

Special report to the Government  
submitted by the Ombudsman for  
Children  
- as a basis for Sweden's Fifth Periodic UN Report



# Preface

The Ombudsman for Children is tasked with representing children's and young people's rights under the UN Convention on the Rights of the Child (CRC), and with monitoring and promoting implementation of the CRC.

In March 2011, the Government instructed the Ombudsman for Children to submit a report to the Government as a basis Sweden's Fifth Periodic Report to the UN Committee on the Rights of the Child (the Committee). The Government of Sweden is to submit its report to the Committee by 1 September 2012 at the latest.

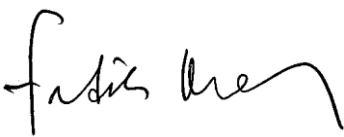
In this report, the Ombudsman for Children will provide a description and an analysis of the areas we have highlighted during the period 2009-2011. The report sets out from the recommendations received by the Swedish Government from the Committee in connection with its 2009 audit.

It presents issues that children and young people have brought to our attention since 2009, and reports on the application of legislation based on the CRC and progress on implementing the CRC in municipalities, county councils and government agencies.

We have used the areas indicated by the Committee to structure the report, following the same principle as other states reporting to the Committee. In our outline, the articles of the CRC relate to the following areas:

- General measures of implementation
- General principles
- Family environment and alternative care
- Basic health and welfare
- Education, leisure and cultural activities
- Special protection measures
- Follow up and dissemination

The Ombudsman's report will be included in its entirety as an annex to the Government's report to the Committee.



Fredrik Malmberg  
Ombudsman for Children

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

### Legislation

10. The Committee invites the State party to take all measures necessary to ensure that national legislation is brought into full conformity with the Convention and recommends that the State party continue and strengthen its efforts towards formal recognition of the Convention as Swedish law. It further recommends that the Convention should always prevail whenever domestic law provisions are in conflict with the law enshrined in the Convention.

In a written submission in 2009, the Ombudsman urged the Government to appoint a commission to undertake a broad review of how Swedish legislation and practice relate to the Convention's provisions, and to consider whether the Convention should be officially adopted as law.<sup>1</sup> In 2011 a survey was carried out within the Government Offices to elucidate how Swedish legislation and practice conformed with the CRC. The survey resulted in a ministry memo that was presented in November 2011. The survey noted that Swedish legislation on the whole was in good conformity with the CRC.<sup>2</sup> The Ombudsman for Children does not fully concur with the conclusions of the survey. It lacks a review of practice, i.e. of whether children's rights are respected in practical application, in decisions and measures. The Ombudsman's assessment is that in some respects there are still significant differences between the CRC and Swedish legislation, even if the greatest challenges concern how existing legislation is applied. In its report entitled *Ny struktur för skydd av mänskliga rättigheter*<sup>3</sup> (A New Structure for the Protection of Human Rights), the Government proposed that a commission be appointed to study the suitability of incorporating more conventions on human rights into Swedish law. The Ombudsman endorsed this proposal in its consultation response.<sup>4</sup> Incorporation would ensure that the Convention is implemented in its entirety and clarify children's role as legal entities with their own specific rights. The CRC would thus have a greater impact in practice when measures are applied and decisions taken at different levels. Different actors' knowledge of the CRC would increase, which would improve compliance. The incorporation of the CRC would also be important in case of a conflict between national legislation and the Convention.

### Coordination

12. The Committee recommends that the State party continue and strengthen its efforts to improve the coherence and coordination of efforts on behalf of children so as to ensure adequate cooperation among central and local authorities as well as cooperation with children, parents and non-governmental organisations. The Committee also recommends that the State party strengthen its measures to monitor and follow up on decisions taken at the municipal and regional level to address the remaining disparities and to ensure implementation of the Convention at all levels, including through the county administrative boards.

The purpose of coordination is to ensure that the CRC is respected and applied for all children and that the responsibility for implementing the Convention rests with the entire Government, in all ministries and at all levels. It is the Committee's view that charging a single ministry with the responsibility for implementing the Convention implies a risk that children's rights become marginalised within Government.<sup>5</sup>

Measures are necessary to improve coordination and follow-up of implementation of the CRC at the national, regional and local level. There are considerable differences between municipalities, county councils and regions in terms of implementing the CRC.<sup>6</sup> These include considerable differences regarding levels of child poverty between and within municipalities. One recurring difference is the level of municipal financial allocations to schools, leisure activities and preschools, and for various forms of support measures. Audits of social services for children also point to large differences in the range, quality and security of different municipal social services. Of particular concern are the differences between municipalities in terms of social service resources available for children at risk.

<sup>1</sup>The Ombudsman for Children. The legal position of the CRC in Sweden. Written communication, 18 November 2009

<sup>2</sup>How Swedish legislation and practice conform with the rights in the CRC - a survey (Ds 2011:37)

<sup>3</sup>*Ny struktur för skydd av mänskliga rättigheter* (A New Structure for the Protection of Human Rights, Summary in English) (SOU 2010:70)

<sup>4</sup>The Ombudsman's opinion on the report *Ny struktur för skydd av mänskliga rättigheter* (A New Structure for the Protection of Human Rights, Summary in English) (SOU 2010:70).

<sup>5</sup>The UN Committee on the Rights of the Child. General Comment No 5 (2003) General measures of implementation of the Convention on the Rights of the Child.

<sup>6</sup>The Ombudsman's opinion on the draft report *En reformerad grundlag* (A Reformed Constitution, Summary in English) (SOU 2008:125).

*Independent monitoring*

16. The Committee recommends that:

a) The State party consider providing the Ombudsman for Children with the mandate to investigate individual complaints,

**a) The mandate for the Ombudsman for Children to investigate individual complaints.**

By dealing directly with the public, both with children and adults and the cases reported, the Ombudsman gains vital knowledge. The Ombudsman carries out audits on a general level to assess whether non-compliance is due to the legislation itself or to shortcomings in its application. These legal powers are used to ensure a thorough review and dialogue with municipalities, county councils and authorities. The Ombudsman for Children submits proposals for legislative amendments and other measures to ensure that national legislation complies with the CRC. However, the Ombudsman is unable to act in individual cases other than using them as a basis for raising issues of principle.

In light of the introduction of an international complaints mechanism linked to the CRC, and of the fact that implementation is influenced by how courts and agencies interpret and apply the law, the Ombudsman's possibilities of also contributing to the development of legal application should be explored. The possibility should be considered that the Ombudsman be empowered to represent individuals in cases where the issue is of special importance to the application of the law, or if it is otherwise of particular interest for the implementation of the CRC.

*Data collection*

20. The Committee recommends that the State party strengthen its efforts to establish coordinated approach between all entities collecting data on children and to improve the systematic collection of disaggregated data concerning the situation of all children, in particular concerning children with disabilities, child victims of abuse aged 15 to 18 years, and children victims of sexual exploitation.

Extensive knowledge of the living conditions of children at different levels is a prerequisite for taking appropriate action and making the right decisions concerning children. Access to current statistics is also a prerequisite for the Committee's ability to determine whether Sweden is living up to its commitments. It is positive that the Ombudsman for Children has a mandate to develop a monitoring system for the child rights policy and the implementation of the CRC in Sweden. However, statistics today lack specificity regarding, for example, children with disabilities and there is no coordinating register of collected data at the local level for several dimensions of children's living conditions and rights. Coordinated data is necessary for making comparisons between different municipalities and to aggregate national statistics. In order to follow up children's living conditions over time, it is important to carry out regular surveys and collections of data. The Ombudsman for Children also believes that it is important to hear the children's own voices and opinions when studies are carried out.

*Dissemination of the Convention and training*

22. The Committee encourages the State party to strengthen its measures to ensure that all children are aware of the Convention and its two Optional Protocols and can use such instruments to defend their rights. The Committee further recommends that the State party ensure systematic and ongoing training programmes on human rights, including children's rights, for all persons working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, teachers, social workers, health personnel and especially children themselves).

**Children and young people's knowledge of their rights**

In 2009, the Ombudsman carried out a survey of 750 children in years 5 and 8 at school. The survey showed that among 11 and 14-year-olds, only about one in five children had heard of the CRC.<sup>7</sup> The Ombudsman repeated this survey in the first quarter of 2010. Among pupils in year 5, awareness of the Convention had increased from 24 per cent to 34 per cent compared with the earlier survey. Among pupils in year 8, however, awareness levels were unchanged.<sup>8</sup>

<sup>7</sup>The Ombudsman for Children. Come closer. 2009.

<sup>8</sup>The Ombudsman for Children. Up to 18 - facts about children and young people. The Ombudsman for Children series of reports 2010:01

All children, regardless of their circumstances and life situations, have the right to receive information about their rights. If children and young people become aware of their rights and can express them in their contacts with adults, this increases pressure on the adult world to provide for these rights. Knowing one's rights is often a prerequisite for being able to influence one's situation and call attention to violations. School policy documents and the new Education Act emphasise that education must communicate and establish respect for human rights. Children in vulnerable situations must be provided with specific information about their rights and where they can turn for support.

### ***Training in children's rights for professional groups working with and for children***

In May 2009, the Ombudsman for children was tasked by Government with developing a strategy for future activities concerning methods development and dissemination of knowledge about children, their rights and the practical application of these rights to professionals whose work impacts children. This strategy proposes both general measures and specific actions involving a number of selected professional groups.<sup>9</sup>

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

### *Non-discrimination*

*26. The Committee recommends that the State party monitor and ensure full compliance with article 2 of the Convention and ensure the implementation of existing laws guaranteeing the principle of non-discrimination with respect to all children within its jurisdiction.*

The Ombudsman has paid particular attention to the situation of children in vulnerable situations. This includes the children who become victims of violence or abuse, children in the care of social services, children affected by eviction and undocumented children.

A report from the National Board of Health and Welfare shows that children live under different conditions, depending on which municipality they grow up in.<sup>10</sup> Seven deprivation indicators and six risk indicators for children and adolescents have been studied. These indicators show that there are major differences in the incidence of deprivation and risk as municipalities with high levels of deprivation indicators also showed high proportions of risk indicators and vice versa. In addition, the report shows that there are important differences between municipalities in spending on activities for children and young people. The report found that deprivation and risk indicators do not directly correlate with municipal expenditure on children and young people.<sup>11</sup> The county administrative boards' national review of child and youth care<sup>12</sup> shows that the proportion of complaints to social services that lead to investigations varies widely between municipalities, from 20% to 80%, and the trend has been negative in the sense that fewer and fewer complaints are investigated at all. The national review concludes that it is the child's place of residence and not the content of the complaint that determines whether a child's situation will be investigated.

### *The best interests of the child*

*28. The Committee recommends that the State party strengthen measures to raise awareness about the meaning and practical application of the principle of the best interests of the child and ensure that article 3 of the Convention is duly reflected in its legislation and administrative measures. It also recommends that the State party take appropriate and effective measures to ensure that the principle of the best interests of the child form the basis and guide the process and all decisions, especially in asylum cases involving children, including by providing regular training to staff at the Migration Board and the social welfare authorities.*

Although the principle of the best interests of the child has been introduced into a number of portal paragraphs

<sup>9</sup>The Ombudsman for Children. Disseminating the Child Convention - the Ombudsman's proposal for a strategy on knowledge development of the child rights perspective. 2009.

<sup>10</sup>The National Board of Health and Welfare. Different conditions - on living conditions, risks and municipal spending on children and young people. 2010.

<sup>11</sup>The Ombudsman for Children. Up to 18 - facts about children and young people. The Ombudsman for Children series of reports 2010:01

<sup>12</sup>The County Administrative Board. Social services and children. County Administrative Boards' audit of social services for children and young people 2006-2007. 2008

of Swedish law, this has not proved sufficient to ensure that the principle is integrated in practice and forms the foundation of case processing and of all decisions.

In accordance with Article 22 of the CRC, children's asylum claims are to be considered separately from their parents' asylum claims. This should apply in the examination of all grounds for protection according to the Aliens Act.

It is disturbing that the grounds "particularly distressing circumstances" is interpreted very narrowly in spite of the fact that the Aliens Act and its legislative history allows for a more generous interpretation. There may be situations that are specific to children and therefore are not covered by the provision "particularly distressing circumstances" as this has been primarily devised with adults in mind. Children's reasons for residence may be of a completely different nature, not merely of another degree, to adults' reasons for gaining a residence permit.<sup>13</sup> A special section of the law should be introduced stating child-specific grounds for residence permits.

Children who are in need of care, due to neglect and/or domestic violence, risk being deported with their parents/guardians. The Ombudsman for Children feels a strong concern for these children and believes that children identified as being in need of care should not be refused entry or deported.

*Respect for the views of the child*

*30. In light of article 12 of the Convention, and drawing the State party's attention to the Committee's recommendations adopted on its day of general discussion on the right of the child to be heard held on 15 September 2006, the Committee recommends that the State party:*

*a) Continue to promote and facilitate, including through legislation, within the family, schools, institutions, the courts and administrative bodies, respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention;*

*a) Promote respect for the views of children and children's participation*

*"You don't get a chance to say anything. No, I don't get to say anything, they only talk to my pretend parents," Sabina.<sup>14</sup>*

The CRC reflects the view that children have their own right to be informed and to be heard. The legislative history of Swedish law, as well as the legislation itself, is unfortunately still characterised by a distrust of the child's ability to form and express his or her own views. Children may not be fully heard in disputes regarding custody, residence and access during social service studies or in the asylum process.

In comparison with the wording of Article 12 of the CRC, the formulations used in Swedish legislation bring a weakening of the child's right to be heard. Article 12 states that every child who is capable of forming his or her own views must be allowed freely to express them in all matters affecting the child. In Swedish legislation the expression often used is that the child's opinion should be obtained if this is not *inappropriate*. This appropriateness requirement has no counterpart in the CRC. One restriction can be found in the Social Services Act, which states that children under the age of 15 should be consulted if this could be useful for the investigation and the child is not likely to be harmed by it.<sup>15</sup> Existing regulations provide authorities with loopholes that prevent children from being heard.<sup>16</sup> The basis should not be to protect the child from participation, but rather to protect the child *in* his or her participation. This requires the development of methods so that children, even young children, can be heard.

The legislation also uses the word "opinion" on the issue of the right to be heard. The Ombudsman believes that the word "views" would fit better with the CRC, where this word is used. In our opinion, the word "view" clearly reflects the right of children, under the CRC, to talk about their view of things without necessarily stating a definite preference on the outcome of the current issue.

<sup>13</sup>The Ombudsman for Children. Come closer. 2009.

<sup>14</sup>The Ombudsman for Children. Behind the Façade. 2011.

<sup>15</sup>Social Services Act (2001:453) Chapter 11 Section 10.

<sup>16</sup>The Ombudsman for Children. The legal position of the CRC in Sweden. Written communication, 18 November 2009.

### *Legal counsel in litigation concerning custody, residence and access*

*"I need your help to make the authorities understand that I WANT TO LIVE WITH MUMMY!!!!!" 11-year old child.<sup>17</sup>*

Every year 50,000 children experience their parents separating.<sup>18</sup> Many children are drawn into disputes where their rights are not fully protected. Children and young people have no real opportunity to be heard in these cases and it is, from a child rights perspective, necessary to implement an option to appoint a special counsel in cases concerning custody, residence and access. This was also recommended by the Committee. The Swedish Parliament announced that the Government would draft a bill stating that children have a right to their own legal counsel in all cases concerning custody, residence and access.<sup>19</sup> The Government has, however, in its bill "Children's opportunities for receiving care," stated that at present a possibility for the court to appoint counsel to represent children in cases concerning custody, residence and access, should not be introduced.<sup>20</sup> The Government considers that the issue of how the child's rights in the process are best served requires further consideration and referred to the evaluation of the 2006 custody reform to be initiated during this mandate period.

The Ombudsman recommends that Sweden ratify the European Convention on the Exercise of Children's Rights which represents an important means of strengthening children's rights in family court cases. The Convention was signed by Sweden, which means that Sweden has undertaken to endeavour to ratify this Convention.<sup>21</sup>

One proposal under discussion, and recommended by the Ombudsman for Children, concerns opportunities for social welfare committees to speak to children without the consent of their guardians in connection with child custody cases. However, the Government did not consider the need for this provision to be sufficiently great.<sup>22</sup>

### *The opportunity for children and young people to voice complaints*

Supervisory authorities and courts are generally inaccessible to children, neither are they adapted to children's preconditions. The UN Committee on the Rights of the Child has, on several occasions, stated that it is seriously concerned that children have such limited opportunities to be heard and to bring about change if their rights under the Convention have been violated. Children's dependent position poses special difficulties for them when claiming their rights. This becomes even more problematic in cases where the guardian and the child have conflicting interests or where the guardian is unable to represent the child. The Committee has also noted that children at risk have special difficulties in being heard.<sup>23</sup> The Committee emphasises that, if these rights are to have any impact, there must be effective legal remedies for redress.<sup>24</sup> An efficient, child-friendly complaints procedure is part of the implementation of Article 12. Children are entitled to access to complaints procedures in all areas such as in family life, in alternative care, in school and in all other institutions, services and facilities available to them.<sup>25</sup> Supervisory agencies must be provided with accessible, child-friendly organisational units where children can submit complaints (see Item 37b).

In cases where national remedies for violations of the rights of children do not exist, or are ineffective, there must be opportunities for children and their representatives to bring their complaints to international mechanisms for human rights. In a written submission prior to the negotiations in February 2011, the Ombudsman called for the Government to take a strong positive position and strengthen children's rights through the establishment of an international complaints mechanism and actively contribute to the strongest possible optional protocol.<sup>26</sup> In December 2011, the UN General Assembly adopted a resolution on a new Optional Protocol to the CRC establishing a communications procedure. Sweden can help strengthen children's rights both nationally and internationally by ratifying this Optional Protocol.

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<sup>17</sup>The Ombudsman for Children. Come closer. 2009.

<sup>18</sup>Statistics Sweden. [www.scb.se](http://www.scb.se) Child and family statistics, 2011

<sup>19</sup>bet. 2005/06:LU27, rskr 2005/6:309

<sup>20</sup>Children's opportunities for receiving care (Govt. Bill 2011/12:53).

<sup>21</sup>The exercise of children's rights in family court cases (Ds 2002:13)

<sup>22</sup>Social support and social services, preconditions for talking with children (Govt. Bill 2009/10: 192)

<sup>23</sup>The UN Committee on the Rights of the Child. General Comment No.12 (2009) The right of the child to be heard.

<sup>24</sup>The UN Committee on the Rights of the Child. General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child.

<sup>25</sup>Unicef. Implementation Handbook for the Convention on the Rights of the Child. 2008

<sup>26</sup>The Ombudsman for Children. Written communication to the Governments of Norway and Sweden. Written communication, 17 January 2011.

*Family environment*

35. *The Committee recommends that the State party:*

*a) take measures to address the causes of the high number of children who are removed from their families as well as children who run away from home or are forced to leave home and ensure that the children who run away or are forced to leave home have access to services and get the necessary advice and support;*

*b) further develop and implement programmes and policies to prevent the placement of children in institutions, inter alia by providing support and guidance to the most vulnerable families, developing, funding and providing parent-training programmes for parents from vulnerable families, and conducting awareness-raising campaigns;*

*a) Measures providing help and advice to children who run away from home or who are forced to leave their homes.*

The National Board of Health and Welfare has attempted to map homelessness among children and young people who are in the grey area between family and social services. In total, about 400 children and young people were reported as homeless during one week in May 2011.<sup>27</sup> In 2009 one of the first studies on homelessness was published which found that 11% of all young people have at some point run away from, or been kicked out of, home.<sup>28</sup> According to the young people themselves, the most common reason that children run away, or are expelled from, the home is problems at home and fights with their parents. Social services must pay increasingly attention to, and be available for, children and young people who find themselves in this situation.

*b) Preventive measures and programmes*

There are no explicit provisions that ensure that preventative activities are undertaken for children and young people who are abused or at risk. Preventive measures should therefore be clarified in law and must aim to identify and counteract environments harmful to children and young people. The Ombudsman's experience is that differences in the support and range of activities provided are considerable between different municipalities. It is therefore vital that the social welfare committee's responsibility for the availability of outreach activities be legally regulated.<sup>29</sup> Many children and young people living in particularly vulnerable situations often have no access to general activities. The Social Services bear the responsibility of reaching out also to these children and offering them appropriate help and support. The Ombudsman also supports the proposal that social welfare committees should have the option of providing open activities for children who have turned 15, even without their guardian's consent, if appropriate and the child requests it or consents to it.<sup>30</sup>

*Children deprived of a family environment*

37. *The Committee recommends that the State party:*

*a) ensure adequate supervision and monitoring of the situation of children placed in foster homes or institutions, including private alternative care or homes for care and residence;*

*b) take the necessary measures to ensure the provision of effective, well-known, independent and impartial complaint mechanisms for children without parental care; and*

*c) provide adequate follow-up and reintegration support and services for children who leave institutional care.*

*"The most important thing is that they want to help you," Lina<sup>31</sup>*

In 2009, the Ombudsman for Children invited young people living in special supervisory homes to talk about their experiences, as experts on their own life and situation. The following year we met with more than 100 children and young people placed in foster homes or homes for care or residence (HVB). Many of the children and young people the Ombudsman met said that there were shortcomings in social services for children, which was also confirmed by the Restitution Commission, which showed that procedures to prevent, detect and correct abuses are rare.<sup>32</sup>

<sup>27</sup>The National Board of Health and Welfare. Homelessness and housing market exclusion in 2011 - scale and character. 2011.

<sup>28</sup>Sjöblom, Y and Högdin, S. Temporary break up: About young people who run away from, or are thrown out of, their homes. Save the Children Sweden, 2009.

<sup>29</sup>The Ombudsman's opinion on the draft report entitled Act on Support and Protection of Children and Young Persons (LBU) (SOU 2009:68).

<sup>30</sup>The Ombudsman's opinion on the draft report entitled Act on Support and Protection of Children and Young Persons (LBU) (SOU 2009:68).

<sup>31</sup>The Ombudsman for Children. Behind the Façade. 2011.

<sup>32</sup>Restitution Commission (SOU 2011:9).



These shortcomings formed the basis of a survey aimed at all municipal social welfare committees initiated by the Ombudsman in 2011. The purpose of this survey was to determine if the social welfare committees had adopted their own directives on the custody and placement of children and what, in that case, is taken up in the directives issued. The results show that few social welfare committees, about one third, have special directives regarding the health care, medical care and schooling of children placed in homes or institutions. Few social welfare committees, about one in five, have adopted directives on how the social services are to act when malpractices or substandard conditions are discovered in a foster home or a home for care or residence (HVB).<sup>33</sup>

In the light of this, the Ombudsman considers that legislation should be reviewed in order to ensure the rights of children placed in care. The current legislation exhibits a flawed human rights perspective and does not describe the rights enjoyed by children and young people who are placed in care. Children's rights to education, health and medical care must be ensured as well as their rights to be heard and be listened to and to receive information about their human rights. The Ombudsman for Children believes that the legislature should implement the proposals of the Child Protection Study, including that the social welfare committee is to be obliged, within the framework of their quality activities, to pay special attention to the necessity of procedures to prevent, detect and correct abuses in the child and youth care systems<sup>34</sup>

The fact that failures do occur concerning children placed in care is also confirmed by a national review of homes for care or residence, where 363 homes for care or residence were examined and more than 1,100 children gave their comments.<sup>35</sup> Licensing of special homes should be reconsidered based on a quality concept with greater clarity as concerns what is considered to be good care.

*"My older sister was in a place where they were unqualified and could not take care of her because they did not know how to control her anger." Erika<sup>36</sup>*

The Ombudsman's survey from 2011 shows that only one third of Sweden's municipalities provide prospective foster parents with compulsory basic training.<sup>37</sup> Social Welfare Committees should be required to provide training, continuous training and guidance for foster and emergency foster home parents.

#### *a) Supervision and monitoring*

*"You get a little angry with the social services because it sometimes feels as if they don't listen to what you say at all," Tahir<sup>38</sup>*

The young people the Ombudsman talked to rarely know their rights, which means that they accept restrictions to them without this coming to the attention of any authority. The Ombudsman believes that the legislature should implement the proposals of the Child Protection Study (see above). One particularly urgent proposal is that the social welfare committee, when taking a decision on placement, must appoint a social worker with responsibility for monitoring the child while in care and keeping in contact with the child during the placement. This social worker should have an independent position in relation to the foster home or institution providing care for the child and must visit the child to the extent appropriate to the child's wishes and needs, though a minimum of at least four times a year. Furthermore, it is important to introduce a statutory duty to conduct individual contact talks with the child, provided that the child wishes to and that children and young people may change social worker if the contact does not work. The Ombudsman for Children considers that opportunities for the child and the foster home to seek a review of a decision made by the social services should be investigated.

*"We feel locked up, alone and crushed," Lisa<sup>39</sup>*

Several of the children we met with said that on their first contact with homes for care or residence (HVB), they have to sign a contract in which they renounce many of their human rights, sometimes supplemented with

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<sup>33</sup>The Ombudsman for Children. Social welfare committee responsibilities for children in care. The Ombudsman for Children reports BR2011:02.

<sup>34</sup>Act on Support and Protection of Children and Young Persons (LBU) (SOU 2009:68).

<sup>35</sup>The County Administrative Boards and the National Board of Health and Welfare. Homes for care or residence for children and young people (HVB). Final report of National Review 2006-2008. 2009.

<sup>36</sup>The Ombudsman for Children. Behind the Façade. 2011.

<sup>37</sup>The Ombudsman for Children. Social welfare committee responsibilities for children in care. The Ombudsman for Children reports BR2011:02.

<sup>38</sup>The Ombudsman for Children. Behind the Façade. 2011.

<sup>39</sup>The Ombudsman for Children. Behind the Façade. 2011.

different punishment systems. Legislation should provide protection against such use of contracts for punitive purposes.

The Ombudsman welcomes the new provision in the National Board of Health and Welfare's instructions that requires authorities to integrate a child's perspective into their supervisory role and to develop methods for supervision concerning children and young people.<sup>40</sup> The Ombudsman also welcomes the fact that the County Administrative Board, from 2011, is to visit all homes for care or residence (HVB) at least twice a year, of which one visit will be unannounced. Of the utmost importance are the amendments to the social services ordinance which allow for contact talks to be held with the child, provided that the child wants to, during inspections of homes for care or residence (HVB), family homes and special supervisory homes.

*b) Provide effective and impartial complaints mechanisms*

*"I feel bad. Try to ask for help but nobody listens... As soon as I do something wrong I get punished instead of getting some help."<sup>41</sup>*

Children who are placed in care must be able to gain redress and compensation when the authorities responsible for child care have neglected their responsibilities. Children should be able to turn to an independent body with any complaints about their care placement. The representative must have the right to pursue cases in court in order to obtain compensation for children who are in society's care.<sup>42</sup> Their position could, for example, correspond to the Child and School Student Representative (BEO) currently in place in the Schools Inspectorate. The activity currently available at the National Board of Health and Welfare in the form of a phone line which children and young people placed in care use may be a useful part of this in the future strengthened representative function.

*c) Follow-up and reintegration*

In our contacts with children and young people placed in care there have been requests that social services should focus on better reintroduction routes into the community. The survey carried out by the Ombudsman showed that the Directive on the evaluation of completed care is applied less extensively than directives regarding the case study process and time spent in foster homes or HVB homes.<sup>43</sup> Social welfare committees must ensure that children and young people who have been placed in care are given the opportunity to share their experience and receive support and other inputs on completion of stay.

*Abuse and neglect*

*39. The Committee recommends that the State party continue and strengthen its efforts to provide adequate assistance to children who are victims of child abuse, including through:*

- a) early detection and treatment of cases involving child abuse;*
- d) providing adequate protection to child victims of abuse in their homes;*
- e) supporting the Swedish Children's helpline so it can provide a 24-hour helpline service for children;*

*a) Early detection and treatment*

Thirty years after the ban on corporal punishment, violence against children remains one of the most serious threats to children's lives, health and development in Sweden. We know that abused children seldom tell an adult about what they are suffering. If professionals working with children and staff in health care and dental services are to fulfil their duty of notification, knowledge on how to identify child abuse is essential. Several surveys have been conducted to investigate the ability of the care system to see and take action to protect abused children. These surveys show that health and dental care staff sometimes lack the skills and procedures necessary to comply with their legal duty to report to social services if child abuse is suspected.

The dental care system is in a unique position to discover children exposed to violence as all children are regularly called for dental check-ups and more than half of all assault injuries to children are located in the mouth, head and neck region. In 2010, the Ombudsman undertook a survey of dental care experience in addressing child abuse in

<sup>40</sup>Ordinance containing instructions for the National Board of Health and Welfare (2009:1243)

<sup>41</sup>The Ombudsman for Children. Behind the Façade. 2011.

<sup>42</sup>The Ombudsman for Children. The Ombudsman's proposals in its 2011 Annual Report. Written communication, 4 March 2011.

<sup>43</sup>The Ombudsman for Children. Social welfare committee responsibilities for children in care. The Ombudsman for Children series of reports BR2011:02

different ways and to assess the level of preparedness in dental clinics to deal with such situations. About two thirds of clinic managers believed that their personnel were in need of additional support in order to act when they encounter children in their work who they suspect have been exposed to violence or abuse, lack of proper care or dental neglect.

Further steps should be taken to ensure that staff in the care system possess expertise on how to detect child abuse and what to do if they suspect a child has been abused and/or neglected. In the Higher Education Ordinance, the Government should include a provision that, in order to gain medical, dental or nursing qualifications, students must possess knowledge of how to detect child abuse.<sup>44</sup>

The Ombudsman for Children has noted that there are considerable variations between and within municipalities on how reporting to social services is managed, and on how to assess whether a case should proceed to an investigation or not. The Ombudsman suggests that Government should mandate the National Board of Health and Welfare to develop regulations stating national criteria for how complaints are to be assessed, how the ex-ante evaluation is to be performed and when an investigation should be initiated. National comparative data is required in order to gain an overall picture of how many children in Sweden are abused and reported to social services, how often investigations are initiated and the measures and outcomes.<sup>45</sup>

*d) Proper protection for children exposed to abuse in their own homes.*

Children who have experienced violence in close relationships will be highlighted in the Ombudsman's 2012 Annual Report, to be presented in March. An analysis will be presented of what needs to be done in order to give children and young people who have experienced domestic violence the support and protection they have the right to.

*e) 24-hour helpline service*

It is important to maintain a helpline where children can call in at any time to receive support and advice. The BRIS helpline should be allocated resources for longer opening hours and availability in several languages. Children who are abused or at risk of harm must also have the opportunity to report this to the authority responsible and be afforded immediate protection.

Basic health and welfare (Articles 6, 18.3, 23, 24, 26, 27.1-3 of the Convention)

*Children with disabilities*

*41. The Committee recommends that the State party, in accordance with article 23 of the Convention and taking into account General Comment No. 9 (CRC/C/GC/9) as well as the Convention on the Rights of Persons with Disabilities and its Optional Protocol, continue to strengthen measures to protect and promote the rights of children with disabilities, inter alia, by:*

*a) developing and implementing a comprehensive policy for the protection of children with disabilities and for their equal access to social, educational and other services;*

*b) ensuring that equal access to services is provided to children with disabilities taking into consideration the standard rules on the equalization of opportunities for persons with disabilities (General Assembly resolution 48/96);*

*c) undertaking the necessary measures to collect accurate statistical data that is disaggregated on children with disabilities; and*

*d) providing equal educational opportunities for children with disabilities, including by providing the necessary support and ensuring that teachers are trained to educate children with disabilities within the regular schools.*

*a-b) Comprehensive policy that ensures equal access to social services*

The Ombudsman welcomes the Government's development of a strategy for implementation of its Disability Policy in Sweden 2011-2016. Concentrated efforts will be made to identify and remove obstacles to full participation in society for girls and boys with disabilities, to prevent and counteract discrimination and to provide the preconditions for independence and self-determination.<sup>46</sup> The Ombudsman for Children wishes to highlight the

<sup>44</sup>The Ombudsman for Children. The responsibilities of the care system for children at risk. Written communication, 27 December 2010.

<sup>45</sup>The Ombudsman's opinion on the draft report entitled Act on Support and Protection of Children and Young Persons (LBU) (SOU 2009:68).

<sup>46</sup>The Government Offices. A Strategy for the Implementation of the Disability Policy in Sweden 2011-2016.

importance of Handisam continuing to disseminate information to municipalities and county councils on methods and strategies concerning how children with disabilities can influence the decisions that concern them.<sup>47</sup>

### *c) Accurate and disaggregated data*

Current statistics show deficiencies in terms of monitoring the development of children and young people with disabilities. Statistics Sweden (SCB) has submitted an analysis to Government of how the various existing data collection opportunities and surveys can be developed to, to a greater extent, throw light on the situation of children and young people with disabilities. The Ombudsman welcomes the fact that SCB has been instructed to monitor this group's living conditions and, in consultation with Handisam, collect indicators and data from other areas to be monitored over time.<sup>48</sup>

### *d) Equal educational opportunities*

*"It got worse than even first grade. Someone who wasn't qualified as a teacher. I only did stuff I already knew. I didn't even get a maths book. I didn't even get to try. My Swedish teacher gave me the alphabet which I already knew from first grade."<sup>49</sup>*

Expectations form a vital success factor for good educational outcomes. Each child is to be given opportunities to develop their skills as far as possible. Knowledge of disabilities and how teaching can be tailored to each child's needs must be improved.

#### *Standard of living*

*53. The Committee recommends that the State Party take all necessary measures to ensure that no child is living below the poverty line. The Committee also recommends that the State party take adequate measures, including special support measures, to ensure that children, in particular those from socially disadvantaged families, including single-parent households and of non-Swedish ethnic origin, are not living in poverty, regardless of where they reside. The State party should consider drawing up a plan of action for combating child poverty in times of economic crisis.*

Families with children have generally achieved a better financial situation in the 2000s and the proportion of children in families with a low income standard has fallen. At the same time the income gap has widened. Children of single parents, especially single mothers, and children of foreign origin, are often worse off financially.<sup>50</sup> The trend for more and more children to live in relative poverty increases the risk of social exclusion and marginalisation for many children. Studies show that children living in economically disadvantaged families are at increased risk of physical and mental ill health, poorer educational attainment and lower future income.<sup>51</sup> Financial vulnerability also exerts negative impact on the child's social life and relationships.<sup>52</sup> In addition, children in socio-economically fragile families are at greater risk of accidents and injuries.<sup>53</sup>

The welfare system's capacity for lifting families out of relative economic poverty is more limited than previously, as is its ability to compensate for increasing income gaps.<sup>54</sup> This is especially true for children of single parents, children with foreign backgrounds and for children living in families where no parent works full time.<sup>56</sup> If no compensatory measures are taken, the children's risk of marginalisation and social exclusion will increase.

### *No child should have to suffer eviction*

Once again the number of evictions of families with children is on the rise. In 2011, 663 children were affected by eviction. Statistics show considerable variation between municipalities. The Ombudsman calls for changes to the law that will oblige municipalities to work preventively in order to avoid evictions of families with children.<sup>57</sup>

<sup>47</sup>Government Decision s2011/3088/FST

<sup>48</sup>Government Decision 2011/11074/FST

<sup>49</sup>The Ombudsman's opinion on the new Education Act - for knowledge, freedom of choice, and security (Ds: 2009:25)

<sup>50</sup>The Ombudsman for Children. Up to 18 - facts about children and young people. The Ombudsman for Children series of reports 2010:01.

<sup>51</sup>Economically vulnerable children (Ds 2004:41).

<sup>52</sup>The National Board of Health and Welfare. Social Report 2010

<sup>53</sup>Swedish National Institute of Public health. Social health inequalities in Swedish children and adolescents – a systematic review, second edition. 2011.

<sup>54</sup>The Ombudsman for Children. Up to 18 - facts about children and young people. The Ombudsman for Children series of reports 2010:01.

<sup>55</sup>The Social Insurance Office. Result indicators for economic family policy. 2011

<sup>56</sup>The Ombudsman for Children. Up to 18 - facts about children and young people. The Ombudsman for Children series of reports 2010:01.

<sup>57</sup>The Ombudsman for Children, How municipalities can reverse the trend of increasing numbers of children being affected by eviction. 2011.

## Education, leisure and cultural activities (Articles 28, 29 and 31)

### *Education, including vocational and professional training and guidance*

55. The Committee recommends that the State party pursue its efforts to ensure that all children enjoy the right to education, including children without residence permit, such as “children in hiding” and undocumented children. The Committee further recommends that the State party incorporate the Convention and other relevant human rights treaties in the curricula in the context of the new Education Act and strengthen such education in both primary and secondary education.

### *Right to education for undocumented children*

Undocumented children lack a statutory right to education. The Ombudsman welcomes the proposal in the report presented in 2010 that the right to education, preschool care and general child care should include all children and young people residing in the country, even if they lack a residence permit, unless their stay is of a very temporary nature.<sup>58</sup> We wish to stress the importance of schools and preschools as a free zone for children so that the child is able to feel safe there. Forcible collection of children from schools and kindergartens by Police for immigration law enforcement may mean that children do not dare to attend. Consideration should be given as to whether the duty of information lying with the social welfare committees should be altered. This could lead to more abuse being reported to social services as fear that the enforcement authorities will be informed in such cases is reduced.

### *Entitlement to education for children and young people who are placed in homes for care and residence and special youth homes*

“I have nothing to do and I only go to school for two hours. Out there kids go for six hours a day, we should get more education,” Ibrahim, 18 years old.<sup>59</sup>

One third of the young people we interviewed in the special supervisory homes thought that they got too little schooling. Many of them expressed a desire for more education and the opportunity to earn grades in all subjects.<sup>60</sup> School is also particularly important to the unaccompanied minors and young people who are placed at HVB, pending a decision. As the feeling of being isolated from society is strong for these children, school brings stability into their precarious existence. School also offers an inclusive context and allows interaction with Swedish adolescents of their own age.<sup>61</sup> The survey of social welfare committees conducted by the Ombudsman in 2011 shows that only one in three social welfare committees has adopted a directive on how children placed in care are to receive the education they have a right to.<sup>62</sup> Research shows that school performance is a key factor affecting the risk of adverse development later in life that has been proved to affect children in care.<sup>63</sup> It is disturbing and remarkable that many children placed in care are missing from the grades records of primary schools (for children placed before the age of 10, 12 per cent of children are not included and for those placed after the age of 12, 19 per cent).<sup>64</sup>

The Ombudsman welcomes the Government commission that has been set up to determine whether the regulation of matters relating to education for children and young people in care needs to be clarified.<sup>65</sup> The right to equal education for children and young people in care must not be reduced.

### *Bullying*

59. The Committee recommends that the State Party strengthen the measures taken to combat bullying and pay special attention to children with disabilities and of foreign origins, and to ensure the participation of children in the

<sup>58</sup>The Ombudsman for Children’s response to the report entitled Skolgång för alla barn (Schooling for every child, Summary in English) (SOU 2010:5)

<sup>59</sup>The Ombudsman for Children. I’m sorry. 2010

<sup>60</sup>The Ombudsman for Children. I’m sorry. 2010

<sup>61</sup>The Ombudsman for Children. Behind the Façade. 2011.

<sup>62</sup>The Ombudsman for Children. Social welfare committee responsibilities for children in care. The Ombudsman for Children series of reports BR2011:02

<sup>63</sup>The National Board of Health and Welfare. Social Report. 2010

<sup>64</sup>The National Board of Health and Welfare. Open comparison of educational levels of children placed in care. 2011.

<sup>65</sup>The right to education for children and young people in care plus distance education. Dir.2011:85.

*initiatives aimed at reducing bullying. Such measures should also address new forms of bullying and harassment outside classrooms or school yards, including by mobile phone and in virtual meeting places.*

Every year, around 50,000 children and young people are victims of bullying. Around 13,000 pupils have been exposed to long term bullying.<sup>66</sup> The issue of harassment in schools is a common theme of the calls and letters the Ombudsman receives from children and young people. Under the Education Act, if the education provider or the staff becomes aware that a child or a student claims to have been subjected to harassment in connection with the school operations, the responsible authority must be notified. The responsible authority is obliged to investigate the circumstances surrounding the violation and take any necessary measures.

The number of notifications to the Child and School Student Representative (BEO) has risen sharply, however, of all reports made to the BEO for the first five years, damages were imposed in only 66 of 3,215 reported cases.<sup>67</sup> Moreover, the school often blames the children who are victims of bullying, which is a double violation of their rights. However, since these pupils are taking part in compulsory education and must attend school, the responsible authority must also, through tighter legislation, be tasked with strict liability to ensure that the school environment is safe. Zero tolerance of bullying must not remain a theory, it must also be part of pupils' reality.

Special protection measures (Articles 22, 30, 38, 39, 40, 37 b-d, and 32-36)

*Asylum-seeking and refugee children*

*61. The Committee recommends that the State party take the necessary steps to ensure that all children, including undocumented children, have a right to health care and medical services under the same conditions as children legally residing in the country.*

Undocumented children in Sweden, who have never been asylum seekers, are only entitled to emergency medical treatment, without subsidies. In January 2010, the Government took a decision to set up a commission to study entitlement to health care for asylum seekers, hidden and undocumented people. The commission presented its proposals in May 2011 which, among other measures, suggested that county councils should offer asylum seekers and undocumented people subsidized health and medical care on the same conditions as residents. The report specially emphasises the needs of children since they belong to a vulnerable group in society. Our hope is that the proposal that is now under preparation within the Government Offices can take effect immediately.

*63. The Committee urges the State party to strengthen measures to ensure that adequate support and supervision are provided to children living in reception centres, as well as adequate psychological and psychiatric care for traumatized asylum-seeking children. The Committee urges the State Party to take the necessary legislative steps to ensure the appointment of a temporary guardian (or "trustee") for each unaccompanied asylum-seeking child within 24 hours of his or her arrival in the country, with a task of informing the child about his or her legal situation as well as available legal immigration procedures. The Committee also recommends that efforts be strengthened to ensure the suitability and adequate qualifications of such guardians. The Committee draws the attention of the State party to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin.*

*"We have no family. No parents. They sent us into the forest," Sharif<sup>68</sup>*

In 2010, approximately 2,400 unaccompanied children sought asylum in Sweden. The majority of them were placed in HVB homes pending a decision on residence permit. In 2010, the Ombudsman met with a number of unaccompanied, asylum-seeking children who live in group homes in the recipient municipalities. Following these meetings the Ombudsman could observe that many unaccompanied, asylum-seeking children felt extremely lonely and alienated, both during the asylum process and after they received a decision from the Migration Board.<sup>69</sup>

<sup>66</sup>The Swedish National Agency for Education. Evaluation of methods to combat bullying, Report no. 353, 2011

<sup>67</sup>The Swedish Schools Inspectorate

<sup>68</sup>The Ombudsman for Children. Behind the Façade. 2011.

<sup>69</sup>The Ombudsman for Children. Behind the Façade. 2011.

The Ombudsman for Children has also visited transit accommodation in arrival municipalities for unaccompanied, asylum-seeking children. We noted that several children had to wait a long time, up to several months, for placement in a recipient municipality.

A study concerning a review of the reception of unaccompanied, asylum-seeking children suggested that the Migration Board be given greater possibilities for allocating asylum-seeking children to a municipality.<sup>70</sup> The Ombudsman for Children supports such a proposal. It is encouraging that the National Board of Health and Welfare is currently working to develop a guide for staff in social services working with unaccompanied children.

*Support and supervision of children living in refugee reception centres.*

*"I have never met a staff member who says come, sit down here and we can talk about what your rights and responsibilities are, what you are allowed to do," unaccompanied, asylum-seeking boy.*

The municipality bears, through its Social Welfare Committee, overall responsibility that everyone in its area receives the support and help they need, including unaccompanied, asylum-seeking children. Consequently the municipality is responsible for ensuring the child's right to housing, education and the support and assistance the child may be entitled to according to the Social Services Act.

*Right to the appointment of a guardian ad litem within 24 hours*

*"The guardian ad litem must be kind and give the children a lot of attention. Have time for the youngsters, listen to them and take them seriously."<sup>71</sup>*

The Ombudsman has drawn attention to the deficiencies in municipalities' appointment of guardians ad litem for these children. For some children it takes a very long time, up to several weeks, before the municipality appoints them a guardian ad litem. It is vital that a guardian ad litem with competence concerning children is appointed as soon as possible, preferably within 24 hours, after an unaccompanied minor has submitted his/her application for asylum.

Not all the young people the Ombudsman met are in regular contact with their guardians ad litem. The competence levels and qualifications of these guardians also vary widely. This is an extremely important relationship and it is consequently vital that children and young people can change guardian ad litem if things do not work out well. The guardian ad litem plays an important role as a replacement guardian and must be empowered to supervise the child's interests and rights. One requirement should be that appointed guardians ad litem of unaccompanied children receive adequate training and supervision in their task.

#### *Family reunification*

*65. The Committee reiterates its recommendation that the State party continue to strengthen the measures taken to ensure that family reunification procedures for recognized refugees are dealt with in a positive, fair, humane and expeditious manner and that they do not entail a risk of infringement of the rights of children under the Convention.*

Thousands of children are waiting to be reunited with their parents in Sweden. There are also children in Sweden who are waiting for their parents. Family reunification should be possible even if written documentation and/or travel documents are lacking, if they do not exist or if it is not reasonable to require the applicant to present such documents.

We are aware of the fact that families are split up when a decision on deportation or refusal of entry is taken and that children are thus separated from one of their parents.

We feel concern about the lack of clarity concerning the age determinations of children seeking asylum. A clear set of guidelines and uniform application to clarify the child rights perspective and greater legal certainty is essential in these estimates.

<sup>70</sup>Unaccompanied, asylum-seeking children. A review of their reception (SOU 2011:64).

<sup>71</sup>The Ombudsman for Children. Behind the Façade. 2011.

*Sexual exploitation and trafficking*

67. The Committee recommends that the State party:

b) strengthen measures to monitor and foresee new and emerging risk situations of sexual exploitation of children;  
c) strengthen measures to protect children who are victims of sexual exploitation, including trafficking and prostitution, and bring perpetrators of sexual abuse and exploitation to justice, and provide data on the extent and patterns of such offences in the next periodic report;

69. The Committee recommends that the State party increase its efforts to prevent and combat the worrying phenomenon of child sex tourism, including by:

e) considering reviewing and amending its legislation in order to abolish all outstanding requirements of double criminality for prosecution in Sweden of sex offences against children and associated crimes committed abroad.

In comments on Sweden's first report on the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, the Ombudsman suggested the removal of the requirement of dual criminality for all the crimes listed in the Optional Protocol. Opportunities to prosecute Swedish nationals who commit sexual offences abroad are not sufficiently broad. The Ombudsman stresses the importance of international cooperation to combat child sex tourism and that steps be taken to prevent, detect, investigate, prosecute and punish people who commit these crimes.

The Ombudsman is concerned about the large number of asylum-seeking children who disappear every year and who are vulnerable to sexual exploitation. It is important to examine the extent of this phenomenon and take action to strengthen protection for these children.

*Administration of juvenile justice*

71. The Committee recommends that the State party, taking into account General Comment No. 10 on children's rights in juvenile justice (CRC/C/GC/10) and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20):

a) review as a matter of priority the current practice of solitary confinement, including amendment of current legislation, as appropriate;

b) limit the use of this measure to very exceptional cases, reduce the period for which it is allowed and seek its eventual abolition; and

c) ensure that all children who have been taken into custody are provided with adequate legal representation.

a) Review the current practice of solitary confinement, including the introduction of amendments to current legislation

*"There shouldn't be any solitary confinement, just a room with a sofa, where you can sit and talk instead of being locked into a room with a mattress," Mia, 14<sup>72</sup>*

*"It's dark and you have to lie on a bare mattress. It's a punishment. For talking back to the staff."<sup>73</sup>*

Children and young people who are in custody and placed in special supervisory homes are in a particularly vulnerable situation. Today, the law allows them to be placed in isolation in a special isolation room if they display violent behaviour or are affected by drugs to the extent that they jeopardize the general order. The Ombudsman examined the records of more than 450 cases of seclusion in special supervisory homes during a six-month period in 2008. This showed that isolation was used in a manner that is inconsistent with either Article 37 of the CRC, Swedish legislation or the guidelines issued by the National Board of Institutional Care (SiS). Isolation was, in several cases, used routinely or as a punishment and there were also examples of children and young people suffering from anxiety or in crisis being isolated instead of receiving proper treatment. During the period studied, around 100 isolations were enforced on children under 15 years old.

<sup>72</sup>The Ombudsman for Children. I'm sorry. 2010.

<sup>73</sup>The Ombudsman for Children. I'm sorry. 2010.



**b) Limit the use of this measure, reduce the time period, strive to remove it.**

*"I was put in isolation seven times in two months when I got here. After 24 hours they take you out for five minutes then they slam you right back in again."*<sup>74</sup>

Since 2009, several changes have been undertaken to strengthen the rights of children placed in special supervisory homes. SIS has specified its internal instructions, trained personnel and tightened up its routines concerning isolation. According to the National Board of Health and Welfare's inspection report of 2011, some shortcomings still remain in the special supervisory homes, for example in terms of quality and safety, but the number of isolations has been substantially reduced and the time the children are kept isolated has been halved. SiS's proposal that the statutory maximum limit for isolation should be changed from 24 to 6 hours is also a move in the right direction. However, the Ombudsman does not consider that this is sufficient and argues that isolation should not be permitted.

**c) Ensure that all children who have been taken into custody are provided with adequate legal representation.**

A decision on isolation can be appealed against at the Administrative Court. This does not occur for several reasons. Children and young people are not aware of this opportunity and an appeal may only be made retrospectively when the isolation has already occurred. In addition, children under the age of 15 do not enjoy the right of appeal. In their case only their guardians may appeal. In order to enhance legal security we propose that an independent children's representative be established to represent the interests of children and young people taken into custody.<sup>75</sup>

**Children deprived of their liberty and children in detention**

The number of children in detention has more than tripled since 1998. This increase has occurred despite the fact that research cannot show a corresponding increase in child and youth crime, and even though legislation clarifies that a person who is under 18 years of age may be detained only if there are exceptional reasons, and detention may only take place if it is clear that adequate monitoring cannot be arranged. In 2010, 155 children under the age of 18 were detained in Sweden. A little more than 80 per cent of the 15 to 17-year-olds were subject to restrictions. These restrictions sometimes meant that the children were refused contact with their families and the rest of the world and kept in circumstances akin to isolation.<sup>76</sup> During the Ombudsman's visits to detention centres, we have met young people who did not know that the restrictions could be appealed against.

Research has shown that detention with restrictions is so mentally stressful that it causes depression and adjustment disorders. For children, these measures are so extreme that the European Committee against Torture called isolation "a draconian measure". Although the UN Committee on the Rights of the Child held that pre-trial detention or detention based on need of care and protection may be used only in exceptional circumstances, and in spite of sharp criticism from organisations such as the European Committee against Torture, serious deficiencies remain in terms of the detained children's legal certainty and human rights.

The Government should take the initiative to investigate the design of a child-friendly alternative to existing detention facilities. Such a review should also examine what restrictions, if any, should be allowed for children and how the negative effects of such measures can be compensated for.

**Legal counsel for children suspected of crimes**

During the autumn of 2011 a review was presented of all cases concerning young people and relating to offences against the person, adjudicated in city courts in Stockholm, Gothenburg and Malmö in 2010. The audit covers over 1,000 police interviews and at more than 600 of them there had been no defence counsel present.<sup>77</sup>

According to the CRC, every child who is alleged as, or accused of, having committed crimes is entitled to legal or other appropriate assistance in the preparation and presentation of his/her defence. According to the Committee, a child suspected of a crime must be guaranteed legal counsel without delay.<sup>78</sup> This counsel must be present

<sup>74</sup>The Ombudsman for Children. I'm sorry. 2010.

<sup>75</sup>The Ombudsman for Children. Ban isolation of children and young people. Written communication, 27 December 2009.

<sup>76</sup>The Swedish Prosecution Authority. Development Centre, Malmö. Account of review of application of special restrictions 2011.

<sup>77</sup>Radio Sweden. Kaliber (current events programme), 27 November 2011.

<sup>78</sup>The UN Committee on the Rights of the Child. General Comment No. 10 (2007) Children's rights in juvenile justice.

throughout the entire investigation to explain what is happening and safeguard the child's interest. According to the Parliamentary Ombudsman, there is strong presumption that defence counsel be appointed for a minor, even in cases where the minor him/herself does not realise the need for such. Defence counsel must be included early in the process, as early as the initial interview.

*Protection of witnesses and victims of crime*

*72. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).*

The legislature should categorise children who experience domestic violence as victims of crime.<sup>79</sup> As a plaintiff, the child would be assigned a special legal representative, which means that the child can be interviewed in the case even if his/her guardian opposes the measure (in cases where the guardian is the suspect, for example). Courts and social welfare committees do not do risk assessments of children who have experienced domestic violence to the same extent as for the children who themselves have been victims of violent or sexual offences. If children who experience domestic violence are categorised as crime victims their position would be strengthened.

## **Follow up and dissemination**

*75. The Committee further recommends that the fourth periodic report and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available to the public at large, civil society organisations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.*

The Government report and related recommendations form an important basis for a broader discussion regarding Government and public actors' implementation of the CRC. The Ombudsman welcomes the theme dialogues with a number of actors that Government has initiated on the basis of the latest recommendations to Sweden. Unfortunately, however, there is no official translation of the Committee's concluding observations from 2009. The Swedish report and the Committee's recommendations should be translated and made available to a wider audience and a larger number of actors in society.

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<sup>79</sup>The Ombudsman for Children. Children who experience violence by or against close family members. Written communication, 16 May 2007.