

*Alternative Report to
The Committee Against Torture –
Regarding
Sweden's Fourth Periodic Report*

Participating organisations:

Save the Children Sweden

Swedish Helsinki Committee

Swedish Iran Committee

Swedish NGO Foundation for Human Rights

Swedish Red Cross

Swedish Section of the Women's International League for Peace and Freedom

1. Introduction and executive summary

We, Save the Children Sweden, the Swedish Helsinki Committee, the Swedish Iran Committee, the Swedish NGO Foundation for Human rights, the Swedish Red Cross, and the Swedish Section of the Women's International League for Peace and Freedom, welcome this possibility to present our Alternative Report to the Fourth Periodical Report of Sweden on the Convention against Torture. This is the first time Swedish NGO's present an Alternative Report to the Committee Against Torture (hereinafter referred to as the Committee). However it is, our intention to continuously follow the observance of the implementation of the Convention in Sweden. If necessary, we will present another report in the future. We wish to thank the Committee for its willingness to accept Alternative Reports and hope that we have produced a report that can be useful in the examination of the Fourth Periodic Report of Sweden.

The prohibition against torture is one of the most fundamental rights. It was originally included in the Universal Declaration of Human Rights of 1948. This shows the importance placed on the prohibition against torture. Not only torture, but also cruel, inhuman and degrading treatment was included in the Declaration. After the drafting of the Declaration, the prohibition against torture was also included in other human rights-treaties. The supervisory mechanisms of those treaties further enhanced the prohibition against torture.

Sweden was one of the countries supporting the formation of a Convention enhancing the prohibition against torture. The basic idea was to convert the Declaration against Torture of 1975 into a Convention, with the addition of a monitoring system. Sweden had already in 1978 produced a draft Convention. The Swedish draft introduced the concepts of non-refoulement, universal jurisdiction and the principle of *aut dedere aut judicare* to the text of the Convention. As it turned out the draft provided a good basis for further discussions. On 10 December 1984 the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) was completed and it contains the three concepts introduced in the Swedish draft. Sweden ratified the Convention on 7 January 1986.

The Government of Sweden has always been in the forefront of the promotion of human rights. The Swedish Government assumes its obligations under human rights treaties seriously and shows a firm commitment to take the measures needed to protect human rights. The Swedish Government has also extended its efforts to supporting democratic development in other countries. In Sweden there is an ongoing dialogue between NGO's and State authorities on the further improvement of the human rights situation. The Government has shown dedication by initiating the process to establish a National Action Plan for Human Rights covering a three-year period. In this plan the Government states its long-term objectives and the role of various actors in the field of human rights. One of the priorities stated by the Swedish Government is the protection against persecution and torture. We welcome this initiative by the Swedish Government. We also hope that it will increase awareness of human rights, and how they efficiently can be put into practice.

Most Swedish citizens retain a high level of trust in public officials. Public officials are in general well educated and behave in accordance with international standards. The risk of persons being subjected to torture or cruel treatment by public officials is limited.

We can conclude that Sweden has come a long way in its recognition of the importance of human rights. However, further improvement is possible. As NGO's, we have an obligation to alert the authorities about problems that are important and evident to us. This obligation can not merely be fulfilled through constant dialogue directly with the Government. The possibility to address a monitoring body such as the Committee is thus valuable and should be used.

In the course of preparing this report we have come across some deficiencies in the protection against ill treatment. In our report we will therefore discuss the implementation of article 3, 4, 10, 11, 12, 14 and 16.

Over the years, Swedish authorities have had serious difficulties in regard to the principle of non-refoulement in article 3. Sweden is on top of the list of countries convicted by the Committee. We want to stress the importance of education of the officers working with asylum cases at the Swedish Migration Board (Migrationsverket) and the Aliens Appeal Board (Utlänningsnämnden). There should also be an increased awareness of the specific problems facing women and children in the asylum process.

One of our greatest concerns is the development after the attacks of 11 September 2001. The position assumed by the Swedish Government on the issue of forced expulsions to countries where there is an obvious risk for persons being subjected to torture is inexcusable. It can never be accepted to violate the non-derogable right not to be tortured. States that have ratified the international human rights treaties, always, have an obligation to protect the values of a world order based on mutual respect for human rights and democracy. This also includes an obligation not to derogate from these values even in difficult situations such as the one after the 11 September.

Since the conclusion of the Initial Report to the Committee there has been an ongoing debate about introducing the crime of torture into the Swedish Penal Code. We can only join the Committee in criticizing the attitude shown by the Swedish Government. We hope that, by our joint efforts, a change can be brought about in order to achieve the full implementation of Article 4.

In regard to Article 10 we wish to address one main concern. It is our belief that public officials in Sweden do not receive adequate education. We believe that education of public officials is the most efficient means to combat the use of torture, inhuman and degrading treatment.

In conclusion, under Article 11, we can state that all the budget cuts imposed on Swedish authorities have had an impact. In view of the fact that the workload on every public officer is increased when funding decreases, this can be one of the causes behind the use of unlawful methods, such as excessive use of force. This behaviour can be attributed to inadequacy due to under staffing and long working hours.

With respect to Article 12 we also wish to discuss the importance of thorough investigations into cases of alleged ill treatment. These investigations should be carried out by an impartial instance and be initiated whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed in any territory under Swedish jurisdiction. This topic was also discussed by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), during its visit to Sweden between 15-25 February 1998.

Under article 14 we wish to discuss the importance of adequate medical assistance for asylum seekers. Asylum seekers with traumas and injuries should be given more than just emergency care during their stay in Sweden. They should also be able to start their rehabilitation and receive adequate medical assistance during the investigation process.

The last topic of this Alternative Report is with respect to article 16 regarding cases of ill treatment of conscripts reported by the Swedish media during the year. We are profoundly concerned about these reports. They are manifests of an unacceptable attitude and behaviour by commanders. Conscripts are in a vulnerable situation given that they do not have a choice,

military service remains an obligation towards the Swedish state. Thus, the Government has an obligation to protect the human rights of conscripts'. It is our hope that the Government is aware of the gravity of this issue and will deal with it efficiently.

Hereafter follows the Alternative Report to Sweden's Fourth Periodic Report to the Committee Against Torture.

2. Article 3 – non-refoulement

Every State Party to the Convention has an obligation not to expel, return or extradite persons to States where there is a substantial risk of being subjected to torture. In order to establish the risk of being subjected to torture, all relevant considerations should be taken into account, including if the country in question has shown a consistent pattern of gross, flagrant or mass violations of human rights. The considerations made under article 3 aim at establishing if the person who faces expulsion runs a personal risk of being subjected to torture. The existence of a consistent pattern of gross flagrant or mass violations of human rights is not enough. There must be specific grounds indicating that the individual would be personally at risk of being subjected to torture. Correspondingly, the absence of a consistent pattern does not necessarily mean that the person is not at risk of being subjected to torture if expelled to the relevant country of origin.

The article on non-refoulement has caused serious problems for Sweden throughout the existence of the Convention. The Committee has no less than eight times concluded that Sweden has allegedly violated the Convention. The convictions indicate that there are deficiencies in the investigations made by the Swedish Migration Board and the Aliens Appeal Board. The protection under Article 3 is absolute, as the Committee has had occasion to remind States parties to the Convention. People at risk of being subjected to torture must also receive protection from it. This obligation is compulsory and it should thus be self-evident for Sweden to comply with Article 3. Unfortunately there are several indications of the contrary.

2.1 Possible questions to the Swedish Government

- Swedish embassies serve as sources of information regarding the situation in the country of origin of asylum seekers. If not executed in an appropriate manner this practice could jeopardise the security of the asylum seeker if he/she is returned to his country of origin. It may also endanger the security of his/her relatives remaining in the country of origin. The arrival of a representative of the Swedish embassy asking questions in the neighbourhood, can however increase the pressure on the relatives of the asylum seeker, making them vulnerable to different kinds of oppression from both state representatives as well as individuals. In one case, that we know of, this kind of behaviour from Swedish representatives opened them to extortion from organised groups engaged in the “protection business”. Does the government see any difficulties in this practice? Has the government considered changes in this procedure? Are there any plans to change current procedures for using embassies as sources of information?
- Staff members involved with the asylum seekers, do they receive the appropriate education concerning torture victims, their trauma and need of rehabilitation? If so, why does the Committee still receive complaints from rejected asylum seekers?
- Staff member of the Swedish Migration Board, do they receive efficient education regarding International Law and impartial/objective information on the political, cultural, social and religious situation in countries of asylum seeker? Does the personnel receive education on the specific situation and the particular needs of women and children during the asylum process?
- There appears to be a general reluctance to believe in the statements of asylum seekers (also reflected in the individual complaints received by the Committee). Why is this the case? Is this the best approach in order to assess an asylum seeker’s claim to protection?
- Why are testimonies of children who are victims of torture not reflected in the investigation material by the Swedish Migration Board?
- Does the principle of non-refoulement in Chapter 8 paragraph 1 of the Aliens Act still apply to terrorists? Does not the expulsion of two Egyptian men to Egypt illustrate a change in practice and of attitude in this respect? How is this new interpretation explained by the government? (For a full presentation of the case, see 2.11.)

2.2 Determining the personal risk

Swedish authorities investigating an asylum application on the grounds of article 3 of the Convention must determine whether there are substantial grounds for believing that the asylum seeker would be in danger of being subjected to torture if his/her case was to be rejected. Doing this means taking into account all relevant factors, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The objective is to determine whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. Non-refoulement is at the core of the 1951 UN Convention relating to the status of Refugees (hereafter referred to as the 1951 UN Refugee Convention). The State Parties are under an obligation to apply this in decisions regarding asylum applications. However, in the decisions of the Swedish authorities, it is not always clear that this consideration is in fact being applied. This must be applied in order to establish clarity regarding the reasons on which decisions are based.

2.3 Evaluation of the situation in countries

Our concerns are primarily based on our experiences from assisting asylum seekers in Sweden. They are also based on our efforts in influencing Swedish asylum policy on a regional, national and international level. Our criticism is not new, other NGO's, lawyers, researchers, members of the Swedish Parliament and media have debated the same questions. However, it has not led to many improvements so far.

The first matter of concern is Sweden's evaluation of the human rights situation in other countries of origin of asylum applicants. For instance, the Swedish Migration Board and the Aliens Appeal Board use confidential reports, for example from Swedish embassies abroad, as sources of information. The use of these reports makes it impossible for the asylum seeker to contest the information upon which negative decisions are based. There is also a general reluctance on the part of the Swedish Migration Board and Aliens Appeal Board to accept reports on human rights violations from NGO's. There is a tendency to trust the Swedish embassies more than the NGO's. It is our belief that this is incorrect. NGO's specialised in Human rights issues can monitor the situation in countries more closely and receive reports from other sources compared to what is possible for the Swedish migration authorities or the embassies. A close co-operation between NGO's and the authorities is essential in order to make reliable evaluations on the situation in countries. The employees of the Swedish Migration Board and the Aliens Appeal Board require more education. They should also constantly receive updated information on the commitments of Sweden under International Law, and the situation in the country of origin of the asylum seekers. This is a prerequisite for a correct determination of asylum claims. We are aware of the fact that this education, to a certain extent, exists today, but we wish to emphasise the need of constantly developing it and making it compulsory.

One of the major problems with the Country Reports is that Swedish authorities sometimes do not seem to realise the gravity of the threats an asylum seeker may have been exposed to. If cases are rejected the Swedish Government has to be absolutely certain that no persecution against the claimant will occur.

2.4 The grounds for decisions

Authorities have an obligation to clearly motivate their decisions. This is important for many reasons. In a community founded on the rule of law, people should know the reasons for a decision of an authority. Otherwise the risk for arbitrariness increases. It is a safeguard for the asylum seeker that he has a right to get a clearly motivated decision. It is of importance for the asylum seeker to understand the reasons for his/her rejection.

However, in many cases it is impossible for the asylum seeker to extract which elements have been crucial when deciding substantial grounds for the risk of torture. The asylum seeker should be presented the reasons for rejection. A thoroughly motivated decision enhances the possibility for the asylum seeker to understand and accept the decision. It also gives him a chance to hand in a new application with new circumstances presented.

2.5 The creation of a new appeal instance

The criticism against how asylum cases are being investigated has led to a decision by the Swedish Government to discontinue the work of the Aliens Appeal Board (Utlänningsnämnden). Some of the County Administrative Courts (länsrätter) will instead become the appeal instances in asylum cases. We want to stress the importance of government supervision of this process that probably will be a two-part process in oral proceedings. A two-part process is positive since the asylum seeker will have the possibility to exhaustively explain his case. He/she will also hear the arguments and reasons from the Swedish Migration Board. However, this new system puts an obligation on the Swedish Migration Board to exhaustively motivate their decisions. This is essential in order for the Swedish Migration Board to serve as a first instance in the asylum process. The protection of asylum seekers should never be endangered. The process in court must not become a trial where the Government seeks reasons to reject the asylum seeker's application. The rule of law must be completely protected.

2.6 The principle of benefit of the doubt

We believe that there is a failure among decision-makers at the Swedish Migration Board and the Aliens Appeal Board to implement the principle of benefit of the doubt. This has resulted in a tendency of focusing too much on the applicant's credibility in relation to travel routes and identification documents. Instead, the authorities should make an individual risk assessment based on the individual's experiences in the context of the human rights situation in the country of origin. There is a general distrust to the accounts given by asylum seekers regarding torture and other circumstances important for their asylum applications. We believe that the Swedish authorities need more education on how torture victims react and how Sweden as receiving country can provide the victims with the best possible help during the asylum process.

The whole asylum process is influenced by earlier experiences of torture. The victim often suffers from, for example Post-traumatic-stress disorder (PTSD) and flashbacks apart from the more obvious physical injuries and scars. The authorities must be aware of and understand the difficult situation of the torture victims. The first step for the authorities is to learn to recognise torture victims at a very early stage of the asylum process. This is important for an immediate start of the treatment and rehabilitation process.

The Swedish authorities often claim that the applicants changes or only reveal part of their accounts in each interview with the authority, which could be an indication of not telling the truth. The Swedish officials pointed at inconsistencies and contradictions in the applicants' accounts as arguments in for example *Kisoki v. Sweden* and *Haydin v. Sweden*. In both cases the Committee rejected the argument due to the fact that complete accuracy is seldom to be expected from torture victims. These cases are in our point of view not isolated incidents. They are evidence of the position of Swedish Authorities regarding accuracy in the accounts of applicants.

It is often forgotten that victims in the past have had terrible experiences with public officials and therefore do not trust persons acting in an official capacity. It is not unusual for victims of torture to initially behave in an irrational way. They do not trust anybody and are only able to reveal their true and complete account after being in the country for some time. Often torture victims have learned from their torturers that they are not allowed to tell anyone what they have been through and above all they will never be believed if they do tell. Before the questioning, the

torture victims should be in a position to trust the officials, only then will they be able to get a full story from them.

Acting in accordance with the Convention must imply that protection of persons from torture comes first. In doubtful cases where a risk cannot be ruled out, the person should be given protection. The Swedish authorities have a tendency to spend more time discussing the credibility of the applicant than considering the need of protection. For instance in the case *Ayas v. Sweden* the tampering with a copy of a judgement from Turkey could “not be ruled out”, and that undermined the general credibility of the applicant. We do not question that falsifications exist, but if the evidence is not stronger than in this case, it should be decided in favour of the applicant. We believe that these cases show a problem of attitude among the Swedish authorities, and that these two cases brought before the Committee are not the only ones. The authorities seldom realise that “the asking around” in the applicants’ countries of origin for judgements and arrests may put the applicant in an even more dangerous situation. Many countries do not accept persons who escape and seek asylum in other countries and the applicants therefore risk reprisals should they return to their country of origin.

2.7 The special situation for children

Children are in a particular vulnerable situation when they seek asylum in Sweden. In many cases children are directly affected by torture and by acts of torture committed against their parents or other family members. They often witness torture, for example how the father is taken away, and the mother is being raped. Of course these experiences affect them, and they are in special need of help. We are concerned that the Swedish authorities do not provide the necessary protection and help for children arriving in Sweden. Why are children not routinely asked about their own experiences of violence or torture when arriving in Sweden? According to the Convention on the Rights of the Child (CRC) authorities as a primary consideration must always see to the best interests of the child. A child seeking refugee status must also receive the appropriate protection and humanitarian assistance. This is even more essential when the child arrives in Sweden without his/her guardians.

Save the Children Sweden (Rädda Barnen) has examined a number of investigations where children received residence permits in Sweden. All permits granted to children during the year 2000 were reviewed. Children who suffered torture or other cruel inhuman treatment often did not receive residence permits according to the 1951 UN Refugee Convention, but instead on humanitarian grounds. This means that Swedish authorities did not consider the applicants in need of protection. Several of these children are known to Save the Children Sweden through their Centre for Children and Adolescents in Crisis (Centrum för Barn och Ungdomar i Kris). At the centre children, victims of torture or other inhuman degrading treatment, are being offered psychological treatment. The above mentioned investigations revealed that the reasons for residence permits were rarely stated. In the year 2000, 153 children under the age of 18 were granted residence permits under the 1951 UN Refugee Convention. Three of these children came to Sweden without their guardians. 274 children were granted residence permits for being in need of protection, eleven of them came without their guardians. A total of 2 457 children were granted residence permits in Sweden in the year 2000. 174 of them came without their guardians.

Children who are victims of torture or other cruel inhuman treatment in their countries of origin are thereby seldom granted residence permits according to the 1951 UN Refugee Convention. In our point of view, as a result to this, children’s own reasons for seeking protection are seldom investigated, and they risk being returned to countries where the torture might be repeated.

Why do Swedish authorities disregard the sometimes obvious need for protection of unaccompanied children and grant them asylum on humanitarian grounds instead of granting them protection in accordance with the 1951 UN Refugee Convention?

Decisions from the Swedish Migration Board and the Aliens Appeal Board show that in the cases where unaccompanied children or a family is granted residence permits due to the child's situation the permit is almost always granted on humanitarian grounds. The experiences of children are not investigated in terms of persecution and torture. The criteria for being considered a refugee are also restrictively interpreted. Instead investigations into children's grounds for asylum are founded on humanitarian aspects.

We would like to stress the fact that experiences of children as victims of human rights' violations are not taken into consideration to the full extent in asylum investigations. This is regardless of whether the child arrives with or without a guardian. The accounts of children who are victims of torture are currently not included in the investigation material by the Swedish Migration Board. This in turn leads to children and families not being granted residence permits in accordance with the 1951 UN Refugee Convention.

It is also our opinion that children arriving in Sweden without guardians, and victims of torture must be granted asylum. The granting of asylum must be founded on the 1951 UN Refugee Convention. This is important since it increases the child's chances to be reunited with his/her family in Sweden or in a third country.

One of the reasons for children also not being classified as refugees to a higher extent in Sweden is probably that the grounds are not made clear during the investigation. It takes special knowledge about children's development and rights to be able to do that. The authorities also need training in interview methodology in order to investigate and evaluate a child's experiences. The deciding authorities and the legal representatives do not have this essential knowledge today. We want the Government to acknowledge the fact that children also can be victims of torture. The education offered to all personnel, working with children who are possible victims of torture, must contain a thorough illumination of this problem.

Children who come to Sweden by reason of having been subjected to harassment and other humiliating treatment in school by friends and teachers because of ethnical origin should be considered refugees and be granted asylum. Children not covered by the refugee definition can still be in need of protection. They can for example be at risk for prostitution, harmful child labour, female genital mutilation or being recruited as child soldiers. In these cases the criteria on "other persons in need of protection" should be applied.

The Swedish authorities are not assuming their responsibility towards children. Children's asylum grounds must be thoroughly investigated and they must be treated with the same respect as adults. Authorities have to bear in mind that children have exactly the same rights to a thorough investigation of their asylum claims as adults. However children are in an even more sensitive position and they must be provided with every possible assistance to get through the asylum process in the best possible way.

2.8 The special situation for women

In 1997 the Swedish Aliens Act was reformed and a new paragraph was introduced. The change was explicitly aimed at enhancing the position of women asylum seekers, but it did not entail any widening of the concept "refugee". The Revised Version of the Swedish Aliens Act now contains a specific sub-category that provides protection for persons who fear gender-based persecution. Unfortunately both external and internal studies within the Swedish Migration

Board have shown that the provision has rarely been applied. The protection for women in fear of gender-based violence that amounts to torture or other cruel, inhuman or degrading treatment has not been decisively enhanced, if we are to judge the number of persons protected as convention refugees. Those women granted protection in Sweden on account of sexual persecution or as the victims of sexual violence, are given residence permits on humanitarian grounds. In our view the Swedish authorities are underestimating the risks women are facing and their accounts are not taken seriously enough.

The Swedish Migration Board has presented guidelines to improve the use of the paragraph and to ensure that the asylum process is gender sensitive. In order to implement these guidelines the investigating officers as well as the decision-makers of the Board must receive adequate training. The Government must make sure that adequate resources are allocated for the implementation of these guidelines.

We believe that there is a general reluctance towards recognising rape committed by police officers as acts of state agents. This results in the notion that rape could be considered a random individual criminal act. That makes it more difficult for a woman to show that she has a well-founded fear of persecution.

We further wish to highlight the lack of country of origin information with a special focus on human rights abuses targeting women. This information is crucial for determining whether the fear is well founded and if the State can protect the woman. Without complete information the Swedish Migration Board will not be able to do the individual risk assessment required under article 3. The authorities must also be educated about the social, economic and psychological consequences of the abuses and the special problems that female asylum seekers face. We are aware of the fact that the personnel of the Swedish Migration Board are already receiving information and education to a certain extent. However we want to stress the need for separate educational programs focusing on the complexity surrounding different forms of violence against women. This education must also include the physical, psychological and social consequences of violence and how a person's gender influences the experience of persecution. The education should subsequently discuss the right to get protection from gender-based violence, including violence based on sexual identity.

Knowledge on these issues is important in order to discover female torture victims as early as possible in the asylum process. An early discovery can help them present their full case. The whole asylum process must be more sensitive to the special needs of women. This also includes providing women with adequate medical assistance, physical as well as psychological, and not only emergency care, as is the case at present. The Swedish Red Cross increasingly receive asylum seekers in its Centres for victims of torture and trauma treatment. The Swedish government could further support this effort.

2.8.1 Non-state actors and violence against women

It must be clearly recognised that violence against women can be defined as persecution, no matter if the perpetrator is a State or a non-state actor. We are well aware of the fact that the Committee in its practice has limited the application of article 3 to cases where the state is responsible for the acts. We believe that acts of torture or inhuman degrading treatment committed by non-state actors should be dealt with by the Committee in cases where the State does not take measures for prevention. If the State omits to take serious action against non-state actors, it should be equivalent to acquiescence to torture under the definition in article 1. The State should thus be held responsible if it cannot effectively protect its citizens against non-state actors. According to the concept of due diligence a State has an obligation to prevent abuse, to investigate them when they occur, to prosecute the alleged perpetrator and bring him/her to

justice in a fair trial. This is especially important in cases of violence against women. The victims of torture committed by non-state actors should also have a right to legal redress and reparations. There is a need for a clear statement that gender-based violence such as rape, domestic violence and female genital mutilation could constitute torture. Women who may be systematically exposed to these acts are in need of protection and their rights must be protected under article 3.

Concerning female genital mutilation see under 8.3.

2.9 The problems faced by homosexual asylum seekers in Sweden

The problems for homosexual persons in some countries have been well known for a long time. In 1997 a special protection rule for persons risking persecution because of homosexuality or gender was introduced in the Swedish Aliens Act, chap. 3 paragraph 3.

In a case from 1998, creating the practice currently followed, the Aliens Appeal Board claimed that a person, in this particular case an Iranian man, could simply refrain from acting out his homosexuality. By concealing his sexual orientation he would no longer be in danger in Iran and the Board therefore did not grant him asylum and did not consider him in need of protection in Sweden. This specific application was later reviewed by the Swedish Government, which concluded that the person in question was in need of protection and therefore granted him a residence permit. However in the decision the Government followed the same line of reasoning as the Aliens Appeal Board. The Iranian authorities do not actively try to find and prosecute homosexuals. If the person does not publicly manifest his sexual orientation in the country of origin he is not in danger of persecution. This shows a severe lack of judgement on behalf of the Swedish authorities as to what exercising ones human rights mean, and a crucial need for better education and information on the exposure to lack of protection for the individual such behaviour could cause in the country of origin. The decision means that the Swedish Government “accepts” that a homosexual person cannot openly live as a homosexual in some countries.

What can also be questioned is whether the decisions on protection due to gender or homosexuality can be applied at the same time as protection against torture, in cases of homosexual asylum seekers. This means that the decision on protection is being given according to persecution on homosexuality and not on the stronger protection afforded by the rule of protection against torture. The claimant thus has a weaker status.

We hope that the guidelines developed by the Swedish Migration Board will bring new practices on homosexual asylum seekers, and an increased awareness of the serious protection failures in regard to homosexuals in many countries.

2.10 The special problem of “refugee-dumping”

One serious problem, extensively reported by the Swedish media, is deportations to third countries. According to a documentary shown in the Swedish television, Swedish authorities, supported by the present legislation, systematically effect deportations to countries, where deportees lack any connection.

The deportations are often based on “language-analysis”, a method used by the Swedish Migration Board, which has been strongly criticised by language experts. Language analysis can be useful in cases where the asylum seeker’s identity is difficult to establish. The analysis must however be done by official experts with sufficient knowledge about for example the structure, culture and of course the different languages of the country. The language analysis should also be only one part of the evidence in determining a person’s country of origin. However, the

Swedish Migration Board has been known to place far too much weight on language analysis and sometimes to base their decisions solely on it. A private company called Equator is hired by the Migration Board to conduct its language analysis. Equator insists on the anonymity of their analysts, which makes judgement on their competence and experience impossible. There is also no way of appealing against the claims of a language analyst.

In a number of cases the Swedish Migration Board has through this language-analysis determined that an asylum-seeker comes from a given country. In reality that may not be the correct country of origin. Ghana has, for example, become a “dumping ground” for Africans.

According to media in Ghana, through the Swedish Consulate, approximately 1 800 US \$ per case, is paid to the Ghanaian authorities to accept citizens from other African countries. Approximately 140 000 SEK of Swedish tax revenue has been paid to immigration authorities in Ghana, this only in the cases that have been traced.

The Swedish Consul in Accra, Amarkai Amarteifio, told Swedish television that he redirects the deported foreigners to their countries of origin. He interrogates them and sends them on to Nigeria, Sierra Leone, Gambia och Guinea. A Swedish Police officer, Bengt Östergren, said: “The Consul acted as if he owned the airport in Accra. He always managed to convince the immigration authorities to ignore the rules and admit non-Ghanaians.”

The consequence of this is that a person who arrives from Sierra Leone to seek asylum in Sweden can be sent to Ghana och Guinea. They are then redirected to their countries of origin. Measures taken by Swedish authorities in these cases can be seen as a link in a possible chain of events which might result in a person’s return to a country, where he or she is in risk of torture. UNHCR has stated that the indirect removal of a person could violate the non-refoulement principle and that no asylum-seeker should therefore be sent to a third country without a reliable assessment in the case of available guarantees. The guarantees could be that the person will be readmitted, that he will enjoy effective protection against refoulement, that he will have the possibility to seek and enjoy asylum, and that he will be treated in accordance with accepted international standards.

Furthermore, some persons who have been subjected to the “redirection” process have, while their country of origin remains unknown, been imprisoned and ill-treated for long periods of time in Ghana. At least one person has “disappeared”.

Swedish police claimed in the program that it is commonly known within the police force that it is possible to send refugees to Ghana when there is uncertainty about their country of origin or when it will be difficult to get their home countries to accept them.

We are deeply concerned about the reports of “refugee dumping”. The attitude taken to this problem by the Swedish authorities is unacceptable. There must be a thorough investigation made in this matter as soon as possible. Expulsing people to a third country just because their real country of origin has not been established means putting asylum seekers in danger. We also conclude that the use of language tests must be under more strict supervision, both regarding the knowledge of the analysts performing the tests and the methods used.

2.11 The change of attitude towards article 3 after September 11

During the consideration of the Third Periodic Report of Sweden, Committee member Mr Burns asked about the application of chapter 8 paragraph 1 of the Aliens Act, on the prohibition on expulsion to a country where there is a risk for torture or other cruel, inhuman and degrading treatment or punishment. Is the prohibition against torture applicable also to terrorists? In it’s

fourth report Sweden expressly stated that the protection given in chapter 8 paragraph 1 of the Aliens Act "...is absolute, thus including criminals and terrorists". The Swedish Government has also earlier acted in accordance with this statement. One example is a case where a Turkish citizen active in the organisation PKK applied for asylum in Sweden. The authorities stated that the man was a refugee under chapter 3 paragraph 2 of the Aliens Act. Because of his activities in the PKK there were however special reasons not to grant him residence permit as a refugee. On the other hand he had a legitimate fear for torture or other cruel inhuman treatment or punishment if sent back to Turkey. The Government concluded he should be given a residence permit.

Once the immediate shock caused by the appalling attacks on the World Trade Centre and the Pentagon on 11 September 2001 had subsided, the temporary paralysis that had gripped the international community was transformed into a global war against terrorism. The right to self-defence was extended in scope, and in the fight against terrorism the universality of human rights is now being reassessed. The tacit question seems to be – are the rights of all human beings to be respected equally? And are we to accept that certain innocent people are wrongfully afflicted because they, perhaps due to their origin, may be assumed to be potential terrorists? Must we uphold the rights of certain specific individuals at all if there is the slightest suspicion that they are in some way associated with suspected terrorists? This ambivalence and inability to make priorities has also become evident in Sweden. Suddenly, it is as though no-one is really sure if you *can* prioritise respect for human rights in a crisis situation.

Since the attack of September 11 there has been a change in attitude on such issues as who should be granted human rights, whose rights are worthy of protection and whether, in the fight against terrorism, human rights are still universal. Human rights as such have been questioned and are being challenged once again even in areas where they have recently gained ground however fragile their foundation.

This attitude has been reflected in Sweden as well, and on a number of occasions recently some of the most fundamental rights of the individual have been violated, often in cases involving citizens with a foreign background or non-Swedish citizens.

Legislation concerning the expulsion or deportation of foreign citizens explicitly forbids the enforcement of such decisions where the individual risks torture or capital punishment in the state concerned. But since 11 September, the image of Sweden as a resolute opponent of capital punishment has changed somewhat. A short time after the attacks, Foreign Minister Anna Lindh stated on several occasions that Sweden might revise its legislation to make it possible for individuals to be expelled or deported to countries where they might be sentenced to death. In doing so, however, she stressed that such a move would be considered if requested by the UN Security Council. The Government line was that Sweden, instead of advocating an unconditional ban, might demand guarantees that the death penalty would not be carried out. Thus the Government felt the right to life could be made a matter of negotiation.

The people who were affected are two Egyptian citizens. They have both been convicted of terrorism by a military court and sentenced in their absence to 25 years in prison in Egypt, now risk being sentenced to death.

The two men were arrested and forcibly expelled the same day the decision was taken. A decision taken by the Government cannot be appealed and also, due to the quick action the men could not complain to the European Court of Human Rights, the Human Rights Committee or the Committee against Torture. The men claim that the expulsion was effected in a harsh, cruel and inhuman manner. About a month after the forced expulsion the Swedish Ambassador in

Cairo was granted a right to visit them in prison. On the same day one of the men's parents was allowed to meet their son. They are still at risk of being tortured regardless of the Egyptian Government guarantees to Sweden. Sweden claims that the Embassy in Cairo visits the men regularly and has thus accepted the Egyptian Government guarantees.

The wife of one of the men and her five children are still in Sweden, having been granted temporary leave to remain in Sweden pending the views of the Committee against Torture.

We find that the Swedish Government in this case acted in contradiction to both national law and its international obligations. According to reports, for instance from Human Rights Watch and Amnesty International, Egypt is a country where torture is practised. The Government of Egypt stated that the law of Egypt applies to the case. This subsequently does not mean that an adequate protection of the two men's rights is being guaranteed. We are of the opinion that it is highly unlikely that the Swedish authorities can keep this case under constant observation.

The Committee against Torture made a statement on November 22, 2001. The statement was made in order to remind the State Parties to the Convention about the non-derogable nature of most obligations undertaken by them in ratifying the Convention. Any responses to the threat of international terrorism adopted by the State Parties must be in conformity with their obligations. We see a need to remind the Swedish Government about their obligations according to the Convention and the importance of upholding the rule of law, even in the struggle against terrorism.

Sources:

- Aliens Appeal Board – case reg. 85-98 (homosexual man from Iran), Utlänningsnämnden reg. 85/98
- Aliens Appeal Board – case reg. 75-97 (member of PKK received protection under 8:1 Aliens Act), Utlänningsnämnden reg. 75-97.
- Article from Värmlands folkblad, 15 March 2002.
- Ayas v. Sweden – Communication No 97/1997, 12/11/98 (returning to other areas outside the kurdisch ones)
- M. Bexelius – “Women as refugees: an analysis of Swedish asylum politics from a gender perspective 1997-200” (our translation), published: January 2001. (“Kvinnor på flykt: En analys av svensk asylpolitik ur ett genusperspektiv 1997-2000”)
- Haydin v. Sweden – Communication No 101/1997, 16/12/98 (returning to areas outside the kurdisch ones)
- Information from Amnesty International regarding the case of the two Egyptian men being forcibly expelled to Egypt.
- Kisoki v. Sweden – Communication No 41/1996, A/51/44 (1996)
- Korban v. Sweden – Communication No 88/1997, 16/11/98 (expulsions to countries who have not ratified article 22 of the Convention)
- SOU 2001:110 – “Utlandsmyndigheters medverkan i utlänningsärenden och ärenden om svenskt medborgarskap”, (Foreign authorities cooperation in alien investigations and investigations about Swedish citizenship, our translation).
- Statement of the Committee against Torture – 22/11/2001, CAT/C/XXVII/Misc.7.
- Statistic material from the Swedish Migration Board's homepage – www.Migrationsverket.se.
- Tala v. Sweden – Communication No 43/1996, A/52/44 (1997)
- The Swedish Migration Board: “Gender based persecution – grounds for residence permit”(our translation), (“Förföljelse på grund av kön – grunder för uppehållstillstånd”), published: February 2001.

- The Swedish Migration Board: “Account of the commission to describe the practices and create guidelines concerning cases of alleged persecution due to sexual orientation, part 1 and 2”(our translation), (“Redovisning av uppdraget att redogöra för praxis och utarbeta riktlinjer avseende ärenden där förföljelse på grund av sexuell läggning åberopas”, del 1 och 2)

3. Article 4 – the problem of introducing a definition of torture in the Swedish Criminal Code

Under article 4 every State Party has an obligation to ensure that all acts of torture are offences according to criminal law. Attempt to commit torture, complicity and participation in torture acts should also be punishable.

3.1 Possible question to the Swedish Government

- Will the Commission on international crimes lead to the introduction of the crime of torture to the Swedish Criminal Code?

3.2 Our considerations

Since the initial report from Sweden in 1988, there has been an ongoing discussion with the Committee about introducing the crime of torture as defined in article 1 of the Convention to the Swedish Criminal Code. Within Swedish law there is a basic provision relating to protection from torture and other cruel, inhuman and degrading treatment. Moreover, in 1995 the European Convention for the Protection of Human rights and Fundamental Freedoms was incorporated into Swedish law. This means that the basic provision prohibiting torture, in article 3 of the European Convention, is applicable in Sweden. In Sweden’s Fourth Report the authorities still adhere to the opinion that all acts of torture are punishable under Swedish Criminal Law. The same applies to attempt, complicity and participation in torture. Examples of provisions in the Swedish Penal Code that criminalise acts referred to in article 1 are; murder (chap. 3 sect. 1), kidnapping (cap. 4 sect. 1), unlawful deprivation of liberty (cap. 4 sect. 2), unlawful coercion (chap. 4 sect. 4), unlawful threat (chap. 4 sect. 5), assault (chap. 3 sect.5), violation of domicile and unlawful intrusion (chap. 4 sect.6), insult (chap.5 sect. 3), rape (chap. 6 sect. 1), sexual coercion (chap. 6 sect. 2), sexual molestation (chap.6 sect. 7) and interference in a judicial matter (chap.17 sect. 10).

As the Committee has pointed out on several occasions, the definition of torture, in article 1 of the Convention, is however very technical and was drafted with the greatest of care. There are thus several aspects of the Swedish argument that can be questioned:

Firstly, it is clear from the definition that the act of torture must have been committed by a public official or other person acting in an official capacity. Swedish law does not have that same distinction. The acts referred to by the Swedish authorities can be committed by anyone. The obligation in Article 4 also requires that those responsible for acts of torture should be punished according to the severity of the crime. In addition, torture is carried out with a specific intention to obtaining a confession. These specific aspects of the crime of torture are not mentioned in the Swedish law.

Secondly, it is very easy for Swedish authorities to argue that torture does not exist in Sweden. As long as it is not a crime under Swedish law there will also be no convictions and no statistics available on if, or how often it really occurs.

Thirdly, as an international crime torture has no statute of limitation and a perpetrator can never be granted amnesty. The crimes listed in the Swedish Criminal Code all have statutes of limitation ranging from two to 25 years.

Fourthly, the average public officer should have knowledge of all applicable rules from Conventions ratified by Sweden. However, Sweden is a dualist state, and its judiciary adhere to the principal of treaty conform construction instead of applying international law. In some cases this does not cause any problem since Swedish law is in harmony with the international rule. In other cases, like the criminalization of the act of torture, it causes problems. As mentioned before, in Sweden the crime of torture does not in fact exist in the law, and the Swedish Government argues that the crimes listed in the Criminal Code can be used to punish torturers. However, public authorities will rarely use the term torture since it is not clearly stated in the law. Swedish public officials must know and abide by Swedish law. Introducing the definition of torture to the Swedish Criminal Code will make crime investigation authorities aware of its existence as a criminal act and judiciaries attentive to the gravity of the crime.

The right not to be tortured is of utmost importance and non derogable. The crime of torture is also considered to be subject to universal jurisdiction. This gives the prohibition against torture a special status and it should be treated accordingly. Including the definition of torture in the Swedish Penal Code would demonstrate the seriousness of the crime in relation to the other punishable acts mentioned above. We can only regret that the Swedish Government does not acknowledge the severity of acts of torture or the importance of adding torture as a crime in the Penal Code. We hope that the Commission mentioned in the Fourth Report will change the view on torture. When the Swedish government implements the Rome Statute for the Permanent International Criminal Court, it should use the opportunity to introduce the crime of torture in the Swedish Criminal Code. This also means that the regulations in Chapter 2 of the Criminal Code regarding universal jurisdiction should be reviewed. Swedish courts never apply universal jurisdiction even though the legislation in theory is already in place. This possibility to prosecute in Sweden for serious crimes is a supplementary protection against non-refoulement especially when the government is asked to extradite e.g. suspected terrorists to a country where they risk being tortured or sentenced to death.

However, until a change is made there is a need to put constant pressure on the Swedish Government.

Sources:

- Concluding observations of the Committee against Torture: Sweden, 06/05/97, A/52/44, paras. 214-226.
- Sweden's Fourth Periodic Report to the Committee against Torture submitted under article 19 of the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment.

4. Article 10 – Education regarding the prohibition against torture

Every State Party to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment has an obligation to educate and disseminate information concerning the prohibition against torture. This means that the prohibition must be included in the training and education for law enforcement and medical personnel as well as public officials.

Education is one of the most efficient ways to influence the values, behaviour and understanding necessary for the participation in the practical implementation of the Convention. Certain groups

such as, police officers, other law enforcement officials and publicly employed security guards, are of particular concern regarding information about the rules of the Convention. The military thus fall within the scope of individuals whose methods are under scrutiny of the Convention.

It is our conviction that a discussion about further education for public officials is necessary. In our opinion, one of the main reasons for excessive use of force is the lack of proper education. We are concerned about reports on the use of excessive force by police officers on duty in Gothenburg during the riots in June 2001. Our concerns are also due to the fact that in at least three cases law enforcement officials were acquitted due to lack of education. Furthermore, the increasing number of reports regarding the use of illegal punishments against conscripts at Swedish regiments. Consequently we want to draw the Committee's and the Swedish government's attention to the need for increased education of public officials. The effect of human rights education and especially knowledge about the prohibition against torture and how this can be avoided can never be underestimated. The authorities and officials need that kind of knowledge in their everyday work.

4.1 Possible questions to the Swedish Government

- Do law enforcement officials regularly receive training in alternative actions to handle stress and violence? If so, is that training efficient for finding better and more secure measures for restraining people?
- Does the training of police officers include human rights and the prohibition against torture? Are Swedish police officers aware of their obligations under international law?
- Is the handbook on police procedures efficient? Is it continuously updated and developed? Are police officers aware of its existence and their obligation to read, learn and abide by the rules that it states?
- Will the Government take steps to improve the education that commanders receive before beginning their work with conscripts? Should the education of commanders not include moral, ethics and social skills?

4.2 Swedish police officers and prison guards

There are at least two cases that we know about, of police officers who could either not be prosecuted or were given a lighter sentence due to lack of education, the cases of Osmo Vallo and Magnus Carlsson. In the case of Bruce Joel Jason Hulthén, the court acted in the same way concerning a prison guard. (For a more extensive presentation of these cases of excessive use of force, please see 5.2.1 and 5.2.2.)

These cases illustrate that the reason for milder sentences for the excessive use of force is lack of education. These cases illustrate that there is a willingness by the courts to act as if lack of education could be an excuse or a reason to reduce the sentence even in cases where the excessive use of force has had a deadly result. This is not acceptable and, in our opinion, the Swedish government has an obligation to consider this problem seriously and avoid its reoccurrence. It is a question of trust between the public and the authorities.

In 1997 the Chancellor of Justice was assigned by the government to investigate cases of deaths in custody. The Chancellor was asked to suggest what changes would be necessary in order to avoid future incidents. The report was very clear on the need for further education, for police officers and other law enforcement personnel.

The Chancellor also discussed the handbook for police procedures and actions of self-defence. The handbook gives guidelines for police officers on how to act when arresting people. It contains methods and possible means to use when arresting people. The handbook is clear

regarding what methods are acceptable and what methods are not. It also addresses the exact methods that may have caused death in several cases, and declares them unsuitable. The handbook is definitely a good initiative, but it does not really help when police officers do not use it in their daily work. The low degree of knowledge about the guidelines and the accepted methods for use of force also shows that there is a clear need not only for more education, but also for raising awareness about the handbook as a valuable source of the accumulated experience regarding acceptable methods.

On a general level we want to stress the importance of senior officers informing younger and setting a good example. The value of experience can not be overrated, and perhaps a programme of mentor ship could prove valuable within the police force. There is also a need to evaluate the actions taken in difficult situations. An evaluation would contribute to a base of experience from which every police officer can learn more about methods for efficient and safe police work.

The need for extensive education for police officers became quite obvious in June 2001 during the EU-Summit in Gothenburg. The demonstrations degenerated into street riots and ended with destruction in the central parts of Gothenburg. The performance of the police has been severely criticised by the public and the media. Serious allegations were made concerning the use of excessive force. The police union presented a questionnaire answered by 900 of the police officers on duty in Gothenburg, that is about 6 % of all Swedish police officers. 59 % of them stated that they did not have enough education for the work they were supposed to do in Gothenburg. 74 % stated that the education for special events should be organised differently. The officers also said that there was a lack of psychological training. Only about 50 % of the officers received information about their duties and 69 % complained about the bad communications between them and their superior officers. Instead, the officers in many cases relied on information from the media, their families and from people on the street. Some of them however expressed an understanding for the difficulties in preparing them for the “war” that broke out in Gothenburg during those days in June.

The Police Union gave a picture of total chaos, and it is therefore not surprising that many complaints about excessive use of force were filed after the EU-summit. However, chaos and poor training may never be used as an excuse for excessive use of force, it can only be an explanation to why it happened. We, along with the Police Union, believe that the events in Gothenburg clearly show that there is a need for better working methods and more education.

4.3 Illegal punishments within the military

The number of reports on illegal punishments used against conscripts has increased in the past few years. For a more extensive presentation of the cases, see under 8.2.1 – 8.2.7. In our point of view the punishments that are being used could constitute inhuman and degrading treatment. We also find that the cases show a clear problem of attitude within the Swedish military concerning leadership. The attitude adopted by commanders in their relations with conscripts could, in our point of view, be changed through education in ethics and moral. There is also a need for more education in leadership and more practical training before being assigned a position of command. It must be clearly stated what is allowed and what is not. Above all, it must be made clear that punishments of this kind are degrading, and that they are forbidden under International Law, such as the Convention against Torture. The military serves purposes in peacetime as well as in war and the public trust is important. Military staff must be educated in human rights and the prohibition against torture, in order to perform their duties in accordance with international law.

The treatment of conscripts as reported, is even more alarming since conscripts are not there by their own choice but are performing a duty towards the State. This makes them vulnerable and

the State has an obligation to protect their interests. This can be attained through stricter control of their situation by an impartial instance and more training for the commanders not only in human rights but also in social skills, moral and ethics. To our information this education is not available today.

By using punishments as presented in 8.2.1 – 8.2.7, the commanders are violating the Convention and the State has not fulfilled its obligation to protect the conscripts. We hope that the Committee can persuade the Swedish government to take all actions needed to prevent the use of these illegal punishments in the future.

The idea with a mentor system like the one at Karlsborg's regiment is very good and we hope other regiments will follow suit and that the government will support this. It can be transplanted to all other regiments and thereby create a better environment for conscripts and others working at regiments.

Sources:

- Cases reported in the paper – "Värnpliktsnytt" (Conscript's news, our translation).
- Information from AI and the Swedish Helsinki Committee on the cases of Osmo Vallo, Peter Carlsson and Joel Jason Hulthén.
- Polisförbundet (The Swedish Police Union) – "Chaos – about the appointment in Gothenburg in June 2001", (our translation), ("Kaos – om kommenderingen i Göteborg juni 2001"),
- Report from the Chancellor of Justice – "Rutiner vid utredningar av dödsfall i samband med myndighetsingripanden – En rapport från Justitiekanslern på uppdrag av regeringen."

5. Article 11- The treatment of persons in police custody

Art. 11 of the Convention is aimed at the prevention of torture through the thorough control of procedures for custody, arrests, detention and imprisonment. We have reasons to believe that Sweden is violating art. 11 of the Convention. The matter of excessive use of force, certain methods used for crowd control and methods when detaining people was also a matter taken up by the Committee in its conclusions to the Third Periodic Report of Sweden in 1996. We share these concerns and are of the opinion that no changes have been made since 1996. The situation has, on the contrary, become more serious.

We are deeply concerned about the reports from Amnesty International (AI) about excessive use of force from law enforcement officials and the manner in which officials restrain persons when taking them into custody. The use of weapons within the police force is also a matter of concern. In our opinion it is of utmost importance that there be a change in attitude regarding the use of lethal weapons within the police force.

5.1 Possible questions to the Swedish Government

- What does the Government intend to do in order to achieve a change of methods used for restraining persons?
- Will there be any changes in the rules regarding the use of weapons within the police force?
- Does the Government intend to make any changes in Swedish law regarding the rights of arrested persons?

5.2 Cases of excessive use of force by police-officers

For obvious reasons the use of force against people from law-upholding authorities poses a threat to both the officials using force and the person subjected to it. The State has an obligation to reduce the risks for individuals to be subjected to violence. This obligation also entails a duty to

provide efficient remedies for victims of violence such as impartially investigating and prosecuting officials suspected of criminal behaviour but also to offer other compensatory measures such as damages to victims of violence. The European Court for Human Rights has concluded that the State, to a certain extent, bears the burden of proof when proving that injuries caused during detention are not due to excessive violence. This obliges the authorities to be observant in order to avoid injuries, to attend to the injured and to document everything that happens during the detention.

In relation to the public, the state authority using force is normally the police, and the use of force is regulated in section 10 of the Police Act (1984:387). According to section 8 of the Police Act the use of force must be proportionate to the desired result. Despite this principles of proportionality Amnesty International has several times criticised the Swedish police for excessive use of force causing the death of individuals either in prison or when in custody of the police. The common features are that the manner of restraint and/or excessive use of force may have caused asphyxia.

5.2.1 Osmo Vallo

The death of Osmo Vallo has been under continuous debate in Sweden since it occurred and there seems to be a common opinion that serious mistakes were committed by several instances during the investigation of the case.

On 30 May 1995, two police officers decided to take Vallo into custody. He was under the influence of drugs and behaving violently. When arresting Vallo the police officers used a manner of restraint that may have contributed to Vallo's death. Vallo was lying on his stomach; his hands cuffed behind his back while one of the police officers put one knee on his neck and one on his back in order to restrain him. Witnesses state police officers stepped upon his body during the arrest. Witnesses also heard a loud noise as if bones were broken inside him. Shortly afterwards Vallo died. In the hospital doctors later established that Vallo had 39 wounds. They consisted of injuries in the face, underarms and thighs.

The definite cause of death has not been made clear, but nevertheless, the use of force by the police officers is clearly questionable and in our view excessive. The police officers in question were convicted of assault. However, there was not enough evidence to convict them of gross assault and manslaughter. After a new investigation of the case the Prosecutor-General decided not to press any other charges against the two police officers on 30 March 2000. The Prosecutor-General has later been severely criticised by the Swedish Parliamentary Ombudsman on how the Osmo Vallo case was handled.

5.2.2 Peter Andersson

A 35-year-old suspected burglar died after being arrested and restrained by four police officers in Örebro on 3 November 2000. The police officers state that he had a rage attack and that the arrest was difficult to perform. The police spokesman declared that the officers forced Andersson to the ground and that he after a while became calm, almost as if he was unconscious and the officers called an ambulance. When waking up in the hospital he became violent again and was transported, lying on his stomach, strapped down on a trolley and handcuffed, from the emergency ward to the psychiatric ward. It has been reported that during this process one of the police officers knelt on his back. During the transport he became unconscious and all resuscitation attempts were in vain.

The preliminary forensic report showed signs of violence on his face, arms, legs and body and indicated that his death was caused by asphyxia. Although the report of the initial examination did not disclose any obvious cause of death, it proved that the testimonies of eyewitnesses and

some of the physical evidence strongly indicated that the cause of death was suffocation through chest compression.

On 28 March 2001 the Prosecutor General decided to reopen the preliminary investigation of the death of Andersson, since the cause of death had not been sufficiently investigated. It is our opinion that it can hardly be justified to kneel on somebody's back when that person is already lying face down, strapped down on a trolley and is handcuffed. Especially since Andersson had already been unconscious.

5.3 Excessive use of force by other law enforcement personnel

5.3.1 Bruce Joel Jason Hulthén

A 28-year-old prisoner Bruce Joel Jason Hulthén escaped from the Storboda Institution on 6 June 2000. The prison guards caught up with him about one kilometre away from the institution. According to reports the four prison guards restrained Hulthén by sitting on him as he was lying on the ground. When the police arrived shortly afterwards, the prisoner was allegedly already unconscious. The guards stated that the prisoner then turned blue in the face and stopped breathing. They tried to resuscitate him, but he was dead on arrival at the hospital.

The four prison guards were suspended pending police investigation. In August 2000 three of the guards were acquitted. The fourth was however charged in October 2000 for holding his hands around Hulthéns neck thereby causing his death. He was subsequently cleared of all charges. One reason for the decision of the court was that the prison guard lacked education.

It definitely seems questionable for four guards to sit on a detainee, there must be other ways to keep him calm until the police arrives. Acting like this shows a clear disregard for the risk of causing injuries to the detainee.

5.4 Use of weapons by police officers

We are concerned about the extensive use of lethal weapons by the police and whether the training received by the police is appropriate. We are of the distinct opinion that the use of weapons in some cases is unnecessary and disproportionate to the exposed threats.

5.4.1 Mikael Pettersson

On 13 March 2000 a police officer was looking for two persons driving a stolen vehicle which had been seen in Vikbolandet, outside Norrköping. The officer observed a car that seemed to suddenly turn around at the sight of the police car. He identified the car as the one reported stolen and began chasing it. The car went off the road and turned up-side-down injuring the driver, Pettersson. As Pettersson got out of the car and started running, the officer pulled his gun and yelled at Pettersson to freeze, stop. Pettersson did not obey, and the officer fired a warning shot. He then started to run after him and repeated his exhortation. Since this did not stop Pettersson either, the officer fired his gun at Pettersson, hitting him in the back. Pettersson died later that day.

The officer's actions were deemed to be disproportionate since Pettersson was only suspected of a minor crime. The officer was also not acting in self-defence, neither when firing the warning nor fatal shot. The officer was charged and convicted for gross assault, grossly causing the death of another person and misconduct. He was sentenced to one year and six months in prison and was discharged for misconduct.

5.4.2 Magnus Carlsson

Carlsson, aged 19, was shot dead in Kalmar on 13 May 2000. He was suspected of drink driving and in a confrontation with the police he allegedly tried to run over the police officers. After managing to stop the car the police officers pulled their guns. One of the officers grabbed Carlsson's clothes, to pull him out of the car. Unfortunately his gun fired hitting Carlsson in the shoulder which, caused Carlsson's death. The police officer was charged with misconduct, or in the alternative, causing the death of another person under 3:7 p.1 of the Criminal Code. He was not acting in accordance with police regulations when holding a weapon in his hand while opening the car door. He was however acquitted in October 2000 due to lack of education.

5.4.3 Idris Demir

Demir, a 27-year-old asylum-seeker from Kurdistan, was shot dead by a police officer in Jönköping on 9 March 2001. The police officers and a friend of Demir gave different versions of the event. The officers claim that it all started with a routine check of a driver's license. Demir claimed that he kept it in a flat outside Jönköping and the police officers accompanied him there to verify. In the flat he admitted that he had no licence, grabbed a carving knife, held it to his throat and threatened to kill himself. Demir ran out of the apartment and into the elevator. He attacked one of the officers with the knife, which made the second officer fire his gun hitting Demir's chest. Demir stumbled down the stairs and died where he landed. The police authorities claimed that the officers fired in self-defence.

Demir's friend claims that Demir did not attack the police, but was shot in the back on his way down the stairs, trying to run away from the police officers. The friend stated that Demir was afraid of being sent back to Turkey if the police caught him. His asylum claim had been rejected. In May, it was reported that the Chief Prosecutor in charge of the investigation had decided to prosecute the police officer who shot Demir. The officer was charged with gross assault and grossly causing of another person's death. The court unanimously acquitted the officer and concluded that he acted in self-defence.

5.5 The EU-summit in Gothenburg

The EU-summit June 2001 will above all be remembered in Sweden for the street riots that broke out in Gothenburg. The work of the police authorities has been widely discussed in Sweden and serious accusations about excessive use of force were reported. These are currently under investigation.

The police was authorised to use live ammunition. During demonstrations, three people were shot by police officers. It has been alleged that shots were fired directly at people without warning shots.

There are also reports of the use of excessive force against demonstrators who were not involved in the violent protests, including beatings with batons. The officers allegedly kicked or beat people with batons. This was allegedly done even after people had been detained and, in some instances restrained with their hands tied behind their back, lying down on the ground. Furthermore there are reports of arbitrarily detentions without charge, in some cases for many hours. This occurred during police actions at two schools. About 100 people have filed complaints against the police, for ill-treatment or illegal detention. There are also reports of detainees being kept isolated and denied to receive mail and books sent to them by their families.

5.6 Our considerations on excessive use of force

As discussed above there are situations where the police must be allowed to use force in order to protect the public. However the use of violence must be a last solution and it must always be

proportionate to the intended aim. The right to use force put the police in a very difficult situation and there will always be discussions regarding in what situations the police may use force and whether or not the violence used was excessive. We believe that this is a question of trust between the police force and the public. The police must act as a role model for society, which means that they should behave in a manner designed to create trust and security. The public must be assured that they can trust the police and be able to go to the police for help in difficult situations. It is important that the police does not pose a threat to the exercise of fundamental human rights. People must be able to demonstrate and express their opinions in public. This should not be restricted through the fear of being subjected to violence by the police.

Swedes in general seem to have a high level of confidence in the police. In an opinion poll in 2001, 1000 people were asked whether they would feel safer or more unsafe if there were more police officers on duty. A total of 74 % stated that they would feel safer or even much safer. This indicates that Swedes have a good relationship based on trust to the police authorities. The level of trust will of course be undermined by an increased number of cases of excessive violence reported in media. It is an important obligation for the police and the Government to maintain or restore that trust.

We believe that the cases discussed above show a pattern of problems within the police and its use of force. There seems to be no clear distinction as to what is lawful intervention and what is excessive use of force. We think there is a general need for improved regulations regarding the restraining of people. The handbook can be a valuable asset in that work if police officers are made aware of their obligation to read and follow its recommendations. It is of great concern that police officers often are not even aware of the guidelines presented in the handbook. As discussed above under art. 10, we believe that police officers need more and better education in handling difficult situations and psychological training to help them remain calm in a stressful working environment.

The handbook mentioned in the report from the Chancellor of Justice, presents examples of the risks attached to the taking into custody of intoxicated persons. It is clear from the handbook that all grips on the neck of a suspect are inappropriate. In the handbook it is also stated that any physical pressure against a person's belly, chest or back can solely be used for a very short period of time. It also clearly expresses that lying on the stomach, with the hands cuffed behind the back and being pushed down to the ground may cause asphyxia. The risk is higher if the person in custody is under the influence of drugs, alcohol or psychopharmacologic drugs. The handbook also gives examples of how the risk of asphyxia can be reduced and what signs to be aware of in order to avoid suffocation.

Considering how clear the handbook is, we find it questionable that the methods described as unlawful are still being used, especially when using them has resulted in people's death. Every police officer that arrest people in the course of his/her daily work, must be under an obligation to know the content of the handbook and to act accordingly. If the officer does not follow the instructions his/her omission to do so can never be considered an excuse. On the contrary, if there is an obligation to act according to the handbook, an omission should, in our point of view, be considered as negligent which makes his/her actions even more grave and reprimandable. In our point of view, it is a violation of the Convention that the State, even though the problems have been long known has not done more to stop these methods from being used. We do not consider it enough to carry out investigations on the matter. There must also be practical steps at all levels to prevent it from being repeated.

The police's use of fire arms must be restricted to cases where it is absolutely necessary The use of lethal weapons must be under constant control and every use of all weapons must be

investigated and evaluated. One of the absolute key elements to a successful handling of the problems is more education on the right to use weapons and the precautions it entails. There should be a continuous search for alternative methods of apprehending suspects without the use of violence.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made recommendations about the right to be represented by a lawyer, to inform relatives or others about the detention and informing the detainee of his or her rights. These three rights are safeguards against the ill treatment of persons deprived of their liberty. The rights must be guaranteed from the outset of custody.

We share the opinion given by the CPT. It is of unquestionable value to receive information about all your rights as a detainee. This should of course also be given in a language that is understandable to the detainee. There is a need for clear regulations in Swedish law about giving complete and understandable information to detained persons. There are interpreters available to the police and they should always be used to help detainees to understand their rights if there is the slightest suspicion that they do not understand Swedish. The CPT meant that there should be a simple form available, translated to different languages stating the rights of detainees. We definitely agree with that. However it must also be taken into account that not all people can read. There must exist an option for them too. It is thus necessary to create a clear obligation for police officers to verbally inform detainees of their rights. This should be done as soon as possible during an apprehension, i.e. when there is an obligation to stay with the police.

The right to inform relatives or others about being detained could be further clarified in Swedish law. 24:9 the Code of Judicial Procedure states that the relatives should be informed as soon as possible, but only if it will not affect the investigation. This means that there is a space for free manoeuvring of the police, which is not in the best interests of the detained person. The information gathered by the CPT also suggests that the practice as regards notification of custody varies from case to case, and discussions with police officers tended to confirm a diversity of approaches. We agree with the CPT that this is something the government should reconsider. It was not changed in the last revision made after the recommendations from the CPT.

The right to a lawyer is not clearly stated in the Swedish law. In 21:7 par. 2 of the Code of Judicial Procedure it says that the lawyer should meet his client and start working on his defence as soon as possible. The delegation from the CPT found that persons suspected of a criminal offence and deprived of their liberty normally were informed of their right to have a lawyer present. However, in most cases persons spent several hours in custody before being informed of their right to a lawyer. The CPT wanted an extension of the right to a lawyer to all categories of persons who are obliged to remain with the police from the very outset of custody. It should not make any difference if they are questioned as potential witnesses or as suspects. We agree with the CPT that it is under the first period of detention that the detainee is most vulnerable for ill treatment. The presence of a lawyer from the very outset of custody would lead to better protection of the detainee.

Sources:

- Annual Reports of A1 available on its website.
- The Case Ribitsch v. Austria- European Court of Human rights 95-12-04, Published: 336 p. 76.
- Report from the Chancellor of Justice – “Rutiner vid utredningar av dödsfall i samband med myndighetsingripanden – En rapport från Justitiekanslern på uppdrag av regeringen.” (Our translation: Routines used in investigations of death in connection with actions taken by authorities).

- Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 25 February 1998.
- The interim report of the Swedish Government in response to the CPT's report.

6. Article 12 – Impartial investigations of suspected Police misconduct

Article 12 states the importance of impartial investigations whenever there are reasons to believe that an act of torture has been committed in any territory under its jurisdiction.

6.1 Possible question to the Swedish Government

- Does the Government intend to follow the considerations made by the CPT and investigate the possibilities of creating a totally independent, impartial organ for investigations into complaints of excessive use of force?

6.2 Our considerations

Keeping in mind that the Swedish public in general has a good relationship to the police we wish to state the importance of effective mechanisms to tackle police misconduct, in order to maintain that trust. The CPT discussed safeguards against police misconduct during its visit to Sweden from 15-25 February 1998. The CPT stressed the dissuasive effect of the imposition of appropriate disciplinary and/or criminal penalties in those cases where evidence of deviations from established rules emerges. The CPT also considered it preferable for the investigative work to be entrusted to a clearly independent agency. According to Chap. 5 of the Police Ordinance, every allegation against police officers will be handed over to a prosecutor. This was also the main argument in the reply by Swedish government when claiming that the investigations are impartial. It also stated that different investigations have shown that the system of internal investigations is sufficient and impartial. However we wish to stress, that even though the prosecutor will lead the investigation police officers are involved in the preparatory work of the investigation.

Even though investigations by internal affairs units would in fact be impartial and thorough, there is a risk that the public will have doubts on the conclusions of the investigations. The positive effects of an impartial and transparent investigation should be clear to all parties. If the public knows that the police will be thoroughly investigated, and if justified sentenced for misconduct, their trust and belief in the police authority will be maintained or restored. This will give the police more security; since their behaviour and authority will not be as much questioned (as today). This in turn could in the longer run give a more relaxed relationship between the police and the public during police interventions.

Trust in the police is fundamental for a democracy and the rule of law. We believe that one way of maintaining or restoring this trust is through creating an independent investigation unit that can act outside the police organisation. We hereby support the conclusions of the CPT and urge the Swedish government to start investigating the possibility of creating a special unit for investigations into allegations of police misconduct.

Sources:

- Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 25 February 1998.

- The interim report of the Swedish Government in response to the CPT's report.

7. Article 14 – the right to redress

Each State Party shall ensure that victims of an act of torture can obtain redress. This includes moral redress such as an acknowledgement of the misconduct, as well as monetary compensation and assistance to medical rehabilitation. In this context we wish to discuss the need for appropriate health care of asylum seekers, especially those who have been victims of torture. We have focused our presentation on the special needs of women and children.

7.1 Possible question to the Swedish Government

- Is the Government willing to change its current practice of only giving emergency health care to asylum seekers?

7.2 Our considerations

Asylum seekers in Sweden do not have a legal right to rehabilitation from injuries caused by e.g. torture while awaiting a decision for residence permit. Since the turnaround time for asylum applications are long, sometimes over a year, this means that they must endure long periods without medical and professional help. Although this is a general problem facing all victims of torture seeking protection in Sweden, we wish to highlight the problems for female torture victims and children.

Further more, in many cases female asylum seekers who are victims of torture are not even recognised as such. These women must be "identified" by the system during their stay in Sweden in order to start their rehabilitation as soon as possible. They must be supported by the system, otherwise they will also not get a fair investigation of their case.

Children victims of torture often encounter the same. Since they often cannot speak for themselves so the system must be sensitive to their needs and protect their interests. This is particularly important for unaccompanied children, where the authorities must act as a kind of legal guardian.

We wish to stress that asylum seekers who are victims of torture are in a particularly vulnerable situation. Therefore, their special needs must be taken in consideration during the asylum process. The expulsion of people suffering from Post-traumatic stress disorder (PTSD) and other psychological problems is very questionable, but doing it without treating their problems seems inhuman. The asylum process currently consists of a long waiting period for the asylum seeker and this makes treatment even more important.

Sources:

- See article 3.

8. Article 16 – Illegal punishments and ill treatment of conscripts

Art. 16 states an obligation for every State Party to prevent acts of cruel, inhuman and degrading treatment in every territory under its jurisdiction. Article 16 aims at actions committed by, or at the instigation of, or with the consent of anyone acting in an official capacity. Under this section we intend to discuss the illegal punishments and ill treatment of conscripts in the Swedish military forces. We have received many reports about ill treatment in the form of punishments

that are unlawful, but still frequently used. We believe that it is a clear violation of art. 16, since very little is being done to prevent these problems.

Further we would like to discuss Female Genital Mutilation.

8.1 Possible questions to the Swedish Government

- What does the government plan to do to strengthen and improve the situation for conscripts? Is there for instance an impartial person in each regiment whom the conscripts have trust in and to whom they can report cases of ill treatment?
- How does the Swedish Government intend to enhance the protection of girls against Female Genital Mutilation?

8.2 The situation for Swedish conscripts

Värnpliktsrådet, The Council of conscripts, (our translation), visits all Swedish military units every year. Many conscripts have talked to them about illtreatment. The complaints concerned illegal punishments, collective punishments, and the use of conscripts as cheap labour. Because of these allegations the Council decided to investigate the matter more thoroughly. In the year 2000 they performed a telephone poll together with a statistic institute. Sweden has about 15 000 conscripts and in the poll about 500 of them participated. Act on disciplinary actions within the total defence system (Lag om disiplinäransvar inom totalförsvaret SFS 1994:1811).

The act permits the Military the use of four different disciplinary punishments, i.e. warning, extra service, pay cut and curfew. Every other disciplinary action is according to the council an illegal punishment. According to the law, it is also prohibited to use collective disciplinary punishments for misdemeanours committed by one person.

The poll showed that about 15 % of the conscripts had been illegally punished. The punishments could for example consist of; physical violence like beatings with a cane, forced sitting in stress position, doing 250 press-ups for losing material, running because some standards are not met, not being allowed to use bed textiles and losing of the weapon strap which means you always have to carry the weapon around in the hand.

The poll also showed that about 31 % of the conscripts had been subjected to collective punishments. This is a very serious problem and can inflict a lot of psychological stress on the person who caused the situation. According to the poll collective punishments are most heavily used in the marine, where about 48 % of the conscripts state that they have been subjected to collective punishments.

After receiving this depressing result the Council contacted the Military Headquarters (Högkvarteret) to find out what they intended to do about the problem. The legal department stated that the awareness of the problem was more or less non-existent, since they had not received many complaints against officers. During the last year we believe and hope that this situation has started to change. The Commander-in-Chief called upon all conscripts to report any use of illegal punishment or collective punishment at a meeting in the end of January 2001.

8.2.1 A conscript was forced to play dog – Älvsborgs regiment

In November 2001 a conscript misplaced his weapon during training at Älvsborgs Amphibian Regiment. A Second Lieutenant found the weapon and hid it. He then forced the conscript to lay down on the ground, put a leash around his neck and told him to sniff his way to the gun. The conscript claims he crawled around on all four for several minutes before finding the gun. As he found it the second lieutenant said that he should pretend to urinate on the gun so the conscript lifted his leg. According to the conscript none of the Commanders present protested against the

treatment. Several witnesses state that this is not an isolated incident but frequently observed in different forms. The case is currently under investigation by the Parliamentary Ombudsman (JO). However the same Second Lieutenant was recently promoted to Lieutenant. This was done even though the case is under investigation and it has not yet been determined if charges will be raised against him.

8.2.2 Conscripts were forced to eat dog-food – Muskö dog unit

A few weeks after starting their service at the Dog Unit at Muskö, the conscripts were woken up and dragged out of bed in the middle of the night. As a sort of consecration rite they were requested to eat dog-food by older conscripts. The Parliamentary Ombudsmen (JO), reviewed the case and concluded that he could not investigate anyone below the rank of Second Lieutenant. Since the Commanders had forbidden the ritual - they were beyond reproach. But despite that, JO clearly stated that these kinds of rituals are absolutely prohibited. This approach is according to us questionable. Even though the commanders had forbidden this behaviour we believe that there was a tacit approval. This is specifically indicated from the picture in the office of the, recently retired, Head of the Dog Unit. The picture shows conscripts eating dog-food.

8.2.3 Playing bird and getting kicked in the stomach – problems in Gothenburg

During field training outside Borås in July 2001, a conscript misplaced his weapon. As punishment he was forced to climb up a tree and play bird. The punishment is familiar as “the thrush”. According to witnesses he sat in the tree twittering like a bird for about 15 minutes.

During after conscript’s first week in the summer of 2001, there was a training including the dismantling and mounting of an automatic weapon. The conscript experienced some problems and could not mount the weapon. A commander went up to him and kicked him in the stomach and asked him if he was stupid. The conscript states that even though the kick was not very hard he felt humiliated and angry. The conscript transferred to a another unit shortly after the incident

8.2.4 The problems at Vaxholm’s regiment

At the Regiment in Vaxholm, Stockholm, about 30 % of the conscripts in 2001 did not complete their military service. The mentality currently shown by commanders at the regiment simply makes the conscripts ask for a transfer.

During the summer the Third Unit was not allowed to bring their water bottles during training. Due to the heat wave, many conscripts suffered from heat strokes. Conscripts claim that everyday about two or three conscripts fainted. It was only after criticism from the Unit’s doctors that the commanders realised that the treatment could not go on.

The Third Unit also had to clean up for between four and six hours because their Commanders claimed that many from the Unit had failed to do their chores that day. This is clearly a collective punishment. Other witnesses have said that if conscripts lost their weapons or had their pockets open, they had to carry around stones in their pockets for about two weeks. There are reports of at least one conscript subjected to carrying stones who suffered big flesh wounds to his thigh and knee during a quick march. The incident was however never reported since the conscript believed that he deserved it.

8.2.5 March as punishment – the Life Guard Unit in Kungsängen

During training one conscript amused himself by getting into others radio frequencies and disrupting the transmissions. The Lieutenant who was the Commander of the training found out and ordered a new training. According to the programme they were supposed to end the training

15 minutes later and have dinner, but instead they had to start walking towards a shooting-range about 5 kilometres away. The conscripts carried battle packing and a 12 kilo radio device pro battle pair, but were not given any opportunity to refill their water bottles for the 10 kilometre march. Before they started, the lieutenant told them that the march was a consequence of the abuse of his trust committed by one of the conscripts. The person, whose identity he already knew, was supposed to report to him afterwards, and should especially consider the suffering that his fellow conscripts had had to endure for what he had done. The march took about 1 ½ hour and as they returned to their quarters, dinner had already been served. The Lieutenant said that they would get something in the morning, and should buy something with their own money. The Lieutenant was reported and the Unit got access to a room with tin food. Two days after the incident the conscripts got food-coupons and the ones who had saved a receipt for food bought were reimbursed.

8.2.6 Illegal punishment - the Life Guard unit at Kungsängen

Victor Svahn served as a military police until he received 300 days leave for stress related symptoms caused by psychological harassment. He is not the only one; about 10 other conscripts have also left their service for similar reasons.

According to several persons in the Unit, two conscripts were forced to wet their pants after being denied visiting the toilet. Svahn got the impression that the Commanders were demonstrating their power. Later the same week, the unit received orders to gather in the yard, in full battle equipment in five minutes. The group quickly realised that it was not possible to make it in time and asked for more time. They did not get it and were about one minute late. They were ordered to return to their quarter without any explanation. After that, they were ordered to crawl down three stone stairs in their quarter over a grating and then stand at attention in the yard. The conscripts consider this a punishment for being late the first time. An investigation has started and the commanders have been forced to apologise to the conscripts.

8.2.7 Attitude problems – Karlsborg regiment

The magazine “Conscripts News”, (“Värnpliktsnytt”), has received many reports about problems of attitude among the commanders at the regiment. One former conscript reported of an incident when he was on guard duty, got very tired and put his feet on the table in the guard’s room. The commander came from behind and lifted him up by the ears asking what “the hell he was doing”. According to other conscripts, the same commander has threatened to hit them in the head with a baton if they let any unauthorised persons in. Apparently he often used threats against the conscripts. The commander himself says: “If I have pulled someone’s ears? How many centimetre? I have pulled many ears.” (our translation)

At this particular regiment there are also reports of conscripts being used as a sort of private servants. For instance they have been forced to search for golf balls lost by the commanders, and as private chauffeurs for Commanders off-duty. When the conscripts complained, the commanders allegedly argued that they should do these chores out of good will, and to influence the commanders not to consider other mistakes by the conscripts.

8.3 Our considerations

Military service is not a voluntary service, it is a duty towards the State. The army does not only exist in times of war. It is an authority with many obligations in peacetime as well. The army must enjoy public trust and it should earn that trust by performing in an acceptable manner. The military service concerns young people in a vulnerable situation. Military service is often their first real experience of an adult life, living away from home and the scheduled school life. For many, it is the first time away from home, assuming total responsibility for their actions. This puts a lot of pressure on the Military. They must set a good example for the conscripts. Bad

experiences as a conscript can cause damage for the future and cause an unwanted lasting effect. Believing that violence and ill treatment is a normal way of exercising power and authority, many of them may keep this pattern of behaviour in their civil work.

It should be an obligation for the Swedish government to stop illegal punishments and other forms of ill treatment from commanders, that conscripts might be exposed to. In order to implement better behaviour there must be a change of attitude to these issues within the military. As mentioned above, we believe that the problem is being dealt with. It can however be supported through stronger leadership and education in ethics and moral as was discussed under article 10. We find the system with mentors currently under development in Gothenburg to be a very good first step towards improving the situation. The regiment deserves credit for taking the problem seriously and really trying to do something about it. The idea is that more experienced officer's talk to younger ones about what is allowed and what is not. The system is aimed specifically at preventing illegal punishments. We believe, as said, that this is a very good start and hope that other regiments will develop similar mentor systems.

We are also concerned about the reports we have received about indications of a sort of tacit approval from the senior Commanders of behaviour from senior conscripts. It often seems as if they do not take the reports of ill treatment seriously. In at least one case the commanders of higher rank, openly stated that they believed that the conscripts were lying about ill treatment to get back at commanders.

It has also been said that the ill treatment can not be that serious, since only a few complaints have reached the heads of the regiments. We believe, on the contrary, that this proves that there is a major attitude problem within the military. We think that the lack of complaints is attributable to fear. The conscripts fear threats of commanders, further ill treatment and punishments for filing complaints. This is not at all surprising, considering the attitudes shown in the statements by conscripts. There must be strict control of the conscript's situation and constant measures against ill treatment. This is an obligation for everybody working in the military. It also means that every conscript has a moral obligation to report any ill treatment he may be subjected to. Without reporting, it is difficult for the senior commanders to put an end to the bad behaviour of the commanders.

The commanders who are guilty of this kind of ill treatment should be punished. Working in the wrong direction is when a regiment promotes the second lieutenant charged with ill treatment to lieutenant during an investigation. That means a tacit approval of his conduct and gives the conscript the impression that it is pointless to report ill treatment.

Sources:

- Investigation from the council of conscripts (our translation), - "The unfair military defence" (our translation), from August 2000, ("Undersökning från Värnpliktsrådet – "Den orättvisa försvarsmakten", augusti 2000.
- Articles from Värnpliktsnytt nr 1-15 2001.
- JO-fall 2001-01-12, diarienummer: 532-2000.

8.4 Female Genital Mutilation

Genital mutilation of women has been totally prohibited under Swedish law since 1982. Consent does not detract from criminal liability and the offence is punishable by up to ten years' imprisonment. In 1998, attempting, preparing or conspiring to commit the offence, or failing to report it, also became punishable by law. The law is very seldom applied, however, which is not

thought to be due to the non-existence of female genital mutilation.¹ It is also believed that relatives of the girls take them out of the country, and thereby outside Swedish territorial jurisdiction, in order to practise genital mutilation. In 1999, therefore, when the law was last amended, the double indemnity requirement was abolished.² A prerequisite for prosecution, however, is that the persons concerned have some connection to Sweden; according to the *travaux préparatoires*, the law is not applicable to asylum seekers who had their children genitally mutilated before they sought asylum in Sweden.

The Government has also directed special information at those who have traditionally practiced genital mutilation on the girls in their families. Nevertheless, the tradition appears to survive. Girls are still genitally mutilated both in Sweden and abroad without this either being detected or investigated. The National Board of Health and Welfare recently reported on the outcome of a three-year project aimed at preventing genital mutilation. One of its conclusions was that there is a continuous need for new, targeted information efforts. In particular, the Board suggests, such information should be directed to religious leaders, men and vulnerable girls. As far as we have been able to determine, willingness to report genital mutilation has not been specifically studied.

¹ See *inter alia* Govt Bill 1998/99:70

² Today, it is up to the Prosecutor-General to define the limits of Swedish judicial law in accordance with the rules on discretionary review of the right to prosecute. No changes were made in Chapter 2 of the Swedish Penal Code in respect of the rules on extraterritorial jurisdiction, a fact that was noted by a number of the bodies to which the amendment was referred for consideration.