularly in relation to access to and quality of housing. Discrimination in the area of access can be direct and indirect, and protection from discrimination is not guaranteed. The issue of spatial segregation of ethnic minorities is systematic. The housing market has become a socio-political arena, whereby landlords, social services and banks apply direct or indirect exclusionary measures, specifically against ethnic minorities.

Ethnic minorities experience discrimination when either renting or purchasing property, as it is more difficult for them to secure bank loans because of discrimination in the financial and banking sector and lower levels of income. As they are less likely to own property, they are more dependent on the private rental sector and social housing where they face additional difficulties such as substandard quality housing and segregation. The Roma minority, for

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<sup>143</sup> DO, *Oversight of research concerning recruitment process in the employment sector*, 2012, p. 4, 8-17, 37

example, is systematically discriminated against by housing companies (see above section 2.2).

Housing companies and realtors determine requirements and choose tenants based on discretionary decisions, which enables uncontrolled ethnic discrimination. While such companies are subject to the Discrimination Act, there are no explicit requirements regulating what is reasonable in terms of criteria for selection. As such, indirect discrimination based on income and other factors has an effect on access to housing for persons with an ethnic background.<sup>144</sup> According to the Ombudsman against Ethnic Discrimination, ethnic discrimination is the most common discrimination in the housing sector.<sup>145</sup>

Limitations in access to the housing market result in further restrictions in access and possibilities in other socio-economic areas and inevitably to increased segregation. Research on housing segregation in Sweden unambiguously shows that segregation, especially in larger cities, is widespread. Furthermore, ethnic segregation has become synonymous with economic segregation, with poorer communities constituting persons with other ethnic background more likely living in isolation.<sup>146</sup>

### **Homelessness and ethnic discrimination**

Persons with other ethnic background and immigrants are overrepresented among homeless people in Sweden, a trend which has continued. In this group, women have been particularly vulnerable. Structural factors, such as exclusion in the labor market, discrimination and segregation, have been identified as constituting the underlying causes to this.<sup>147</sup> This is a brutal circle for ethnic minorities and must be given more attention by the government.

### **Recommendations**

- Conduct an in-depth study on discrimination in the housing sector, including both direct and indirect forms of discrimination in the area of housing and in institutional discrimination in banks and financial institutions mortgage lending practices.
- Enact legislation and policies requiring housing companies to make rental criteria public. Housing queues based on queue time need to be established for all housing companies, limiting arbitrary evaluations and possibilities for discrimination.
- Encourage transparency in the housing sector, including routines for housing companies, to ensure that criteria are equally applied to all applicants regardless of ethnic background.
- Address the increase in homelessness amongst persons with other ethnic background and immigrants with measures that will guarantee housing, giving special attention to women.
- Cooperate with relevant civil society actors, such as those working with immigrants and ethnic minorities in disadvantaged neighbourhoods, to develop measures to counteract discrimination in the housing sector.

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<sup>144</sup> National Board of Housing, Building and Planning, *A report of the current situation – part of Roma inclusion 2012 -2032*, Report 2014:27, November 2014, p. 9

<sup>145</sup> Ibid., p. 21

<sup>146</sup> National Board of Health and Welfare, *Social report 2010*, p. 176

<sup>147</sup> See recent report by the National Board of Health and Welfare, *Homelessness 2017- extent and nature*, 2017.

### 3.5. Discrimination in the health care system

#### Main concerns

- Ethnic discrimination is the most common ground for discrimination in access to health care in Sweden. Persons with other ethnic background experience poor treatment and discrimination in the health care system and as such, have low trust in the system, lowering their ability and willingness to use it.
- People with other ethnic background tend to have poorer health compared to other Swedes.
- The Discrimination Act lacks prohibition of discrimination in the health care system, thus, there are no concrete requirements to undertake active measures to counteract such discrimination.
- A law concerning healthcare for undocumented persons and asylum seekers entered into force in 2013. While this proposal has improved undocumented persons access to health care, the regulation is not comprehensive as these groups continue to not receive the same health care as residents in Sweden.

Ethnic discrimination is the most common ground for discrimination in access to healthcare in Sweden. Reports evidence persons with other ethnic background are treated differently by healthcare personnel and experience restrictions in access to health care. According to the former Ombudsman against Ethnic Discrimination (DO), these groups of people are not cared for as individuals seeking health care, but are treated based on stereotypes based on the ethnic group they are regarded to belong to.<sup>148</sup> The same DO has reported psychiatric cases concerning immigrants where the medical analysis was based on general negative perception of the patient's ethnic origin, as opposed to the particular situation of the individual patient.<sup>149</sup> Such treatment has been characterized as one of the most severe forms of discrimination in health care.<sup>150</sup>

#### Health care of asylum seekers and undocumented persons

Since UNA Sweden's last alternative report to the CERD Committee, a new law governing health care for undocumented migrants was established in 2013 which provides the same level of healthcare to asylum seekers as to undocumented migrants.<sup>151</sup> It also allows for undocumented migrant children up to the age of 18 to receive the same healthcare as children with resident status in Sweden.<sup>152</sup> While recognizing advancements in the law, the Swedish Medical Association criticizes the changes as being too limited and discriminatory since asylum seekers and undocumented persons in practice are not guaranteed health care on equal terms as other persons living in Sweden. Moreover, the Medical Association notes that medical personnel would still be forced to focus upon the legal status of a patient and their requisite legal entitlements instead of their medical needs.<sup>153</sup>

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<sup>148</sup> DO, *The right to health care on equal terms for all*, 2012, p. 22-23

<sup>149</sup> Ibid., p. 27.

<sup>150</sup> Ibid., p. 31

<sup>151</sup> *Law on health care for some foreigners residing in Sweden without appropriate permit* 2013:407, §§ 1, 5

<sup>152</sup> Ibid., § 5

<sup>153</sup> Andersson. Joakim., "The Swedish Medical Association supports equal health care for everyone", *Läkaretidningen*, 26 June 2017, available at: <http://lakartidningen.se/Aktuellt/Nyheter/2017/06/Lakarforbundet-staller-sig-bakom-krav-pa-var-d-pa-lika-villkor/>

There are also known cases where asylum seekers and undocumented persons have been reluctant to seek medical assistance, even in the most critical cases, due to the fright of being reported to law enforcement authorities by medical staff. A study conducted by Médecins Sans Frontières showed that 82 percent of undocumented persons have faced direct or indirect obstacles when seeking medical assistance.<sup>154</sup>

In this regard, it is highly relevant to once again emphasize the previous recommendations made by the UN. Former UN Special Rapporteur on Health, Paul Hunt, noted after his country visit to Sweden that the above mentioned discriminatory practices are in direct breach of the fundamental human right to the highest attainable standard of health, which is to be enjoyed by all without discrimination. This is especially important for vulnerable persons in Sweden since they constitute the disadvantaged group that international human rights law is designed to protect.<sup>155</sup> His findings are supported by the Committee on CESCR which stated in its General Comment 14 that "States are under an obligation to respect the right to health by refraining from or denying or limiting equal access for all persons, including [...] asylum-seekers and illegal immigrants, to preventive, curative and palliative health services."<sup>156</sup> This is also endorsed by the CERD Committee's General Recommendation No. 30.<sup>157</sup>

### Recommendations

- Undertake effective legislative and policy measures prohibiting discrimination in access to health care.
- Develop and implement active measures which create acceptable health care environment for persons with other ethnic background, combating their mistrust in the health care system and encouraging its use.
- Ensure that the rights of asylum seekers and undocumented persons with health problems are properly guaranteed.
- Ensure that the rights of asylum seekers and undocumented persons with disabilities are properly guaranteed.
- The 2013 law issued by the government should be extended so that asylum seekers and undocumented persons are offered the same access to healthcare as all other residents in Sweden, as recommended by the former UN Special Rapporteur on Health and the CERD Committee.

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<sup>154</sup> Médecins Sans Frontières, *Experiences of hidden people in Sweden – Excluded from health care for immigrants living without legal status*, 2015, p. 8, 16, available at: <https://lakareutangranser.se/sites/default/files/reportgomdaswedenen.pdf>. It should be noted that under the *Secrecy Act* (1980:100), Chapter 1 § 1, general staff are, as a general rule, prohibited from divulging information about individuals.

<sup>155</sup> UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, A/HRC/4/28/Add.2*, 28 February 2007, paras. 72-75

<sup>156</sup> UN Committee of ESCR, *General Comment No. 14: The right to the Highest Attainable Standard of Health (Art. 12)*, E/C.12/2000/4, 11 August 2000, para 34

<sup>157</sup> UN Committee of ICERD, *General Recommendation No. 30: Discrimination against non-citizens*, CERD/C/64/Misc.11/rev.3, 2004, para. 36

### 3.6. Discrimination and segregation in the education system

#### Main concerns

- Segregation in the educational system is a persistent problem and leads to lower educational achievement among ethnic minorities.
- Few immigrants, who arrive to Sweden at the age of sixteen and seventeen, graduate upper secondary school and studies show that newly arrived persons do not always receive the education they are entitled.
- Other structural forms of discrimination include an educational system that fails accommodate language and culture. Subsidized mother-tongue education for ethnic and national minorities is not consistently provided by Swedish schools. Official statistics regarding the number of students entitled to mother-tongue lessons are misleading since it does not reflect actual demand.
- Educational materials promote and reinforce prejudices by presenting stereotypical images of ethnic minorities and their cultures. Because of this, some families are unwilling to send their children to school as they fear that they will not be protected from discrimination.

#### Educational attainment

Ethnic discrimination in the area of education continues to be a problem in Sweden. Educational attainment of ethnic minorities is lower than that of the rest of the general population and the drop-out rate also tend to be higher. Few immigrants, who arrive to Sweden at the age of sixteen and seventeen, graduate upper secondary school. These difficulties arise from a combination of factors, such as segregation and other indirect and structural forms of discrimination. Segregation is a persistent problem, both as a result of segregation in the educational system itself and spatial segregation in housing.<sup>158</sup>

#### Lack of mother-tongue education

Other structural forms of discrimination include lack of provisions for education that accommodate language and culture.<sup>159</sup> The need for subsidized mother-tongue lessons amongst national minority students are not being met by Swedish schools and municipalities, and the official statistics regarding the number of students entitled to subsidized mother-tongue education is misleading since it may not reflect actual demand. Access to subsidized mother-tongue lessons can also vary from one municipality to another. Other structural forms of discrimination include lack of provisions for education that accommodate language and culture. With regards of the official minority groups in Sweden, there is a widespread lack of initiatives within municipalities to foster mother-tongue education.<sup>160</sup> It has been evidenced that children in primary schools who maintain mother-tongue education are in short of structure and clear connections to school curriculums as a result of poor steering documents.<sup>161</sup>

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<sup>158</sup> Statistics Sweden, *Integration – foreign born persons in upper secondary school*, 2011, p. 22, 34-35

<sup>159</sup> County Council of Stockholm and Saami Parliament, *National Minorities – the development of the minority policy in 2015*, Report 2016:9, 2016, p. 11-16

<sup>160</sup> State Official Investigations, *National minority languages in the school*, SOU 2017:91, 2017, p. 231-286

<sup>161</sup> County Council of Stockholm and Saami Parliament, Report 2016:9, 2016, p. 13



### **Reproducing racism and prejudices**

Many students belonging to ethnic or minority groups in Sweden share a general view on the existence of stereotypes, generalizations of these groups and lack of knowledge in the Swedish schools. The lack of knowledge is visible amongst teachers; however, the most critical issue concerns the school curriculum which is inadequate and discriminatory when describing ethnic and minority groups. As previously mentioned, certain minorities are described through the use of stereotypes that are considered offensive by many students. The school curriculum include either nothing or very limited presentation of Sweden's historical role in the trans-Atlantic slave trade, or the State's historical violations of the rights of Saami and Roma people. School literature should counteract discrimination, not reinforce the stereotypes that cause it. The school should be a neutral place and act in line with critical thinking. Instead, however, many students experience that it represents a place for both abuses and reproducing existing discriminatory stereotypes and attitudes.<sup>162</sup>

### **Recommendations**

- Undertake measures to increase the number of persons with other ethnic background and immigrants graduate upper secondary school.
- Instruct school authorities across the country to ensure mother-tongue literacy education for all. This is particularly urgent for the Roma and the Saami people as institutionalized discriminatory practices created their illiteracy in the first place.
- Ensure newly arrived migrants are immediately enrolled in schools. Ensure their curriculum is the same as all other students.
- Evaluate and update Swedish school literature to ensure that accurate and non-discriminatory stereotyping and perceptions of ethnic minorities are available to all children in the Swedish school system. Information regarding the Roma, the Saami and the Muslim cultures, especially, need to be developed to enrich curriculum for all students.
- Allocate resources for awareness raising campaigns in schools on ethnic and religious minorities.

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<sup>162</sup> Expo, 2015, p. 23-28