



Institutet  
för mänskliga  
rättigheter

# Swedish Institute for Human Rights Annual Report 2023



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## Foreword from the Board

This report presents the first year of operation of the Swedish Institute for Human Rights. It highlights important steps in the development of the Institute's activities, as well as an overview of some of the observations we have made in the field of human rights in 2022. It has certainly been an eventful year, with major challenges for the protection of human rights both in the world around us and in Sweden, while the Institute's work has had to focus primarily on creating long-term and sustainable conditions for the fulfilment of its core tasks as an independent national human rights institution in accordance with the Paris Principles.

The mandate of the Institute is to promote the safeguarding of human rights in Sweden, based on both our Constitution and all of Sweden's obligations under public international law in the field of human rights, with a particular responsibility for disability rights issues. This is a major task that requires a stable organisation, with both a broad and highly skilled workforce, and strong integrity in its operations. Cooperation with others is also crucial in this important task. This applies not least to civil society organisations, but also to the relevant government authorities and international bodies. The Swedish Institute for Human Rights complements the work of government authorities and other bodies that have previously worked to protect and promote human rights, and must be an independent, unifying and driving force in this work. No other actor with a similar comprehensive mission in the field of human rights has previously existed in Sweden.

In order to gain credibility in its mission, both nationally and internationally, it is essential that the Institute is able to meet the international standards of independence, breadth and effectiveness set by the Paris Principles. In developing the Institute's organisation and working methods, there is therefore a clear objective to meet the criteria required for acceptance as a full member – with A status – of the Global Alliance of National Human Rights Institutions (GANHRI) as soon as possible.

During the first year of operation, much of the internal work has focused on recruitment, mainly of staff with different skills, but also of a permanent Director of the Institute, who will manage the day-to-day operations on behalf of the Board. The start-up phase of a new government authority, which in this case requires specific independence from the Government, also involves the preparation and definition of a large number of governance documents and procedures, not least to meet various regulatory requirements. An important part of the work in this first year has also involved contacts with civil society organisations, including in preparation for the establishment of the Institute's advisory board.

However, the fact that the Institute is in a start-up phase has not meant that work on its core task has been completely side-lined. Despite initially very limited staff resources, the Institute has, among other things, responded to legislative consultative submissions, submitted its first supplementary report to a UN treaty body, initiated a baseline analysis of public knowledge and perceptions of human rights, and participated in a variety of lectures and seminars on human rights and the Institute's activities.

The Institute's main tasks thus include contributing, through reviews and reports, to an overview of the fundamental rights and freedoms that people should be guaranteed, and how they are respected and realised in practice in our country. The Institute shall also present proposals to the Government on the measures needed to ensure human rights. It goes without saying that this task requires careful prioritisation of issues and problem areas, so that the Institute can make the best use of its limited resources and make a real contribution to strengthening human rights. There are undoubtedly many areas that deserve attention, both in terms of particularly vulnerable groups and issues that concern us all, such as the rule of law and freedom of expression or access to healthcare on equal terms.

Promoting dissemination of information and consciousness raising of human rights is also part of the mission. Initial studies by the Institute give indications that many people are unaware of their human rights and do not know where to turn if their rights are violated. These are issues that need to be explored further, as does the question of the enforceability of different rights.

While there is still much work to be done to build up the Swedish Institute for Human Rights, we are very pleased and proud of what we have achieved together in our first year of operation. We are convinced that the Institute has a very important role to play and look forward to being even better placed to promote the safeguarding of human rights in Sweden in 2023.

Elisabeth Rynning, Chair

Negin Tagavi, Vice Chair

Fredrik Malmberg, Director

Annika Jyrwall Åkerberg

Leif Ljungholm

Niklas Martti

Titti Mattsson

Pål Wrangé

## Summary introduction

We live in a time of intertwined global crises that challenge human rights. Global warming is already considered to be having a serious impact on life on Earth. For three years, the coronavirus pandemic has posed both direct and indirect threats to human health and rights in every country in the world. In 2022, Europe also faced a geopolitical crisis and a sharp deterioration in the security situation due to Russia's invasion of Ukraine. The war has caused many civilian casualties and forced countless people to flee their homes, while at the same time contributing to a global energy crisis, rising inflation and food insecurity.

In troubled times, it is more important than ever that we maintain and renew our efforts to safeguard human rights. In the context of crises and rapid societal change, the risk of discrimination and rights violations increases. The risk of existing inequalities and conflicts in society worsening also increases. Human rights give us a common compass for the values that must be safeguarded in order to maintain a free, democratic, fair and inclusive society, even in turbulent times.

Human rights also give us important tools to address the crises and challenges facing society. By guaranteeing fundamental rights and freedoms, such as freedom of expression, freedom of religion, the right to a fair trial, the right to education, and the right to political participation, we capitalise on everyone's experience and abilities, and increase the resilience of society.

This year marks 75 years since the United Nations (UN) adopted the Universal Declaration of Human Rights. The Declaration was a rejection of the atrocities committed during the Second World War (1939–1945), in particular the genocide and other crimes against humanity committed by the Nazi regime. But the Declaration was also about addressing the root causes of the war. The Declaration was prompted by the recognition that societies in which political power is not constrained by individual rights, in which those in power are not bound by law, pose serious threats to a world order characterised by peace and international cooperation. The international human rights system was established both to protect the inherent and equal value of human beings and to safeguard the UN's overall objectives of peace, development and security.



Sweden has long played a prominent role in the international promotion of human rights. In troubled times, there is reason to renew these efforts, albeit with a measure of humility. Being a leading force for human rights in the 2020s is not centred around pointing out the shortcomings of other countries. It is about showing respect for the international regulations and monitoring mechanisms that we helped to build, even when such bodies criticise us. If we show that we are willing to act on critical questions and recommendations from e.g., the UN human rights treaty bodies, we not only strengthen compliance with human rights in Sweden, but also help to strengthen the credibility of these institutions when they evaluate other countries.

The Swedish Institute for Human Rights was established on 1 January 2022 and is tasked with promoting the safeguarding of human rights in Sweden. The establishment of the Institute is an important step towards increased awareness of human rights in Sweden and is a clear indication of the importance of living up to both the Swedish constitution and the legally binding human rights conventions that we have chosen to ratify. The Institute was also created in response to the previous lack of an actor tasked with conducting independent analyses of the development of human rights in the country and advising decision-makers on what measures can be taken to strengthen and promote the protection of rights in the country.

As part of its mandate to promote the safeguarding of human rights in Sweden, the Swedish Institute for Human Rights acts as an independent monitoring mechanism for the Convention on the Rights of Persons with Disabilities (CRPD). The Convention covers a broad group of people who are at higher risk of rights violations both internationally and in Sweden. Ultimately, the Convention is about creating a more inclusive and equal society in which all people have the right to live a dignified life with equal opportunities.

Sweden has a strong tradition of democracy and respect for individual rights and freedoms. Human rights are protected in Sweden by both the Constitution and ordinary law, and by Sweden's accession to a large number of international conventions. In recent years, awareness of human rights has gradually increased among lawyers and civil servants in public administration. At the same time, human rights have become an increasingly established area for multidisciplinary education and research at colleges and universities around the country. There is also a strong debate in the Swedish public sphere about human rights and their importance.

At the same time, our analysis shows that Sweden is not immune to the forces that challenge respect for human rights. The major challenges of our time – such as the climate crisis, geopolitical conflicts and the decline of democracy – affect people's

ability to have their rights respected, including in our country. The promotion of human rights must constantly evolve and adapt to meet such changes.

This Annual Report does not aim to provide a complete picture of the human rights situation in Sweden, but it is our hope that it can serve as a basis for public debate and as an invitation to continued dialogue on important factors that affect the safeguarding of human rights internationally and in Sweden.

The Annual Report also shows how human rights concern us all. The contexts in which respect for human rights needs to be strengthened are often contexts in which we spend a large proportion of our lives, and in which we are most vulnerable as human beings. This may be at home, at school, on the internet, in the workplace, at the healthcare centre, in nursing homes or when dealing with various government authorities. It is in everyday life that human rights take on life and meaning.

## **The establishment of the Swedish Institute for Human Rights**

The Annual Report begins with a description of the establishment of the Swedish Institute for Human Rights, its mission and its organisation. It then describes the Institute's efforts to launch its activities and establish sustainable and transparent ways of working during its first year of operation, with a focus on dialogue and engagement with civil society and other actors. The chapter also includes information on the official inauguration of the Institute in May 2022, as well as interviews with staff and board members that provide insight into the process of building an independent government authority from scratch. An important background to the Institute's work is the Paris Principles, which were adopted by the UN in 1993 and constitute minimum requirements for independent national human rights institutions. Chapter 1 concludes with a description of the Institute's work to fulfil the Paris Principles and apply for membership in the Global Alliance of National Human Rights Institutions (GANHRI).

## **Reports, studies and position statements**

The second chapter of the Annual Report summarises some key reports and studies issued by the Institute during its first year of operation. The chapter also summarises the Institute's stance on current public inquiries and legislative proposals.

### ***Report to the UN Committee on the Rights of the Child***

The Institute's first comprehensive analysis was a supplementary report to the UN Committee on the Rights of the Child, which was presented in August 2022. The

possibility of submitting supplementary reports to UN treaty bodies is an important tool for national human rights institutions. Through such reports, the Institute is able to make independent analyses of the Government's efforts to satisfy Sweden's international human rights commitments.

In the report to the UN Committee on the Rights of the Child, the Institute highlighted six subject areas as suggestions for the review of the Government's work for the rights of the child.

- The impact of the COVID-19 pandemic on children
- Sweden's accession to the third Optional Protocol to the UN Convention on the Rights of the Child on an individual complaints mechanism
- The incorporation of the UN Convention on the Rights of the Child (CRC)
- The Government's follow-up of the national strategy to strengthen the rights of the child
- The independence of the Ombudsman for Children in Sweden
- The best interests of the child in the legislative process.

In the context of the COVID-19 pandemic, it is of utmost importance to analyse the consequences that the various decisions and actions taken during the pandemic have had for the human rights of the child. To this end, the Institute highlighted in particular the importance of continued monitoring and of taking action following the monitoring that takes place.

The second area highlighted by the Institute in its report concerned Sweden's accession to the third Optional Protocol to the CRC on an individual complaints mechanism for children. The Institute stated that, regardless of whether Sweden accedes to the third Optional Protocol, it is of utmost importance that the rights of the child are enforceable at the national, regional and local level.

According to the Government's strategy for national human rights work, the effects of incorporation and continued transformation of the CRC should be monitored and evaluated. No such monitoring and evaluation have been carried out as yet. Nor has the Government's planned monitoring of the 2010 strategy for the implementation of the CRC been carried out.

The Institute also emphasised the importance of the Ombudsman for Children in Sweden, by virtue of being an independent monitoring mechanism for the rights of the child, also having real independence and sufficient resources to operate effectively.

Finally, the Institute highlighted the issue of continued systematic transformation work and the conclusions of the CRC Inquiry (Barnkonventionsutredningen). The CRC Inquiry was tasked with mapping the extent to which Swedish legislation and practice correspond with the CRC.

In September 2022, the Institute and the Ombudsman for Children in Sweden participated in a meeting (pre-session) at the UN Committee on the Rights of the Child in Geneva, where some of the points mentioned were discussed. In January 2023, the UN Committee on the Rights of the Child conducted its dialogue with Sweden. In March 2023, the Committee made its recommendations to Sweden. The Institute will follow up on these recommendations.

### *Survey on public perception of human rights*

An important prerequisite for ensuring that all people enjoy their rights is that they know their rights and are able to exercise them. In the autumn of 2022, the Swedish Institute for Human Rights conducted a survey to better understand how the public views human rights, which areas they consider important, and how they perceive that human rights are met and can be enforced in Sweden today. The survey had about 2,200 respondents in an online panel.

A majority of the respondents (63 percent) state that they know their rights fairly or very well.

47 percent feel that there are human rights that are under threat in Sweden today. The right to freedom from hate, threats and violence, freedom from discrimination, and the right to health and social care are the rights that most people feel are under threat. 43 percent believe that there are specific groups of people whose rights are under threat in Sweden today. The group “born abroad” stands out as a group that many see as particularly at risk.

The survey shows that relatively few people, four percent, feel completely sure about where to turn if their rights are violated. 35 percent respond that they do not know where to turn at all and 52 percent have only some knowledge of it.

44 percent of respondents say that they are aware that they can lodge a complaint with the European Court of Human Rights, while nine percent are aware that they can lodge a complaint with some of the UN treaty bodies.

When asked if they have ever turned to a government authority or other organisation because their rights have been violated, 69 percent say they have never had their rights violated. Nine percent of the respondents state that they contacted a

government authority or other organisation at some point because their rights had been violated. 22 percent state that they have never contacted anyone when they felt that their rights had been violated. In the subsequent question about why they have not contacted anyone, there are two recurring answers. One is that they feel there is no point in contacting anyone when their rights have been violated and the other is that they lack knowledge of who to contact.

### *Opinions and position statements*

It is important for a national institution tasked with promoting the safeguarding of human rights to be able to respond to inquiries and legislative proposals. By submitting referral statements, the Institute can provide views on how various proposals comply with the Swedish Constitution (the Instrument of Government, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression), the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), the Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights), and other obligations in the field of human rights binding on Sweden under public international law.

During the year, the Institute has submitted the following referral statements:

- Freeze on the establishment of independent schools and independent leisure centres with a denominational focus (U2022/01678)
- Enhanced protection against discrimination (SOU 2021:94)
- Future direction of the Living History Forum (Ku2021:A)
- Report of the inquiry into ILO's Convention concerning the elimination of violence and harassment in the world of work (SOU 2021:86)
- Expanded possibilities to use secret surveillance (SOU 2022:19)
- Review of the Office of the Parliamentary Ombudsmen (2021/22:URF2)
- Our democracy – worth safeguarding every day (SOU 2022:28)
- Better impact assessments (Ds 2022:22).

All referral statements are summarised in the Annual Report (chapter 2) and can be read in their entirety on the Institute's website.<sup>1</sup>

## **Human rights in Sweden 2022**

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<sup>1</sup> [www.mrinstutet.se](http://www.mrinstutet.se)

The third chapter of the Annual Report focuses on some important themes and societal challenges that affect the conditions for human rights in Sweden and internationally. The chapter contains examples of rights issues related to these themes that the Institute has observed in its monitoring in 2022. The chapter also contains a summary of current legislative changes and court cases that may affect people's opportunities to have their rights realised.

### **Climate change and human rights**

Climate change and human rights are interlinked. For example, extreme weather events and natural disasters caused by climate change affect the right to life, food and health. Influence over climate action is also a rights issue, not least for those most affected, such as children, young people, persons with disabilities, refugees, and Indigenous peoples who often reside in proximity to natural resources. In 2022, the link between climate change and human rights has become increasingly clear in Sweden.

For the Indigenous Sami people, climate change is already affecting natural grazing-based reindeer husbandry. In 2022, a consultation mechanism was introduced on issues related to the Sami people. Empowerment is a key element of Indigenous rights, which is being challenged in the context of increased demand for natural resources in the green transition. One example is the exploitation concession in Kallak/Gállok, which the government approved in 2022 after a multi-year process. A number of actors have warned of the risk of negative environmental impacts and UN experts have criticised the lack of consultation with affected Sami communities, in line with previous criticism of Sweden for not protecting the Sami people's right to influence and co-determination.

In Sweden and internationally, children and young people have taken a prominent role in the climate and environmental movement, not least with reference to the impact of climate change on the lives and health of young people and future generations. One example is the organisation Aurora, which filed a lawsuit against the Swedish state in 2022. Aurora argued that Sweden's climate measures are insufficient and that the rights of children and young people to a good environment, life, health and development are thereby jeopardised.

Questions about the protection of the rights of individuals and groups involved in climate and environmental issues have been raised in recent years both internationally and in Sweden, including in relation to protests using civil disobedience as a method. One fundamental principle of civil disobedience is that a person who has performed an illegal action bears legal responsibility for it. Some actions may also affect the rights and freedoms of others and threaten essential functions of society. However, according to several civil society organisations, in recent years there has been a shift in the criminalisation of civil disobedience from disobeying a police order to

sabotage, which risks leading to sanctions that are no longer proportionate to the act committed.

### **Threats to democracy and the rule of law**

In many parts of the world, democracy and the rule of law are in decline, while polarisation between different social groups is increasing. Sweden is not immune to these developments.

In 2022, general elections were held at the national, regional and local level in Sweden. For the first time in the 2000s, voter turnout fell compared to previous elections. At the same time, a study commissioned by the Swedish Institute for Human Rights shows that polarising or xenophobic rhetoric was widespread during the election campaign. The fact that the Swedish political debate is characterised by increasing polarisation between different groups has previously been pointed out by the UN Committee on the Elimination of Racial Discrimination, among others.

Civil society stands as another essential pillar of a functioning democracy. As shown by e.g., the EU Agency for Fundamental Rights (FRA), civil society organisations in many parts of Europe have found it increasingly difficult to carry out their tasks due to both restrictive legislation and threats and attacks against human rights defenders and journalists, among others.

The right to a fair trial is fundamental in a democratic country. Sweden experienced a significant number of fatal shootings throughout the year 2022. Many of the measures initiated by the previous and current governments against deadly gang-related violence have involved longer prison sentences, more police officers and increased use of secret surveillance. It is important to monitor the effects of these regulatory changes to ensure consistent and uniform application of the law in the courts and to safeguard the legal rights and security of individuals.

The issue of the limits of freedom of expression and assembly was highlighted during the year by a number of Koran burnings. Freedom of expression and assembly are fundamental human rights and fundamental principles in a democratic country. In some cases, these freedoms can be restricted under international law to protect the rights and freedoms of others and to combat hate propaganda. The discussion on how Swedish legislation and official practice fulfils international human rights commitments will probably continue. An important starting point, however, is that freedom of expression is a prerequisite for the free formation of opinion, which is stated in the Instrument of Government as being one of the foundations of democracy.

During the year, several reports emerged of children and young people being subjected to violations and other abuses in residential homes for young people run by the National Board of Institutional Care (SiS). Among other things, SiS's use of coercive measures has been questioned, such as the use of what is known as segregation. There are provisions in international regulations that specify the situations in which children and young people may be detained and how they should be treated during detention. The situation in Swedish residential homes for young people has been highlighted and criticised in international reviews.

### **Increasing social inequality, discrimination and racism**

According to several international human rights treaties, the right to education, the highest attainable standard of health, access to health and social care, the right to adequate housing and to participate in cultural life are key human rights. In 2022, we noted several examples of disparities between different groups in terms of access to such economic, social and cultural rights, as well as in terms of risks of discrimination and abusive treatment.

In 2022, it remained clear that the COVID-19 pandemic has posed one of the greatest human rights challenges of our time. The pandemic presented governments around the world with difficult trade-offs between rights and other important societal interests. The spread of COVID-19 posed a direct and unequally distributed threat to people's right to the highest attainable standard of health and caused significant strain on healthcare systems. At the same time, the restrictions put in place to stop the spread of the disease resulted in extensive restrictions on several fundamental rights and freedoms, including freedom of movement, assembly, association and religion, as well as the right to health, education, work and participation in cultural life.

The Institute's report to the UN Committee on the Rights of the Child in 2022 highlighted the right to education for children with disabilities, particularly in relation to the experiences of pupils with disabilities during the COVID-19 pandemic. A general problem related to the right to education is the lack of systematic knowledge gathering on the situation of pupils with disabilities. This makes it difficult to monitor how the situation of pupils with disabilities evolves over time. In 2022, a government inquiry was set up to investigate how knowledge about pupils with disabilities can be improved without jeopardising personal privacy.

The right to housing is protected in e.g., Chapter 1, Section 2 of the Instrument of Government and several UN conventions in the field of human rights. In their latest reviews of Sweden, both the UN Committee on Economic, Social and Cultural

Rights (CESCR) and the UN Committee on the Elimination of Racial Discrimination (CERD) have expressed concern about compliance with the right to housing in Sweden. Among other things, the committees have requested more information about obstacles in the housing market for Afro-Swedes and other groups, and the Government's measures to combat such obstacles.

During the year, the Institute has also noted continued challenges in the work for women's human rights. For example, a report from the National Organisation for Women's Shelters and Young Women's Shelters in Sweden (ROKS) showed that 55 percent of all women surveyed stated that they had been subjected to violence by a man at some point after their 15th birthday. Furthermore, the study found that 80 percent of women between the ages of 18 and 25 reported instances of sexual harassment perpetrated by men. In addition, the results showed an increase in reported sexual violence among young women over the past 20 years.

Sweden's compliance with its human rights obligations towards people covered by the Reception of Asylum Seekers Act (1994:137) has been questioned in recent years by e.g., civil society organisations and UN treaty bodies. Among other things, the level of daily allowance for asylum seekers and persons with temporary residence permits has been considered too low to ensure the right to an adequate standard of living. The lack of access to rights for asylum seekers has come into renewed focus in 2022 with the arrival of tens of thousands of refugees from Ukraine.

The principle of non-discrimination is fundamental to most of the international human rights treaties. In 2022, the Equality Ombudsman reported that discrimination and harassment on the basis of religion constitute a real obstacle to individuals' access to equal rights and opportunities, including in schools and at the workplace. The Swedish National Council for Crime Prevention (Brå) also noted that Afrophobia is the most common motive among reported hate crimes in Sweden, and that hate crimes against Afro-Swedes are also characterised by a high incidence of violence. In a survey launched in Sweden in autumn 2022, the EU Agency for Fundamental Rights (FRA) found that more than 50 percent of the Roma surveyed in Sweden had experienced antigypsyism. In the summer of 2022, the Government adopted five action programmes aimed at combating Afrophobia, antisemitism, antigypsyism, Islamophobia and racism against the Sami for the period 2022–2024.

A recurring criticism from the UN monitoring mechanisms concerns the general lack of data on the situation of various particularly vulnerable groups in Sweden. In November 2022, for example, the newly established UN Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement (EMLER) visited Sweden. Following the visit, EMLER urged the Swedish Government to step up its work

against structural racism, while expressing concern about the reluctance to compile data on different grounds of discrimination.

### *Technological development, digitalisation and human rights*

New technologies bring opportunities, challenges and risks for human rights. New communication tools and digital platforms enable people to connect and exchange ideas and information more easily. At the same time, technological developments create new risks. Among other things, new technologies can collect large amounts of information about people's identities, preferences and behaviours, creating risks to the right to privacy and the right to protection of personal data.

In 2022, the Swedish Institute for Human Rights noted several examples of such risks in Sweden. For instance, the Swedish Authority for Privacy Protection has documented shortcomings in the implementation of the European General Data Protection Regulation (GDPR), a regulation designed to protect the individual's right to personal privacy. During the year, the Swedish Security Service has also reported on the use of digital technology by foreign powers for espionage and influence attempts in the country, often with the aim of intimidating individuals living in Sweden into silence.

In connection with rapid technological developments, the Institute has paid particular attention to the increasing use of secret surveillance, such as wiretapping, camera surveillance and data interception, which entail serious restrictions on personal privacy and the right to private and family life. It is important that all such restrictions are proportionate to the necessity of preventing crimes.

### *Case law and legislative changes*

The concluding section of Chapter 3 describes a number of decisions in Swedish and international bodies where issues related to Sweden's human rights commitments are addressed. Among other things, the Supreme Administrative Court found that municipal bans on the wearing of items of clothing, such as headscarves, that express religious affiliation are covered by the protection of freedom of expression in the Instrument of Government. In order to be deemed permissible, municipal decisions regarding restrictions must be supported by law.

The section also highlights some cases that deal with how the interpretation of the right to freedom from arbitrary detention should be understood. One decision by the Supreme Administrative Court deals with whether compulsory institutional care of young people over the age of 18 under the Care of Young Persons (Special

Provisions) Act is compatible with the European Convention on Human Rights (ECHR). A decision from the Migration Court of Appeal concerns how long a detention under the Aliens Act can last without being considered arbitrary under the ECHR.

The section on case law and legislative changes also contains an account of judgments by international courts and treaty bodies in complaint cases concerning Sweden's international commitments. This includes two rulings by the European Court of Human Rights on the right to private and family life. The section also contains reports on several rulings by UN treaty bodies on issues such as the fact that repatriation of persons to other countries should not be permitted because the persons would be at risk of serious human rights violations.

The section on case law and legislative changes also describes some legislative changes that are important for the protection of human rights in Sweden. From 1 August 2022, for example, a person will be able to receive damages from the state or a municipality if they have suffered a violation of fundamental rights and freedoms under the Instrument of Government.

The section also describes the introduction of a new offence in the Freedom of the Press Act that criminalises so-called foreign espionage. The constitutional amendment means that anyone who disseminates secret information about Swedish defence cooperation is guilty of a crime if the information can seriously damage Sweden's intergovernmental interests and the act is carried out with the aim of benefiting a foreign power or equivalent. There is an exception to the criminal provision that aims to protect acts that are considered justifiable. Another amendment to the Instrument of Government adopted in 2022 involves making it possible by ordinary law to restrict the freedom of association of organisations that engage in or support terrorism.

# 1. The establishment of the Swedish Institute for Human Rights

## The road to an independent Institute

### The emergence of human rights

Human rights have deep historical roots. The idea that all human beings have equal value and rights can be traced through several philosophical and religious traditions. In early modern European thought, the natural rights of human beings became central, although they were usually interpreted in ways that applied only to white, landowning and adult males. During the revolutions of the late 18th century, in North America, France, Haiti and elsewhere, ideas of human equality and freedom inspired resistance to imperialism, absolute autocracy, slavery and other forms of arbitrary power. From the 19th century onwards, human rights gave impetus to movements against the slave trade, torture, racial discrimination, harsh and unfair working conditions, and for universal suffrage, education and women's rights, among others.<sup>2</sup>

Contemporary human rights work is otherwise most associated with the period after the Second World War, which ended in 1945. In 1948, the then newly formed United Nations (UN) adopted the Universal Declaration of Human Rights. The Declaration was based on an internationally shared abhorrence of the atrocities of war, particularly the Holocaust and other crimes against humanity perpetrated by the Nazi regime in Germany. The authors of the Universal Declaration also shared a view of what had caused the war. They saw that people who lacked basic freedoms, security and social safety nets were susceptible to anti-democratic movements and war propaganda. Consequently, international human rights efforts focused on establishing the necessary conditions for enduring peace.<sup>3</sup>

The Universal Declaration spans several different areas. At the heart of it all is the principle that all human beings are equal in dignity and rights, and that no one should be discriminated against on the basis of factors such as gender, colour, religion or

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<sup>2</sup> See, e.g. Miia Halme-Tuomisaari and Pamela Slotte, ed. *Revisiting the Origins of Human Rights*, (Cambridge: Cambridge University Press, 2015).

<sup>3</sup> William A. Schabas, ed. *The Universal Declaration of Human Rights: The Travaux Préparatoires* (Cambridge: Cambridge University Press, 2013), lxxxix, lxxxviii.

origin. The Declaration then contains a number of articles which state that people have the right to life, bodily integrity and fundamental freedoms. As members of society, people also have the right to education, healthcare, political participation, a social safety net and access to an independent judiciary, among other things. But the Universal Declaration also states that people have obligations to others and to society. For example, as early as Article 1 it states that people should act towards each other in a spirit of brotherhood. Human rights and obligations are united in the same document.<sup>4</sup>

### **From political will to law**

The Universal Declaration of Human Rights has become one of the most widely circulated and influential texts in world history. However, it was not initially formulated as a legal document, but as a political expression of will by the States participating in the early UN cooperation. In the second half of the 20th century and the early 21st century, international cooperation on human rights largely revolved around the drafting of legal agreements, known as conventions, which set out more clearly what States must do to fulfil human rights in practice.<sup>5</sup>

In 1950, the Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR). However, because of the Cold War deadlock, it was not until the 1960s that the first worldwide UN human rights conventions were finalised. In addition to the general UN covenants on civil and political rights (ICCPR, 1966) and economic, social and cultural rights (ICESCR, 1966), the UN has over the years drawn up specific conventions against racial discrimination (CERD, 1965), for women's rights (CEDAW, 1979), for the rights of the child (CRC, 1989) and for the rights of persons with disabilities (CRPD, 2006). Another convention of particular importance for Sweden is the EU Charter of Fundamental Rights (EU Charter of Rights and Freedoms, 2007).

### **Human rights in Sweden**

Since the late 1940s, Sweden has actively participated in the drafting of international declarations and conventions on human rights. For example, a Swedish delegate to the UN in the 1940s, Ulla Lindström, contributed a text to the Universal Declaration stating that the right to political participation should be realised primarily through the

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<sup>4</sup> UN Universal Declaration of Human Rights (1948).

<sup>5</sup> For an overview of the development of human rights in the UN since the 1940s, see Jan Eckel, *The Ambivalence of Good: Human Rights in International Politics Since the 1940s* (Oxford, Oxford University Press, 2019).

right to vote in general elections (Article 21).<sup>6</sup> In the late 1970s, Sweden and the Netherlands took the initiative for what became the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1984.<sup>7</sup> A more recent example is the contribution of Swedish diplomats and UN officials to the reform of the UN human rights system, not least in connection with the establishment of the UN Human Rights Council in 2006.<sup>8</sup>

Sweden's contribution to and ratification of most international human rights conventions has been justified by the fact that Sweden is a strong constitutional state where fundamental freedoms such as freedom of assembly, freedom of the press and freedom of expression have long been protected in the Constitution. Chapter 1, Section 2, Paragraph 1 of the Instrument of Government states that public power in Sweden shall be exercised with respect for the equal value of all persons and for the freedom and dignity of the individual. Sweden has also been a frontrunner in the advancement of social and economic welfare.

However, it has not always been obvious that international human rights conventions should be seen as relevant at home, despite the fact that Sweden has contributed to and ratified most such agreements.<sup>9</sup> It has sometimes been argued by governments that Sweden already guarantees individuals their human rights and therefore does not need to take further steps to fulfil its obligations under international law. For example, when Sweden ratified the Convention on the Rights of the Child in 1990, a government inquiry argued that Swedish legislation either already complied with or went beyond the provisions of the Convention and that no further action was therefore needed to ensure that rights were guaranteed in Sweden. However,

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<sup>6</sup> Amendments submitted by Sweden to articles 16, 19 and 21 of the draft declaration of human rights, UN Doc. A/C.3/252 (1948), 9 October 1948.

<sup>7</sup> Hanne Hagtvedt Vik and Skage Alexander Ostberg, "Sweden, Amnesty International and Legal Entrepreneurs in Global Anti-Torture Politics, 1967–1977," *The International History Review* 44 no. 3 (2022): 633–652.

<sup>8</sup> Paul Gordon Lauren, "To Preserve and Build on its Achievements and to Redress its Shortcomings: The Journey from the Commission on Human Rights to the Human Rights Council," *Human Rights Quarterly* 29, no. 2 (2007): 307–345.

<sup>9</sup> Johan Karlsson Schaffer, "The Self-Exempting Activist: Sweden and the International Human Rights Regime," *Nordic Journal of Human Rights* 38, no. 1 (2020): 40–60. Of the UN human rights conventions, Sweden has not yet ratified the Convention for the Protection of All Persons from Enforced Disappearance (CED) or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). Sweden has also not acceded to the optional protocol on an individual complaints procedure to the Covenant on Economic, Social and Cultural Rights (CESCR) and the Convention on the Rights of the Child (CRC). For the most current list, see "Ratification Status for Sweden," *Office of the High Commissioner for Human Rights*, downloaded 2 February 2023, [tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=168&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=168&Lang=EN).

subsequent surveys showed that there was a need for both legislative and awareness-raising measures.<sup>10</sup>

### International criticism of Sweden

One reason why human rights conventions have not always been perceived as applicable to domestic law is the adoption of a dualistic perspective on the relationship between national and international law in Sweden. This means that international agreements do not become legally binding within the country until they have been transposed into national law. This is done either by declaring that there is harmony of norms or by amending the law in the form of transformation or incorporation.

Transformation means that the content of an international agreement, such as a convention, is interpreted and incorporated into existing legislation in various areas, while incorporation means that a convention is incorporated in whole or in part into national law and can then be applied directly by national courts and other government authorities. In Sweden, transformation has been the method most often used in the field of human rights.

Sweden has also adopted the principle that Swedish legislation should be interpreted in conformity with treaties, which means that Swedish law is interpreted in the light of Sweden's international commitments. However, this principle has not always been effectively translated into legal practice.<sup>11</sup>

Over time and in response to persistent criticism from civil society organisations and international monitoring mechanisms, including the UN and the Council of Europe, Sweden has chosen to incorporate international human rights agreements. A milestone was reached in 1995 when the ECHR was incorporated into Swedish law in connection with Sweden's accession to the EU. Since 1 January 2020, the Convention on the Rights of the Child has also been part of Swedish law. As a result, the interplay between national and international law has slowly changed. Over time, it has also become more common for Swedish courts and administrative authorities to use treaty-compliant interpretation.<sup>12</sup>

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<sup>10</sup> Prop. 1989/90:107, SOU 1997:116, Ds 2011:37 and SOU 2020:63.

<sup>11</sup> See also, Patrik Bremdal, "Fördragskonform tolkning", in Patrik Bremdal and Johanna Ohlsson, ed., *Mänskliga rättigheter i teori och praktik: Från idé till förvaltning* (Lund: Studentlitteratur, 2021), p. 161-179.

<sup>12</sup> See also, Ove Bring, Mark Klamberg, Said Mahmoudi and Pål Wrangé, *Sverige och Folkrätten*, 6th edition (Stockholm: Norstedts juridik, 2020), p. 262-268.

The State has also made efforts to incorporate human rights into the regular operations of municipalities, regions and government authorities. The first national strategy for the implementation of the UN Convention on the Rights of the Child in Sweden appeared in 1999, and a second was adopted by the Riksdag (Swedish Parliament) in 2010.<sup>13</sup> The first national action plan for human rights was presented in 2002, with the aim of creating a more comprehensive approach to the issues in Sweden.<sup>14</sup> When a new action plan was launched in 2006, a national delegation for human rights was also established.<sup>15</sup> In its final report in 2010, the delegation recommended the establishment of a national human rights institution as part of the promotion of human rights in Sweden.<sup>16</sup> In 2016, the government adopted the most recent strategy for human rights, which remains in effect to this day.<sup>17</sup>

### **A national human rights institution in Sweden**

In international reviews, Sweden has been repeatedly criticised for lacking an independent national human rights institution.<sup>18</sup> Sweden has a number of ombudsman institutions, such as the Parliamentary Ombudsmen, the Ombudsman for Children in Sweden and the Equality Ombudsman. In addition, there are regional and local institutions tasked with bringing together human rights work in different parts of the country. However, unlike a large number of countries around the world, including Denmark, Finland and Norway, Sweden has until now lacked a nationwide and independent institution with a broad mandate to promote the implementation of all the international human rights conventions to which Sweden is a party.<sup>19</sup> The absence of a national human rights institution has been seen by several UN bodies as a significant shortcoming in Sweden's human rights framework.

The foundation when establishing a national human rights institution is the Paris Principles, which were formulated within the UN in the early 1990s. The Paris Principles originated from the recognition that human rights are ultimately about increasing people's participation, freedom and equality in the societies in which they live. A corollary of this is that the promotion of human rights should primarily take

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<sup>13</sup> Prop. 1997/98:182 and prop. 2009/10:232.

<sup>14</sup> Skr. 2001/02:83.

<sup>15</sup> Skr. 2005/06:95.

<sup>16</sup> SOU 2010:70.

<sup>17</sup> Skr. 2016/17:29.

<sup>18</sup> See, inter alia, the recommendations of several UN monitoring mechanisms for the Universal Periodic Review (UPR) of Sweden, UN Doc. A/HRC/WG.6/35/SWE/2 (2019), para. 6.

<sup>19</sup> The Global Alliance of National Human Rights Institutions (GANHRI) had 120 members at the end of 2022. GANHRI considers 88 of these to be in full compliance with the Paris Principles and thus to have so-called A status.

place at the local level and with the real influence of the people who live there, especially those individuals and groups whose rights are at risk of being violated.<sup>20</sup>

The Paris Principles set out a number of minimum requirements that national human rights institutions need to meet. The most basic of these is the requirement of independence from government and other actors. Independence applies to the mandate and composition of the institution as well as to its funding and working methods. A national human rights institution should have a broad mandate to promote the safeguarding of human rights, based on the international commitments of its own state. According to the Paris Principles, a national human rights institution should also have a broad membership of the various social forces involved in the protection and promotion of human rights. The institution must have sufficient public funding to fulfil its mission and must not be subject to financial control that could affect its independence. A national human rights institution should also be free to prioritise its areas of focus, working methods and forms of cooperation.

Considering the criticism Sweden has received in international contexts, Swedish civil society organisations have for many years advocated that Sweden should establish an independent national human rights institution in accordance with the Paris Principles. The pressure from civil society was likely one of the main reasons why the Government appointed an inquiry into a national human rights institution in March 2018. Another important reason was that in 2009 Sweden had ratified the UN Convention on the Rights of Persons with Disabilities (CRPD). Article 33(2) of the CRPD states that there shall be in each State one or more independent mechanisms to promote, protect and monitor the implementation of the provisions of the Convention. The inquiry commissioned in 2018 was asked to make proposals on how such a mechanism could be integrated as part of a national human rights institution with a broad mandate.<sup>21</sup>

The inquiry resulted in the Government tabling a bill in September 2020 to establish a human rights institution in Sweden.<sup>22</sup> On 9 June 2021, the proposal was voted through in the Riksdag and the institute was established on 1 January 2022.<sup>23</sup>

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<sup>20</sup> UN Paris Principles on National Human Rights Institutions, UN Doc. A/RES/48/134 (1993).

<sup>21</sup> Ds 2019:4.

<sup>22</sup> Prop. 2020/21:143.

<sup>23</sup> For more on the process to set up the Institute, see the Swedish Institute for Human Rights, *Annual Report 2022*, p. 8.

### **The Institute's statutory mandate**

The establishment of the Swedish Institute for Human Rights meant that Sweden for the first time had an independent authority for all issues in the field. According to the Act (2021:642) on the Institute for Human Rights, the Institute shall work to promote the safeguarding of human rights in Sweden based on our Constitution (the Instrument of Government, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression), as well as the European Convention on Human Rights (ECHR), the EU Charter of Rights and other international agreements binding on Sweden in the field of human rights. This includes a mandate to fulfil the role of an independent national mechanism as set out in Article 33(2) of the Convention on the Rights of Persons with Disabilities (CRPD).

In order to fulfil its role, the Institute shall in particular

- monitor, investigate, and report on how human rights are respected and realised
- present proposals to the Government on the measures needed to ensure human rights
- liaise with international organisations and otherwise engage in international cooperation
- promote education, research, development of expertise, dissemination of information and consciousness raising in the field of human rights.

Within the limits of its mandate and responsibilities, the Institute will decide on its organisation and on the details and focus of its work.

### **Organisation of the Institute**

The Institute is formally a government authority, but it has much greater independence than other government authorities and decides its own organisation and direction of activity. The Institute is managed by a Board composed of members with expertise in the field of human rights and experience of qualified work in civil society, the judiciary and the legal profession, and academia.

Following a broad nomination procedure in which civil society organisations and the legal profession as well as colleges and universities were invited to submit proposals, the Government appointed seven Board members in October 2021, who formally took up their duties on 1 January 2022. The Institute's first Board includes Elisabeth Rynning as Chair, Negin Tagavi as Vice Chair, and Annika Jyrwall Åkerberg, Leif Ljungholm, Niklas Martti, Pål Wrangé and Titus Mattsson as Board members.<sup>24</sup>

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<sup>24</sup> A presentation of the Board members is found in Annex 2.

The Board also includes the Director of the Institute, who is appointed by the Board in accordance with the law. The Director manages the day-to-day operations in accordance with the Board's directives and guidelines. The Director is the head of the authority and is responsible for the day-to-day operations of the Institute.

On 1 January 2022, Anders Kompass was appointed Acting Director of the Institute until a permanent Director could take up office. The recruitment process started in the spring, and in October the Board decided to appoint Fredrik Malmberg as Director of the Institute as of 20 January 2023. Charlotte Palmstierna served as Deputy Acting Director in November 2022 and was appointed as Interim Acting Director by the Board for the period 1 December 2022 to 19 January 2023.

The Institute is also required by law to have an advisory body, the Council, to provide advice and support to the Institute from civil society and other human rights actors. The Council must have broad representation, particularly from organisations representing persons with disabilities. Appointment of the Council has been a priority in 2022, and the Institute has conducted several dialogues with civil society organisations in particular to seek their views and wishes. In the autumn of 2022, the Board set a target of appointing the Council in the spring of 2023, following an open nomination process.

The design of the Institute's tasks as an independent national mechanism under Article 33(2) of the Convention on the Rights of Persons with Disabilities (CRPD) and how that work will relate to the Institute's other work has also been a priority during the first year of operation. In the process of the Article 33(2) mandate, the active involvement of the disability rights movement is important and necessary. This follows both from the Institute's ambition to work in a rights-based manner, but also from the consultation and involvement obligations in Article 4(3) of the CRPD, and the obligation to ensure that organisations are involved and fully participate in the tasks under Article 33(2). A question for further consultation with the disability rights movement will therefore be what the forms of involvement and participation in the continuing Article 33(2) process should be. It is also important to draw on the experience of other actors, such as the Swedish Agency for Participation and national human rights institutions in other countries.

## **The inauguration of a historical institute**

At last! Long awaited! These were two of the most common comments during the inauguration of the Swedish Institute for Human Rights, which took place on 31 May 2022.

Guests were welcomed to the Institute's premises by Acting Director Anders Kompass and Board Chair Elisabeth Rynning. The warmth quickly spread indoors, while rain and drizzle marked the last spring day of the year.

The Institute's large conference room, named *Demokratin*, was filled with life and movement, mingling, food and conversation to the jazzy tunes of an ensemble from the municipal Lund School of the Arts (*Kulturskolan*). The digital slideshow “In a surreal time”, an art project about the Coronavirus-colours autumn 2021, which was also created by pupils in Lund, was shown at the same time. This served as a reminder of the regained freedom and community that the pandemic taught all of us should not be taken for granted.

### **Broad representation among the guests**

Guests at the inauguration had been invited from all over Sweden to represent people who work for human rights in different ways in their professional and everyday lives. They included representatives from civil society, such as religious communities, non-profit organisations, the disability rights movement and Sweden's national minorities. Elected officials and civil servants from the national and local level, universities and colleges, trade unions and media were also in attendance.

The stage programme began with Katarina Barruk, a singer, pianist and joik performer from Umeå, who performed music in the Ume Sami language to the accompaniment of Arnjolt Nordvik on guitar. A musical experience that touched many audience members.

- “I just have to catch my breath. I'm sure I'm not the only one. Wow!” began Negin Tagavi, the Institute's Vice Chair and the afternoon's moderator.

She went on to welcome the guest of honour, then Minister for Culture Jeanette Gustafsdotter, to the stage.

### **Minister for Culture inaugurates the Institute**

The then Minister for Culture, Jeanette Gustafsdotter, began her speech by stressing the importance of the Institute's establishment and of looking out into the world.

- “In these times, human rights, upheld by a rules-based world order, are more important than ever. If we needed a reminder of why this is important, Russia's brutal aggression against Ukraine has made it clear.”

The Minister for Culture then went on to talk about Sweden's long tradition of strong respect for human rights, and as a role model among many countries. But that this does not mean we are infallible, as both international and national reviews repeatedly highlight areas for improvement.

- “Our work is not done. We cannot just sit back and rest on our laurels. Human rights work must continue and evolve. It must be long-term, structured and systematic. A key element of this structure is the establishment of an independent national human rights institution, in line with the Paris Principles,” she said.

Finally, the Minister for Culture stressed the unique role and independence of the Institute.

- “The Institute will scrutinise, not least, the work of the Government with a critical, independent eye. I look forward to receiving analyses, reports and, not least, proposals for making Sweden even better.”

The Minister for Culture then cut the ribbon.

### **Elisabeth Rynning on society's vulnerable groups**

In her speech, Elisabeth Rynning, Chair of the Institute's Board, highlighted how fortunate the people of Sweden are to live in a country where welfare, democracy and the rule of law are taken for granted by most people. At the same time, she pointed out that a more fragmented picture emerges when the system is scrutinised, and that many groups do not benefit from the full protection of rights.

- “This may be the case for children or our elderly, persons with disabilities, migrants, people detained for various reasons, minority groups of various kinds. The exclusion that we see in parts of society is a democratic problem that must be taken seriously.”

Rynning went on to talk about how the Institute will contribute to providing an overview and overall picture of the fundamental rights and freedoms in Sweden, and how they are realised in practice in people's everyday lives.

- “We will sometimes be perceived as uncomfortable, but we will always be objective, serious and reliable with well-substantiated positions. The Institute is at the beginning of an exciting journey, and I hope you will all join us on it,” she concluded.

### **The Institute is welcomed to the Human Rights City of Lund**

The third speaker at the inauguration ceremony was Philip Sandberg (Liberals party), at the time Chair of the Lund City Council, who expressed his pride in welcoming the Institute and its guests to the city.

The Chair of the Municipal Council spoke about Lund as a hub and cluster for human rights with important historical links to rights issues. He explained how Lund became the first human rights city in the Nordic region and the regional cooperation



behind the Government's decision to locate the Institute for Human Rights in the city.

- “We were a few different actors who saw that if there is any place that is very suitable for a human rights institute, it is Lund. We joined arms; the Raoul Wallenberg Institute, the Municipality of Lund, Lund University, Malmö University, the City of Malmö, Region Skåne and civil society and got a huge response from the people of Lund,” he said.

### **Katarina Barruk on the fight for her language**

Artist Katarina Barruk's second appearance in the programme was a testimony of how it feels to be a minority in the Swedish majority, but also to be a minority in the Sami minority.

- “At school, I had to fight a lot to be taught in Sami, and all my friends spoke Swedish. So, I used to only speak Sami at home with my family. And then it's like carrying a whole language and a whole identity and culture that those around me don't know much about. And then it can feel like, do they really know me? Do they even know who I am?”

Barruk took the audience to Västerbotten on a journey through her life, childhood and upbringing. She highlighted some crucial milestones in the fight for the right to her language, which resulted in Ume Sami being recognised as the fourth Sami language today.

- “6 April 2016 was a historic day here in Sweden, because it gave us a new written language that we can use. That's when the Ume Sami orthography was finally approved. But it had been a long battle to get there. Many times in my life, ever since I was a child, I have been told, ‘No, your language is not approved’. As if others should approve my language. Do you think I'm making it up or something? That I'm just pretending?” she said.

### **Civil society collaboration for an institute**

Why an institute to complain about Sweden? Why do human rights matter? And are there really problems in Sweden? Mia Ahlgren described these as three common questions she has encountered in her work at the Swedish Disability Rights Federation. She explained how a number of civil society organisations had joined forces to press the issue of a Swedish human rights institute and what reactions it had provoked in the process.

- “Finally, the word that we have been sharing and waiting for so long. (...) Another word, which Katarina Barruk also mentioned, is to fight. And it has been a battle. And there has been resistance. And that resistance has sometimes come from places where we didn't always expect it,” she said.



Ahlgren went on to exemplify problems that exist for people with disabilities in Sweden, such as being able to claim individual rights and justice by complaining and appealing to the courts when society has failed to provide support. She also pointed to the election year and the opportunities for people with disabilities to participate in the democratic process on equal terms. Finally, Ahlgren also mentioned the Convention on the Rights of Persons with Disabilities (CRPD), which Sweden ratified in 2009.

- “When we in civil society recently worked together to review this convention, we came up with a list of 134 recommendations. The first and so far only recommendation that has been implemented is the establishment of the Institute for Human Rights,” she said.

### **Human rights as the cornerstone of peace**

The UN's Universal Declaration of Human Rights was the basis for a conversation between Acting Director Anders Kompass and Göran Rosenberg, author and journalist. But above all, it was a quote by Eleanor Roosevelt, from the 10th anniversary of the Declaration in 1958, that was at the centre of the discussion. In the quote, Roosevelt, former Chair of the UN Commission on Human Rights, highlighted how it is first and foremost in everyday life that human rights take on life and meaning.

- “I have made reference to Eleanor Roosevelt many times in all the years I have worked for the UN and human rights, in many places around the world and in situations where it has been very difficult to feel hope for the future,” began Anders Kompass.

Göran Rosenberg went on to talk about the background to the Declaration of Human Rights; about the Second World War, the Holocaust and the experience of the total denial of human worth.

- “If human rights cannot be upheld at the smallest level, then it doesn't matter what the great declarations say. (...) I have written quite a few times that a right is never worth more than the obligation to respect it. If that obligation does not exist, it does not matter what is written in the declarations, it must be put into practice. And in the case of most people, it has to be put into practice very close to their lives,” Rosenberg said.

The conversation also touched on Russia's war of aggression against Ukraine and how respect for human rights is the cornerstone of peace in the world. As the child of Holocaust survivors, Göran Rosenberg concluded the talk by reflecting on how that experience has influenced his approach to human rights.

- “It has shaped me in the sense that I have always been quite sensitive to how fragile this is. The fragility of our civilisation, it's there. We have to constantly

maintain it; it has to be buttressed. And I think that what has happened now is a reminder that it has to go out to the individual people, as Eleanor Roosevelt says, out!”

### **Spoken word with Sara Nazari**

Sara Nazari rounded out the afternoon with her spoken word poetry and the poem “If They Ask”. Negin Tagavi welcomed her to the stage with the following description:

- “With her piercing nuance, she has managed to find words to describe the space and emotion behind the heavy paragraphs we often lean on in our work. She is in the final stages of becoming a lawyer, she is a poet, she wants to make the world a better place, she sees people, she stands for hope, love, fire and fervour.”

Sara Nazari started her poetic career in the Stockholm-based movement Revolution Poetry and gained attention when she performed as an interlude act in the Melodifestivalen final in spring 2022. With a Kurdish background, she also has personal experience of the importance of human rights in practice. Her poetry touched on war, flight, the death of her father, the loving sacrifices of her mother, poverty, lack of choice and the different circumstances of children in life. She concluded the inauguration of the Swedish Institute for Human Rights with the following words:

- “I have to say, I am tired of fighting, that I want to float, but it is only because I am a consequence of the survivors, so I have to live and take time for granted. Because that was the goal anyway, to make things a little better for those who come after. But has it become so much better? There's a beauty in the embers, but the embers can burn you. Are we fighting for the world, or have we learned to fight for ourselves?”

## **1.3 An institute under construction**

### **Building an independent authority**

The Act (2021:642) on the Institute for Human Rights is the foundation and framework for the Institute's work. But a law and public grant are not enough to bring a government authority to life. It requires, for example, premises, IT systems, a diary and financial management systems, as well as governance documents and procedures for a number of areas. Above all, it needs people with the skills to carry out the mission in its entirety.



In order to meet the requirement for independence, the inquiry behind the Institute chose to take only those decisions that were absolutely necessary for the Institute to start its operations on 1 January 2022. This meant that a large part of the first year of operations was devoted to the preparation of basic governance documents as well as the recruitment of administrative staff, experts and communication officers. By the end of 2022, the total number of staff was 18, with experience mainly in public administration, civil society, academia and international organisations.<sup>25</sup>

### Dialogue and cooperation

There has been broad agreement within the Institute's management to give building of the organisation the time it needs. For the Institute to be transparent, effective and credible, it first needs a stable organisational foundation. It also needs well-developed working models for, among other things, dialogue and cooperation, external monitoring, prioritisation and analysis of rights issues.

At the same time, a national human rights institution can never close the door to the outside world. While the Institute is being built, one of its main tasks has been to engage in dialogue with civil society organisations and other actors in the various fields of rights. These dialogues have been important in communicating the Institute's mandate and mission, as well as the progress of its establishment. Above all, the dialogues have provided an opportunity to obtain the views of different actors on pressing human rights issues and to discuss the way forward for further cooperation.

The first organised dialogue took place in March 2022, when the Institute met with organisations representing persons with disabilities in Stockholm. The meeting also discussed how the Institute will handle the mandate to act as a national monitoring mechanism under Article 32(2) of the Convention on the Rights of Persons with Disabilities (CRPD).

In April, the Institute met with the National Human Rights Network, a collection of civil society organisations coordinated by the United Nations Association. In May, the Institute participated in a seminar organised by the Swedish Foundation for Human Rights on economic, social and cultural rights and Sweden's reporting to the UN. Shortly thereafter, the Institute met with a number of children's rights organisations to discuss further dialogue and the review of Sweden in the UN Committee on the Rights of the Child (see chapter 2).

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<sup>25</sup> See also Swedish Institute for Human Rights, *Annual Report 2022*, p. 8-15.

In June, shortly after the inauguration in Lund, the Institute made a trip to Jokkmokk and Kiruna to initiate dialogue with Sami organisations and representatives. In the autumn of 2022, the Institute continued to establish contacts with, among others, anti-discrimination offices, organisations representing Roma, Tornedalians, Swedish Finns and LGBTQI people.

In addition to dialogues with civil society organisations, during its first year of operation the Institute has had contacts with research groups at Luleå University of Technology, Umeå University, Uppsala University, Stockholm University and Lund University, among others. The Institute has also had contacts with a number of government authorities with related tasks, including the Ombudsman for Children in Sweden, the Equality Ombudsman (DO), the Living History Forum (FLH), the Swedish Agency for Participation (MFD), the Swedish Agency for Youth and Civil Society (MUCF) and the Swedish Gender Equality Agency. The Institute has also participated in four regional conferences on human rights around the country, working together with the county administrative boards, Uppsala University and the Swedish Association of Local Authorities and Regions (SKR). The Institute has met with a number of municipalities, regions, government authorities and civil society organisations within the framework of these conferences.

In the spring of 2022, the Institute participated in two meetings within the framework of the National Human Rights Network involving people working on human rights issues at the Raoul Wallenberg Institute (RWI), county administrative boards, universities and colleges, civil society, government authorities, municipalities, regions and the Swedish Association of Local Authorities and Regions (SKR). The network has been convened by RWI and the County Administrative Board of Dalarna. In 2023, the Swedish Institute for Human Rights took over the responsibility for convening the network.

The Swedish Institute for Human Rights has also been in close contact with other national human rights institutions, not least the Norwegian and Danish institutes, for advice and support on organisational issues, international cooperation and prioritisation of rights areas. In October 2022, the Institute was granted membership of the European Network of National Human Rights Institutions (ENNHRI) and was thus also able to participate in the network's annual meeting in Brussels in November.

A concrete example of the value of dialogue and interaction with other actors was the report submitted by the Swedish Institute for Human Rights to the UN Committee on the Rights of the Child in August 2022. The report, which was produced after a few months of intensive work in late spring and summer, was the

Institute's first submission to a UN human rights treaty body. The report was based on close cooperation with the Ombudsman for Children in Sweden and input from a number of other authorities and organisations. In September, a delegation from the Institute participated in the Committee's preparatory meeting in Geneva, where it was able to present the Institute's observations on the development of children's rights in Sweden (for a summary, see Chapter 2).

### **Contact with individuals and stock-taking analysis**

The Swedish Institute for Human Rights does not have a mandate to examine individual complaints, but the information that the Institute receives through conversations and communication with individual rights holders is an important contribution to the work of monitoring the human rights situation in Sweden. During the year, the Institute has received letters, emails and calls from individuals. It is important for individuals to be able to assert their rights, and it is here that the Swedish Institute for Human Rights, like other Swedish authorities, has a duty to provide individuals with the help they need to safeguard their interests.

In the autumn of 2022, a stock-taking analysis of public perception and experience of human rights in Sweden was also initiated. A survey was conducted using a web panel to investigate the public's knowledge of human rights and how they perceive access to information about these rights. Questions were also asked about the areas of human rights that they consider particularly important, and how they perceive human rights to be guaranteed and enforceable in Sweden. The survey will be supplemented with other research methods, such as interviews and larger dialogues (for preliminary results and the conclusions presented, see Chapter 2). In 2023, a special report will be drafted presenting the survey in its entirety.

### **1.3.1 Human rights in big and small ways**

**An exciting dream job – but at the same time obscure, difficult and a huge challenge. That is how the Institute's first employee, Anna Andersson, describes the work of building a new independent authority from scratch. With responsibilities including recruitment and working environment, she also sees the important link between human rights and human resources for the Institute to succeed in its mission.**

On 6 September 2021, Anna Andersson, the Institute's first employee, was hired as HR Specialist. Her physical workplace then became the Skåne Court of Appeal in Malmö, where the Government Offices share premises with the activities of government inquiries with a regional connection. With other inquiry colleagues in

Stockholm, there were, at first, many trips to the capital and digital meetings on Skype.

- “It’s been incredibly exciting to be involved in building a new organisation with this human rights mandate. It’s not something I could have even dreamed of! Ever since I was a little girl, I’ve had a strong commitment to the equal value of people. So when I saw this job among the job vacancies, I thought ‘What a job!’”

### **Psychological security for cooperation**

However, building a new organisation from the ground up has proved to be more work than Anna Andersson could have ever imagined. This is because everything that is already in place in an established organisation is missing, and big and small things have to be resolved at the same time. Because of the independence of the authority, the Government’s inquiry could not precede the Institute’s Board and Director, whose recruitment and responsibilities are regulated by law.

- “Organisations are normally built in a different manner – with executives hired first and then staff. We’ve done the opposite. We have also become jacks-of-all-trades and rolled up our sleeves to tackle whatever needed doing. Finding and defining roles in the organisation is a big challenge for everyone.”

In the process, Anna Andersson has also come to realise how much human rights and human resources are interconnected, and that the main tasks in a start-up phase relate to creating the right conditions for psychological security in an unclear situation.

- “It’s not just about recruiting the right skill sets. It’s also about getting people to work well together. If the Swedish Institute for Human Rights cannot create a workplace culture where everyone feels included, how can we be credible to anyone else?”

## **1.3.2 Coffee crisis and creative solutions**

**One of the 18 employees Anna Andersson helped recruit to the Institute is Ola Hallström, an IT and office services technician, who became the first person to take up his post on 1 December 2021. He then also became the first member of operational staff on site at the Institute’s premises in Lund.**

At the time, parts of the premises were closed for renovation and the only things in place were carpets and freshly painted walls. Ola Hallström sat on the floor to work and was alone in the office most of the time.

- “There was nothing in the space. It felt empty and unreal. It was pretty difficult and abstract, and I didn't really know what was expected of me. But I had to start piecing everything together and create my own idea of what needed to be done,” he says.

As deliveries arrived, Hallström began assembling furniture, setting up a telephone switchboard, ordering telephone subscriptions and serial numbers and creating a Wi-Fi network. He brought in a shelf from home so that the janitorial staff would have somewhere to store their equipment and found other creative solutions to meet the needs that arose as the number of colleagues in the office grew. Like the great need for coffee!

- “It was getting too expensive to buy coffee out all the time, so we tried to order a coffee machine. But that wasn't possible because we didn't have a registration number and were so new that a credit check couldn't be done.”

Ola Hallström then visited a local company in Lund which helped him order and invoice a coffee machine for the Institute. This was made possible by postponing the invoicing date until the registration number was registered.

- “They were kind and trusted me, arranging for us to become an invoice customer without being able to perform a credit check. I brought coffee filters and coffee from home, as we couldn't buy that either. But we were able to resolve the emergency coffee situation!”

In the same way, a simple printer was purchased, an item the registrar needed to perform their work tasks. It was placed on a cardboard box which served as a temporary table.

- “Everything has gone smoothly and rolled along well. The advantage of starting so slowly and gradually is that we have had time to talk and reason through everything together. It's also been nice to have a say in deciding our own procedures, says Ola Hallström.

### **1.3.2 Management and governance with a settler spirit**

**As three of eight Board members, Elisabeth Rynning, Niklas Martti and Annika Jyrwall Åkerberg have had an enjoyable, challenging and busy year. Like settlers from olden days, they have had to take on all challenges of their assignment. Twenty meetings later, they are proud of what they have managed to achieve in 2022. One success factor has been the good teamwork, where different perspectives and experiences have been central.**

- “I always look forward to each board meeting because I know there will be interesting discussions, laughter and important decisions for the Institute. The cooperation has gone brilliantly, and we complement each other very well,” says Annika Jyrwall Åkerberg.

Her “day job” is Senior Legal Advisor for Civil Rights Defenders, and she has extensive experience of working as a human rights lawyer in Sweden. Annika Jyrwall Åkerberg, who herself has a visual impairment and always has her guide dog with her, has also worked for the disability rights movement and specialises in discrimination against people with disabilities. As a member of several human rights networks, she has also previously been involved in advocating for Sweden to have its own human rights institution. It was therefore a great pleasure to be nominated and selected as a Board member of the Institute.

#### **Do you feel that your experience from civil society has been useful in the work of the Board?**

- “Absolutely! The information I get from meetings with individuals and organisations, coupled with my own knowledge of human rights, is a very important foundation for the decisions I advocate. Meeting with civil society also gives me a great opportunity to test an idea and get feedback before proposing it to the Board.”

#### **Big, broad and complex**

Nervousness, excitement and a mixture of fear and delight. These were Niklas Martti's feelings when he was appointed as a Board member of the Institute by the then State Secretary at the Ministry of Employment. They work as a team leader for international programmes at the Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (RFSL) and is a board member of the National Association of Swedish Tornedalians.

- “With my background in the working class, as a national minority from a small village north of the Arctic Circle, and also as an LGBTIQ person, I could never have imagined that a person like me would have this opportunity,” says Niklas Martti.

A major challenge that Martti has experienced in his new board position is that human rights is so vast and broad, covering everything from minorities and Indigenous peoples to children's rights, asylum rights, disability rights, LGBTIQ, the right to health, the right to freedom and more.

- “I have often felt – where do we start? What should be prioritised? Each area also has its complex issues and often intersects, as when rights violate other rights areas. For example, there may be issues related to freedom of expression and freedom of religion. Here, however, the Institute's specific mission for people with disabilities has been a good guide to get started.”

### **1.3.3 The chair who is used to being uncomfortable (side text)**

**With a background as Chief Parliamentary Ombudsman, Elisabeth Rynning was deemed to be a suitable Chair for the Institute's Board. A trust she feels honoured to have. She sees focusing on the long-term credibility, independence and relevance of the Institute as her most important task.**

At the end of October 2021, all members of the Institute's Board were appointed and started working immediately, even before they formally took up their positions on 1 January 2022. Meetings had to be held digitally initially due to the pandemic. It was not until 24 February, at the sixth meeting of the Board, that all members were able to meet physically. For many members, it was also their first meeting with staff at the Institute's premises in Lund.

#### **What were the first tasks the Board had to tackle?**

- “One important task was to quickly recruit an Acting Director of the Institute, who would be on site from the start. The appointment of Anders Kompass was one of the Board's first decisions. At the same meeting, we also decided on the rules of procedure and appointed the Chair and Vice Chair of the Board. The first period was very much about planning activities and getting key governance documents in place.”

#### **What was your approach when planning your work going forward?**

- “We were aware that the establishment phase of the Institute would take time, while we all wanted to work towards reaching its full capacity as quickly as possible. That's why we agreed from the outset on the guiding principles of independence, collaboration, transparency and credibility, and that these values should not be sacrificed in the establishment process.”

#### **How has your experience from previous jobs and assignments been useful?**

- “Naturally, my experiences from the Parliamentary Ombudsmen (JO), in terms of both government authority management and all the statutory requirements

imposed on an authority, have been very helpful. From JO, I also have the experience of working in a government authority that is supposed to be independent of the Government and able to make uncomfortable criticisms. Throughout my professional life I have been interested in matters concerning the rights of individuals in relation to society, which has of course also been useful in this assignment.”

### What will be most important for the Board in 2023?

- “The establishment of the Institute's Advisory Council for Human Rights is of course the single most important issue, as a foundation for cooperation with civil society representatives. Another is the monitoring of the Institute's ability to live up to the Paris Principles. We also want to deepen cooperation with human rights institutions in other countries and benefit from their experience. In our internal work, it will also be important to develop and clarify different roles, in the Board and the organisation, as well as to identify the Institute's mission to promote, protect and monitor the UN Convention on the Rights of Persons with Disabilities.”

## 1.4 The route to international recognition

The Swedish Institute for Human Rights was established with the aim of creating an independent national institution to promote the safeguarding of human rights in Sweden. A key aspect of that aim is to meet the requirements of independence and effectiveness set out in the Paris Principles.

The Paris Principles are also the foundation of an international cooperation body for national human rights institutions: the Global Alliance of National Human Rights Institutions (GANHRI). It is GANHRI that determines whether a national institution meets the principles, awarding it membership and what is referred to as A status. The decision is based on an accreditation process, whereby GANHRI's own accreditation committee conducts a thorough review of the constituent act and activities of the institution concerned.

In order to apply for membership and A status, there are thus a number of criteria set by GANHRI that the Swedish Human Rights Institute must meet. One such requirement is that the Institute's mission and independence must be regulated by law or constitution. Another requirement is that the Institute can demonstrate that its activities contribute to greater public awareness and respect for human rights, while addressing widespread violations, e.g., through thematic studies and official reports.

Furthermore, the Institute should be able to demonstrate that it has played an active role in both the preparatory phase and the follow-up to any assessment of Swedish conditions by the international monitoring mechanisms.

In its assessments of other national human rights institutions, GANHRI has also indicated that it should be made clear in law that the annual report should be discussed in parliament. It has also called for the nomination and appointment process of executive decision-makers to be broad and transparent, and for this too to be regulated by law. Swedish legislation has clear requirements on who should be allowed to nominate members to the board but says almost nothing about how the nomination process should work.

The Institute will undertake a comprehensive analysis of the extent to which it complies with the Paris Principles. However, as described above, we can already see that there are issues that we would like to bring to the attention of the Government, for example:

- it should be stated in law that the annual report should be considered by the Riksdag
- both the nomination and appointment process for executive decision-makers must be regulated by law.

## **A status as a goal**

On 24 October 2022, the Institute's Acting Director took a decision on behalf of the Board that the further organisational development of the Institute should be driven by the Paris Principles, with the aim of building a strong and independent Institute with the ambition to be able to apply for and obtain A status within two years. The decision established a cross-sectoral working group, composed of representatives from different activities in the Institute's administrative office.

The working group has two mandates. Firstly, it will ensure that a thorough analysis of the Institute's compliance with the Paris Principles is conducted. Among other things, it will look at the legal mandate, the appointment of the Institute's management, the powers of investigators, the focus of studies, the interaction with the UN system, the influence of civil society, the composition of staff, the reception of the annual report, the predictability of funding and the accessibility of the Institute.

The analysis will form the basis of a workshop with experts and external stakeholders, with a view to identifying actions for an A-status strategy. The actions

will be planned with the ambition that accreditation can take place at the time of the next review of Sweden by the UN Universal Periodic Review (UPR) mechanism. This review process will begin in 2024 and culminate in a public session at the UN in 2025.

The Board's decision that the Institute will actively work to meet the Paris Principles has implications for both professional ethics and working practices. The Institute strives to ensure that the Paris Principles' emphasis on independence, effectiveness, diversity, accessibility and participation is applied in all aspects of its operations. This includes safeguarding the integrity of the Institute, while consulting outside experts and civil society on relevant aspects of its work.

## 2. Reports, studies and position statements

This chapter provides an overview of reports, studies and position statements produced by the Swedish Institute for Human Rights in 2022. The chapter begins with a summary of the Institute's first report to one of the UN human rights treaty bodies, the UN Committee on the Rights of the Child. This is followed by a presentation of preliminary findings and conclusions from a survey of public perception of human rights conducted by the Institute in 2022. The chapter also includes a summary of the Institute's referral statements on recent government inquiries and legislative proposals.

### 2.1 Report to the UN Committee on the Rights of the Child

An important task of the Institute for Human Rights is to actively monitor Sweden's compliance with international human rights commitments. This includes submitting alternative reports and supplementary information, as well as engaging in dialogue with international monitoring mechanisms. Another important part of the monitoring is to follow up on the implementation of the recommendations Sweden receives from the various monitoring mechanisms. The Institute's priorities will be influenced, among other things, by the areas of rights that are relevant for international review.

The Swedish Government submitted its combined sixth and seventh report to the UN Committee on the Rights of the Child in the autumn of 2021, preceded by the Ombudsman for Children in Sweden and civil society organisations submitting so-called alternative reports to the Committee, which then produced a *list of issues*. This

list then formed the basis for the Government's report. Once the Government's report had been submitted to the Committee, there was an opportunity for independent national institutions and civil society organisations, among others, to submit supplementary information.

In August 2022, the Institute for Swedish Human Rights submitted its first supplementary report to the Committee on the Rights of the Child.<sup>26</sup> In the report, the Institute highlighted the following topics as suggestions for the review of the Government's work on the human rights of the child:

- The impact of the COVID-19 pandemic on children
- Sweden's accession to the third Optional Protocol to the Convention on the Rights of the Child on an individual complaints mechanism
- Incorporation of the CRC into Swedish law
- The Government's follow-up of the national strategy to strengthen the rights of the child
- The independence of the Ombudsman for Children in Sweden
- The best interests of the child in the legislative process.

### **The consequences of the COVID-19 pandemic**

In the context of the COVID-19 pandemic, it is of utmost importance to analyse the consequences that the various decisions and actions taken during the pandemic have had for the human rights of the child. To this end, the Institute highlighted in particular the importance of continued monitoring and of taking action following the monitoring that takes place. The Institute suggested that the following questions be raised by the UN Committee on the Rights of the Child in its dialogue with Sweden:

- What efforts has the Government made to ensure that the consequences for children and young people of decisions taken by the Government are analysed both in times of peace and in times of crisis, including an analysis of the impact of the decisions on the human rights of the child?
- What efforts has the Government made to ensure that child and youth impact assessments are carried out for decisions and actions affecting children and young people at all levels of society, both in times of peace and in times of crisis, including an analysis of the impact of decisions on the human rights of the child?

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<sup>26</sup> The full report is available on the Institute's website.

- Does the Government intend to draw up an action plan of measures to reduce the inequalities accentuated by the COVID-19 pandemic based on the monitoring carried out?
- In what way will the Government pay particular attention to the situation of children and young people with disabilities, children and young people belonging to Indigenous peoples or national minorities and children in vulnerable situations?

### Individual complaints mechanism for children

The second area highlighted by the Institute in its report concerned Sweden's accession to the third Optional Protocol to the UN CRC on an individual complaints mechanism for children. The Institute drew the attention of the Committee on the Rights of the Child to, among other things, the fact that the Institute has perceived that there is a greater reluctance to ratify the communications procedures (complaints mechanism) in the Optional Protocol compared to other communications procedures previously ratified by Sweden. The Institute also stated that, regardless of whether Sweden accedes to the third Optional Protocol, it is of utmost importance that the rights of the child are enforceable at the national, regional and local level. Furthermore, the Institute stated that a government inquiry has found that children and young people are not adequately informed about their rights.<sup>27</sup> The inquiry proposed that the government authorities that are central to the rights of the child be charged with making individual activities known, accessible and adapted to children. In this context, the Institute found that it would be important to monitor whether children and their representatives are aware of where children can turn in a vulnerable situation. The Institute suggested that the following questions be raised by the UN Committee on the Rights of the Child in its dialogue with Sweden:

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

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<sup>27</sup> SOU 2016:19, p. 331-332.

### **Incorporation of the CRC into Swedish law**

The third topic of the report relates to incorporation of the CRC. The Institute drew the attention of the Committee on the Rights of the Child to the fact that the Government, in connection with the incorporation, considered that there was no need to specifically regulate the status of the Convention in relation to other legislation. In practice, this means that the CRC applies as ordinary law and does not automatically take precedence in the event of a normative conflict with statutes of the same value. Furthermore, the Institute highlighted that, in its strategy for human rights work, the Government states that the effects of incorporating and further transforming the provisions of the CRC into domestic legislation should be followed up and evaluated. No such monitoring and evaluation have been carried out as yet. The Institute therefore proposed the following questions and recommendations to the UN Committee on the Rights of the Child in its report:

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

### **Follow-up of the strategy to strengthen the rights of the child**

The fourth topic which the Swedish Institute for Human Rights addressed concerned the Government's follow-up of the strategy to strengthen the rights of the child in Sweden. The current strategy was adopted by the Riksdag (Swedish Parliament) in 2010.<sup>28</sup> The strategy states that it should be reviewed and followed up at regular intervals to ensure that it is effective and useful in strengthening the rights of the child in Sweden.<sup>29</sup> No such follow-up has taken place. The Institute argued that it would be important for such follow-up to take place. The Institute suggested that the following questions be raised by the UN Committee on the Rights of the Child in its dialogue with Sweden:

- When will the strategy to strengthen the rights of the child be followed up?
- Will an action plan be developed, based on the strategy, to further strengthen the implementation of the CRC at all levels of society?

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<sup>28</sup> Prop. 2009/710:232.

<sup>29</sup> Prop. 2009/710:232, p. 11.

- Will the follow-up of the strategy to strengthen the rights of the child be coordinated with the follow-up of certain human rights-related initiatives and the follow-up of other strategies, such as the strategy for disability policy?

### **The independence of the Ombudsman for Children in Sweden**

The fifth topic of the report to the Committee on the Rights of the Child concerned the independence of the Ombudsman for Children in Sweden. The Swedish Institute for Human Rights stressed the importance of an independent mechanism for monitoring the rights of the child also having real independence and sufficient resources to operate effectively. In the annual appropriation directions to the Ombudsman for Children in Sweden from recent years, it is clear that the governance of the Ombudsman's activities has increased through special commissions from the Government. The Institute suggested that the following questions be raised by the UN Committee on the Rights of the Child in its dialogue with Sweden:

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

### **The best interests of the child in Swedish legislation and practice**

Finally, the Institute highlighted the issue of continued systematic transformation work and the conclusions of the CRC Inquiry (Barnkonventionsutredningen). The CRC Inquiry was tasked with mapping the extent to which Swedish legislation and practice correspond with the CRC. In its report in 2020, the CRC Inquiry concluded that Swedish legislation was broadly in line with the CRC, with the exception of some 30 shortcomings in compliance. However, Sweden's report to the Committee lacks a detailed account of the measures taken to remedy the shortcomings identified by the Inquiry.

The Institute also highlighted that, in its 2016 report, the Child Rights Inquiry (Barnrättighetsutredningen), which investigated the incorporation of the CRC, stressed that the CRC should be reflected more in preparatory work and proposed that a provision be included in the Committee Regulation (1998:1474) to the effect that if proposals in a report have an impact on the rights of the child, the consequences in that respect should be stated in the report. The Swedish Institute for Human Rights argued that a provision in the Committee Regulation along the lines proposed by the Child Rights Inquiry would contribute to a more systematic



transformation process. Furthermore, the Institute found that there is a need for support on how to conduct such impact assessments and intends to promote the development of such guidance. The Institute suggested that the following questions be raised by the UN Committee on the Rights of the Child in its dialogue with Sweden:

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

In addition, the Institute raised a question in the report concerning the Government's follow-up of the work on the rights of the child and a question to the Committee on the Rights of the Child on a clarification of a recommendation given to Sweden in 2015 to establish a high-level mechanism with a clear mandate and with the power to ensure equal access to all rights at the regional and local level.

In September 2022, the Institute participated in a pre-session of the Committee on the Rights of the Child in Geneva, which was also attended by representatives of the Ombudsman for Children in Sweden. The UN Committee on the Rights of the Child put questions to the Institute and the Ombudsman, and the Institute raised, among other things, the independence of the Ombudsman for Children in Sweden.

In January 2023, the UN Committee on the Rights of the Child conducted its dialogue with Sweden. On 6 February 2023, the Committee on the Rights of the Child made its recommendations to Sweden.<sup>30</sup> The Institute will follow up on these recommendations.

## 2.2 Survey on public perception of human rights

In the autumn of 2022, the Swedish Institute for Human Rights conducted a survey to gain a better understanding of how the public views human rights, what areas they

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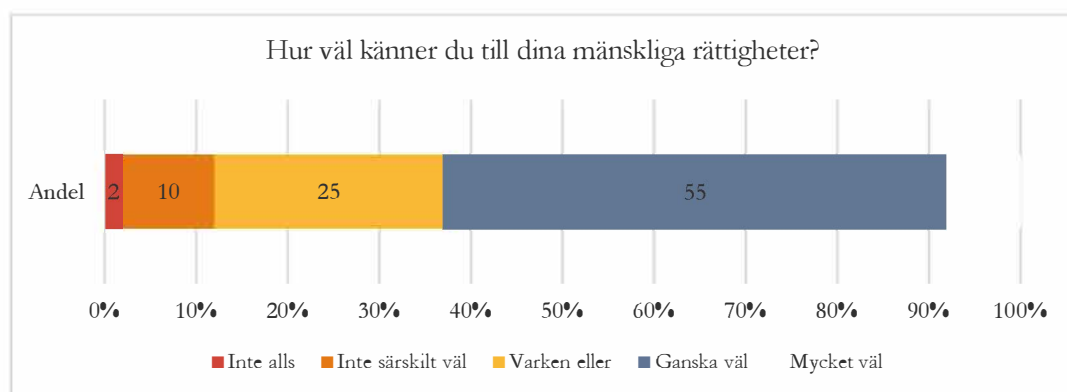
<sup>30</sup> UN Committee on the Rights of the Child, Concluding observations on the combined sixth and seventh periodic reports of Sweden, 6 February 2023, UN Doc. CRC/C/SWE/CO/6-7 (2023).

consider important, and how they perceive that human rights are met and can be enforced in Sweden today. The survey was carried out by the company Enkätfabriken using the Norstat web panel. 2,197 people responded to the survey, 1,081 women and 1,116 men.<sup>31</sup>

The Norstat web panel is representative of the population at large in terms of geography, age and legal gender. At the same time, this survey method has some limitations. For example, the panel only includes people who have chosen to be part of a web panel, have access to a computer and understand Swedish. Nor is Norstat's panel representative of all people included in the persons with disabilities population. Because of these limitations, further surveys will need to be targeted at groups not adequately covered by the first survey.

In 2023, the Swedish Institute for Human Rights will continue its work to create a clearer picture of how people with different circumstances and life situations perceive the human rights situation and the possibility of claiming rights in Sweden. For example, the Institute will compile existing survey results and possibly supplement them with qualitative interviews. The Institute will also ask survey questions to the Swedish Agency for Participation's survey panel, Rivkraft, where all participants have some form of disability. The results will be presented in a report during the year.

A selection of the results from the first survey is presented below.



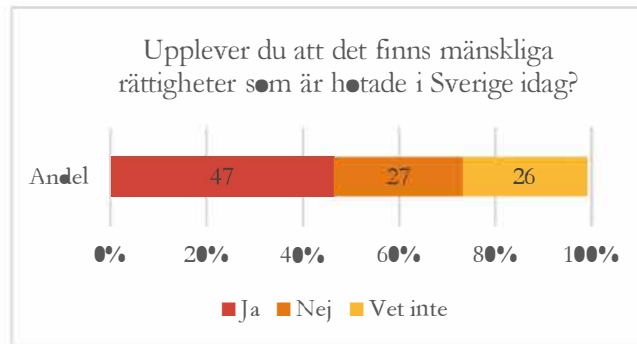
A majority of respondents, 63 percent, say they know their rights fairly or very well. The three human rights they are most aware of are the right to vote in elections,

<sup>31</sup> The survey results do not reveal any statistically significant differences between women and men. The results are therefore presented without gender breakdown.

freedom of expression, and freedom of religion. The right they say they know the least about is the right to seek asylum.<sup>32</sup>

### Almost half feel that some human rights are under threat

47 percent of the respondents feel that there are human rights that are under threat in Sweden today. 27 percent say they do not feel this is the case, while 26 percent say they do not know.

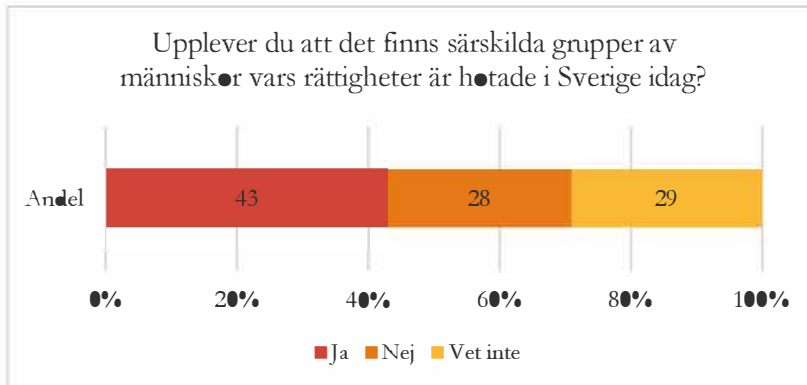


Of those who responded that there are human rights that are under threat in Sweden today, the majority state that the right to freedom from hatred, threats and violence is threatened (56 percent). This is followed by freedom from discrimination

(44 percent), the right to health and social care (44 percent), economic security (44 percent) and freedom of expression (43 percent). Voting in elections is the right that the fewest number of respondents (6 percent) see as under threat today.

43 percent of respondents believe that there are specific groups of people whose rights are threatened in Sweden today. These respondents were also given the opportunity to indicate which groups they had in mind in an open response alternative. More than a third of the respondents said that they felt that people born abroad were a group whose rights were threatened in Sweden.

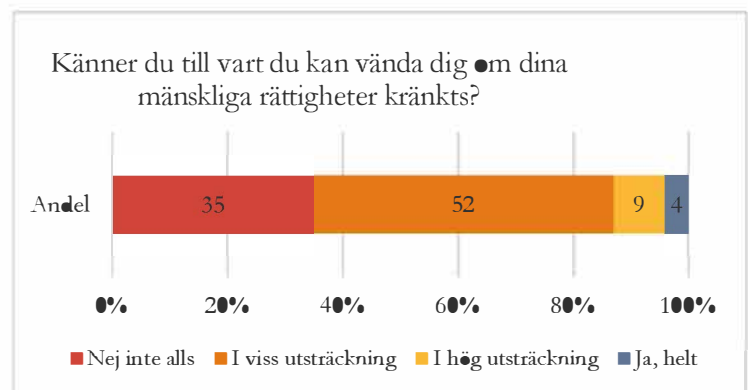
<sup>32</sup> Some questions in the survey included a condensed list of human rights to choose from. The rights included in the list were: seek asylum; culture; freedom of association; sustainable environment; meaningful employment; rest and leisure; freedom from torture or other cruel, inhuman or degrading treatment; freedom from hatred, threats and violence; housing; freedom of assembly; the highest attainable standard of health; right to own property; private and family life; economic security; freedom from discrimination; fair trial; participation in society; education; freedom of religion; health and social care; freedom of expression; vote in elections and other.



### Few know where to turn when rights are violated

The survey shows that relatively few people, four percent, feel completely sure about where to turn if their rights are violated. 35 percent say they do not know where to turn at all and 52 percent say they have only some knowledge about it. Respondents in the 46–55 age group and those with a university or college education are more likely than others to say they know where to turn if their rights are violated.

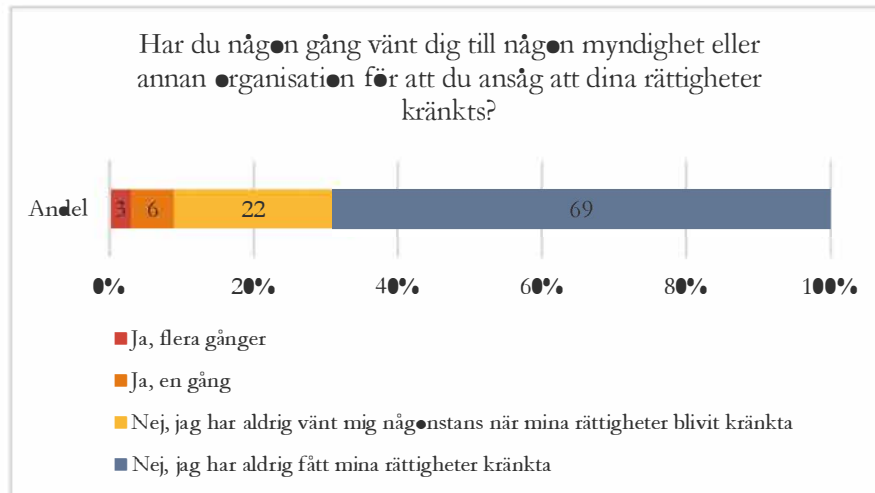
44 percent say that they are aware that they can lodge a complaint with the European Court of Human Rights, while nine percent are aware that they can lodge a complaint with any of the UN treaty bodies.



A question on which government authorities and organisations respondents are aware of showed that the Equality Ombudsman (DO) is known by 76 percent and the Parliamentary Ombudsmen (JO) and the Health and Social Care Inspectorate (IVO) by 73 percent. At the same time, 16 percent responded that they were aware of an anti-discrimination office.

## A majority say they have never had their rights violated

When asked if they have ever turned to a government authority or other organisation



because their rights have been violated, 69 percent say they have never had their rights violated. 22 percent of respondents say they have never

turned to anyone when they felt their rights had been violated, while 9 percent say they have contacted a government authority or other organisation when their rights were violated.

A closer look at the results shows that respondents aged 66 and over are more likely than others to say that they have never had their rights violated. Among respondents who indicated female as their gender identity, 68 percent said they had never had their rights violated. The corresponding figure for respondents who indicated male as their gender identity was 70 percent.<sup>33</sup> In contrast, among respondents who identified themselves as non-binary, relatively few, 25 percent, said that their rights had never been violated.

Respondents were also given the opportunity to answer the question of why they had not contacted a government authority or organisation if their rights had been violated. Two recurring answers are that they either do not feel there is any point in contacting an authority or organisation when their rights are violated or they lack knowledge of who to turn to.

34 percent say that they do not experience any obstacles to claiming their rights in Sweden, while 66 percent say that there are obstacles or they do not know. When asked what obstacles there are to claiming their rights in Sweden, the most common answers are that it costs time and money or that it is difficult to find information.

<sup>33</sup> The answer alternatives for the question about gender identity were: female, male, non-binary, other alternative, unsure and do not wish to answer.

As mentioned, the web panel survey methodology has several limitations. Nevertheless, the survey results can be considered as relatively reliable indications that there are challenges in terms of public awareness of how to claim their rights. The survey also shows that a large proportion of the public perceive that access to rights is unequal, and perceive that some rights are under threat.

Many respondents answered “Don't know” to several questions in the survey. This, coupled with the fact that relatively few people say they are fully aware of where they can turn for help with their human rights, could be interpreted as meaning that the vast majority are aware that they have human rights, but that few are actually aware of what these rights are and how they can be enforced.

### **Participants at Human Rights Days express concern about human rights**

In November 2022, the Swedish Institute for Human Rights participated in the Human Rights Days. The Human Rights Days have been running since 2000 and are the largest gathering in the Nordic region for practitioners, researchers, government authorities, politicians and volunteers who work with or want to learn more about human rights.

In 2022, the Human Rights Days were held in Örebro and the Institute participated with two seminars. One of the seminars focused on listening to and capturing participants' experiences of human rights in Sweden, similar to the aforementioned survey. The almost 120 participants answered in groups or individually to the question of what they perceived as human rights problems in Sweden today.

The responses received at the seminar focused on society's problems with racism, access to rights for persons with disabilities, climate and environmental threats, legal protection and the lack of opportunities to claim economic, social and cultural rights. Several participants also stressed the need to strengthen the knowledge of human rights among both rights-holders and duty-bearers (e.g., the judiciary, government authorities, municipalities and regions). Several participants specifically highlighted the need for better knowledge of and a clearer structure for the monitoring and enforceability of human rights in Sweden.

At the Human Rights Days, the Institute also participated with a well-attended stand where 286 people responded to a short survey on how they perceive the human rights situation in Sweden. A majority of respondents said that they felt that there are rights that are under threat in Sweden today and that the right not to be discriminated against is the right that is most under threat. This is followed by freedom from hatred, threats and violence, and the right to asylum. The right to a

sustainable environment, freedom of expression, freedom of religion and economic, social and cultural rights, such as the right to housing and health and social care, were also mentioned in several of the survey responses. A majority of respondents also feel that there are groups whose human rights are particularly threatened. Of these groups, people who have migrated to Sweden are most frequently mentioned, followed by LGBTIQI people and persons with disabilities.

As mentioned above, the Swedish Institute for Human Rights will continue its work to create a clearer picture of how people with different circumstances and life situations perceive the human rights situation and the possibility of claiming rights in Sweden. The results will be presented in a report during the year.

## 2.3 Referral statements

Responding to inquiries and legislative proposals is an important tool for a national human rights institution to promote the safeguarding of human rights. By submitting referral statements, the Institute can provide views on how legislative and other proposals comply with the Swedish Constitution (the Instrument of Government, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression), the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), the Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights), and other obligations in the field of human rights binding on Sweden under public international law.

In 2022, the Institute has had a dialogue with the Government Offices and expressed the view that it would be desirable for the Institute itself to be given the opportunity to decide which consultative referrals it chooses to respond to. This is to enable the Institute to meet the requirements of independence under the Paris Principles.

The following section presents summaries of the Institute's referral statements from the 2022 financial year. All referrals can be read in full on the Institute's website.

### **Freeze on the establishment of independent schools and independent leisure centres with a denominational focus (U2022/01678)**

The Swedish Institute for Human Rights rejected the proposal for a ban on the establishment of independent schools and leisure centres with a denominational orientation, as it would constitute a general and disproportionate restriction of the right to education and the right to freedom of religion as expressed in international human rights legislation. General restrictions on fundamental rights and freedoms

can only be justified where there is a clear link between the object of the restriction and a legitimate aim. In the present case, a clear link between the denominational orientation itself and the objectives pursued by the Government has not been established and the restriction cannot therefore be considered legitimate.

### **Enhanced protection against discrimination (SOU 2021:94)**

The Swedish Institute for Human Rights supported the report's proposal for enhanced protection against discrimination.

Like the Inquiry on certain issues in the Discrimination Act (A 2019:03), the Institute emphasised that the principle of non-discrimination is fundamental in a democratic society, but also that it is fundamental in ensuring Sweden's international commitments in the field of human rights.

Sweden's commitments require that the necessary steps, through legislation or other measures, be taken to ensure that individuals have rights that are not realised. The report's proposal for enhanced protection against discrimination promotes the principle of non-discrimination as expressed in the European Convention on Human Rights, the UN Conventions on Human Rights and the Charter of Fundamental Rights of the European Union, as well as what is laid down in the Instrument of Government, which states that public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual.

However, enhanced protection against discrimination implies some restrictions on freedom of expression and freedom to form opinions. The Institute considered that these restrictions are acceptable in order to ensure the fundamental principle of non-discrimination.

### **Future direction of the Living History Forum (Ku2021:A)**

The Swedish Institute for Human Rights welcomed the proposals for a reformulated and partly expanded mission for the Living History Forum (FLH). It was the Institute's view that FLH continues to have an important role to play in promoting work for democracy and human rights based on knowledge of the Holocaust. At the same time, the Institute called for a more in-depth analysis of the consequences of a changed and more contemporary mission for FLH in relation to other authorities. The Institute also called for more in-depth discussion of key concepts in FLH's terms of reference.

## **Report of the inquiry into ILO's Convention concerning the elimination of violence and harassment in the world of work (SOU 2021:86)**

The International Labour Organization (ILO) is the United Nations' specialised agency for matters concerning employment and labour. ILO's Convention concerning the elimination of violence and harassment in the world of work (Violence and Harassment Convention) and its accompanying Recommendation aim to protect people in the world of work from violence and harassment, including gender-based violence and harassment. States ratifying the Convention shall respect, promote and realise the right of everyone to a working life free from violence and harassment. The Convention is also accompanied by a Recommendation, which is intended to supplement the Convention but is not binding. The Convention and Recommendation contain provisions on health and safety at work, labour law and discrimination, and have links with e.g., social security law, criminal law and the joint work of the labour market partners.

The Swedish Institute for Human Rights supported the proposals of the inquiry and welcomed the ratification of the ILO Convention (No. 190) concerning the elimination of violence and harassment in the world of work. The Institute also welcomed Sweden continuing to be an active partner in the development of human rights at home and internationally. The Institute expressed the need for the Government to consider a supplementary inquiry in a specific order into the expansion of effective protection against violence and harassment for migrant workers, their families and persons working in the country in the informal economy or without the required permits. Furthermore, the Institute stressed the importance of allocating sufficient resources to regulatory authorities and the judiciary as a whole for effective protection against violence and harassment and emphasised the importance of providing support to both victims and perpetrators of violence. The Institute also made specific comments on the terms of reference for the inquiry, which lacked clear instructions regarding the obligations arising from Sweden's accession to the European Union, the Convention on the Rights of the Child and other obligations arising from Sweden's international human rights commitments. The inquiry thus lacked, for example, a child-rights impact assessment. Finally, the Institute stressed that even if it turned out that Sweden did not yet fully comply with the requirements of the Convention, this should not prevent ratification. The ambition of participating in international cooperation on human rights should be to continually advance positions in Sweden as well.

### **Expanded possibilities to use secret surveillance (SOU 2022:19)**

The Institute commented on the inquiry's proposal to expand the possibilities of using so-called secret surveillance in the context of criminal investigations. The Institute considered that the report did not provide sufficient evidence to assess whether the proposed restrictions on personal privacy and the right to private and family life are necessary and proportionate in accordance with the requirements of, inter alia, the Instrument of Government and the European Convention on Human Rights (ECHR). For example, there was a lack of detailed information on the impact of increased possibilities for the use of secret surveillance on the ability to combat crime so far and on the consequences for the protection of private and family life and personal integrity. Nor were there detailed comparisons with legislative development and use of surveillance in other countries. The Institute therefore refrains from taking a position on the proposals.

The Institute also noted that the pace of legislation in this area has been high and that there is a risk that the high pace of legislation in this area may affect the predictability of the application of the law. The Institute therefore stressed the importance of the necessary competence of courts, prosecutors and public legal representative and of the Swedish Commission on Security and Integrity Protection (SIN) having the necessary resources for effective enforcement.

The Institute also called for a more detailed explanation of how the proposals relate to the Convention on the Rights of the Child.

### **Review of the Office of the Parliamentary Ombudsmen (2021/22:URF2)**

The Institute responded to the report of a parliamentary committee commissioned to review the Office of the Parliamentary Ombudsmen. In its response, the Institute emphasised the important role of the Parliamentary Ombudsmen (JO) in ensuring that public activities do not infringe on citizens' fundamental rights and freedoms.

In particular, the Institute commented on those parts of the review that relate to the constitutional status and mandate of JO. The Institute supported several of the proposals that would strengthen the role of JO, including the requirement for a qualified majority in the Riksdag (Swedish Parliament) to dismiss a parliamentary ombudsman. At the same time, the Institute questioned the inquiry's choice not to propose further changes that would be more in line with international frameworks and recommendations in this area, such as the Venice Principles on Ombudsman Institutions. The Institute drew attention, inter alia, to the fact that these principles provide for a seven-year term of office and limit the possibility of re-election, and

that by law or by the Constitution JO must be guaranteed sufficient resources to carry out its duties.

The Institute also stated that it was important to further investigate the issue of JO's supervision of private actors. The Institute also stated that there is a need to review the mandate of the Parliamentary Ombudsmen as a national visiting body to sites where people may be detained in accordance with the Optional Protocol to the UN Convention against Torture, OPCAT. This concerns, for example, the functional independence of JO's OPCAT activities and the need to expand the scope of supervision so that visits can be made to all sites where persons may be held in detention.

### **Our democracy – worth safeguarding every day (SOU 2022:28)**

The 100 Years of Democracy Committee was tasked with planning, coordinating and implementing actions and activities for a strong democracy between 2018 and 2021 and carried out several communication and awareness-raising activities. The Committee also presented a number of proposals. The Institute welcomed the Committee's mandate and partly supported the inquiry's proposal to include a requirement to report on the impact on democracy in the Committee Regulation (1998:1474). However, the Institute refrained from giving an opinion on the remaining proposals as it did not have sufficient evidence to assess the quality and interrelationship of the proposals.

### **Better impact assessments (Ds 2022:22)**

The current regulations governing impact assessments are mainly the Regulatory Impact Assessment Regulation (2007:1244) and the Committee Regulation (1998:1474). The purpose of impact assessments is, inter alia, to ensure as far as possible that a measure under consideration is really needed, that it solves the problem at hand and to provide a comprehensive basis for assessing the consequences, such as social, economic and environmental, that the measure may entail. The current Regulatory Impact Assessment Regulation applies to administrative authorities under the Government and contains provisions on the obligation of government authorities to produce impact assessments.

The memorandum proposed a new regulation on impact assessment (Impact Assessment Regulation) which consolidates provisions on impact assessments. Like the current rules, the Impact Assessment Regulation is proposed to require that an impact assessment be presented when government administrative authorities adopt

regulations or general advice. The Institute welcomed the proposal in the memorandum to introduce a new Impact Assessment Regulation but found that the proposed Impact Assessment Regulation should also apply to impact assessments in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on the Rights of the Child, and Sweden's other binding international obligations in the field of human rights.

### 3. Human rights in Sweden 2022

According to the Act (2021:264) on the Institute for Human Rights, the annual report to the Government must include a summary of the Institute's observations of developments related to human rights during the previous year. The preparatory work for the Institute states that the annual report can serve as a basis for public debate and the work of the Government and the Riksdag. The Institute shall otherwise be free to organise the report as it sees fit.<sup>34</sup>

Such a compilation of the Institute's observations of developments of the area cannot provide a complete picture of the human rights situation in Sweden but can serve as a basis for public debate.

In the autumn of 2022, the Institute began a long-term monitoring effort to identify important global themes that affect compliance with human rights internationally and in Sweden.

Through the Institute's monitoring of developments related to human rights, as well as through dialogues with civil society and other actors, four overlapping themes were identified that affect human rights in different ways and which have been stated by the UN Secretary-General and others as some of the major societal challenges of our time:<sup>35</sup>

- climate change and the need for a just transition,
- threats to democracy and the rule of law,
- increasing social inequality, discrimination and racism, and
- rapid technological development.<sup>36</sup>

This chapter presents these overarching themes. They are illustrated by several examples that we have noted through our monitoring during the year, and where there is evidence from e.g. international treaty bodies, government authorities, researchers and civil society organisations to draw on. The chapter concludes with a section that describes some important legislative changes and court cases that the Institute noted in 2022 and which we

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<sup>34</sup> Ds 2019:4, p. 68–69; Prop. 2020/21:143, p. 32-33.

<sup>35</sup> See, for example, the UN Secretary-General's address to the General Assembly, 20 September 2022.

<sup>36</sup> This is not an exhaustive list of societal developments that affect compliance with human rights in Sweden and internationally. Nor should the order of the list be seen as an indication that the Institute has set any order of priority between these areas.

believe may have significance for the development of human rights in Sweden in both the short and long term.

The Institute hopes that the Annual Report will help to highlight the breadth of issues in the field of human rights and give rise to further reflection and discussion. The Institute's monitoring to identify important global themes that affect compliance with human rights will be further developed in 2023 in collaboration with the Institute's future Advisory Council and through continued dialogue with civil society and other actors.

### 3.1 Climate change and human rights

In a historic decision in July 2022, the UN General Assembly declared that a clean, healthy and sustainable environment is a human right. 161 countries, including Sweden, voted in favour of the resolution, while eight countries abstained. The resolution describes the right to a clean, healthy and sustainable environment as a prerequisite for the realisation of other human rights.<sup>37</sup>

The 2015 Paris Agreement is a binding global agreement, linked to the UN Framework Convention on Climate Change (UNFCCC). According to the Paris Agreement, when taking action to address climate change, parties should respect, promote and fulfil their respective obligations in relation to, inter alia, human rights, the right to health and the rights of Indigenous peoples.<sup>38</sup> Several UN treaty bodies have also stated that failure to take measures to prevent foreseeable human rights harm caused by climate change may constitute a violation of states' obligations to protect human rights.<sup>39</sup>

The cooperation of the United Nations Economic Commission for Europe (UNECE) has inter alia developed the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, known as the Aarhus Convention. The Aarhus Convention, which entered into force

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<sup>37</sup> The Human Right to a Clean, Healthy and Sustainable Environment, 26 July 2022, UN Doc. A/76/L.75 (2022).

<sup>38</sup> United Nations Climate Change Conference, Paris Agreement, 12 December 2015, Preamble.

<sup>39</sup> CEDAW Committee and CRPD Committee, among others, Joint Statement on Human Rights and Climate Change, 14 May 2020, UN Doc. HRI/2019/1 (2020).

in 2001, links environmental issues with human rights and strengthens the right of access to information, influence and appeal in relation to environmental decisions.<sup>40</sup>

Climate change and human rights are closely linked. The increased incidence of extreme weather events and natural disasters due to climate change affects, for example, the right to life, water and sanitation, food, health, housing, self-determination, culture, employment, and development.<sup>41</sup>

In 2021, the UN Human Rights Council appointed for the first time a Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change to help address the negative impact of climate change on human rights. In July 2022, the Rapporteur concluded that the insufficient efforts to date to reduce greenhouse gas emissions are creating a human rights disaster. The Rapporteur also stated that those most affected must be empowered, including children, young people, persons with disabilities, refugees, Indigenous peoples and minorities.<sup>42</sup> According to the latest World Bank estimates, 216 million people could become climate migrants within their own countries by 2050.<sup>43</sup>

According to the UN Intergovernmental Panel on Climate Change (IPCC), it is likely that we will not reach the target of keeping global warming below 1.5 degrees Celsius this century. Limiting warming to below two degrees Celsius will require significantly accelerated emission reductions.<sup>44</sup> The IPCC has recognised that the Arctic is one of the regions in the world with the most rapidly changing climate. The average temperature in the Arctic is rising about twice as fast as the global average.<sup>45</sup> According to the Swedish Meteorological and Hydrological Institute (SMHI), since

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<sup>40</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The Convention is based on Principle 10 of the Rio Declaration adopted at the 1992 UN Conference on Environment and Development. The Swedish Environmental Protection Agency is designated as the Swedish node for the provision of both legal and practical information on the Convention and its implementation at the national level.

<sup>41</sup> UN Office of the High Commissioner for Human Rights (OHCHR), “The impacts of climate change on the effective enjoyment of human rights”, <https://www.ohchr.org/en/climate-change/impacts-climate-change-effective-enjoyment-human-rights>, downloaded 20 February 2023.

<sup>42</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, 26 July 2022, UN Doc. A/77/226 (2022).

<sup>43</sup> Viviane Clement, et al, “Groundswell Part 2: Acting on Internal Climate Migration”, *World Bank Working Paper*, 13 September 2019.

<sup>44</sup> Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, 27 February 2022.

<sup>45</sup> IPCC, *Regional fact sheet – Polar regions*, [https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC\\_AR6\\_WGI\\_Regional\\_Fact\\_Sheet\\_Polar\\_regions.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Polar_regions.pdf), downloaded 20 February 2023.

the 1860s Sweden has become warmer during all seasons, with the greatest increase in temperature during winter in northern Sweden.<sup>46</sup>

Some additional observations related to human rights and climate change made by the Institute in 2022 are summarised below. These observations do not provide a complete picture of the human rights situation related to climate change in Sweden. However, they can serve as a basis for public debate and for a continued dialogue with various actors to identify factors that affect compliance with human rights internationally and in Sweden.

### 3.1.1 Gállok and Indigenous peoples' rights

Climate change has a significant impact on individuals and groups who are already at higher risk of discrimination or who live in fragile ecosystems. In the international human rights context, Indigenous peoples are often highlighted as particularly vulnerable as they often have a close relationship with the environment and natural resources.<sup>47</sup> This also applies to the Indigenous Sami people. The changing climate affects both ecosystems and the conditions for reindeer husbandry, fishing and hunting. Climate change and its consequences have led to increased concerns among the Sami about the future of Sami culture, lifestyle and traditional Sami knowledge.<sup>48</sup>

The State has a comprehensive obligation to protect the rights of the Sami as an Indigenous people. Reindeer husbandry rights are based on ancient tradition and are protected by the Constitution in Chapter 2, Section 17 of the Instrument of Government. In 2020, the Supreme Court also made it clear in its decision in the Girjas case that parts of the UN Declaration on the Rights of Indigenous Peoples and ILO Indigenous and Tribal Peoples Convention (No. 169) constitute principles of international law that are binding upon Sweden.<sup>49</sup>

Indigenous law emphasises the need for special protection for Indigenous peoples' traditional land use and the principle of free and informed prior consent. Under Article 27 of the UN International Covenant on Civil and Political Rights (ICCPR), the State also has an obligation to ensure minorities' ability to practise their culture. Reindeer husbandry is an important part of the Sami culture. This was emphasised in

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<sup>46</sup> Semjon Schimanke, et al., "Observerad klimatförändring i Sverige 1860–2021", *Klimatologi* 69 (2022).

<sup>47</sup> Report of the UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, 26 July 2022, UN Doc. A/77/226 (2022).

<sup>48</sup> Jouni J. K. Jaakkola, et al., "The Holistic Effects of Climate Change on the Culture, Well-Being, and Health of the Saami, the Only Indigenous People in the European Union," *Current Environmental Health Reports* 5 no. 4 (2018): 401–417.

<sup>49</sup> NJA 2020 p. 3

the Fosen Judgment of the Norwegian Supreme Court in 2021, which found that significant negative impacts on reindeer husbandry from wind power installations may constitute a violation of Article 27 of the ICCPR.<sup>50</sup>

In the summer of 2021, the Government appointed a parliamentary committee (Renmarkskommittén) with the task of submitting proposals for a new Reindeer Husbandry Act. According to the committee's directive, the proposals submitted must, among other things, be compatible with the Supreme Court's conclusions in the Girjas Judgment and with Sweden's obligations under international law.<sup>51</sup>

In 2022, certain steps were taken to strengthen Sami rights in Sweden. Among other things, members were appointed to the Truth Commission, which is tasked with raising awareness and spreading knowledge of the historical injustices committed by the State against the Indigenous Sami people and submitting proposals for measures that contribute to reparation and promote reconciliation.<sup>52</sup>

In order to promote the influence of the Sami people, a consultation system on issues concerning the Sami people was introduced on 1 March 2022.<sup>53</sup> This obliges the Government and state administrative authorities to consult Sami representatives before making decisions on matters of particular importance to the Sami. From 1 March 2024, municipalities and regions will also be subject to the consultation obligation.

In February 2022, Region Jämtland Härjedalen, a Sami administrative authority, received a ground-breaking study in Sweden that examined the potential effects of a regional implementation of the UN Declaration on the Rights of Indigenous Peoples.<sup>54</sup> The study also included a multi-year roadmap for how the region can proceed to implement the Declaration. A process of anchoring in the Sami community and among regional politicians has since begun.<sup>55</sup>

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<sup>50</sup> Norwegian Supreme Court Ruling dated 11 October 2021, HR-2021-1975-S. See also Norwegian National Human Rights Institution, *Menneskerettslig vern mot inngrep i samiske bruksområder*, 21 January 2022.

<sup>51</sup> Dir. 2021:35.

<sup>52</sup> Dir. 2021:103.

<sup>53</sup> Act (2022:66) on consultation on issues concerning the Sámi people.

<sup>54</sup> UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, UN Doc. A/RES/61/295 (2007).

<sup>55</sup> Region Jämtland Härjedalen, *Innebörden av att Region Jämtland Härjedalen implementerar FN:s Deklaration om Ursprungsfolkens Rättigheter – Förverkligande av rättigheter i samverkan*, 28 September 2022.

At the same time, 2022 was a year when questions about the status of the rights of Indigenous peoples in Sweden were high on the political agenda. On 22 March 2022, the then Minister for Business, Industry and Innovation announced the Government's approval of a mining exploitation concession in Gállok (also known as Kallak) for the British company Beowulf Mining and its subsidiary Jokkmokk Iron Mines AB.<sup>56</sup> The decision followed a multi-year process in which the relevant authorities disagreed. Surrounding Sami villages and the Sami Parliament have opposed mining in the area because it is a natural migration route for reindeer and has high natural values. In June, the Jåhkågasska tjiellde Sami village filed an application for legality review with the Supreme Administrative Court in an attempt to have the exploitation concession repealed.<sup>57</sup>

The Gállok case has attracted considerable national and international attention. The risk of irreversible negative impact on reindeer husbandry and nature has been highlighted by a number of actors, such as the County Administrative Board of Norrbotten, UNESCO and several environmental and human rights organisations.<sup>58</sup> Prior to the decision, the UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Special Rapporteur on Human Rights and the Environment urged the Government not to grant the exploitation licence. In a joint statement, the UN experts wrote that “a decision not to approve the Gállok project can demonstrate a watershed shift from past injustices”. At the same time, they expressed concern about the lack of good faith consultation and the failure to obtain free, prior and informed consent of the Sami people, and about the significant and irreversible damage that the Gállok project will cause to Sami lands, resources, culture and livelihoods, and to the environment.<sup>59</sup>

Following the decision to grant exploitation concession in Gállok, the UN Committee on the Elimination of Racial Discrimination (CERD Committee) wrote to the Government under its urgent procedure. The CERD Committee also expressed concern about the lack of consultation in the Gállok case. The Committee urged the Swedish Government to seek assistance from the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to facilitate a dialogue between the

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<sup>56</sup> Government decision N2017/04553.

<sup>57</sup> Sami Parliament, “Jåhkågasska tjiellde låter Högsta förvaltningsdomstolen pröva regeringens beslut om bearbetningskoncession i Gállok”, 16 June 2022.

<sup>58</sup> Government decision N2017/04553, p. 7, 12, 13.

<sup>59</sup> Joint letter to Sweden from UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Special Rapporteur on Human Rights and the Environment, 3 February 2022, UN Doc. AL SWE 2/2022 (2022).

Swedish Government, the Sami people and the business sector.<sup>60</sup> In a letter to the CERD Committee, the Government failed to respond to the recommendation, but instead emphasises that companies are obliged to consult with particularly affected groups, including reindeer herders.<sup>61</sup>

Sweden has also previously been criticised by the UN for failing to protect the Sami's right to influence and co-determination. In a decision from 2020, the CERD Committee found that the Swedish State had violated parts of Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in a case concerning three exploitation concessions for mining activities in areas where the Vapsten Sami village practises reindeer husbandry. This was because there had not been a consultation to obtain free and informed consent prior to the decisions. The CERD Committee specifically emphasised that the obligation to consult cannot be delegated to private companies.<sup>62</sup>

The Gällöck mining concession is an example of the increasing pressure on traditional Sami areas to access natural resources such as forests and minerals needed in the transition to address climate change. One of the criticisms levelled at Sweden by international monitoring mechanisms is that such a transition must not take place at the expense of Indigenous peoples' rights. Indigenous rights must be understood as an integral part of human rights and a prerequisite for enabling individuals and groups belonging to Indigenous peoples to preserve and manage traditional lands in a sustainable manner.

### 3.1.2 Climate protests and demonstrations

Both freedom of expression and freedom of assembly are fundamental human rights and essential principles in a democratic society. In Sweden, these freedoms are protected by both the Constitution and the international conventions to which Sweden has acceded, such as Articles 10 and 11 of the European Convention on

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<sup>60</sup> Letter from CERD Committee to Sweden (EWUAP Action Letter), 29 April 2022, UN Doc. CERD/EWUAP/106/2022/MJ/CS/ks (2022).

<sup>61</sup> Ministry for Foreign Affairs, "Communication from CERD, Reference: CERD/EWUAP/106<sup>th</sup> session/2022", 15 July 2022.

<sup>62</sup> CERD Committee, Opinion adopted by the Committee under Article 14 of the Convention, concerning communication No. 54/2013, 18 December 2020, UN Doc. CERD/C/102/D/54/2013 (2020). The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) has also stressed that Sweden needs to work to ensure that Sami women are able to actively influence the design and implementation of policies and strategies for climate change, crisis management and risk reduction. UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), Concluding observations on the tenth report of Sweden, 24 November 2021, UN Doc. CEDAW/C/SWE/CO/10 (2021).

Human Rights, Articles 19 and 21 of the UN Convention on Civil and Political Rights (ICCPR), Articles 13 and 15 of the UN Convention on the Rights of the Child (CRC) and Article 21 of the UN Convention on the Rights of Persons with Disabilities (CRPD).

Sweden has also acceded to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. States must ensure that persons exercising their rights in accordance with the provisions of the Convention “shall not be penalised, persecuted or harassed in any way for their involvement”.<sup>63</sup> In June 2022, a new Special Rapporteur under the Aarhus Convention was appointed to protect environmental defenders. The Special Rapporteur can take urgent action to protect people who are penalised, persecuted or harassed for trying to exercise rights covered by the Convention. The Rapporteur can also receive individual complaints.<sup>64</sup>

In Sweden and internationally, children and young people have taken a prominent role in the climate and environmental movements, not least with reference to the impact of climate change on the lives and health of young people and future generations. On 25 November 2022, the association Aurora filed a lawsuit against the Swedish state. Aurora argued that Sweden's climate measures are insufficient and that the rights of children and young people to a good environment, life, health and development are thereby jeopardised.<sup>65</sup> The Aurora case is one of a growing number of similar lawsuits around the world.<sup>66</sup> The UN Committee on the Rights of the Child is also working on a new general comment on the rights of the child and the environment, in which children and young people are involved through a special advisory team.<sup>67</sup>

Questions about the protection of the rights of individuals and groups involved in climate and environmental issues have been raised in recent years, including in relation to protests using civil disobedience as a method. International human rights

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<sup>63</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 3.8.

<sup>64</sup> UN Economic Commission for Europe (UNECE), “World's first Special Rapporteur on Environmental Defenders elected under the Aarhus Convention”, 24 June 2022.

<sup>65</sup> Nätverket Aurora, “Nu stämmer vi staten,” 6 November 2022.

<sup>66</sup> Joana Setzer and Catherine Higham, “Global trends in climate change litigation: 2022 snapshot”, *Grantham Research Institute Working Paper Series*, London School of Economics and Political Science, 30 June 2022.

<sup>67</sup> UN Committee on the Rights of the Child, Draft general comment No. 26 on children's rights and the environment with a special focus on climate change, 9 December 2021.

experts have warned that there is a shift towards harsher punishment and increased vulnerability for climate activists around the world. In a report to the UN General Assembly, the UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association emphasised the importance of the growing global movement to assert their rights and fight for more ambitious climate action. The report expresses concern about how states in many parts of the world are using smear campaigns and criminalisation of climate activism as tools to limit the movement.<sup>68</sup> The Special Rapporteur on Environmental Defenders elected under the Aarhus Convention has also recognised the increasing restrictions against environmental defenders.<sup>69</sup>

A similar trend has also been recognised in Sweden. In 2022, there were a number of climate protests in Sweden that used civil disobedience as a method. Citing the climate emergency, activists blocked motorways and thoroughfares, and glued themselves to aircrafts, roadways and bridges. Several were arrested and prosecuted, including for sabotage and disobeying a police order. Some of the activists have been sentenced to prison.<sup>70</sup>

A basic principle of civil disobedience is that the person who has performed an illegal action bears legal responsibility for it. In this context, it should be noted that some actions may also impact on the rights and freedoms of other persons and threaten essential functions of society. However, according to several civil society organisations, in recent years there has been a shift in the classification of crimes concerning civil disobedience, from disobeying police order and arbitrary action to sabotage. In a statement from September 2022, for example, Amnesty, Civil Rights Defenders and Greenpeace argued that the sabotage classification of climate protests and civil obedience is new and could lead to sanctions that are no longer proportionate to the act committed.<sup>71</sup>

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<sup>68</sup> Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 23 July 2021, UN Doc. A/76/222 (2021).

<sup>69</sup> UNECE, “UN Special Rapporteur on Environmental Defenders presents his vision for mandate to ensure protection under the Aarhus Convention”, 24 November 2022.

<sup>70</sup> Judgment pronounced in Växjö District Court B6472-21, 25 October 2022. See also “Stoppade plan på Ängelholms flygplats – döms till fängelse”, *SVT Nyheter*, 9 November 2022; “Klimataktivisterna som stoppar flygplan”, *Sveriges Radio - P1 Dokumentär*, 30 September 2022.

<sup>71</sup> Erica Bjureby, Anna Johansson and John Stauffer, “Orimliga straff väntar dem som deltar i klimataktioner”, *Dagens Nyheter*, 23 September 2022.



## 3.2 Threats to democracy and rule of law

There are several signs that democracy is in decline globally. In its annual report, the International Institute for Democracy and Electoral Assistance (International IDEA), an intergovernmental organisation that works to promote democracy and human rights, has shown that more than half of the world's democracies have experienced negative development in 2022. The report refers, among other things, to the results of a study that measures values among populations in some seventy countries. The study shows that there has been a decline in people's confidence in democratic governance over the past five years.<sup>72</sup>

Democracy, development and respect for human rights are interdependent and mutually reinforcing. Democracy gives people the opportunity to participate in decisions about how to govern society and how to form laws and rules. Democracy also gives people the power, through regular elections, to remove leaders who do not respect the rights and interests of inhabitants.<sup>73</sup>

Below follows a summary of some additional observations related to democracy, the principles of the rule of law, and human rights made by the Institute in 2022. These observations do not provide a complete picture of the human rights situation in Sweden in this area. However, they can serve as a basis for the public debate and for a continued dialogue with various actors to identify factors that affect compliance with human rights internationally and in Sweden.

### 3.2.1 Human rights and democracy

The right to vote and stand for election is enshrined in several international conventions, such as Article 25 of the UN International Covenant on Civil and Political Rights (ICCPR). A high turnout in democratic elections, both in general and for groups that for various reasons are far removed from political decision-making, is also a sign of a well-functioning democracy. It is therefore noteworthy that voter turnout in the 2022 Swedish general elections fell compared to the previous round of elections and for the first time in the entire 2000s. In the parliamentary elections, the decline corresponded to three percentage points and the overall turnout was 84.2

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<sup>72</sup> International Institute for Democracy and Electoral Assistance (IDEA), *The Global State of Democracy 2022: Forging Social Contracts in a Time of Discontent*, 30 November 2022.

<sup>73</sup> See e.g., World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, Item 8.

percent.<sup>74</sup> According to Statistics Sweden's (SCB) analysis the decline was greatest in areas where turnout had previously been low.

According to several municipalities, one of the reasons for the drop in turnout was queues outside polling stations, which may have caused voters to abstain from voting.<sup>75</sup> The risk of queues had already been recognised before the elections. For example, the Office for Democratic Institutions and Human Rights (ODIHR), which is part of the Organization for Security and Co-operation in Europe (OSCE), had noted that new rules on screening around ballot paper holders at polling stations could create queues.<sup>76</sup>

Another pillar of a viable democracy is civil society. As shown by e.g., the EU Agency for Fundamental Rights (FRA), civil society organisations in many parts of Europe have found it increasingly difficult to carry out their tasks due to restrictive legislation as well as threats and attacks against human rights defenders and journalists, among others.<sup>77</sup>

Civil society's possibility to express opinions freely, including on issues that may be uncomfortable for the Government and the Riksdag, is part of the freedom of expression and freedom to form opinions. These rights are protected in Sweden through both the Constitution and international conventions. It is therefore important that civil society organisations do not risk being silenced by the threat of reprisals from political authorities.

The situation for organisations and individuals engaged in human rights became topical during the parliamentary elections and the subsequent government negotiations in the autumn of 2022. At the end of October, a number of Swedish organisations published critical reviews of the so-called Tidö Agreement between the supporting party Sweden Democrats and the governing parties Moderate Party,

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<sup>74</sup> Statistics Sweden, *Mänskat valdeltagande i alla kommuner utom två*, 21 November 2022.

<sup>75</sup> In a decision dealing with some 70 complaints about queues preventing voters from voting, the Electoral Review Board pointed to a survey conducted by the Electoral Authority after the elections. This showed that around 19 percent of the 178 responding municipalities found that the queues outside polling stations may have had a negative impact on voter turnout. However, the survey does not show the extent of this impact. *Köer vid röstmottagning, presentation av Valu och preliminära valresultat innan röstmottagning avslutats m.m. – avslag*. Valprovsningsnämndens beslut 2022:46 m.fl., 7 December 2022.

<sup>76</sup> The Office for Democratic Institutions and Human Rights (ODIHR) assessed that there was no risk of incorrect results and thus no need for the presence of international election observers. ODIHR, *Sweden, General Elections, 11 September 2022: Needs Assessment Mission Report*, 1 August 2022.

<sup>77</sup> European Union Agency for Fundamental Rights (FRA), *Protecting Civic Space in the EU*, 22 September 2021.



Christian Democrats and Liberals.<sup>78</sup> The reviews attracted a lot of attention, with, for example, members of the Riksdag making public statements proposing to withdraw the government grant to the organisation Civil Rights Defenders.

On 10 November 2022, the Government decided to withdraw the bill on so-called democracy conditions for grants to civil society.<sup>79</sup> The withdrawal was partly due to the fact that many civil society organisations and religious communities expressed concern that the proposed democracy conditions were unclear and could have a disproportionate impact on civil society's room for manoeuvre. The issue of democracy conditions will now be prepared further in the Government Offices of Sweden.<sup>80</sup>

### 3.2.2 Rule of law

An important principle for ensuring the right to a fair trial is that of the equality of the parties in the legal process. On 1 January 2022, new rules were introduced in Sweden that expand the possibilities to refer to information provided during police interrogations, for example, in court. At best, these changes can lead to shorter periods of detention and to testimonies based on more recent memories. At the same time, they represent a departure from the principle that the court should decide cases based on what it has heard and seen during the main hearing.<sup>81</sup>

In a referral statement to the proposal for increased opportunities to use early hearings, the Swedish Bar Association stated that there was a risk that this could undermine procedural safeguards for the individual. Among other things, the Swedish Bar Association found that the new rules violated the principle of the equality of the parties, since the suspect at an early stage has no insight into the investigation and thus does not have the same opportunities to defend themselves as when the case is fully investigated. The Swedish Bar Association also found that the possibilities for effective cross-examination were reduced and stated that cross-

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<sup>78</sup> Amnesty International Sverige, *Amnesty International Sverige kommenterar Tidöavtalet*, 20 October 2022; Civil Rights Defenders, *Tidögranskningen – En rättighetsbaserad granskning av Tidöavtalet*, 24 October 2022; Rädda Barnen, *Tidöavtalet och barnrätten – en översiktlig analys*, 28 October 2022.

<sup>79</sup> Prop. 2021/22:272.

<sup>80</sup> Ministry of Health and Social Affairs, *Notes from issue-specific consultation with civil society on 13 December 2022 on the bill for State support to religious communities and democratic conditions for support to civil society*, 13 December 2022, Ku2022/01808.

<sup>81</sup> Prop. 2020/21:209, p. 14 and 26.

examination is by far the best way to test the credibility of a witness and the reliability of a statement.<sup>82</sup>

The primary responsibility for maintaining public order and security lies with the Swedish Police Authority. State monopoly on violence is a fundamental part of a state governed by law. A proposal for a new law on security guards submitted in 2021 would enable more flexible and increased use of security guards.<sup>83</sup> According to the inquiry's proposal, security guards should be given certain additional powers, such as transporting and frisking individuals. At the same time, it is proposed that security guard training be extended from 80 hours to 160 hours. To ensure that security guards can fulfil the requirements of equal treatment, proportionality and necessity in their exercise of power, it is important, according to the inquiry, that they have the right training. Furthermore, security guards must comply with the same requirements as the police when using their delegated powers.<sup>84</sup>

In 2022, 61 people were shot dead in Sweden. This is an increase of almost 30 percent compared to the previous peak in 2020, when 47 people were killed with firearms.<sup>85</sup> Young men and boys are the main victims of the increased and deadly violence.<sup>86</sup>

Sweden's human rights commitments under the European Convention on Human Rights (ECHR), for example, include an obligation to guarantee the rights and freedoms of individuals, including from the actions of private actors such as criminal gangs. Under Article 1 of the ECHR, the State has an obligation to guarantee everyone under its jurisdiction the rights and freedoms set out in the Convention. This obligation is fulfilled, inter alia, by criminalising offences against the life and privacy of individuals and ensuring effective investigation and prosecution.<sup>87</sup>

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<sup>82</sup> Swedish Bar Association, *Statement on the interim report "Early hearings – new rules of evidence in criminal cases"* (SOU 2017:98), R-2018/0002, 2018.

<sup>83</sup> SOU 2021:38.

<sup>84</sup> UN General Assembly, Code of Conduct for Law Enforcement Officials, 17 December 1979, UN Doc. A/RES/34/169, article 1, commentary a.

<sup>85</sup> The Swedish Police Authority, *Confirmed shootings per region and month, 2022*, <https://polisen.se/om-polisen/polisens-arbete/sprangningar-och-skjutningar/>, downloaded 16 February 2023.

<sup>86</sup> Swedish National Council for Crime Prevention (Brå), *Lethal firearm violence in Sweden and other European countries – A comparative study of levels, trends and methods of violence*, Report 2021:8, 2021, p. 34.

<sup>87</sup> See rulings of the European Court of Human Rights, e.g., *MC v. Bulgaria*, no. 39272/98, 4 December 2003; *KU v. Finland*, no. 2872/02, 2 December 2008.

Many of the measures initiated by the previous and current governments against deadly gang-related violence are criminal policy measures. One proposal against gang crime that was prepared in 2022 involves extensive changes to the Penal Code to tackle offences committed in criminal networks.<sup>88</sup> The proposal includes increased penalties for a number of offences, as well as the introduction of a special provision on increased penalties for violent encounters between criminals.

The proposal was strongly criticised for reasons concerning legal certainty. In its referral statement, the Parliamentary Ombudsmen (JO) noted that the proposal follows other extensive changes in recent years with the same or similar purpose, such as stricter penalties, more criminalisation and the abolition of the penalty reduction for young offenders. JO pointed out that the penal law framework has been designed to meet the high standards of rule of law in the form of predictability, proportionality and equal treatment. According to JO, this requires that the system at large, as well as specific penal provisions, choice of sanctions and meaning out of punishment, is clear and predictable. Recurrent criminal policy reforms therefore jeopardize a consistent and uniform application of the law in the courts and the individual's procedural guarantees.<sup>89</sup>

Other proposals to deal with gang-related crime and shootings have involved expanding the possibilities for the use of what are known as secret surveillance. The proportionality of these proposals has been questioned by several referral bodies, including the Swedish Institute for Human Rights, which pointed out that the Government needs a broader analysis in its measures to prevent gang crime. It is important to propose measures, based on research and evidence, that are preventive, such as early-prevention against children and young people being recruited into gang-related criminality or organised crime.<sup>90</sup>

### 3.2.3 Koran burning and the limits of freedom of expression and assembly

In April 2022, the politician and opinion shaper Rasmus Paludan burned the Koran in a number of locations in Sweden after the police in several cases authorised him to hold a public gathering with this purpose. The Koran burnings coincided with the fasting month of Ramadan and took place mainly in areas with a relatively large

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<sup>88</sup> SOU 2021:68. The Government submitted a bill to the Riksdag in January 2023, prop. 2022/23:53.

<sup>89</sup> JO, Statement on the report "Tougher penalties for crimes in criminal networks" (SOU 2021:68), JO reference number R 117-2021, 29 November 2021.

<sup>90</sup> Swedish Institute for Human Rights, Consultation response "Expanded possibilities to use preventive coercive measures" (SOU 2022:52), 31 January 2023.

Muslim population and in some cases in close proximity to mosques. In a number of places, there were disturbances, riots and stone throwing. During the year, a number of people were convicted of aggravated sabotage against first responder operations after participating in these riots.

The subsequent political and media debate centred mainly on the actions of the local population, the police intervention and the turmoil that arose in connection with the events. The burning of the Koran and the subsequent riots also triggered a discussion on the limits of freedom of expression and assembly.

Freedom of expression and assembly are fundamental human rights and essential principles of democracy. In Sweden, these two freedoms are protected by both the Constitution and the international conventions to which Sweden has acceded, such as the European Convention on Human Rights and the UN Convention on Civil and Political Rights (ICCPR).<sup>91</sup>

However, freedom of expression does not mean that you can say or do anything in any context. In a democratic society, freedom of expression may in some cases be restricted in order to protect the rights and freedoms of others. For example, the European Convention on Human Rights allows freedom of expression and assembly to be restricted for this reason if the restriction is prescribed by law and necessary in a democratic society.<sup>92</sup> In addition, Sweden has obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to prohibit what is referred to as hate speech.<sup>93</sup> The ICCPR also states that any promotion of racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.<sup>94</sup>

In Sweden, freedom of expression is limited, for example, by the fact that agitation against an ethnic or national group is prohibited by law.<sup>95</sup> This makes it a criminal offence to publicly disseminate messages that threaten or express contempt for a group of people with reference to, for example, religious beliefs. It is not only verbal and written messages that are prohibited, but also messages disseminated by other

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<sup>91</sup> European Convention on Human Rights, Articles 10 and 11; ICCPR, Articles 19 and 21.

<sup>92</sup> European Convention on Human Rights, Articles 10(2) and 11(2).

<sup>93</sup> CERD, Article 4(a).

<sup>94</sup> ICCPR, Article 20.

<sup>95</sup> Penal Code (1962:700), Chapter 16, Section 8.

means. For example, the Supreme Court has ruled that wearing Nazi symbols can be regarded as agitation against an ethnic group.<sup>96</sup>

In recent years, Sweden has received several recommendations from the various UN monitoring mechanisms regarding hate speech. Sweden has been urged to, inter alia, take immediate measures to protect Muslim minority groups. The treaty bodies have also particularly emphasised the responsibility of politicians and the media to combat hate speech and urged Sweden to increase its efforts to prevent, investigate and prosecute such cases.<sup>97</sup>

According to the case law of the European Court of Human Rights, it must be possible in a democratic society to criticise religious ideas and practices, even if it may offend certain groups. Religious groups must tolerate critical public statements and debate about their religion, provided that such criticism does not amount to incitement to hatred, violence or discrimination. The European Court of Human Rights has ruled that speech intended to spread hatred based on religious intolerance is not covered by the European Convention on Human Rights' protection of freedom of expression.<sup>98</sup>

Authorisation for public gatherings is regulated in Sweden by the Public Order Act, which in turn is based on the regulations in Chapter 2, Section 24 of the Instrument of Government, permitting restrictions on the freedom of assembly and demonstration. According to the Public Order Act, a public gathering may be refused if this is necessary for the sake of public order or safety at the gathering, for traffic purposes, or to prevent an epidemic. The reference to order and safety in the Public Order Act has been interpreted as limited to cases where there is a concrete danger to order and security arising from the execution of criminal acts.<sup>99</sup>

Questions about the limits of freedom of expression and assembly were again raised in early 2023 in the wake of actions and demonstrations in connection with Sweden's application to become a member of the NATO defence alliance. The discussion on

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<sup>96</sup> NJA 1996 p. 577. See also SOU 2019:27, p. 133.

<sup>97</sup> CERD Committee, Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden, 6 June 2018, UN Doc. CERD/C/SWE/CO/22-23 (2018); UN Human Rights Committee, Concluding observations on the seventh periodic report of Sweden, 28 April 2016, UN Doc. CCPR/C/SWE/CO/7 (2016).

<sup>98</sup> Judgments of the European Court of Human Rights, *E.S. v. Austria*, no. 38450/12, 25 October 2018; *Gündüz v. Turkey*, no. 35071/97, 4 December 2003.

<sup>99</sup> Thomas Bull, *Mötes- och demonstrationsfriheten: en statsrättslig studie av mötes- och demonstrationsfrihetens innehåll och gränser i Sverige, Tyskland och USA*, 1st edition (Uppsala: Skrifter från Juridiska fakulteten i Uppsala, 1997), p. 551.

how Swedish legislation and administrative practice live up to international human rights commitments to prosecute hate speech is likely to continue. An important starting point, however, is that freedom of expression is a prerequisite for the free formation of opinion, which is stated in the Instrument of Government as being one of the foundations of democracy.<sup>100</sup>

### 3.2.5 Abuse of children and young people in special residential homes for young people

The protection against arbitrary deprivation of liberty is a fundamental principle of the rule of law. This protection, which is expressed for example in Chapter 2, Section 6 of the Instrument of Government and Article 5 of the European Convention on Human Rights, means that no one may be deprived of their liberty except in specifically listed cases and in accordance with the law.

There are specific rules on the situations in which a child or young person may be deprived of their liberty, and how they should be treated. Article 37(b) and (c) of the UN Convention on the Rights of the Child (CRC) states that deprivation of liberty shall be used only as a measure of last resort and for the shortest appropriate period of time, and that the child shall be treated humanely and with respect for his or her inherent dignity.<sup>101</sup> Children and young people deprived of their liberty shall also be protected against all forms of torture and other cruel, inhuman and degrading treatment or punishment. Provisions on this can be found in the UN Convention against Torture (CAT), the Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR).<sup>102</sup>

In Sweden, the state, in some cases, has the possibility to use force to ensure that children and young people up to the age of 21 receive the care and treatment they

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<sup>100</sup> Chapter 1, Section 1 and Chapter 2, Section 21 of the Instrument of Government. See also Johan Hirschfeldt, "Konstitutionellt yttrandefrihetsskydd i Sverige - konflikter och brytpunkter", in Bertil Wennberg and Kristina Örtengren eds., *Fritt ord 250 år. Tryckfrihet och offentlighet i Sverige och Finland – ett levande arv från 1766* (Stockholm: Sveriges Riksdag, 2016), p. 591.

<sup>101</sup> There are also other UN texts with minimum rules on how detained children and adolescents may be treated, such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), General Assembly Resolution A/RES/40/33, 29 November 1985, and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), General Assembly Resolution A/RES/45/113, 14 December 1990.

<sup>102</sup> See also UN Convention against Torture (CAT), Articles 1 and 16, Convention on the Rights of the Child, Article 37(a), and ICCPR, Articles 7 and 10.

need. For example, if a child or young person is abusing substances or displaying a criminal lifestyle and is in need of special supervision, it is possible for a court to decide to place the child or young person in one of the National Board of Institutional Care's (SiS) special residential homes for young people, at the request of his or her home municipality according to Section 12 of the Care of Young Persons (Special Provisions) Act (1990:52) (LVU). Such placement in a special residential home is considered deprivation of liberty.<sup>103</sup> Some children and young people are placed in SiS residential homes for several years.

At the end of 2021, there were 21 special residential homes for young people in the country, for a total of 739 individuals. Of these, the majority were for boys.<sup>104</sup> The average age of the young persons placed was around 16 years, but there is no minimum age limit for placement in a residential home.<sup>105</sup> Some of these residential homes accommodated children and young people (69 individuals) who had been charged and sentenced for serious offences to a sanction known as secure youth care.

In 2022, several reports emerged that children and young people had been subjected to violations and other abuses in SiS residential homes. In February, SiS closed a ward at Bärby Residential Home after reports that the safety of the inmates was threatened.<sup>106</sup> Managers and staff on the ward were reassigned. The media presented testimonies and other documentation about how staff had subjected children and young people on the ward to abuse, threats, punishment and other violations over a long period of time.<sup>107</sup> During the year, there were also reports that, since 2018, SiS itself reported around ten incidents in which staff subjected children and young people to sexual abuse or initiated inappropriate sexual relations with them.<sup>108</sup> An inspection report from the Health and Social Care Inspectorate (IVO) published in January 2023 revealed extensive shortcomings and deficiencies in all SiS operations involving the care of girls. A survey of children and young people deprived of their liberty showed that almost half of the girls and a quarter of the boys who responded

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<sup>103</sup> See for example Article 4 of the Optional Protocol to the UN Convention against Torture (CAT). Deprivation of liberty is defined there as “any form of detention, imprisonment or placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”.

<sup>104</sup> National Board of Institutional Care, *SiS årsredovisning 2021*.

<sup>105</sup> In 2021, the youngest child placed in an SiS residential home was 8 years old. See National Board of Institutional Care, *SiS i kortfattad 2021. En samling statistiska uppgifter om SiS*.

<sup>106</sup> National Board of Institutional Care, “SiS stänger tillfälligt avdelning på Bärby”, 11 February 2022.

<sup>107</sup> Eigil Söderin, “Vittnar om skräckväldet på SiS-hemmet, ‘Jag ville dö’”, *Dagens ETC*, 21 April 2022.

<sup>108</sup> Fernando Arias, “Flera anmälningar om övergrepp på SiS-hem: ‘Man är ju ett barn’”, *Sveriges Radio – Ekot*, 30 August 2022.

to the survey had experienced staff being threatening or abusive towards themselves or other young people.<sup>109</sup>

The safety of children and young people deprived of their liberty can also be threatened if the staff in the residential homes fail to protect them from abuse by fellow inmates. According to IVO's report, seven out of ten girls who responded to the survey had experienced repeated threatening or abusive behaviour from other inmates, either towards themselves or others.<sup>110</sup> In connection with an inspection of the Vemyra Residential Home in April 2022, the Parliamentary Ombudsmen (JO) drew attention to the fact that the staff did not set clear boundaries and that the female inmates were left to deal with their conflicts on their own. JO also pointed out that the girls could be harmed because there were not enough staff on site at night to take action when the children and young people went into each other's rooms.<sup>111</sup>

SiS's use of coercive measures against children and young people deprived of their liberty has also been questioned. The most restrictive measure that can be taken in the special residential homes under LVU is called solitary confinement. This means that a child or young person may be separated from staff and other young people for up to four hours at a time if they are behaving violently or are so influenced by an intoxicant that they cannot be kept in order. Solitary confinement is often carried out by locking the child or young person in a special room with no furnishings.

Statistics from recent years show that the group of child or young inmates most often subjected to solitary confinement are younger girls. In February, SiS stated in its annual report that the incidences of solitary confinement had decreased in 2021, partly as a result of a special initiative for girls.<sup>112</sup> The organisation Barnrättsbyrån, which has previously published critical reviews of how SiS justifies and carries out solitary confinement, considered that the statistics for the year showed a different picture and that girls have been subjected to this measure to the same extent as before. Barnrättsbyrån also pointed out that the number of reports against SiS to the Health and Social Care Inspectorate (IVO) had never been as high as in 2021.<sup>113</sup> IVO later noted that the number of solitary confinements of girls almost doubled between

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<sup>109</sup> Health and Social Care Inspectorate (IVO), *Tillsyn av SiS särskilda ungdomshem 2021–2022 Redovisning av regeringsuppdrag S2021/03345*.

<sup>110</sup> IVO, *Tillsyn av SiS särskilda ungdomshem 2021–2022*.

<sup>111</sup> JO inspection record, ref. no. O 7-2022.

<sup>112</sup> National Board of Institutional Care, *SiS årsredovisning 2021*.

<sup>113</sup> Barnrättsbyrån, *Avskiljningar, våld och missförhållanden inom SiS ungdomsvård 2021*, May 2022.

2019 and 2021.<sup>114</sup> According to a written communication from the Government to the Riksdag in January 2023, some of SiS's efforts to reduce the solitary confinement of girls had produced results, but at the same time it was noted that solitary confinement in SiS operations overall had not decreased in 2022.<sup>115</sup>

The reports of abuse in residential homes for young people are not unique to 2022. Over the past decade, authorities such as the Ombudsman for Children in Sweden (BO), the Parliamentary Ombudsmen (JO) and IVO as well as the media have repeatedly drawn attention to how children and young people in residential homes have been harmed. The problems in Swedish residential homes have also been highlighted in human rights monitoring reports. In December 2021, the UN Committee against Torture (CAT Committee) expressed concern about information that children in residential homes for young people have been subjected to violence, including prolonged restraint, and welcomed commitments from the Government to investigate this further, in accordance with the obligation in Article 12 of the UN Convention against Torture (CAT) to investigate suspected acts of torture.<sup>116</sup>

In 2022 and early 2023, Sweden was reviewed by the UN Committee on the Rights of the Child. In conclusions published in February 2023, the Committee recommended that Sweden, among other things, prohibit by law the solitary confinement and isolation of children in alternative care.<sup>117</sup> The Committee also urged Sweden to strengthen the rule of law in SiS operations, including in matters of coercive measures and the use of violence.<sup>118</sup> The UN Committee on the Rights of the Child had previously also urged Sweden to ensure that all solitary confinement of children is prohibited.<sup>119</sup>

### 3.2.6 Polarising or xenophobic rhetoric during the election campaign

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<sup>114</sup> IVO, *Tillsyn av SiS särskilda ungdomshem 2021–2022*, 10 January 2023.

<sup>115</sup> Avskiljningar vid Statens institutionsstyrelses särskilda ungdomshem, skr. 2022/23:49

<sup>116</sup> UN Committee against Torture, Concluding observations on the eighth periodic report of Sweden, 20 December 2021, UN Doc. CAT/C/SWE/CO/8 (2021), para. 27.

<sup>117</sup> Alternative care under Article 20 of the Convention on the Rights of the Child includes SiS special residential homes for young people.

<sup>118</sup> UN Committee on the Rights of the Child, Concluding observations on the sixth and seventh periodic report of Sweden (Advanced unedited version), 6 February 2023, UN Doc. CRC/C/SWE/CO/6-7 (2023), paras. 23 and 29.

<sup>119</sup> UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Sweden, 6 March 2015, UN Doc. CRC/C/SWE/CO/5 (2015), paras. 25 and 26.

People's right to participate in public affairs is protected by the Constitution and the international human rights framework.<sup>120</sup> The right applies to everyone at all times but is especially put to the test when general elections take place. Sweden's human rights commitments include an obligation to protect people within its territory from acts of violence.<sup>121</sup>

In May 2022, Sweden was visited by representatives of the Organization for Security and Co-operation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR). The aim was to examine the need to have election observers in place during the elections that autumn. The ODIHR concluded that there was no risk of inaccurate election results and thus no need for the presence of international election observers.<sup>122</sup> However, in its report from the visit, the ODIHR also noted the prevalence of polarising or xenophobic rhetoric in Sweden. Among other things, ODIHR referred to the 2018 review of Sweden by the UN Committee on the Elimination of Racial Discrimination (CERD Committee), which expressed strong concern that “racist hate speech against Afro-Swedes, Jews, Muslims and Roma continues in Sweden, in particular during election campaigns, in the media and online”.<sup>123</sup> ODIHR also recalled statements by the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), which in its 2021 review of Sweden expressed concern about the under-representation of women in politics, particularly women from minority backgrounds.<sup>124</sup>

In response to CERD's and ODIHR's comments, during autumn 2022 the Institute tried to get a picture of the extent of the problem. The Institute asked the data analysis company Retriever to investigate the spread of polarising or xenophobic

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<sup>120</sup> See, for example, the International Covenant on Civil and Political Rights (ICCPR), Article 25 and Instrument of Government, Chapter 1, Section 1.

<sup>121</sup> European Convention on Human Rights, Article 2.

<sup>122</sup> OSCE's Office for Democratic Institutions and Human Rights (ODIHR), Sweden, General Elections, 11 September 2022: Needs Assessment Mission Report, 1 August 2021.

<sup>123</sup> UN Committee on the Elimination of Racial Discrimination (CERD Committee), Concluding observations on the combined twenty-second to twenty-third periodic reports of Sweden, 6 June 2018, UN Doc. CERD/C/SWE/CO/22-23 (2018), para. 10.

<sup>124</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), Concluding observations on the tenth report of Sweden, 24 November 2021, UN Doc. CEDAW/C/SWE/CO/10 (2021), para. 28.

rhetoric during the election campaign.<sup>125</sup> The study found that from 1 May 2022 until the new government took office on 18 October 2022, thousands of articles in the print news media and online editorial media contained polarising or xenophobic statements. It also showed that such coverage peaked in week 36, which ended with Election Sunday.<sup>126</sup>

In terms of subject matter, many of the most widely circulated articles containing polarising or xenophobic statements were about the situation in the suburbs. These include policy proposals involving prevention of the emergence of so-called “Somali towns”, ADHD screening of children living in at-risk areas and testing the language skills of two-year-olds. Another large group of articles with polarising messages consisted of rebuttals where political representatives accused each other of, for example, posing security risks and behaving dictatorial. As the Institute is not aware of similar studies from previous election campaigns, it is not possible to draw any conclusions about the development over time.<sup>127</sup>

Increased political divisions often coincide with increased violence or threats of violence.<sup>128</sup> In a report from 2021, the Swedish National Council for Crime

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<sup>125</sup> It is of course difficult to determine what constitutes a polarising statement, especially during an election campaign where virtually every statement is intended to promote one's own policies and distance oneself from political opponents. Retriever sought to identify those comments that are more severe and harsh in tone than the usual debate retorts. For the purpose of the study, polarising rhetoric was defined as statements that can create resentment and distrust between people and groups, while xenophobic rhetoric was defined as statements and comments that deliberately target people and groups based on e.g., skin colour, religion or nationality. The distinction between polarising and xenophobic rhetoric is not always clear. In the process of categorising various statements, Retriever generally chose to interpret statements that were not obviously aimed at identifying specific ethnic groups as polarising, even if they could sometimes be perceived as xenophobic. Retriever, *Polariserande och främlingsfientlig retorik i media i samband med valet 2022 1 maje– 18 oktober 2022*, 24 October 2022, p. 3–8.

<sup>126</sup> The estimate is based on a search for words and phrases that can be linked to polarisation and xenophobia in the context of elections and electoral campaigns, which were then filtered and supplemented by Retriever. Ibid., p. 5.

<sup>127</sup> Ibid., p. 8-11.

<sup>128</sup> For an overview of current research on the relationship between polarising or xenophobic rhetoric and politically motivated violence or threats of violence, see Daniel L. Byman, “How hateful rhetoric connects to real-world violence”, *Brookings Institution - Order from Chaos*, 9 April 2021, <https://www.brookings.edu/blog/order-from-chaos/2021/04/09/how-hateful-rhetoric-connects-to-real-world-violence/>, downloaded 23 February 2023.

Prevention (Brå) showed that 26 percent of elected officials at the municipal and regional level have been influenced by various forms of threats or harassment because of their elected position. The influence could take the form of political considerations. 17 percent of the elected officials surveyed by Brå state, for example, that they have avoided getting involved or speaking out on specific issues as a consequence of exposure or concern.<sup>129</sup> Brå also asked the elected officials who had been subjected to threats and harassment to give a more detailed account of the most recent incident. In about half of the incidents, the perpetrator was perceived to belong to some form of group, most often a right-wing extremist group (15 percent). The second most common was that the perpetrator was perceived to belong to a left-wing extremist group (10 percent).<sup>130</sup> Brå's studies also indicate that threats and harassment against elected officials tends to increase during election years.<sup>131</sup>

In July 2022, the psychiatry coordinator of the Swedish Association of Local Authorities and Regions (SKR) was murdered during Almedalen Week in Visby by an offender with a right-wing extremist past. The offender was also convicted of preparing a terrorist offence by murder or aggravated assault in which a party leader was the intended victim.<sup>132</sup> The Swedish Security Service (Säpo) later warned that the tone of the political debate leads to an increased risk of politically motivated violence. "Words matter. That's definitely the case," said a spokesperson for Säpo in August 2022. "Both in terms of politicians making statements, as well as when you, me and everyone makes statements. If the debate climate is very polarised and loud, that in itself can increase threats."<sup>133</sup>

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<sup>129</sup> Swedish National Council for Crime Prevention, *Politikernas trygghetsundersökning 2021*, 28 October 2021, p. 11.

<sup>130</sup> Ibid., p. 77.

<sup>131</sup> Ibid., p. 33.

<sup>132</sup> Gotland District Court, B 808-22, 6 December 2022.

<sup>133</sup> Jan Falkirk, "Säpochef ryter ifrån om det höga tonläget", *Svenska Dagbladet*, 31 August 2022. Translation by the Institute.

### 3.3 Increased social inequality, discrimination and racism

According to several international human rights treaties, the right to education, the highest attainable standard of health, access to health and social care, the right to adequate housing and to participate in cultural life are key human rights.<sup>134</sup> The right to the highest attainable standard of health and the right to an adequate standard of living are examples of what are known as progressive rights. This means that State Parties undertake to make full use of their available resources for the progressive realisation of these rights.<sup>135</sup> The state, on the other hand, has an absolute responsibility not to discriminate against anyone, and also an obligation to protect individuals against discrimination by private actors. Protection against discrimination applies always and to all rights.<sup>136</sup>

In Sweden, there are differences between different groups in areas affected by economic, social and cultural rights, such as the labour market, education, health and participation in cultural life. For example, Sweden has a labour market with persistent differences in wages and pensions between women and men.<sup>137</sup> In 2022, the Allbright Foundation reported that women made up only 27 percent of the management teams of listed companies. The number of women in roles such as chief executive officer, board chair or business unit manager has decreased in recent years.<sup>138</sup> There are also significant differences in labour market participation between persons with and without disabilities.<sup>139</sup>

In terms of education, girls generally perform better school results than boys. Pupils with highly educated parents generally perform better than pupils with parents with less education.<sup>140</sup> Children and young people with disabilities are also less likely to

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<sup>134</sup> See e.g., the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Rights of the Child (CRC), the UN Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

<sup>135</sup> See e.g., ICESCR, Article 12.

<sup>136</sup> CESCR Committee, General comment No. 3: The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, UN Doc. E/1991/23 (1991), para. 1.

<sup>137</sup> Statistics Sweden, *På tal om kvinnor och män 2022: Lathund om jämställdhet*, 21 June 2022.

<sup>138</sup> Allbright Foundation, *Allbrightrapporten 2022: Noll nya chefskvinnor*, November 2022.

<sup>139</sup> Statistics Sweden, *Situationen på arbetsmarknaden för personer med funktionsnedsättning 2021*, 31 March 2022.

<sup>140</sup> Statistics Sweden, *Elever i årskurs 9 med högutbildade föräldrar presterar bättre*, 8 February 2021.

have their right to education realised (see section below on the right to education for children with disabilities).

According to the Public Health Agency of Sweden's national public health survey, *Hälsa på lika villkor 2022*, just over 70 percent of Sweden's population has a good general state of health, and the proportion has increased since the survey started in 2004. However, there are still variations between different groups. Around 80 percent of respondents with post-secondary education feel they are in good health, compared to just over 60 percent of those with pre-secondary education. Young LGBTIQ people generally have poorer health than other young people. This applies to both physical and mental health, but the difference is greatest in terms of mental health. Only one third of young LGBTIQ people consider themselves to have good mental health.<sup>141</sup>

In 2017, Sweden was ranked best in the world in combating social and economic inequality but has since fallen in each new survey and was ranked 20th in 2022, the worst in the Nordic region.<sup>142</sup>

A state should ensure economic, social and cultural rights by making maximum use of its available resources and striving to progressively strengthen these rights for its citizens without any differentiation. In 2024, Sweden will be reviewed in relation to the implementation of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of Persons with Disabilities (CRPD). In 2023, reporting will begin on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Below is a brief summary of some of the observations on developments related to social inequality, discrimination and racism made by the Institute in 2022. These observations do not provide a complete picture of the human rights situation in these areas in Sweden. However, they can serve as a basis for the public debate and for a continued dialogue with various actors to identify factors that affect compliance with human rights internationally and in Sweden.

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<sup>141</sup> Swedish Agency for Youth and Civil Society (MUCF), *Jag är inte ensam, det finns andra som jag: Rapport om unga bbtqi-personers levnadsvillkor*, 2 June 2022.

<sup>142</sup> Oxfam, *The Commitment to Reducing Inequality Index: 2022*, 12 October 2022, p. 53.

### 3.3.1 Impact of the COVID-19 pandemic on human rights

The COVID-19 pandemic represented one of the greatest human rights challenges of modern time. It presented governments around the world with difficult trade-offs between rights and other important societal interests. The spread of COVID-19 posed a direct threat to the right to the highest attainable standard of health and caused significant strain on healthcare systems. At the same time, the restrictions put in place to stop the spread of the disease also resulted in extensive restrictions on several fundamental rights and freedoms, including freedom of movement, assembly, association and religion, as well as the right to health, education, work and participation in cultural life. There is also strong evidence that the social isolation caused by the pandemic led to an increased incidence of violence, particularly against women in intimate relationships and children.<sup>143</sup>

During the pandemic, several human rights defenders expressed the hope that the crisis would reinvigorate human rights work.<sup>144</sup> In 2022, there were several signs that the development was instead perceived to be the opposite. In connection with the launch of Amnesty International's annual report in March 2022, for example, the Secretary General of Amnesty Sweden stated that “many states have used the pandemic as a pretext to silence peaceful demonstrators, journalists, human rights defenders and others who have protested and demanded justice”.<sup>145</sup>

There are different pictures of Sweden's handling of the pandemic. During parts of 2020, Sweden had high death rates compared to other European countries. However, over the entire period 2020–2022, Sweden was one of the countries with the lowest excess mortality in the world.<sup>146</sup> Sweden initially chose to manage the pandemic with advice and calls for social distancing instead of extensive restrictions, which led to fewer restrictions on freedom of movement and education compared to other countries. However, the Swedish approach changed during the course of the pandemic, and the restrictions imposed during the later stages, in particular on freedom of assembly and demonstration, were far-reaching.

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<sup>143</sup> UN Women, *Measuring the shadow pandemic: Violence against women during COVID-19*, 24 November 2021. For an early overview of developments in Sweden, see Swedish Gender Equality Agency, *Covid-19 och våldssättet*, 1 February 2021.

<sup>144</sup> Morten Kjaerum, “The post-crisis human rights agenda,” in Morten Kjaerum, Martha F. Davis and Amanda Lyons, ed., *COVID-19 and Human Rights* (London: Routledge, 2021), p. 297–307.

<sup>145</sup> Amnesty Sweden, “Världsledare och företagsjättar krängde falska löften om en rättvis återhämtning från Covid-19”, 28 March 2022.

<sup>146</sup> “The pandemic's true death toll”, *The Economist*, <https://www.economist.com/graphic-detail/coronavirus-excess-deaths-estimates>, downloaded 31 December 2022.

The COVID-19 pandemic had significant consequences for human rights in Sweden in other ways as well. The Corona Commission's final report – published less than two weeks after the last restrictions were lifted in February 2022 – showed that the pandemic “accentuated already existing inequalities” in Sweden.<sup>147</sup>

One clear example is the comprehensive impact of the pandemic on elderly people. Although there was no widespread testing at the beginning of the pandemic, the high death rates indicate that the spread of infection must have been very high. The regions' preparedness to deal with a major crisis also proved to be inadequate. Lack of protective equipment for care providers during the early months made it more difficult to contain the spread of the virus. Due to the guidelines issued elderly people sometimes did not receive the hospital care they needed.<sup>148</sup> A number of people died in nursing homes without a family member or another person by their side. It has also been questioned whether there was sufficient legal support for the ban on visitors in nursing homes, which may have overly restricted the right to private and family life under Article 8 of the ECHR.<sup>149</sup>

Another vulnerable group was people born outside of Europe who had an increased risk of needing hospital care and dying as a result of COVID-19.<sup>150</sup> The pandemic also disproportionately affected persons with disabilities. According to the Swedish Disability Rights Federation, the pandemic caused persons with disabilities suffering from reduced finances, cancelled healthcare visits, a significantly limited life situation, increased anxiety, fear and depression.<sup>151</sup>

Finally, there are also several indications that the COVID-19 pandemic has had a negative impact on the rights of children and young people.<sup>152</sup> One example is the right to education guaranteed by, inter alia, Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 28 of the Convention on the Rights of the Child (CRC) and Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD). Sveriges förenade elevkårer investigated upper-secondary

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<sup>147</sup> SOU 2022:10, p. 264.

<sup>148</sup> The priorities of the National Board of Health and Welfare sometimes led to the perception that elderly people should only be offered palliative care. There were also uncertainties about how the statistics should be collected and presented. National Board of Health and Welfare, Nationella principer för prioritering inom intensivvård under extraordinära förhållanden, 25 March 2020.

<sup>149</sup> SOU 2022:10, p. 619-620.

<sup>150</sup> SOU 2022:10, p. 254.

<sup>151</sup> Elisabeth Wallenius and Kenneth Johansson, ”Krisberedskapen behöver bli mer inkluderande,” *Dagens samhälle*, 23 March 2021.

<sup>152</sup> Ombudsman for Children in Sweden, *COVID-19-pandemins konsekvenser för barn – slutredovisning av regeringsuppdrag*, 30 June 2021.

school students' experiences of the pandemic and of returning to school after distance learning. In a 2021 report, they describe how an entire generation of young people lost knowledge, dropped in grades, and lost study skills and motivation. Back in school, they are under increasing pressure to make up for lost time while adapting to the new environment.<sup>153</sup>

In Sweden – as well as in Denmark and Norway – there are virtually no constitutional provisions on peacetime crises and therefore no possibility to declare a state of emergency. Civilian crises may be managed under the same general constitutional rules on norm-making, decision-making and governance that apply under normal circumstances.<sup>154</sup>

States can restrict human rights to a limited extent when it is necessary to protect public interests, such as national security, public health, public order and the rule of law. However, such a restriction must be proportionate and not go beyond what is necessary in each specific situation. In its evaluation of Sweden's management of the pandemic, the Corona Commission noted that it is difficult to gain an overview of the overall impact on fundamental rights and freedoms, and to determine how different regulations and decisions relate to each other. Due to lacking documentation, it is unclear how key considerations were made, and by whom. It is also unclear to what extent Sweden's international human rights commitments were taken into account in the assessments made.<sup>155</sup>

To summarise, it is clear that the COVID-19 pandemic has had an extensive impact on the enjoyment of human rights, including in Sweden. The pandemic has exposed shortcomings in welfare systems, and measures to prevent the spread of infection have often accentuated already existing inequalities.

The experience of the pandemic also shows the importance of robust protection of rights such as the right to education, health and fundamental freedoms, both to maintain respect for human equality and dignity, but also to maintain functioning public structures. By applying a rights-based approach to crisis management, it is

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<sup>153</sup> Sveriges förenade elevkårer, *Framtidens oro och psykisk ohälsa – Så har Sveriges gymnasieelever påverkats av distansundervisningen*, 2021.

<sup>154</sup> In October 2021, a parliamentary committee was appointed to review the regulation on the war delegation, the location of the parliamentary session and the Government's normative competence in peacetime crises (Dir. 2021:80). Among other things, the committee is to assess whether there is a need to expand the Government's norm-making competence in peacetime crises, and to submit the proposals for legislative amendments that the committee deems justified.

<sup>155</sup> SOU 2022:10, p. 340.

possible to visualise the situation of both individuals and groups, while making it possible to evaluate the risks that various restrictions may entail.<sup>156</sup>

Civil and peacetime crises such as the COVID-19 pandemic, test our ability to ensure basic human rights, for both children and adults. If basic structures and procedures to ensure human rights are not in place in peacetime, it is likely that there is no room to create them in civilian peacetime or other crises.

### 3.3.2 Right to education for children and young people with disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) has been in force in Sweden since 2009. It specifically includes relevant rights already established in previous conventions and confirms that human rights also apply to persons with disabilities. The Convention explains the barriers faced by persons with disabilities, highlights solutions related to different areas of rights, and states that human rights are universal, indivisible and interdependent.

The right to education is enshrined in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 24 of the CRPD recognises this right and that persons with disabilities have the right to education without discrimination and on an equal basis with others. The same right can be found in Article 28 of the Convention on the Rights of the Child (CRC). In March 2022, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) and the UN Committee on the Rights of the Child issued a joint statement calling on States Parties to ensure that all children with disabilities can realise their right to education on the basis of the principles of equality of opportunity and non-discrimination.<sup>157</sup>

The Swedish Institute for Human Rights' report to the UN Committee on the Rights of the Child in 2022 highlighted the right to education for children with disabilities,

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<sup>156</sup> See e.g. Ramboll, *Vägen framåt – pandemin och de mänskliga rättigheterna*, February 2022.

<sup>157</sup> CRPD Committee and Committee on the Rights of the Child, Joint Statement on the rights of children with disabilities, 18 March 2022.

particularly in relation to the experiences of pupils with disabilities during the COVID-19 pandemic.<sup>158</sup>

A general problem related to the right to education is the lack of systematic knowledge gathering on the situation of pupils with disabilities. There are challenges in collecting registry data due to the need to protect individuals' privacy (see also the section on equality data). This makes it difficult to monitor how the situation of pupils with disabilities evolves over time.

However, it is clear that persons with disabilities have a lower level of education than the rest of the population in Sweden. According to Statistics Sweden's (SCB) monitoring of living conditions from 2021, 31 percent of persons with disabilities have at most pre-secondary education, compared with 15 percent of persons without disabilities.<sup>159</sup> Moreover, according to SCB, young people with disabilities are more likely to drop out of upper-secondary school than pupils without disabilities.<sup>160</sup>

A survey conducted by researchers at Malmö University shows that half of the total number of pupils with autism leave compulsory school without achieving the intended learning outcomes.<sup>161</sup> These results are in line with those of Autism Sverige's annual member survey, which also indicates a negative trend over time, i.e., that an increasing proportion of pupils with autism do not achieve the intended learning outcomes by the time they leave school. The same applies to school attendance. In 2021, 21 percent were absent for 40 days or more during a school year, compared to 14 percent in 2018 and 12 percent in 2016.<sup>162</sup>

Pupils with disabilities generally feel more insecure at school than other pupils. They also have a higher risk of being bullied and harassed at school.<sup>163</sup>

In 2022, a government inquiry was set up to investigate how knowledge about pupils with disabilities can be improved without jeopardising personal privacy. More knowledge about the pupils' situation can create better conditions for long-term work to ensure that pupils with disabilities have the right – also in practice – to reach

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<sup>158</sup> For a summary of the report to the Committee on the Rights of the Child, see the previous chapter of the Annual Report on the Institute's reports, studies and position statements from the past year.

<sup>159</sup> SCB, *Statistik om personer med funktionsnedsättning, tabeller, 2021*.

<sup>160</sup> SCB, *Statistik om personer med funktionsnedsättning, tabeller, 2018–2020*.

<sup>161</sup> Lotta Anderson, "Schooling for Pupils with Autism Spectrum Disorder: Parents' Perspectives", *Journal of Autism and Developmental Disorders* 50 no. 12 (2020): 4356–4366.

<sup>162</sup> Autism Sverige, *Medlemsundersökning om skolan 2022*, 25 April 2022.

<sup>163</sup> Swedish Agency for Participation, *Hinder och möjligheter för ett inkluderande barnrättsarbete*, 12 June 2020.

as far as possible in their knowledge development. This, in turn, is fundamental to the exercise of other basic human rights, such as the right to democratic participation, economic independence and the best possible health.<sup>164</sup>

According to the CRPD, pupils with disabilities should be provided with appropriate personalised support measures, including reasonable accommodation based on individual needs. Furthermore, the school environment should be socially, educationally and physically accessible. In order to achieve this, duty bearers must create the conditions for systematic quality assurance work in schools that meets the needs of pupils with disabilities.

### 3.3.3 Right to housing

According to Chapter 1, Section 2, Paragraph 1 of the Instrument of Government, public institutions shall, in particular “secure the right to employment, housing and education, and shall promote social care and social security, as well as favourable conditions for good health”.

The right to housing is a human right protected, inter alia, in the UN Universal Declaration of Human Rights (Article 25) and in several UN conventions, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). According to the UN Committee on Economic, Social and Cultural Rights (CESCR Committee), the right to housing includes, inter alia, access to safe and secure housing and protection against discrimination in the housing market. The CESCR Committee has also called on states to give special priority to vulnerable groups.<sup>165</sup>

In their most recent reviews of Sweden, both the CESCR Committee and the UN Committee on the Elimination of Racial Discrimination (CERD Committee) have requested more information about obstacles in the housing market for Afro-Swedes and other groups and the Government's measures to combat such obstacles.<sup>166</sup>

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<sup>164</sup> Dir. 2022:73.

<sup>165</sup> CESCR Committee, General Comment No. 4: The Right to Adequate Housing, 13 December 1991, UN Doc. E/1992/23 (1991).

<sup>166</sup> CESCR Committee, List of issues prior to submission of the seventh periodic report of Sweden, 16 November 2020, UN Doc. E/C.12/SWE/QPR/7 (2020), para. 19.

The issue is also highlighted in the Equality Ombudsman's statistical report from 2022, which shows that the number of reports of discrimination in the housing sector has increased over the past year. In 2021, almost half of all cases received by the Equality Ombudsman were related to ethnicity, while discrimination on the basis of disability was the second most common reason for reporting.<sup>167</sup> According to Statistics Sweden, overcrowding is also more pronounced among people born outside of Europe than among the rest of the population.<sup>168</sup>

However, there is a lack of important aspects of information on inequalities in the housing market, especially regarding the situation of groups at higher risk of discrimination such as Afro-Swedes and Muslims. This has been noted by the CERD Committee, which has recommended that the Government develop more diversified statistics on ethnicity to enable in-depth analysis to support both policy development and monitoring.<sup>169</sup>

In January 2022, the Equality Ombudsman published a report on discrimination in the provision of rental housing which showed how, among other things, rental policies and rental criteria can constitute cases of discrimination. These include high income requirements in relation to the rent, the non-acceptance of certain benefits and other allowances as income, and requirements for Swedish citizenship, permanent residence or a Swedish personal identity number. The report also emphasised that persons with disabilities are at risk of being discriminated against in several different ways.<sup>170</sup>

The Equality Ombudsman's report also showed that there is a lack of knowledge and awareness of discrimination among actors in the rental housing market.<sup>171</sup> This is in line with the results of an interview study published by the organisation Malmö mot Diskriminering in 2022. The study showed that housing actors, i.e., housing companies, housing agents and the municipality, have a general awareness of the existence of discrimination, but find it difficult to determine in practice what constitutes discrimination and what does not. According to the report, there are

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<sup>167</sup> Equality Ombudsman, *Statistik 2015–2020: Statistik över anmälningar, tips och klagomål som inkommit till Diskrimineringsombudsmannen åren 2015–2020*, 29 March 2021, p.54.

<sup>168</sup> Statistics Sweden, *Lämna ingen utanför: Statistisk lägesbild av genomförandet av Agenda 2030 i Sverige*, 30 October 2020.

<sup>169</sup> CERD Committee, Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden, 6 June 2018, UN Doc. CERD/C/SWE/CO/22-23 (2018), para. 5.

<sup>170</sup> Equality Ombudsman, *Diskriminering vid tillhandahållande av hyresbostäder*, 21 January 2022.

<sup>171</sup> Ibid.

shortcomings in the preventive work, while at the same time the housing actors feel that there is a lack of clarity about where the responsibility lies.<sup>172</sup>

According to Sveriges Stadsmissioner, homelessness in Sweden has increased over the past 20 years, particularly among children, people with a foreign background and women. Compared with the other Nordic countries, Sweden currently has the highest proportion of homeless people per inhabitant.<sup>173</sup> While homelessness used to mainly affect the most socially vulnerable, the mentally ill and people with substance abuse problems, it now increasingly affects people whose personal finances are too weak to buy or rent their own home.<sup>174</sup> This is partly due to a shortage of housing.<sup>175</sup>

In a consultation statement from 2022, the Ombudsman for Children in Sweden stated that the protection of children's right to good and safe housing is too weak in Sweden. It is estimated that tens of thousands of children live either in homelessness, in temporary accommodation or in the secondary housing market, transit housing or in apartments rented by Social Services. At the same time, there are no uniform national support programmes for families with children linked to homelessness. According to the Ombudsman for Children in Sweden, many homeless families are also denied help by Social Services, often on the grounds that they are considered sufficiently capable of resolving the situation on their own.<sup>176</sup>

In July 2022, the Government adopted a national strategy as an important step towards combating homelessness in Sweden. The strategy, which covers the period 2022–2026, has four objectives: homelessness should be prevented, no one should live on the streets, the “Housing First” method should be introduced nationally, and the social perspective in urban planning should be strengthened. The strategy has a particular focus on preventing evictions involving children and ensuring support for rights holders in the event of an eviction.<sup>177</sup>

Under certain circumstances, evictions are compatible with Sweden's international human rights commitments, such as repeated non-payment of rent or damage to

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<sup>172</sup> Malmö mot Diskriminering, *Jag tror vi diskriminerar utan att vi ens tänker på det: En intervjustudie om diskriminering på bostadsmarknaden ur bostadsaktörers perspektiv*, October 2022, p. 32

<sup>173</sup> Forte, *Forskning i kortbet nr 14 – Hemlöshet*, 2 June 2020, p. 33.

<sup>174</sup> Sveriges Stadsmissioner, *Hemlös 2021: Tema: Är kommunernas arbete mot hemlöshet effektivt*, 1 December 2021.

<sup>175</sup> SOU 2022:14, p. 459.

<sup>176</sup> Ombudsman for Children in Sweden, Ref. no. 2022–0081, Consultative referral of Reduced threshold for good housing (SOU 2022:14), 19 August 2022.

<sup>177</sup> Ministry of Health and Social Affairs, *Regeringens strategi för att motverka hemlöshet 2022–2026 (S2022/03255)*, 7 July 2022.

rented property without any reasonable cause. However, according to the CESCR Committee, the responsible authorities must ensure that evictions are carried out in a manner consistent with national legislation and international human rights conventions, and that the persons affected have access to adequate legal remedies.<sup>178</sup>

In its list of questions concerning Sweden's compliance with economic, social and cultural rights, the CESCR Committee has specifically requested information on the situation of persons living in informal settlements.<sup>179</sup> In its response from 2021, the Government indicated that some measures have been taken, such as that vulnerable EU/EEA citizens, especially children, are entitled to support from Social Services even in cases where their residence in Sweden is not compatible with Swedish law.<sup>180</sup> The National Board of Health and Welfare has also clarified that Social Services should provide support in connection with evictions from housing, including informal settlements. If the persons to be evicted do not have the right of residence, it is still the responsibility of Social Services to remedy a temporary urgent emergency situation by, for example, offering premises for temporary evacuation, occasional assistance for travelling home or food.<sup>181</sup>

In the latest survey of the number of people experiencing homelessness from 2017, the National Board of Health and Welfare estimated that around 33,000 people were living in homelessness, but this estimation does not include groups such as undocumented migrants, asylum seekers and EU migrants.<sup>182</sup>

In other words, there is a lack of data at the national level on the number of people living in informal settlements, and we know relatively little about their situation and the support measures they have received from Social Services in connection with preventive activities and evictions. There is no coherent national picture of Social

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<sup>178</sup> CESCR Committee, General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 20 May 1997, UN Doc. E/1998/22 (1997), para 11.

<sup>179</sup> CESCR Committee, List of issues prior to submission of the seventh periodic report of Sweden, 16 November 2020, UN Doc. E/C.12/SWE/QPR/7 (2020), para. 19. Informal settlements refer to places where people live without legal protection. For a more detailed definition, see the United Nations Human Settlements Programme, *Habitat III issue papers 22: Informal settlements*, 31 May 2015.

<sup>180</sup> Seventh periodic report submitted by Sweden under articles 16 and 17 of the Covenant, 10 January 2022, UN Doc. E/C.12/SWE/7 (2022), para. 201.

<sup>181</sup> National Board of Health and Welfare, *Vägledning för socialtjänsten i arbetet med EU/EES-medborgare*, June 2020, p. 43.

<sup>182</sup> Forte, *Forskning i korthet nr 14 – Hemlöshet*, 2 June 2020, p. 33.

Services' efforts to address the needs and rights of people without a residence permit.<sup>183</sup>

### 3.3.4 Gender-based violence against and human trafficking of women and children

In November 2022, the National Organisation for Women's Shelters and Young Women's Shelters in Sweden (Roks), together with Örebro University, launched a report on women's safety called *Kvinnors trygghet – ett jämställt samhälle fyllt av våld*. The report is based on a comprehensive survey conducted by Statistics Sweden (SCB) between April and August 2021 on behalf of Roks. 55 percent of the 6,611 women who participated in the study said they had been subjected to violence by a man at some point after their 15th birthday. 80 percent of women between the ages of 18 and 25 said they had been sexually harassed by a man. Furthermore, the results showed an increase in reported sexual violence among young women over the past 20 years.<sup>184</sup>

In a report on the living conditions of young LGBTIQ people published in 2022, the Swedish Agency for Youth and Civil Society (MUCF) showed that young LGBTIQ people are more likely to experience sexual violence or exploitation than young cisgender heterosexual (cis het) people. The results, which are based on MUCF's youth survey, also show that young LGBTIQ people are more likely to be subjected to domestic violence than young cis het people. A consistent difference within the group is that young LGBTIQ people with disabilities are subjected to sexual violence or exploitation and domestic violence to a greater extent than other young LGBTIQ people.<sup>185</sup>

In its current situation analysis from November 2022, the Swedish Gender Equality Agency found that there is an increased risk of Ukrainian refugees being subjected to human trafficking, labour exploitation and prostitution in Sweden. A majority of the people fleeing Ukraine in Sweden are women and children. The Swedish Gender Equality Agency emphasised that the risk of people being exploited in prostitution and human trafficking increases with large refugee flows. In 2022, some twenty police reports were received concerning people who fled from Ukraine. The preliminary investigations that are still ongoing concern pimping, human trafficking and human exploitation. Ukrainian refugees are covered by the EU's Temporary

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<sup>183</sup> CESCR Committee, Seventh periodic report submitted by Sweden under articles 16 and 17 of the Covenant, 10 January 2022, UN Doc. E/C.12/SWE/7 (2022).

<sup>184</sup> Jenny Westerstrand, et al., *Kvinnors trygghet – ett samhälle fyllt av våld* (Stockholm: Roks, 2022).

<sup>185</sup> Swedish Agency for Youth and Civil Society (MUCF), *Jag är inte ensam, det finns andra som jag: Rapport om unga bbtqi-personers levnadsvillkor*, 2 June 2022.

Protection Directive.<sup>186</sup> In addition, mapping who is at risk of exploitation is made more difficult as the individual interviews otherwise conducted by the Swedish Migration Agency when applying for protection in Sweden have been replaced by an automated process. The number of unreported cases is therefore suspected to be large.<sup>187</sup>

Sweden has an obligation under both the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC) to protect women and children from violence, sexual exploitation, prostitution and human trafficking.

In its summarised conclusions for Sweden from November 2021, the CEDAW Committee devoted several of its recommendations to the area of gender-based violence against women and human trafficking. The Committee welcomed efforts made to improve Sweden's institutional and policy framework, including the adoption of the 2018 Action Plan against Prostitution and Trafficking in Human Beings and the National Strategy to Prevent and Combat Men's Violence against Women, which entered into force in 2017. At the same time, the Committee expressed concern, inter alia, about the continued prevalence of gender-based violence against women, including domestic violence.<sup>188</sup>

The CEDAW Committee particularly highlighted the lack of data on gender-based violence against women and girls, especially in relation to women belonging to ethnic or national minorities, women with disabilities and migrant women. The Committee also expressed concern about the increased demand for prostitution and the lack of shelter for both women and girls who are victims of violence and women and girls who are victims of human trafficking.<sup>189</sup>

### 3.3.5 Rights of refugees

Seeking and enjoying asylum from persecution is a human right under Article 14 of the Universal Declaration of Human Rights. The enjoyment of asylum is linked to another right, the right of a person not to be forced to return to a place where they

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<sup>186</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

<sup>187</sup> Swedish Gender Equality Agency, Nationella samordningen mot prostitution och människohandel, *Lägesanalys- risk att kvinnor och barn utnyttjas i vinter*, 17 November 2022.

<sup>188</sup> CEDAW Committee, Concluding observations on the tenth periodic report of Sweden, 24 November 2021, UN Doc. CEDAW/C/SWE/CO/10 (2021).

<sup>189</sup> Ibid.

may be at risk of serious violations of their human rights, known as the principle of *non-refoulement*.<sup>190</sup> The UN Committee against Torture has argued that states should avoid adopting deterrent measures or policies, such as cuts in assistance to asylum seekers, which could force them to return to their country of origin despite the risk of being subjected to e.g. cruel, inhuman or degrading treatment or punishment.<sup>191</sup>

International refugee law and international human rights law also guarantee other rights to refugees and other persons in need of international protection. These include rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). Under Article 11 of the ICESCR, the State has an obligation to ensure the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The corresponding right is found in Article 27 of the CRC and Article 28 of the CRPD.

One of the ways in which asylum seekers can be guaranteed an adequate human standard of living is through a daily allowance.<sup>192</sup> The daily allowance is regulated in the Reception of Asylum Seekers Act (1994:137) (LMA). It varies in size depending on whether the person lives in one of the Swedish Migration Agency's accommodations where food is included or in an accommodation where food is not included. In accommodation where food is included, the daily allowance is SEK 24 per day for single adults and SEK 19 per day for adults sharing a household. For children aged 17 and under, the daily allowance is SEK 12 per day. In accommodation where food is not included, the daily allowance is SEK 71 per day for single adults and SEK 61 per day for adults sharing household expenses. For children aged 17 and under, the daily allowance is SEK 37–50, depending on the age of the child. Families with more than two children receive full daily allowance for the two oldest children and half daily allowance for the other children. In addition to

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<sup>190</sup> Article 33 of the UN Convention relating to the Status of Refugees (Refugee Convention) and Article 3 of the UN Convention against Torture. The principle of non-refoulement is widely recognised as binding under customary law.

<sup>191</sup> UN Committee against Torture (CAT Committee), General comment No. 4 on the implementation of article 3 of the Convention in the context of article 22, 4 September 2018, UN Doc. CAT/C/GC/4 (2018), para. 14

<sup>192</sup> Reception of Asylum Seekers Act (1994:137) (LMA).

food, the daily allowance is meant to cover clothes and shoes, medical care and medicine, dental care, hygiene articles, other consumables and leisure activities.<sup>193</sup>

The level of the daily allowance for asylum seekers has remained unchanged in Sweden since 1994. In its 2015 review of Sweden, the UN Committee on the Rights of the Child urged Sweden to increase the daily allowance for asylum seekers, and also to ensure that the allowance is not reduced for families with more than two children.<sup>194</sup> In order to ensure an adequate standard of living for all, the Committee recommended in its latest review in 2023 that Sweden increase the level of social benefits and allowances, including for asylum-seeking children.<sup>195</sup>

The issue of the level of the daily allowance for asylum seekers was actualized with the influx of refugees from Ukraine in 2022. The EU's Temporary Protection Directive was activated in March 2022 and formed the basis for a decision by Sweden to grant temporary protection to refugees from Ukraine.<sup>196</sup> The temporary protection gives Ukrainian refugees the right to a temporary residence permit for as long as the Temporary Protection Directive is activated (the Directive is currently in force until 4 March 2023). By 31 December 2022, 50,365 Ukrainian citizens had been granted residence permits under the Temporary Protection Directive.<sup>197</sup>

Under the EU's Temporary Protection Directive, EU Member States are obliged to provide people granted temporary protection with suitable accommodation or the means to obtain accommodation. They must also have their social welfare and subsistence needs met if they lack sufficient resources.<sup>198</sup> However, the temporary

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<sup>193</sup> Ordinance on the Act on Reception of Asylum Seekers (1994:361).

<sup>194</sup> UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Sweden, 6 March 2015, UN Doc. CRC/C/SWE/CO/5 (2015), para. 48(b). The issue of the allowance level was also raised by the Committee on the Convention on the Rights of the Child in 2020, SOU 2020:63, vol. 2, p. 1053-1058.

<sup>195</sup> UN Committee on the Rights of the Child, Concluding observations on the combined sixth and seventh periodic reports of Sweden, 6 February 2023, UN Doc. CRC/C/SWE/CO/6-7 (2023), para. 36(a).

<sup>196</sup> This includes persons who arrived in Sweden on or after 30 October 2021 and have not left Sweden since then, and who can prove that they are citizens of Ukraine, or that they are residing in the country with international protection status, as well as their families.

<sup>197</sup> Swedish Migration Agency, Skydd enligt massflyktsdirektivet, <https://www.migrationsverket.se/Privatpersoner/Skydd-enligt-massflyktsdirektivet.html>, downloaded 14 February 2023.

<sup>198</sup> On 4 March 2022, the EU Member States in the Council decided to activate Council Directive 2001/55/EC, Article 13(1).



protection status a person may receive in Sweden after the activation of the EU's Temporary Protection Directive in March 2022 means that they fall within the scope of the Reception of Asylum Seekers Act (1994:137) (LMA). Consequently, the daily allowance of Ukrainian refugees is at the same criticised level as that of asylum seekers.<sup>199</sup>

Another limitation of rights resulting from the LMA concerns healthcare. Under Article 12 of the ICESCR, the state has an obligation to protect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Access to healthcare for adult asylum seekers in Sweden is currently limited to emergency care and care that cannot be delayed.<sup>200</sup>

### 3.3.6 Racism, hate crimes and discrimination

The principle of non-discrimination is fundamental to most of the international human rights treaties. As mentioned earlier, the state has an absolute responsibility not to discriminate against anyone, and also an obligation to protect against discrimination by other private actors. Protection against discrimination applies always and to all rights.<sup>201</sup>

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<sup>199</sup> Section 1, Para. 1, Item 2 LMA. In 2022, the Nordic Council of Ministers and the UNHCR representation for the Nordic and Baltic countries commissioned a comparative study of the reception of Ukrainian refugees with temporary protection in the Nordic countries. The study showed that the daily allowance is the lowest in Sweden. According to the report, Sweden also differs in terms of access to healthcare, as Ukrainian refugees in the other Nordic countries have the same access to healthcare as the rest of the population. Nordic Welfare Centre, *Implementation of temporary protection for refugees from Ukraine – A systematic review of the Nordic countries*, 7 December 2022.

<sup>200</sup> For a long time, and now most recently in relation to the Temporary Protection Directive, the concept of “care that cannot be delayed” has been criticised by various actors for being unclear and thus opening the door to arbitrary assessments and difficult ethical considerations for healthcare professionals. National Board of Health and Welfare, *Hälsa- och sjukvård och tandvård till asylsökande och nyanlända*, October 2016. In 2022, the Swedish Medical Association, among others, expressed an opinion on the issue: Sofia Rydgren Stale and Torsten Mossberg, “Begreppet ‘vård som inte kan anstå’ bör avskaffas”, *Sydsvenskan*, 20 May 2022. In March 2022, this was also brought to the Institute's attention in connection with a meeting with an informal network of organisations and associations involved in helping undocumented migrants gain access to care (Right to Care initiative).

<sup>201</sup> CESCR Committee, General comment No. 3: The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, UN Doc. E/1991/23 (1991), para. 1.

The most common complaints to the Equality Ombudsman (DO) between 2015 and 2021 concerned discrimination related to disability or ethnicity.<sup>202</sup> In its report on the task of developing knowledge about discrimination related to religion or other beliefs, DO also reported that “negative perceptions of religion and discrimination affect many people's living conditions and constitute a real obstacle to individuals' access to equal rights and opportunities.”<sup>203</sup> Children are harassed for their religion at school, job applicants are screened out in recruitment processes and families experience obstacles in contacts with the healthcare sector. This applies not least to those who make their faith visible in various ways, for example through clothing or jewellery, such as Muslim girls and women wearing hijabs or other types of veils or Jewish boys and men wearing kippahs. DO's report also showed that individuals with Arabic or Muslim names, especially men, are subject to extensive discrimination, for example in the labour market in connection with recruitment.<sup>204</sup>

In a report from 2022, the Swedish National Council for Crime Prevention (Brå) noted that Afrophobia is the most common motive among reported hate crimes, apart from general xenophobic motives. Hate crimes against Afro-Swedes are also characterised by a high incidence of violence. Brå also pointed out the challenges in investigating these offences, prosecuting perpetrators and providing support to victims of hate crime, and that there are no evaluations of the efforts made in this area.<sup>205</sup>

In 2022, the Council of Europe's Committee on Equality and Non-Discrimination recognised that Islamophobia, or anti-Muslim racism, is widespread and increasing in Council of Europe member states, pointing out that Muslim women are particularly affected. The Committee found that states should ensure that measures against

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<sup>202</sup> Equality Ombudsman, *Statistik 2015–2021: Statistik över anmälningar som inkom till Diskrimineringsombudsmannen 2015–2021*, Report 2022:2, 1 April 2022.

<sup>203</sup> Equality Ombudsman, Redovisning av uppdrag att utveckla kunskap om diskriminering som har samband med religion eller annan trosuppfattning, 1 December 2022, p. 2. The Institute's own translation.

<sup>204</sup> Ibid.

<sup>205</sup> Swedish National Council for Crime Prevention, *Afrofobiska hatbrott*, Report 2022:7, November 2022.

radicalisation and terrorism are compatible with human rights and the rule of law to avoid stigmatisation and discrimination against Muslims.<sup>206</sup>

In its latest review, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) urged Sweden to pay particular attention to the intersectional vulnerability of women belonging to disadvantaged groups, such as Sami, Roma, migrant and asylum-seeking women, as well as women who are refugees and women with disabilities. According to the CEDAW Committee, poverty disproportionately affects women and girls belonging to disadvantaged and marginalised groups in Sweden.<sup>207</sup>

Sweden, like many other European countries, also has problems with negative differential treatment and racism against Roma. In a survey launched in Sweden in autumn 2022, the EU Agency for Fundamental Rights (FRA) found that more than 50 percent of the Roma surveyed in Sweden had experienced anti-gypsyism.<sup>208</sup> In 2022, Sweden is halfway through the Strategy for Roma Inclusion 2012–2032 adopted by the Riksdag (Swedish Parliament). The County Administrative Board's latest follow-up of the strategy found that the work has lost momentum and impact. The County Administrative Board finds that “the strategy has high and ambitious goals, which requires a long-term approach, both locally and nationally. When this is lacking, the work becomes jerky and project-based, which has not been favourable for the target group.”<sup>209</sup>

In the summer of 2022, the Government adopted five action programmes aimed at combating Afrophobia, antisemitism, anti-gypsyism, Islamophobia and racism against

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<sup>206</sup> Council of Europe's Committee on Equality and Non-Discrimination, *Raising awareness of and countering Islamophobia, or anti-Muslim racism, in Europe*, Doc. 15616, 26 September 2022.

<sup>207</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), Concluding observations on the tenth report of Sweden, 24 November 2021, UN Doc. CEDAW/C/SWE/CO/10 (2021), para. 9.

<sup>208</sup> EU Agency for Fundamental Rights (FRA), *Roma and Travellers in six countries: Roma and Travellers Survey*, 23 September 2020. In autumn 2022, the report was launched in Sweden through regional meetings in Malmö, Gothenburg, Linköping, and Uppsala and a national meeting in Stockholm. The launch was carried out by the Raoul Wallenberg Institute for Human Rights and Humanitarian Law on behalf of FRA and in close cooperation with Roma civil society.

<sup>209</sup> Stockholm County Administrative Board, Redovisning av uppdrag att samordna, följa upp och genomföra insatser inom ramen för strategin för romsk inkludering, 7 July 2022. The Institute's own translation.

the Sami for the period 2022–2024. The action programmes complement the Swedish National plan to combat racism, similar forms of hostility and hate crime. The Government's stated objective is for Sweden to be a country free from racism and hate crime.<sup>210</sup>

### 3.3.7 Equality data

A recurring criticism from UN review committees over the years concerns the lack of data on the situation of particularly vulnerable groups in Sweden. The European Commission defines equality data as any qualitative or quantitative information that can be used to describe and analyse the state of equality. Accurate and comparable data is essential to assess the extent and nature of discrimination affecting vulnerable and marginalised groups.<sup>211</sup>

In its most recent evaluation of Sweden, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed concern about the lack of disaggregated data on gender-based violence against women and girls, particularly in relation to women belonging to ethnic or national minorities, women with disabilities and migrant women.<sup>212</sup> Sweden has also previously been criticised by, among others, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) and the UN Committee on the Elimination of Racial Discrimination (CERD Committee) regarding the lack of necessary data to understand the situation of certain groups of persons with disabilities and the enjoyment of economic and social rights by different ethnic groups.<sup>213</sup>

In November 2022, the newly established UN Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement (EMLER) visited Sweden. During the visit, EMLER gathered information on legislation and practices, met with representatives

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<sup>210</sup> Government Offices of Sweden, Samlat grepp mot rasism och hatbrott, <https://www.regeringen.se/regeringens-politik/samlat-grepp-mot-rasism-och-hatbrott/>, downloaded 24 February 2023.

<sup>211</sup> European Commission, *European handbook on equality data 2016 revision*, December 2016, p. 15-16.

<sup>212</sup> CEDAW Committee, Concluding observations on the tenth periodic report of Sweden, 24 November 2021, UN Doc. CEDAW/C/SWE/CO/10 (2021), para. 23(f).

<sup>213</sup> CRPD Committee, Concluding observations on the initial report of Sweden, 12 May 2014, UN Doc. CRPD/C/SWE/CO/1 (2014); CERD Committee, Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden, 6 June 2018, UN Doc. CERD/C/SWE/CO/22-23 (2018). Sweden's latest report to CERD was completed in 2022 and published in January 2023; see Combined twenty-fourth and twenty-fifth reports submitted by Sweden under article 9 of the Convention, 6 January 2023, UN Doc. CERD/C/SWE/24-25 (2023).

of authorities, including the Swedish Institute for Human Rights, and civil society organisations, and conducted interviews with rights holders. The aim was to evaluate Sweden's work to combat racism and discrimination specifically in relation to human rights violations in the context of law enforcement.

After the visit, EMLER urged Sweden to step up the work against structural racism and expressed concern about the unwillingness of Sweden to enable disaggregated data on different grounds of discrimination. According to the Chair of the Expert Mechanism, the availability of equality data is “an essential condition for designing and evaluating measures against structural racism.”<sup>214</sup> EMLER's preliminary conclusions will be communicated to the Government in early 2023.

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<sup>214</sup> Office of the High Commissioner for Human Rights (OHCHR), “Sweden should step up efforts to fight systemic racism, UN Mechanism to Advance Racial Justice says after 5-day visit”, 4 November 2022.

## 3.4 Technological development, digitalisation and human rights

In a 2021 report, an advisory committee to the UN Human Rights Council (HRC) showed how new technologies bring opportunities, challenges and risks to human rights. New communication tools and digital platforms make it possible to connect and to share ideas and information. For people with chronic diseases and disabilities, assistive technologies create new opportunities to realise the rights to health, education and participation. For human rights organisations around the world, satellite data and forensic tools, for example, make it possible to map large-scale human rights violations.<sup>215</sup>

At the same time, technological developments create new global risks. According to the UN Human Rights Council, drones and autonomous weapon systems have recently become commonplace in modern warfare, leading to increased insecurity for civilians in conflict zones and raising questions of accountability for war crimes and rights violations. In turn, automation, machine learning and artificial intelligence are leading to major changes in the labour market. The development of artificial intelligence creates increased opportunities for automated decision-making, which could potentially deepen existing patterns of discrimination if self-learning algorithms rely solely on past practices. Added to this is a changing media landscape, where an independent, fact-checking press is challenged by a digital ecosystem in which polarising messages are rewarded and fake news is allowed to spread widely.<sup>216</sup>

A brief summary of observations of developments related to technological development and human rights made by the Institute in 2022 is presented below. The compilation does not provide a complete picture of developments in the area but can serve as a basis for the public debate and for a continued dialogue with various actors to identify factors that affect compliance with human rights internationally and in Sweden.

### 3.4.1 Technological development and human rights in Sweden

Most of the opportunities and risks to human rights posed by technological developments are visible in Sweden. A fundamental problem is that technology is not

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<sup>215</sup> UN Human Rights Council, Possible impacts, opportunities and challenges of new and emerging digital technologies with regard to the promotion and protection of human rights, 19 May 2021, UN Doc. A/HRC/47/52 (2021).

<sup>216</sup> Ibid.

equally accessible to all. As the internet becomes the most common means of identification, communication and payments, there is a risk that individuals and groups in vulnerable situations will be excluded from full participation in society.

An example of this is the transition from manual to digital payment services. In a 2021 report, the county administrative boards, which are responsible for monitoring the issue, showed that access to digital payment services is generally satisfactory, but not for the elderly or persons with disabilities. According to the county administrative boards' assessment, in recent years there has been an increase in the number of people without access to a payment account. Thus, in practice, these people lack the opportunity to utilise basic financial freedoms and otherwise participate fully in society.<sup>217</sup>

As communication is increasingly concentrated to digital platforms, there is also a risk of racism and hate speech becoming more widespread and normalised. In 2022, the Swedish Defence Research Agency (FOI) presented a study on how ethnic minorities are described in Swedish discussion forums on the digital platform Reddit. Among the posts mentioning ethnic minorities published on Reddit from January to July 2022, 19 percent contained negative attitudes towards minorities.<sup>218</sup>

In its study, FOI shows that Muslims and other people of Middle Eastern and North African origin are particularly exposed to negative attitudes on Reddit, which can partly be linked to the reporting of the so-called Easter Riots in April 2022. FOI also highlights the difficulties in combating the spread of racism on social platforms owned by private companies, which do not have the same obligations as states to ensure human rights. The algorithms to identify and remove racist posts are not yet sufficiently developed. In addition, the companies behind social platforms are faced with the difficulty of drawing boundaries around what is and is not to be classified as racist posts.<sup>219</sup>

In 2022, the Swedish Security Service (Säpo) reported how the development of cyber espionage and cyber-attacks has changed from being primarily focussed on industrial espionage to now revolving around a political agenda. Individuals living in Sweden are often the targets of surveillance, threats and direct violence in order to prevent political opinion shaping and opposition. According to Säpo, Russia, China and Iran,

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<sup>217</sup> County Administrative Boards, *Bevakning av grundläggande betaltjänster 2021*, 25 November 2021. For relevant international legislation, see e.g. ICESCR, Article 6.2.

<sup>218</sup> Swedish Defence Research Agency (FOI), *En studie i fördom - Om rasistiska stereotyper i digitala miljöer*, 2 November 2022.

<sup>219</sup> Ibid. See also City of Malmö, *Trygg och säker digital stad*, 12 October 2022.

among others, conduct extensive intelligence gathering and attempts to influence groups and individuals in the diaspora in Sweden. In May 2022, the head of Säpo's counter-intelligence department stated that “foreign powers devote considerable resources to getting individuals in Sweden to engage in self-censorship. When people living in Sweden are subjected to threats, pressure and, in the worst case, outright attacks to prevent them from using their statutory freedom of expression, it is not only a threat to individuals, but ultimately a threat to Sweden's democracy and our territorial sovereignty.”<sup>220</sup>

### 3.4.2 Digitalisation and the right to personal privacy

New technologies can collect large amounts of information about people's identities, preferences and behaviours, creating risks to the right to privacy and the right to protection of personal data. A recent example is the lack of compliance with the European General Data Protection Regulation (GDPR) in Sweden. The Regulation protects, among other things, the right of individuals to receive information about how personal data is used, to have inaccurate data corrected and to have certain data erased. The GDPR applies to the data management of both public institutions and a company.

In 2022, the Swedish Authority for Privacy Protection (IMY) reported that it had received 2,620 complaints from individuals in the previous year. The majority of the complaints related to cases where individuals tried to claim rights without success or where organisations handled sensitive personal data in a risky way.<sup>221</sup> IMY's analysis also shows that half of all residents in Sweden have limited knowledge of the rights protected by the GDPR. Although many people are concerned about the privacy risks posed by technological developments, few take active steps to protect their personal privacy online.<sup>222</sup>

On 20 November 2022, the EU Digital Services Act (DSA) entered into force. The Regulation imposes a number of obligations on online intermediation services. The Regulation has the potential to strengthen the protection of human rights online. It includes increased transparency and accountability requirements for online platforms.

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<sup>220</sup> Säkerhetspolisens årsbok, *Säkerhetspolisen 2021*, May 2022, p. 14. The Institute's own translation.

<sup>221</sup> Swedish Authority for Privacy Protection, *Klagomål till IMY – den nationella bilden 2021*, 9 June 2022.

<sup>222</sup> Swedish Authority for Privacy Protection, *Digital integritet 2022: En rapport om den svenska befolkningen och personlig integritet i digital miljö*, 29 November 2022.

At the same time, Human Rights Watch and others called for stronger protection against companies' surveillance and profiling of people.<sup>223</sup>

### 3.4.3 Secret surveillance

Secret surveillance involves intrusive measures against the individual that can be used by law enforcement authorities such as the Swedish Police Authority, the Swedish Security Service (Säpo) and the Swedish Economic Crime Authority. They include bugging rooms, wiretapping and surveillance of electronic communications, camera surveillance and data interception.

The use of secret surveillance is a restriction on the right to protection from public institutions against invasion of personal privacy in accordance with Chapter 2, Section 6 of the Instrument of Government. Similarly, the use of secret surveillance constitutes an infringement of the right to protection of private and family life as expressed in international conventions, such as in Article 8 of the European Convention on Human Rights. However, the right to protection of private and family life is not absolute but may be restricted under certain conditions. But a restriction must never go beyond what is necessary to achieve an acceptable purpose. Such purposes may include national security, the prevention of crime or the protection of the rights and freedoms of others.<sup>224</sup>

Technological developments have a major impact on both the development and use of secret surveillance. Arguments for the introduction of the possibility of secret data interception have been, inter alia, that other surveillance (such as telephone tapping) have become less effective due to the increased use of encryption and anonymisation in criminal circles.<sup>225</sup> According to the Swedish Prosecution Authority, new technical methods for interception mean, among other things, that the risks to third parties can be minimised.<sup>226</sup>

Secret surveillance is mainly used in preliminary investigations and are generally directed against a person who is reasonably suspected of a crime. There is also some possibility for the Swedish Police Authority and Säpo to use it in intelligence

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<sup>223</sup> Human Rights Watch, “EU: Put Fundamental Rights at Top of Digital Regulation”, 7 January 2022.

<sup>224</sup> European Convention on Human Rights, Article 8.

<sup>225</sup> Prop. 2019/20:64, p. 69–72.

<sup>226</sup> Swedish Prosecution Authority, Framställning om ändringar i lagsifningen om hemliga tvångsmedel i 27 kap. rättegångsbalken, 28 October 2019.

activities to prevent certain serious crimes, such as sabotage, espionage and terrorist offences.<sup>227</sup> As a general rule, secret surveillance can only be used after a court has authorised them at the request of a prosecutor. In this process, the individual's rights and privacy are protected by a public legal representative. Under Swedish law, the use of secret surveillance must be appropriate, proportionate and respond to a clear need.

The need for secret surveillance often comes up in discussions and debates on measures against organised crime and gang crime. The use of secret surveillance has been growing steadily for a long time but decreased somewhat in 2021. The most common secret surveillance is secret surveillance of electronic communications. In 2021, 3,310 individuals were the target of 12,989 authorisations for such surveillance. It is very rare for the courts to deny a prosecutor the use of secret surveillance. For example, less than one percent of prosecutors' requests for authorisation of secret surveillance of electronic communications were rejected in 2021. The courts also almost always affirm the interim (temporary) decisions on secret surveillance that prosecutors can take in urgent cases.<sup>228</sup>

The report Expanded possibilities to use secret surveillance (Utökad användning av hemliga tvångsmedel) (SOU 2022:19) was submitted in May 2022. It proposed that it should be possible to use secret surveillance in more situations than today. Several of the proposals in the report were questioned by the referral bodies, partly because they could entail increased risks to personal privacy.<sup>229</sup> The Swedish Institute for Human Rights found, among other things, that the supporting documentation was insufficient to take a position on whether the proposed restrictions on personal privacy and the right to private and family life were necessary and proportionate (see Section 2.3 for a summary).

Several other public inquiries have worked on issues related to the expansion of secret surveillance during the year. In October 2022, proposals were presented to enable the use of secret surveillance to prevent crime.<sup>230</sup> In its referral statement, the Swedish Institute for Human Rights expressed concern that the high pace of legislation in this area means that an already complex and inaccessible regulatory

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<sup>227</sup> Section 1, Para. 1 of the Act (2007:979) concerning measures to prevent certain particularly serious offences (Prevention Act).

<sup>228</sup> Government communication 2022/23:30.

<sup>229</sup> See e.g. Swedish Authority for Privacy Protection, Yttrande över utökade möjligheter att använda hemliga tvångsmedel (SOU 2022:19), ref. no. IMY-2022-2830, 9 February 2022; Swedish Bar Association, Utökade möjligheter att använda hemliga tvångsmedel R-2022/1035, 14 September 2022.

<sup>230</sup> SOU 2022:52.

framework risks becoming even more unclear and difficult to understand. This may affect the possibility of predictable application of the law. According to the Institute, it is of utmost importance that new rules on increased surveillance through secret surveillance are necessary, legally secure and proportionate to the interference in people's freedoms they represent.<sup>231</sup>

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231 The Secretary General of the Swedish Bar Association has expressed a similar view, including advocating the establishment of an expert council that would improve the quality of the legislative process for proposals that would infringe on personal privacy. See e.g. Mia Edwall Insulander, "Låt expertråd granska nya lagar om avlyssning", *Dagens Nyheter*, 11 January 2022.

## 3.5 Case law and legislative changes

This section describes a selection of decisions in Swedish and international bodies in which human rights issues in Sweden were addressed in 2022. It then describes some legislative changes that may be of importance for the protection of human rights in the long and short term.

### 3.5.1 Important decisions from national bodies

#### Freedom of expression and freedom of religion

In two rulings in December 2022, the Supreme Administrative Court (HFD) found that municipal bans on wearing veils in schools were not supported by law. One case concerned a decision by the Municipal Council in Skurup in 2019 that headscarves, burqas, niqabs and similar items of clothing would not be permitted in the municipality's preschools and compulsory schools. The second concerned a decision by the Municipal Council of Staffanstorp that headscarves would not be allowed in the municipality's organisations for children in preschool and compulsory school up to sixth grade.<sup>232</sup>

Both cases involved so called legality reviews in which the Supreme Administrative Court examined whether the decisions were contrary to law or other statutes and should therefore be repealed under the Local Government Act.<sup>233</sup> The Supreme Administrative Court found that a ban on the wearing of clothing that expresses religious affiliation has such actual effects on individuals that it is covered by the protection of freedom of expression in the Instrument of Government.<sup>234</sup> Decisions on restrictions must therefore be supported by law in order to be permitted.<sup>235</sup> Although the Education Act contains a provision stating that schools with a public organiser shall be non-denominational, this provision does not constitute legal support for restricting freedom of expression in the way that has been done.<sup>236</sup>

#### Legality review of the Convention on the Rights of the Child

In April 2022, two judgments were issued by the Administrative Court of Appeal in Stockholm concerning complaints about municipal decisions on the organisation of

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<sup>232</sup> HFD 2022 ref. 51 I and II, 8 December 2022.

<sup>233</sup> Chapter 13, Section 8, Para. 1, Item 4 of the Local Government Act (2017:725).

<sup>234</sup> Chapter 2, Section, 1, Para. 1, Item 1 of the Instrument of Government.

<sup>235</sup> Chapter 2, Sections 20 and 25 of the Instrument of Government.

<sup>236</sup> Chapter 1, Section 6 of the Education Act (2010:800).

school activities.<sup>237</sup> Individuals had claimed, among other things, that the municipalities had not complied with the obligation to consider the best interests of the child under Article 3(1) of the Convention on the Rights of the Child. The decisions should therefore be repealed.<sup>238</sup>

One of the legal issues decided by the court concerned the significance of the provisions of the Convention on the Rights of the Child in such a legality review. The Administrative Court of Appeal pointed out that the provision on the best interests of the child in Article 3(1) has been considered to be directly applicable in practice, and that a municipal decision that is contrary to the provision can thus be repealed.<sup>239</sup>

### **Freedom from arbitrary detention**

In March 2022, the Supreme Administrative Court adjudicated a fundamentally important case concerning who can be deprived of liberty under the Care of Young Persons (Special Provisions) Act (LVU). According to the European Convention on Human Rights, everyone has the right to liberty and personal security.<sup>240</sup> For example, it is possible to deprive a “minor” of their liberty for the purpose of “educational supervision” or to “[bring] him before the competent legal authority”.<sup>241</sup> In Sweden, a young person can be deprived of their liberty under the LVU if the young person is exposing their health or development to a significant risk of harm through socially degrading behaviour. The law states that if the young person is over the age of 18, LVU care must be more appropriate than other care.<sup>242</sup> An 18-year-old who had been detained under LVU appealed the decision, arguing that he could not be considered a minor under the provision of the European Convention on Human Rights. There were therefore no grounds for placing him in compulsory institutional care in a special home for young people run by the National Board of Institutional Care (SiS). In a divided judgment, the Supreme Administrative Court stated that there is no clear age limit in Swedish law and practice for when young people are

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<sup>237</sup> Administrative Court of Appeal in Stockholm, 5211-21 and 5626-21, 7 April 2022.

<sup>238</sup> Chapter 13, Section 8, Para. 1, Item 4 of the Local Government Act (2017:725).

<sup>239</sup> The Administrative Court of Appeal made reference to NJA 2020 p. 761 and NJA 2021 p. 1065.

<sup>240</sup> European Convention on Human Rights, Article 5.

<sup>241</sup> European Convention on Human Rights, Article 5(1)(d).

<sup>242</sup> Section 1, Para. 3 of LVU read together with Section 3 of LVU.

granted all the rights that adults have. The regulation in LVU therefore does not lead to arbitrary detention in violation of the ECHR.<sup>243</sup>

The question of which deprivations of liberty are permitted under the ECHR also came up in a case before the Migration Court of Appeal (MiÖD), the highest instance for examining questions concerning the detention of foreigners. Under the ECHR, detention may, for example, be used to prevent unauthorised entry into a country or for the purpose of expulsion or deportation.<sup>244</sup> In October 2022, MiÖD ruled on a case concerning how long a detention can last. The case concerned a man who had appealed against a decision to detain him. After being sentenced to imprisonment and deportation for a criminal offence, he had been detained for three years and nine months after serving his sentence. According to the man, this was an unreasonably long time and there was no prospect of enforcing his deportation. The detention was therefore not in reasonable proportion to the restriction of rights that the detention entailed. MiÖD stated that the long detention should be seen in the light of the fact that it concerned a foreign national who had committed serious and repeated offences, with a risk of recidivism. He had also systematically refused to cooperate in the enforcement of the deportation order. The measure was therefore not disproportionate in relation to the purpose of the detention. There were therefore exceptional grounds for continued detention.<sup>245</sup>

### Right to life

In March 2022, the Office of the Chancellor of Justice (JK) awarded damages to a family in a case concerning whether the Swedish state had violated the right to life under Article 2 of the European Convention on Human Rights.<sup>246</sup> The background to the decision was an incident in 2014, when a man died after a police intervention at a hospital in Västerås where he was receiving compulsory psychiatric care. Several preliminary investigations into criminal offences were initiated in connection with the incident, but never led to prosecution. The Office of the Chancellor of Justice found that there were deficiencies in the preliminary investigations. For example, some investigative efforts, such as interrogations, had been delayed. The Office of the Chancellor of Justice also noted that the police officers involved reported the incident by writing memoranda,

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<sup>243</sup> HFD 2022 ref 11. The Chief Justice of the Supreme Administrative Court disagreed with the majority and stated that the concept of a minor in Article 5(1)(d) of the European Convention on Human Rights cannot be interpreted as covering young persons who are of age, i.e. over the age of 18.

<sup>244</sup> Article 5(1)(f) of the European Convention on Human Rights.

<sup>245</sup> MIG2022:8, 10 October 2022.

<sup>246</sup> JK ref. no. 2020/5729.

something that the Osmo Vallo investigation stated should not be allowed to happen when someone is seriously injured or dies in connection with police intervention.<sup>247</sup>

The Office of the Chancellor of Justice made reference to the European Court of Human Rights' case law statements that the state has positive obligations in cases of this kind. One of these is that an investigation following deaths in police interventions must meet a certain standard. It must be able to demonstrate the cause and circumstances of the fatal outcome, as well as whether the use of force was justified. The state also has an obligation to identify and hold those responsible accountable. All reasonable measures, such as witness interviews and autopsies, must therefore be taken to secure evidence. Overall, the Office of the Chancellor of Justice found that the deficiencies in the investigation were of such a nature and extent that the state had violated Article 2 of the ECHR on the right to life. The man's parents and two siblings were awarded SEK 30,000 each in damages.

### **Prohibition of torture and other inhuman and degrading treatment**

On 1 September 2022, the Svea Court of Appeal decided to reject certain evidence in a criminal case on the grounds that it had been obtained in violation of the prohibition of inhuman and degrading treatment under Article 3 of the ECHR. The decision described how two police officers held a kind of conversation or interrogation with a man who had a serious gunshot wound to the head. The conversation lasted half an hour while waiting for an ambulance and while the ambulance crew prepared the man for transport. According to the decision, the situation was very stressful. Among other things, the man's face was illuminated by a bright light, and he was in great distress. The conversation continued even after the man provided information that made him a suspect in a very serious offence. The man was also not informed of his rights as a suspect. According to the Court of Appeal, it was obvious that the two police officers did not intend to treat the man poorly, but that their treatment of him was likely to violate his human dignity. The Court of Appeal therefore found that the behaviour constituted both inhuman and degrading treatment in violation of the European Convention on Human Rights.<sup>248</sup>

The Court of Appeal stated that according to the European Court of Human Rights' case law, it may be legitimate to present an investigation to a court that was not obtained in accordance with the provisions of the Convention, but only as long as

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<sup>247</sup> SOU 2002:37.

<sup>248</sup> Svea Court of Appeal, B 7505-22, file appendix 143.

the evidence does not contravene the Article 3 prohibition.<sup>249</sup> The Court of Appeal also emphasised that the Supreme Court has stated that if an investigation has been obtained in a manner contrary to Article 3, its use may lead to the entire trial being considered unfair.<sup>250</sup>

### Cases involving core international crimes

During the year, there were a number of convictions for core international crimes. In February 2022, a woman was sentenced to six years in prison for gross core international crime and gross war crime. She had taken her secondary school-aged son to Syria during the ongoing civil war, where he was recruited by the Islamic State (IS) and used as a child soldier. The Stockholm District Court noted, among other things, that these offences can also be committed by omission, and that the mother's failure to prevent her son from leaving home to perform his duties as a child soldier was punishable.<sup>251</sup>

In July 2022, an Iranian citizen was sentenced to life in prison by the Stockholm District Court for gross core international crime and murder for participating in the execution of a very large number of political prisoners in Iran in 1988.<sup>252</sup>

In November 2022, the Supreme Court (HD) made a decision on the possibility of trying a case of gross core international crime in Sweden.<sup>253</sup> The case concerned a Swiss citizen who was charged with aiding and abetting a gross international crime in Sudan,<sup>254</sup> an offence covered by the universal jurisdiction provision of the Penal Code.<sup>255</sup> The case concerns offences allegedly committed in his role as a representative of companies in the Swedish group Lundin Oil, alone or together and in concert with a Swedish national. According to the Supreme Court, the connection to Sweden was sufficient for there to be a legitimate Swedish interest in the administration of justice, and the Swedish court therefore has jurisdiction to hear the case. The Supreme Court further stated that the alleged offences having been committed in a non-international armed conflict did not give rise to any other

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<sup>249</sup> European Court of Human Rights, *Jalloh v. Germany* (Grand Chamber), no. 54810/00, 11 July 2007.

<sup>250</sup> NJA 2011 p. 638 p. 21.

<sup>251</sup> Stockholm District Court, B 20218-20, 4 March 2022.

<sup>252</sup> Stockholm District Court, B 15255-19, 14 July 2022.

<sup>253</sup> Supreme Court, "Universalitetsprincipen", Ö 1314-22, 10 November 2022.

<sup>254</sup> Chapter 22, Section 6 of the Penal Code in its working prior to 1 July 2009, and Chapter 23, Section 4 of the Penal Code.

<sup>255</sup> Chapter 2, Section 3 of the Penal Code.

assessment. Nor does the fact that the man was not in Sweden constitute an obstacle to Swedish jurisdiction.

### 3.5.2 Sweden in the European Court of Human Rights

In 2022, the European Court of Human Rights issued two rulings in cases concerning Sweden.

The first complaint, *Thörn v. Sweden*, concerned a man convicted of a minor drug offence after producing cannabis for personal use for medical reasons.<sup>256</sup> He argued that this had led to a violation of his right to private and family life under Article 8 of the ECHR.<sup>257</sup> The European Court of Human Rights found that his rights had not been violated, as the State has a wide margin of appreciation when balancing the individual's interest in pain relief against the public interest in controlling drugs and medicines. The European Court of Human Rights also noted that the Supreme Court of Sweden had in fact taken the man's interests into account in the classification of the offence, the assessment of the sentence and the sentencing.<sup>258</sup>

The second case, *MT et al. v. Sweden*, concerned an unaccompanied Syrian boy whose family was not allowed to join him in Sweden due to a temporary suspension of family reunification. The suspension lasted between July 2016 and July 2019 and concerned so-called persons in need of subsidiary protection who had been granted temporary residence permits. The European Court of Human Rights held that Sweden had correctly weighed the needs of society against the interests of the family, and that there was no violation of Article 8 of the ECHR. According to the Court, there were also objective reasons for treating the family differently than if they had been recognised as refugees. The high number of refugees received by Sweden represented a strain on the State, and the measure was therefore not disproportionate.<sup>259</sup>

In September 2022, Sweden requested to intervene (participate) in an intergovernmental case at the European Court of Human Rights between Ukraine

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<sup>256</sup> European Court of Human Rights, *Thörn v. Sweden*, no. 24547/18, 1 September 2022.

<sup>257</sup> Article 8 of the European Convention on Human Rights.

<sup>258</sup> NJA 2017 p. 872.

<sup>259</sup> European Court of Human Rights, *MT et al. v. Sweden*, no. 22105/18, 20 October 2022. In a dissenting opinion, one of the judges stated that the majority of the Court had not taken sufficient account of the previous case law of the European Court of Human Rights in Grand Chamber, including the decisions *M.A. v. Denmark*, no. 6697/18, 9 July 2021, on Article 8, and *Biao v. Denmark*, no. 38590/10, 24 May 2016, on Article 14 and the prohibition of discrimination.

and Russia concerning gross violations of human rights.<sup>260</sup> According to a statement by the then Minister for Foreign Affairs, Sweden would present positions in line with Ukraine's, i.e. that international law must be respected, that responsibility for acts of aggression must be enforced and that allegations of war crimes must be investigated.<sup>261</sup> At the same time, Sweden intervened in a case in the International Court of Justice on genocide charges against Russia.<sup>262</sup>

### 3.5.3 UN statements on Sweden's human rights obligations

In 2022, the UN's treaty bodies have not issued any general conclusions on how Sweden complies with the UN human rights conventions to which Sweden has acceded. However, in some cases it is possible for individuals to turn to the committees if they feel that their rights under the convention have been violated, which can result in conclusions that Sweden has violated its international commitments. There are also other monitoring mechanisms of the UN Human Rights Council (HRC) that have carried out various reviews of Sweden, such as EMLER (see Section 3.3.6). This section briefly describes some cases concerning Sweden's human rights commitments that the Institute considers to be of particular interest.

In January 2022, the UN Committee against Torture published a decision on Sweden. The decision concerned whether the deportation to Afghanistan of a man who had converted to Christianity would violate the right, under Article 3 of the Convention against Torture (CAT), not to be sent to a country where he risks being subjected to torture or cruel, inhuman or degrading treatment or punishment. The Committee stated, among other things, that Swedish migration authorities had failed in their obligation to make an individual assessment of the personal and real risk that the man would face in Afghanistan.<sup>263</sup> The man was granted a residence permit by the Swedish Migration Agency in September 2022.<sup>264</sup>

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<sup>260</sup> European Court of Human Rights, *Ukraine v. Russia* (X), no. 11055/22.

<sup>261</sup> Ministry for Foreign Affairs, "Sverige deltar i två domstolsmål om kriget i Ukraina", 9 September 2022, <https://www.regeringen.se/pressmeddelanden/2022/09/sverige-deltar-i-tva-domstolsmal-om-kriget-i-ukraina/>, downloaded 14 February 2023.

<sup>262</sup> International Court of Justice, *Declaration of intervention of the Government of Sweden in the case of Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia)*, 9 September 2022.

<sup>263</sup> UN Committee on Torture (CAT Committee), Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 918/2019, 20 January 2022, UN Doc. CAT/C/72/D/918/2019 (2022).

<sup>264</sup> "FN stoppade Abolfazls utvisning – nu får han stanna i Sverige", *Sveriges Television*, 19 September 2022.

In March 2022, the UN Human Rights Committee stated that the deportation of a family to Albania would constitute a violation of the prohibition of torture and other cruel, inhuman and degrading treatment under Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The family argued, among other things, that they were at risk of violations by criminals from whom the state was unable to protect them. The Committee noted that even if the Swedish authorities found contradictions in the asylum application, this did not exempt them from taking other reasonable measures to clarify whether or not there was a risk to return. Based on the circumstances of the individual case and the information and evidence available to the Committee, the Committee found that the assessment of the asylum application was arbitrary. A return to Albania would therefore constitute a violation of the Covenant's prohibition of torture.<sup>265</sup>

In December 2022, the UN Human Rights Committee issued a decision stating that Sweden would be guilty of violations of the right to life under Article 6 of the ICCPR and the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment under Article 7 of the ICCPR if a Burundian man was returned to his home country. The man claimed that his return would put him at risk of death, torture, imprisonment or disappearance, inter alia because he had disclosed serious abuses to human rights organisations and journalists. The Committee found that there was an incorrect assessment of the risk the man would face in Burundi, given that he was both threatened and wanted by the authorities.<sup>266</sup>

The UN Working Group on Arbitrary Detention, an expert group under the UN Human Rights Council (HRC), published a statement in May 2022 in which it stated that a man from Afghanistan had been arbitrarily detained in Sweden. The man had been detained for 23 months after his asylum application was rejected and he was sentenced to deportation for a criminal offence. The Working Group stated that the detention violated, among other things, the man's procedural rights under Articles 13 and 14 of the ICCPR and the prohibition of discrimination in Articles 2 and 26 of the same Covenant.<sup>267</sup>

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<sup>265</sup> UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2632/2015, 22 September 2022, UN Doc. CCPR/C/134/D/2632/2015 (2022).

<sup>266</sup> UN Human Rights Committee, Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3701/2020, 8 December 2022, UN Doc. CCPR/C/136/D/3706/2020 (2022).

<sup>267</sup> UN Working Group on Arbitrary Detention, Opinions adopted at its ninety-third session, 19 May 2022, UN Doc. A/HRC/WGAD/2022/26 (2022).

For several years, a number of UN special rapporteurs and working groups under the Human Rights Council have raised questions about the situation of more than 10,000 boys and men of different nationalities detained in prisons and other detention centres in north-eastern Syria. According to the rapporteurs, the detentions are arbitrary, and the conditions are inhumane. A number of the detainees are Swedish citizens. In a communication to the Swedish Government in February 2022, the UN experts stated that a voluntary return to the countries of origin is the only solution acceptable under international law to the human rights, humanitarian and security problems faced by foreign detainees. The experts asked Sweden to report on the measures taken to protect the rights of the detainees and to return Swedish citizens to Sweden. Sweden's response from April 2022 stated, among other things, that the exercise of jurisdiction is a prerequisite for being held responsible under human rights regulations, and that there was no basis for saying that Sweden has what is known as extraterritorial jurisdiction in north-eastern Syria. Although the letter stated that Swedish children should be brought to Sweden, if and when possible, the letter also stated that there was no information about Swedish boys being held in prison or other detention in north-eastern Syria.<sup>268</sup>

### 3.5.4 Some important legislative changes

From 1 August 2022, a person will be able to receive damages from the state or a municipality if they have suffered a violation of fundamental rights and freedoms under the Instrument of Government, which is part of the Swedish Constitution.<sup>269</sup> Constitutional damages shall only be paid to the extent necessary to compensate for the violation. There are cases where individuals have previously been awarded non-pecuniary damages for violations of constitutionally protected rights and freedoms, but the amendment to the Tort Liability Act has made the rules clearer and the protection of the individual stronger.<sup>270</sup>

During the past year, some provisions in the Swedish Constitution relating to fundamental rights and freedoms have also been adopted. The prerequisites for such

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<sup>268</sup> Ministry for Foreign Affairs, UD2022/01541, 1 April 2022. In the autumn of 2022, two fundamentally important decisions were issued concerning France and Finland's human rights obligations towards their own citizens in Syria. See European Court of Human Rights in Grand Chamber, *H.F. et al. v. France*, no. 24384/19 and 4424/20, 14 September 2022 and UN Committee on the Rights of the Child, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 100/2019, 22 October 2022, UN Doc. CRC/C/91/D/100/2019 (2022).

<sup>269</sup> Chapter 3, Section 4, Item 1 of the Tort Liability Act, as amended by SFS 2022:1368 (prop. 2021/22:229).

<sup>270</sup> Supreme Court, *Medborgarskapet I och II*, NJA 2014 p. 323 and NJA 2018 p. 103.

amendments are that the Riksdag (Swedish Parliament) votes equally twice on the proposal and that there is an election between the votes. In November 2022, the Riksdag finally adopted some proposals to amend the Constitution from 1 January 2023.

One amendment to the Instrument of Government involves making it possible by ordinary law to restrict the freedom of association of organisations that engage in or support terrorism.<sup>271</sup>

A more high-profile amendment concerned the criminalisation of so-called foreign espionage as an offence against freedom of the press and freedom of expression. The amendment to the Freedom of the Press Act places restrictions on the freedom of everyone to publish information in constitutionally protected media forms, as well as on the freedom to communicate and the freedom to acquire information.<sup>272</sup> The constitutional amendment means that anyone who disseminates secret information about Swedish defence cooperation – such as peacekeeping and security efforts within the framework of NATO, the UN, the Organisation for Security and Cooperation in Europe (OSCE) and the EU – is guilty of foreign espionage, provided that the information can seriously damage Sweden's intergovernmental interests and the act is carried out with the aim of benefiting a foreign power or equivalent. The penalty for offences of the normal description is proposed to be a maximum of four years, while gross foreign espionage could result in a prison sentence of two to eight years. If the offence is not intended to benefit a foreign power or equivalent, it should instead be classified as unauthorised possession or negligence of secret information. These offences carry a fine or a prison sentence of maximum two years. There is an exception to the criminal provision that aims to protect acts that are considered justifiable in view of the purpose and other circumstances.

Since it is not easy to predict the interpretation of what can be considered justifiable, it has been expressed that there is a risk that individuals will play it safe and therefore refrain from acting in a way that could be considered criminal.<sup>273</sup>

Parallels have also been drawn to previous revelations of military abuses, which according to the critics would become a criminal offence if carried out in contexts in

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<sup>271</sup> Chapter 2, Section 24, Para. 2 of the Instrument of Government; see report 2021/22:KU13 and report 2022/23:KU4.

<sup>272</sup> Chapter 7, Section 14(a) of the Freedom of the Press Act. See prop. 2021/22:55 and report 2021/22:KU16 and report 2022/23:KU7.

<sup>273</sup> Publicistklubben, Svenska Pen, et al., “Låt inte Erdogan få styra svensk medierapportering”, *Dagens Nyheter*, 9 November 2022.

which Sweden participates after the introduction of the new offence. Julian Assange and Anders Kompass are two names mentioned in the debate.<sup>274</sup> In the 2010s, they each published and disseminated information on various cases of abuse by troops involved in various peacekeeping and security military cooperations. The aim was to highlight suspicions and initiate legal investigations into serious offences against the civilian population in the countries of the respective operations. In the case of Assange, the information concerned e.g., US-led drone attacks in Afghanistan, which claimed many civilian lives, but which without Assange's efforts would probably have remained unknown to the wider public. In the case of Kompass, the information concerned the sexual abuse of underage boys by French UN soldiers in Central Africa, which he learned about as head of field operations at the UN Human Rights Office and then chose to pass on to French law enforcement authorities.

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<sup>274</sup> Anders Kompass himself has criticised the proposal. Josefin Karlsson and John Granlund, "Anders Kompass rasar över förslag om visselblåsarlag", *Aftonbladet*, 15 November 2022.

## Appendix 1. Act (2021: 642) on the Institute for Human Rights<sup>275</sup>

### Mandate

**Section 1** The Swedish Institute for Human Rights shall promote the safeguarding of human rights in Sweden, based on

1. the Swedish Instrument of Government, the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression,
2. the European Convention for the Protection of Human Rights and Fundamental Freedoms,
3. the Charter of Fundamental Rights of the European Union, and
4. other obligations in the field of human rights binding on Sweden according to public international law.

The Institute shall fulfil the functions of an independent national mechanism under Article 33(2) of the Convention on the Rights of Persons with Disabilities.

**Section 2** In particular, the Institute shall

1. monitor, investigate, and report on how human rights are respected and realised in Sweden,
2. submit proposals to the Government on the measures needed to ensure human rights,
3. liaise with international organisations and otherwise engage in international cooperation, and
4. promote education, research, development of expertise, dissemination of information and awareness-raising in the field of human rights.

The Institute may propose to the Government that Sweden's obligations under international law within the field of human rights be expanded.

The Institute will not handle complaints from individuals concerning violations of human rights.

**Section 3** Not later than by 1 April each year, the Institute shall submit a report to the Government on its activities and its observations relating to developments in the field of human rights during the previous calendar year.

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<sup>275</sup> Translation by the Institute.

**Section 4** Within the limits of its mandate, the Institute will decide on its organisation and on the details and focus of its work.

### **Management, appointments and tasks**

**Section 5** The Institute is managed by a Board.

**Section 6** The Director is the head of the agency and is appointed for a term of six years. The post shall be advertised and filled following an application procedure. The Director shall have experience of qualified work in the field of human rights.

**Section 7** The Board shall be composed of the Director and seven other members. The other members shall be appointed by the Government for a period of five years. The Board shall elect a Chair and Vice Chair from among the members appointed by the Government.

The Government may dismiss a member prematurely only at the member's request or if there are exceptional circumstances. If a member's term of office ends prematurely, a new member shall be appointed for the remainder of the term.

**Section 8** The Board shall include members with expertise in the field of human rights and experience of qualified work in the following areas of activity:

1. civil society,
2. the judicial system and legal practice as advocates, and
3. academic research and higher education.

For each of the areas of activity, there shall be two members with experience within the field.

The Government shall request proposals for members from

1. the Institute's Council,
2. the Swedish Bar Association, and
3. universities and university colleges.

**Section 9** A person who has been a member of the Institute's Board or employed as Director under Section 6 may not be appointed as a member of the Board or employed as Director earlier than five years after the termination of the appointment or employment.

### **Advisory body**

**Section 10** The Institute shall have a Council. The Council shall provide advice and support by bringing to the Institute knowledge and experience from the human rights activities of civil society organisations and other actors.

The Council is appointed by the Board. The Council shall have a broad composition and shall consist of at least ten members. Organisations representing persons with disabilities shall be represented on the Council.

### **Information from government authorities, municipalities and regions**

**Section 11** State administrative authorities, municipalities and regions shall, at the request of the Institute, provide information on the measures taken within their own activities to ensure human rights.

This obligation does not apply to quasi-judicial tribunals or bodies of administrative authorities with quasi-judicial functions.

Nor does the obligation apply to the Office of the Chancellor of Justice, the Parliamentary Ombudsmen or the Swedish National Audit Office. *Act (2022:1053)*.

### **Transitional provisions**

1. This Act shall enter into force on 1 October 2021 in respect of Sections 5, 7 and 8 and otherwise on 1 January 2022.

2. The first time Board members are to be appointed, two members shall be appointed for a term of three years, two members for a term of four years, and three members for a term of five years. The two Board members who have experience of qualified work in civil society shall be appointed for a term of three years.

3. The provisions of Section 8, Para. 3, Item 1 shall not apply to the first appointment of members of the Board.



## Appendix 2. Management of the Institute

The Institute is managed by a Board. The appointment of the Board is governed by the Act (2021:642) on the Institute for Human Rights. The Board shall be composed of the Director plus seven other members. The other members shall be appointed by the Government for a period of five years. The Board shall elect a Chair and Vice Chair from among its members.

The Board shall include members with expertise in the field of human rights and experience of qualified work in civil society, the judiciary and the legal profession, and research and higher education. For each of the areas of activity, there shall be two members with experience within the field.

The members of the Board are as follows:

### **Elisabeth Rynning, Board Chair**

As Chief Parliamentary Ombudsman (2016–2021), Elisabeth Rynning's duties included ensuring that individuals' fundamental rights and freedoms are not violated in public activities and preventing inhuman and degrading treatment of detained persons. She was formerly a Justice of the Supreme Administrative Court and before that Professor of Medical Law, where her research focused in particular on the rights and legal protection of patients and research subjects. Elisabeth has, among other things, been an expert in the Swedish National Council on Medical Ethics, a board member of the National Centre for Knowledge on Men's Violence Against Women and the Swedish Agency for Health and Care Services Analysis, and a member of the Swedish Press Council. She has participated in many international collaborations, in research and with ombudsman institutions in other countries. Elisabeth has been a Visiting Professor of Medical Law at Uppsala University since 1 January 2022.

### **Negin Tagavi, Vice Chair of the Board**

Negin Tagavi is a trained diplomat and lawyer and currently works as Deputy CEO at Fryshuset. Before joining the diplomatic programme at the Ministry for Foreign Affairs, she worked at a corporate law firm. She has been posted to the Swedish Embassy in Baghdad and served at the Permanent Mission of Sweden to the UN in New York. Negin also worked at the Department for Human Rights and Public International Law at the Ministry for Foreign Affairs in Stockholm, where she, inter alia, spearheaded and negotiated Swedish human rights policy in various multilateral forums. Negin left the Ministry for Foreign Affairs and the Government Offices of Sweden in 2017 and has since been active in civil society in various capacities.



### **Annika Jyrwall Åkerberg**

Annika Jyrwall Åkerberg works as Senior Legal Adviser for Civil Rights Defenders. Her work focuses on issues such as the situation in locked institutions, the right to a fair trial and the rights of persons with disabilities. Annika previously worked for the Committee on the Rights of the Child in Geneva and for the former UN Special Rapporteur on Disability Issues and participated in the drafting of the Convention on the Rights of Persons with Disabilities. In Sweden, she has been a member of the Stockholm Council for Human Rights, an examiner for courses in human rights at University College Stockholm (Enskilda Högskolan) and has worked for the Swedish disability rights movement. She has also specialised in discrimination against persons with disabilities and has written a book on the subject.

### **Leif Ljungholm**

Leif Ljungholm is a lawyer working at Ljungholm & Bostrom Advokater AB in Lund. He has previously been a partner in some of the larger corporate law firms in Sweden. Leif has and has had several assignments for the Swedish Bar Association. He has been a board member and then chair of the Swedish Bar Association. He has also served as Vice Chair of the Disciplinary Committee of the Swedish Bar Association and as the Association's representative on the International Bar Association (IBA) Council. He has worked on various human rights issues and was a board member of the Raoul Wallenberg Institute for Human Rights (RWI) for 12 years. He has also been a member of the Swedish Press Council (now the Swedish Media Council) and has been a board member of the Emil Heijnes Foundation for Jurisprudential Research since 1997.

### **Niklas Martti**

Niklas Martti is Head of Program at RFSL, responsible for a regional programme that aims to strengthen LGBTIQI organising in Asia and Africa. Niklas is also a board member of the National Association of Swedish Tornedalians – Tornionlaaksolaiset (STR-T) and thereby participates in various national processes focusing on anti-discrimination and rights of national minorities in Sweden. Niklas has previously worked at Sida, MyRight, the international work of the IOGT-NTO movement, and as a human rights observer in Palestine and Israel. Niklas grew up in Tornedalen and is a native speaker of Swedish, Meänkieli and Finnish.

### **Pål Wrange**

Pål Wrangé is Professor of International Law at Stockholm University, Director of the Stockholm Centre for International Law and Justice (scilj.se), a member of the International Court of Arbitration and a former advisor on international law at the Ministry for Foreign Affairs. For more than thirty years, he has taught and researched international law and human rights in Sweden and internationally and has represented Sweden at the UN, the EU and the International Criminal Court, among others.

### **Titti Mattsson**

Titti Mattsson is Professor of Public Law at Lund University. Her research focuses on societal interventions in social services and healthcare with a special interest in children, the elderly and persons with disabilities. She coordinates the Health Law Research Centre and the Law and Vulnerability environments at the Faculty of Law. Her long-standing involvement in social, legal and ethical issues outside academia is reflected in various assignments, such as expert in the Swedish National Council on Medical Ethics (Smer) and Vice Chair of the Ethics Council of Region Skåne.

### **Fredrik Malmberg, Institute Director**

Fredrik Malmberg previously served as Director General of the National Agency for Special Needs Education and Schools (SPSM). Prior to that, he served as Ombudsman for Children for eight years. As Director General of SPSM, Fredrik Malmberg has been involved in issues such as the rights of persons with disabilities. As Ombudsman for Children, he worked broadly to promote a wide range of rights for children and young people. He has also served on the board of the European Union Agency for Fundamental Rights and previously worked for Save the Children in Sweden, Africa and Asia.