UNICEF Sverige
Box 8161, SE-104 20 Stockholm
S:t Eriksgatan 46 C
Telefon 08-692 25 00
Fax 08-652 15 20

Insamlingskonto PG 90 20 01-7
(OCR 90 25 01-6)
Org.nr 80 24 01-4386
E-post unicef@unicef.se
www.unicef.se

To
The Human rights council
Geneva

Stockholm 13 June 2014

Alternative report from UNICEF Sweden re. the UPR process re. Sweden

Introduction

This is a comment to the coming UPR process where Sweden will be reviewed during 2015. The comments are only on the recommendations concerning children's rights.

The legal status of the UN Convention on the Rights of the Child

1. Recommendation 95.6

Incorporate into its domestic law norms protecting all children, including indigenous children, in line with the Convention on the Rights of the Child.

Swedish government comment:

In 1990 the Swedish government confirmed that Swedish legislation did not conflict with the CRC. A parliamentary committee was appointed by the Swedish government in 1992 to clarify how the CRC was implemented in Swedish legislation. The investigation led to further changes and in 2010 the government submitted a new strategy with the aim to strengthen children's rights. One of the objectives of the strategy was to function as a base for public services working for or directly with children. In 2011 the Swedish government once again reviewed and confirmed the coherence between Swedish legislation and CRC.

Comment UNICEF Sweden:

UNICEF Sweden believes that the principles and provisions in the CRC would be considered more seriously in the judicial system if the CRC would be incorporated as such into Swedish legislation and became Swedish law. UNICEF Sweden welcomes the Government's decision to appoint a commission with the mandate to consider the incorporation of the CRC into Swedish legislation.

It is necessary to strengthen the legal status of the CRC in order to implement it in different areas and levels in the Swedish society. If the CRC in whole would be incorporated into the Swedish legislation, its principles and provisions should be directly invoked before the courts and applied by national authorities. We believe that this would imply that the Swedish Government, national or local authorities as well as municipalities, must see their role as fulfilling clear legal obligations to each and every child.

As long as the CRC is not incorporated as such, it will not have any legal status nor impact in individual cases, especially not in the judicial system.

We are also concerned that the Swedish Government has not yet ratified the Third Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure. We cannot understand the reason for not ratifying in order to expressly protect the right of children to redress violations of their rights.

- ***UNICEF Sweden recommends the Swedish Government to initiate an incorporation of the CRC as such into the Swedish legislation.***
- ***UNICEF Sweden recommends the Swedish Government to ratify the Third Optional Protocol on a Communication Procedure.***

Children in migration

2. Recommendation 95.80 Children in migration

Look into ways to effectively ensure that the principle of the best interests of the child will be a primary consideration and hence form the basis for and guide all related processes and decisions, especially in asylum cases involving children

Swedish government comment

Children and young people who are in need of protection or support by the social services are regulated by the Social Services Act (2001:543). The legislation is applied to all children in need of protection or support and do not point out particular group of asylum-seeking children.

The Migration Board are continuously striving for an advanced knowledge among their officers concerning basic human rights issues. The Migration Board assess all errands concerning children separately and on an individual basis. They are obliged to have particular respect for the best of the child in all parts of the process.

Comment UNICEF Sweden:

It is clear that a more eloquent children's rights perspective should be applied in the asylum process. A scrupulous investigation regarding the child's own reasons for seeking asylum or residence permit should be included in the decision making of each case, and the grounds for every decision should be thoroughly documented.

Migration officers and decision makers in asylum cases should have a specific knowledge of children's rights, and a certain competence for child focused assessment methods.

The Swedish law should expressly refer to child specific forms of persecution, so that there is a special protection assessment in place when a child is concerned.

- ***UNICEF Sweden recommends the Swedish Government to initiate an amendment in the Aliens Act regarding child specific forms of persecution.***

3. Recommendation 95.78

Adopt legislative measures to guarantee that unaccompanied undocumented children are cared for.

Swedish government comment
Sweden's municipalities are responsible for the reception of unaccompanied asylum-seeking children and young people under 18. The municipalities are according to the Social Services Act (2001:453) ultimately responsible for providing the child with the support and assistance necessary.

Comment UNICEF Sweden:
Although the best interests of the child has been transformed and inserted into the Aliens Act, we are concerned about the principle not being given actual weight in the decision making regarding e.g. children at risk of being expelled or deported while in care due to negligence or domestic violence, children affected by the Dublin Regulation and children with long residence in Sweden. We believe this disparity results in that the child's best interests is not being considered enough in various situations.

- ***UNICEF Sweden recommends the Swedish Government to initiate further strengthening of the principle of the best interests of the child in all decision making regarding children in migration.***

4. Recommendation 96.41

Improve the services, especially social services, provided to asylum-seekers; stress the importance of providing asylum-seekers deprived of means of subsistence with health insurance comparable to that afforded to nationals.

Swedish government comment:
Children seeking asylum are offered the same health care and dental care as a child living in Sweden. This is regulated in the Act (2008:244) on health care for asylum seekers and others. However, children who are staying in the country without applying for asylum, there is no legal obligation for the country to provide care under the same conditions as for people living in Sweden.

Comment UNICEF Sweden:
We welcome that the Swedish Government has acknowledged undocumented children's legal rights to health care and education. These law amendments went into force in 2013. We believe it is now very important to monitor that these legal rights also are possible to access in practice.

- ***UNICEF Sweden recommends the Swedish Government to ensure that undocumented children are given access to health care and education in practice***

According to the Aliens Act it is legitimate to expel or deport children who have been placed in out-of-home care due to negligence and/or domestic violence during the asylum process. This is not in accordance with article 2, 3, 6 and 20 in the CRC. Social workers report they are prevented to fulfil their responsibilities to consider the best interests of the child in these cases, since the Aliens Act has precedence over the Social Services Act and the Care of Young Persons Special Provisions Act. They report situations where they wait to intervene despite the risks for the child in the home

environment, while awaiting a decision from the Swedish Migration Board. It is necessary to strengthen the collaboration between relevant authorities such as the social services, the Migration Board, the police authorities and children's health care.

- ***UNICEF Sweden recommends the Swedish Government to initiate an amendment to the Aliens Act ensuring that no child is expelled or deported while in need of care due to negligence and/or domestic violence.***
- ***UNICEF Sweden recommends the Swedish Government to strengthen the collaboration between authorities involved in cases regarding migrant children in care, such as the social services, the Migration Board, the police authorities and children's health care.***

Children victims of trafficking

5. Recommendation 95.61

Work closely with the European Union to create a comprehensive anti-trafficking-in persons network

Swedish government comment:

Sweden participates actively in all EU forums that in some ways address the issue of human trafficking. On the political level, Sweden is pushing for further development and has, via the Swedish Police, invested in a campaign aiming at preventing sexual abuse against children committed by Swedes abroad

Comment UNICEF Sweden:

However, the existing legislation is not sufficiently clear regarding the crime of trafficking in children. UNICEF Sweden believes it would be easier to understand and apply the legal provision if there was one specific on child trafficking in the Penal Code. This would increase the transparency and facilitate the law enforcement. Such a provision should specify what types of exploitation that it criminalizes, in order to bring precision to the outlining of the crime. Such a specific provision would imply a stronger protection for children under the age of 18 years.

- ***UNICEF Sweden recommends the Swedish Government to initiate an amendment in the Penal Code regarding the crime related to trafficking in children.***

Training programs and awareness raising

UNICEF Sweden believes that there is a need for awareness raising among decision makers about the different aspects and natures of trafficking. This work should not only cover trafficking in children for *sexual* purposes, but all forms of exploitation, e.g. begging, crimes and labour. These training programs should include what trafficking is, how trafficking in children can be recognized, and how to act when there is a suspicion of trafficking in children.

- ***UNICEF Sweden recommends the Swedish Government to include all types of exploitation related to trafficking when raising awareness about trafficking in children.***

- ***UNICEF Sweden recommends the Swedish Government to develop and increase the use of training programs on trafficking in children for different authorities.***
- ***UNICEF Sweden recommends the Swedish Government to take an initiative to improve the collaboration between relevant authorities to prevent trafficking in children and to protect children who are victims of trafficking.***

Children in social exclusion

6. Recommendation 95.81

Devote more efforts to reduce social exclusion and better integrate its growing immigrant population into all aspects of society.

Swedish government comment:

Sweden consider establishment on the employment market to be the single most important instrument in order to decrease social exclusion. In 2010 a new reform was accepted that aims to facilitate establishment on the employment market for newly arrived migrants. Furthermore, the Swedish government has ordered an investigation of accessible instruments for decreasing social exclusion among female migrants who do not participate in the working population. The final report which was finished in 2011, identifies three key areas: 1) practical and hands-on teaching in Swedish, 2) health and personal development, and 3) vocational efforts.

Comment UNICEF Sweden:

UNICEF Sweden believes that the Swedish Government should take a comprehensive and integrated approach to combat social exclusion, its consequences and its underlying causes. It is important to adopt a national strategy in order to reach all municipalities and to get the authorities to collaborate.

- ***UNICEF Sweden recommends the Swedish Government to adopt a national strategy with a holistic approach on how to prevent social exclusion and increase social inclusion among children.***

The child's right to be heard and participate

Children living in social exclusion report they have limited opportunities to express their views and participate in the decision making affecting them. Children in social exclusion, with their experiences, perspectives and proposals on how to strengthen social inclusion, needs to increasingly be taken into consideration in the decision making process at all levels.

- ***UNICEF Sweden recommends the Swedish Government to realize the right for children in social exclusion to express their opinions and participate in all the decision making affecting them.***

7. Recommendation 96.44

Adopt legislative measures to guarantee the right to education for all migrant boys and girls.

Swedish government comment

All children aged 7-16 which are residents in Sweden and subject to public schooling have a right to education. Also children seeking asylum in Sweden have the right to education on the same terms as other children according to the constitution and the Education Act (2010:800).

Comment UNICEF Sweden:
Of all the preventive factors known to combat social exclusion and breaking negative social inheritance, education is among the most central. Through surveys conducted in Swedish elementary schools, it is noticeable that the Swedish educational system moves in a direction where the inequities and equality gaps are growing more significantly and where the current quality of the Swedish education is decreasing.

UNICEF Sweden believes that the perspective of the child and the specific actions required to enable children in social exclusion to benefit from education, should be added to political debates, proposals and the decision making concerning the Swedish school system.

- ***UNICEF Sweden recommends the Swedish Government to enhance the central follow-up mechanism of the educational system in order to counteract educative inequalities.***
- ***UNICEF Sweden recommends the Swedish Government to include children's perspectives and the particular vulnerability and needs of children in social exclusion in the decision making regarding the school system.***

Education

Raising awareness about the CRC in school environments

8. Recommendation 95.47
Strengthen human rights education programs at the national and local levels aimed at eradicating racism and xenophobia

Swedish government comment
The new Education Act (2010:800) came into force on 1 July 2011 and clearly emphasizes the importance of human rights to be a legislative basis in all activities covered by the Act. The Act states that the education in the school system" will teach and establish respect for human rights and fundamental democratic values that the Swedish society is based on" (6 §) It also states that education should be designed in accordance to fundamental democratic values and human rights (5 §), and that all teaching should promote human rights and actively combat all forms of degrading treatment.

Comment UNICEF Sweden:
UNICEF Sweden would like to see a long term strategy on how these projects can leave on and how the CRC could be implemented in schools, beyond the subject of a lesson plan. UNICEF Sweden believes that there is a need to build the capacity of rights-holders, especially children, to claim their rights, and the capacity of duty-bearers to fulfil their obligations. It helps adults and children work together, providing the space and encouragement for meaningful participation and sustained civic engagement. UNICEF Sweden promotes a 'child rights approach' to help empower both children and adults in schools. A 'child rights approach' includes learning about rights, learning

through rights learning for rights. Knowledge of the CRC should be rooted already in teacher training.

- ***UNICEF Sweden recommends the Swedish Government to develop a long term strategy on how to build the capacity of schools to implement the CRC.***
- ***UNICEF Sweden recommends the Swedish Government to enhance the central follow-up mechanism of the educational system in order to secure that students have possibilities to be heard and participate in decision making in school.***

9. Recommendation 95.33

Carry out national campaigns against all forms of discrimination, publish its new law against discrimination and ensure its implementation

Swedish government comment

In the 2012 budget, a three- year initiative was announced for awareness-raising activities for children and young people about related forms of intolerance and discrimination for the period 2012-2014. For these measures 4.5 million were allocated i.e. 1.5 million per year.

Comment UNICEF Sweden:

UNICEF Sweden welcomes the government's wider protection against age discrimination in the Discrimination Act and the strengthening of human rights in The Education Act. Most schools in Sweden work to prevent discrimination and other degrading treatment to some extent. Still a survey conducted by The Swedish National Agency for Education shows that there were inaccuracies in 80 percent of the equality plans in the primary schools inspected in 2007 and the first half of 2008.

- ***UNICEF Sweden recommends the Swedish Government to strengthen the work against discrimination, harassment and violations in schools by closer central control, especially to make sure student´s proposals for preventive measures are taken into account.***

International development

UNICEF Sweden underlines the importance of developing the proposed action plan and other measures within Sida to better make visible and mainstream the child rights perspective within the whole organisation. At present, the work in this field does not seem to be prioritised, with neither sufficient funds nor staff resources dedicated to the task. This work has to go in line with the development of the new policy for international development. In the draft policy, currently on referral, the child rights perspective is not very well integrated. UNICEF Sweden however welcomes that women and children are prioritised as focus target groups.

- ***UNICEF Sweden recommends the Swedish Government to go further with the intended plans to develop an action plan for the mainstreaming of the child rights perspective within Sida, including developing new methods of integrating and measuring results achieved for children. This requires strategic thinking but also dedicated staff resources.***

UNICEF Sweden

Véronique Lönnerblad
Executive Director