



**The Children's Ombudsman's opinion
concerning the Swedish Government's
Report of 2002 to the UN Committee
on the Rights of the Child**

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Foreword

Generally speaking, children in Sweden are relatively well off. Their material standard is high, and their physical health is good seen from an international perspective. Children and young people have rich opportunities for play and recreation, as well as parents who care for them and respect their opinions.

In Sweden, the implementation of the UN Convention on the Rights of the Child (CRC) has improved in many ways. More municipalities, county councils and Government authorities are familiar with the CRC and are seeking methods by which to acquire a better child's perspective in decision-making.

Nevertheless, we can see several disturbing signals in our own statistics as well as in many reports.

More and more children are suffering from psychological problems and an increasing number are seeking help from psychiatric clinics for children and youth. The queues to these clinics are unacceptably long, and support for these children is deficient. Considerable effort will be required in terms of student health care, where many of these problems can be sorted out early, and in terms of the county councils' psychiatric care for children and young people.

We can also conclude that class differences have increased. The cutbacks in State aid during the '90s affected children and their families to a great extent. Since then, the improved economic situation has caused the standard to rise, but the benefits do not extend to everyone. Children who are growing up with unemployed or single parents have not enjoyed the same improvement in standard – instead, the gap has widened.

Sweden must improve the way it receives unaccompanied refugee children. According to the CRC, they are entitled to the same rights as other children in Sweden. Better support and faster processing of their cases are two important demands.

The Swedish legislation regarding adoption needs a thorough going-over and a change in perspective. Today, legislation proceeds from the right of adults to be parents, not from the child's right to a secure upbringing and a good childhood.

At present in Sweden, there is a boom in teenagers that will continue for some years. The fact that a significant group of children is about to enter their teen years places stringent requirements on societal planning, including everything from how upper secondary schools should be dimensioned to how attractive leisure-time and meaningful club activities can be provided. The challenges are many, and the Government's report to the UN Committee on the Rights of the Child can be seen as a good starting point for taking measures in the future.

Stockholm, 24 October 2002

Lena Nyberg
Children's Ombudsman

1. Opening standpoints

The Children's Ombudsman perceives the frequent reports from the Government to the UN Committee on the Rights of the Child (the Committee) as being an important contribution in following up efforts to implement the UN Convention on the Rights of the Child (CRC). The Government's reports provide us with an opportunity to check our own efforts against their observations, as well as to compare our assessment of developments with theirs as far as Sweden's commitment to the rights of children and young people is concerned. With that in mind, it is regrettable that we have not had more time at our disposal to study and comment on the draft Government's report from the 27 september.

The Children's Ombudsman observes with satisfaction that in its reports the Government so clearly asserts the importance of a strategy to implement the CRC in Sweden.¹ The efforts to arrive at a strategy have produced many sound observations that are of value to the continuing task of implementing the Convention.

The Children's Ombudsman now has – as the Government has pointed out in its latest report – a stronger position, and its mandate has been established in a law enacted by Parliament giving the Children's Ombudsman a more distinct role as the upholder of the rights of children and young people. Another important change is that its role as the promoter of the implementation of the CRC in Sweden has now been confirmed by law as a permanent assignment. The Children's Ombudsman has also been granted certain legal authority vis-à-vis civil authorities, municipalities and county councils, thereby giving the Children's Ombudsman the right to require information regarding how far the implementation of the rights of children and young people has advanced in their various spheres of operation. The people responsible for providing this information are also duty-bound to be present at discussions with the Children's Ombudsman.

In its review of the Government's report of 1997, the Committee urged the Government to increase its efforts to ensure that the municipalities observe and respect the CRC, given the risk that children and families might otherwise get different access to the services society offers. In its current report, the Government states – as a solution to this problem – that it will offer municipalities and county councils support in the form of the strategy being drawn up by the Children's Ombudsman, as well as help in the development of instruments and tools that can be used to implement the CRC.

The fact that the Government offers the work of the Children's Ombudsman as support to the municipalities and county councils does not rectify, however, that the Government's capacity to influence the quality of these instances' operations – in several areas that are important to children and young people – is deficient. This applies, for example, to the schools, in particular student health care, the social services' efforts in various areas, and mobility service for children with functional disabilities.

In this year's report, the Government provides an extensive account of the work under way in Sweden to strengthen children's and young people's rights in society. Many of the measures aimed at the future are presented as new assignments that devolve upon the Children's Ombudsman. However, although it is positive that the Children's Ombudsman has acquired a stronger position as well as a more distinct and extensive assignment with respect to implemen-

¹ Government bill 1997/98:182.

tation of the Convention, there is reason to point out that the Office of the Children's Ombudsman is a relatively small civil authority that is not able – within the scope of the present budget – to fully live up to the demands implied by the bill presented in the spring of 2002.

Furthermore, the Children's Ombudsman feels that over the long term the Office must have its authority extended by being granted the authority to act in individual cases that concern children and young people.

The Government has assigned the Children's Ombudsman to develop models and guidelines for local ombudsmen who can represent children and young people. The purpose of this is to more carefully safeguard children's rights and interests when decisions are made locally; however, it is also meant to provide children and young people with direct contact and dialogue with their own representatives at the local level. Although at this point the Children's Ombudsman is not able to elaborate on the content of the report, there is reason for the Committee to note that, with the help of local ombudsmen, Sweden intends to intensify its efforts to implement the CRC at every level of society.

The Children's Ombudsman also notes with satisfaction that in today's society there is a general political discussion about the resources set aside for schools. The schools play an important role in the everyday life of children and young people; thus, efforts directed towards the schools are of vital importance to the improvement of their situation.

In part as a consequence of the Committee's views on Sweden's previous report, the Government has engaged a large number of players in developing the current report. The Children's Ombudsman would like to express appreciation of this way of working, which has surely contributed to the breadth of this year's report. We also wish to express support for the plans to give both the Government's report and the Children's Ombudsman's comments on it, wide public distribution and to let the material be requisitioned free of charge.

In this statement, the Children's Ombudsman has chosen to comment on the sections in which the Government, in the Children's Ombudsman's view, has not been sufficiently clear in its account, or in which we feel the account has gaps.

2. General measures (Articles 4, 42 and 44, § 6)

The national strategy for implementing the CRC has resulted in many good experiences that are of importance for the continued work when it comes to strengthening the children's perspective in municipalities, county councils and state authorities. The local and regional efforts are largely focused on making use of the knowledge and experience that exists in municipalities and county councils.

Between 1995 and 2001, the Children's Ombudsman has conducted four surveys regarding the municipalities' implementation of the CRC. On two occasions, in 1999 and 2001, the Children's Ombudsman has also sent out and compiled questionnaires to the county councils regarding the implementation of the Convention. From the results obtained, we can establish that an increasing number of municipalities and county councils are discussing and taking decisions on the Convention. The number of municipalities that have discussed the CRC at a general level increased from 5 per cent in 1995 to 81 per cent in 2001. During the same period, the proportion of municipalities that have taken decisions on adopting a plan of action or similar document increased from 2 per cent in 1995 to 29 per cent in 2001.

The development in the state authorities has been followed up in a similar way. Through comprehensive surveys in 1998 and 2001, the Children's Ombudsman gained a picture of the work being carried out on the CRC within state authorities. The nine pilot authorities with which the Children's Ombudsman has collaborated within the framework of the national strategy are naturally taking a leading role, although a positive trend can also be observed within a large number of other state authorities.

In collaboration with a number of authorities involved in the administration of justice, the Children's Ombudsman has worked to ensure that the CRC is incorporated in their operations. The Children's Ombudsman has collaborated with the National Police Board, the Prosecutor-General, the Swedish Migration Board and the Swedish Aliens' Appeals Board. Collaboration with the National Judiciary Administration has just been launched.

On the basis of the experiences of the Children's Ombudsman during the work within the framework of the strategy, it is clear that the Children's Ombudsman's future work must be based in part on the fact that authorities, municipalities and county councils are in need of recurring support. In the light of this, the Children's Ombudsman is planning to develop support in the form of guidance, further training and through the development of information and training materials.

Knowledge-gathering

The Children's Ombudsman should, within his area of work, gather knowledge and compile statistics about the living conditions of children and young people. To this end, we are cooperating with Statistics Sweden (SCB) in the publication *Up to 18 – facts about children and young people* in which information from many statistical sources is clearly presented. The Children's Ombudsman considers that, as a result of the investment the Government has made in annual basic statistics about children and their families, produced by SCB, the statistical source material has been extended and improved considerably as regards children's and young people's family situations and other demographic conditions.

In the work on *Up to 18*, based on facts, areas are being discovered that are not yet that well covered as regards statistics. The Children's Ombudsman considers that these gaps ought to be filled. Even though Sweden is considered to be a 'statistics-dense' society, this does not apply to children and young people compared to the adult population. There is a lack of information that is essential when it comes to following the development of children's and young people's conditions. For example, there is no reliable information at a national level about the number of children and young people with various kinds of disability. As regards statistics about injuries, there is no information about what permanent harm children and young people have suffered due to serious injuries in traffic or other environments, for example. Following the development of children's and young people's mental health through recurring measurements is considered by the Children's Ombudsman to be very important. We therefore appreciate the fact that the National Board of Health and Welfare has been awarded a commission by the Government which they are currently carrying out, with the aim of preparing repeated studies of children's and young people's mental health. Furthermore, we consider that statistics about children and young people with a foreign background should be more comprehensive, including studies of the conditions experienced by children and young people seeking asylum. Yet another problem is that there are currently no official statistics indicating the number of homeless children and young people in Sweden. Neither are there any good statistics available in respect of whether society's range of leisure and cultural activities reach children and young people in an equivalent way.

In Sweden, recurring measurements of the adult population's living conditions have been conducted since the 1970s. These investigations are important indicators of the population's welfare. In 2000, a selection of children and young people aged 10–18 years were included for the first time in such a study, and this measurement has been repeated in 2001 and 2002. The Children's Ombudsman considers that it is vital, in order to follow the development of children's and young people's welfare, for these studies to be made permanent and to be conducted at suitable intervals.

Cutbacks during the 1990s

Children and young people during the 1990s were doubly affected by the prevailing economic crisis in Sweden, both by economic stresses in their families due to increased unemployment and reduced compensation levels in the national insurance systems, and by a dilution of the resources in society's activities for children and young people.

At the start of the decade, Sweden also experienced the largest baby boom in a long time, in particular during the years 1989–1992. Each year around 25,000 more children were born than in the corresponding years in the 1980s. However, the high birth rates were replaced after 1992 by very low birth rates during the middle and latter half of the 1990s. In 1999, for example, fertility levels stood at 1.5 children per woman, the lowest level ever recorded in Sweden. Another demographic change which affected children's and young people's situation within childcare, schooling and health services during the decade was the major influx of immigrants, mainly from the former Yugoslavia, during the years 1992, 1993 and 1994.²

Children's economic conditions

In its final progress report (SOU 2001:79), the Balance Record of Social Welfare Commission for the 1990s presented analyses which demonstrate that children as a population group and their

² *Välfärd vid vägskäl – Utvecklingen under 1990-talet, delbetänkande*. Balance Record of Social Welfare Commission, SOU 2000:3.

families have been disadvantaged by developments in the 1990s. The proportion of children in households with very low incomes or lacking cash margins has increased slightly during the 1990s. Children of manual workers, those born abroad and children of lone parents experience particularly harsh conditions.³ Children with lone parents are not keeping pace with the economic recovery. In 1999, their households still had 5 per cent lower incomes than the corresponding group in 1991.

During the 1990s, almost 11 per cent of all children lived in families with incomes below the income support level for at least three years, according to an analysis of longitudinal data. Twelve per cent lived in families that received income support for at least three years.⁴

A recently presented report shows that the upward trend in the economy, that commenced in 1997, was continuing in 2000, but by that year children's economic standard of living had still not passed the level of the beginning of the 1990s. The general improvements in 2000 in the economic conditions of families with children meant a relative increase in the difference between poor and rich families with children. These differences are increasing in both directions. The income standard of the poorest tenth of families with children has worsened by just over 6 per cent between 1991 and 2000, while the richest tenth has reported an increase of just over 7 per cent in the same period. There are also considerable variations between the municipalities as regards the proportion of children living below the poverty line used by the study. Differences in economic vulnerability between children with a Swedish and children with a foreign background are displaying an increasing trend in 2000 compared with the year before.⁵

Dilution of resources in children's activities

The Children's Ombudsman views with considerable concern the development that has taken place since the beginning of the 1990s regarding the size of groups in nursery school and after-school centres and the staff-to-children ratio. These levels are still unsatisfactory, and there are considerable differences within the country. The improvements that the state has announced in the scope of resources are therefore necessary.

Nursery school and schoolchild care was extended during the 1990s to cover many more children using the existing resources, with the result that the staff-to-children ratio declined and the size of the groups of children increased. The dilution of resources is particularly evident within after-school operations, where the number of children per permanent employee has more than doubled during the decade.⁶

However, only approximately 7 per cent of children between the ages of 10–12 years attend after-school centres and family day-care centres, with an additional 5 per cent participating in open leisure activities. These figures are for 2000 and have remained more or less the same throughout the 1990s. More than half of the children in this age range manage alone in the afternoons after the end of school.⁷

As the cost of premises represents a major proportion of the budget, a larger number of children have to spend time in the existing premises than before in many areas. Many parents and people working in the profession have contacted the Children's Ombudsman during this time and de-

³ *Välfärdsboks slut för 1990-talet*. SOU 2001:79.

⁴ *Barnens del av kakan – välbefinnande och fattigdom bland barn 1991–1999. Demografiska rapporter 2002:1*. Statistics Sweden (SCB).

⁵ *Barns ekonomiska utsatthet – 2000*. Tapio Salonen, Save the Children (Rädda Barnen), 2002.

⁶ *Välfärdsboks slut för 1990-talet*. SOU 2001:79.

⁷ *Beskrivande data om barnomsorg, skola och vuxenutbildning 2001*. National Agency for Education, report no. 206.

scribed the environment for the children as being both noisy and cramped, and many are also concerned for the children's safety due to the low staff-to-children ratio.

In schools, resources for children in need of special support have been diluted. Mother tongue education and education in Swedish as second language has declined significantly during the 1990s. In many areas, schools have cut back on counselling and psychologist services, and school nurses have been forced to deal with problems lying outside their area of expertise. In a current study, a large proportion of school nurses describe that they have been assigned extended work duties within existing or even reduced economic resources.⁸

The proportion of students leaving compulsory education without grades in one or more subjects has increased from 20.4 per cent in 1998 to 25.7 per cent in 2001.⁹

During the 1990s, the proportion of children who have been registered in special schools has increased by just over 50 per cent, while the number of pupils in comprehensive school increased by 18 per cent during the same period. According to an analysis by the National Agency for Education, there can be several reasons for this. With the cutbacks that have been made in resources for special education in normal comprehensive schools, there is insufficient support for various categories of children who do not traditionally belong to the education for pupils with learning disabilities sphere.¹⁰

Against the background of this negative development, the Children's Ombudsman has a positive view of the fact that, for the period 2001–2006, the Government is providing municipalities with additional resources for schooling in order at least to return some of the resources that the children and young people had to do without during the 1990s.

Leisure time and culture

The leisure and cultural sectors for children and young people are not regulated by law and have therefore been particularly vulnerable to the stringent savings demands that have existed in the municipalities. There are considerable variations in the municipalities' work with leisure activities, as well as in the selection available at local level. These differences can be due to the size of the municipalities, their geographic location, their view of the importance of leisure and the local organisation.

During the 1990s, the municipalities cut by 20 per cent the allocation for providing children and young people with good leisure facilities, and by 5 per cent the allocation for supporting children's and youth culture. The number of employees has fallen by approximately 10 per cent and investment has halved during the same period.¹¹

⁸ *Elevhälsa – rapport från enkätundersökning bland skolsköterskor, skolpsykologer och skolkuratorer*. Swedish Association of Graduates in Social Science, Personal and Public Administration, Economics and Social Work, Federation of Salaried Employees in the Hospital and Public Health Services, the Swedish Society of Psychologists and the Children's Ombudsman, 2002

⁹ *Up to 18 – facts about children and young people*. The Children's Ombudsman and Statistics Sweden (SCB), 2001, and the Government report.

¹⁰ *Hur särskild får man vara? En analys av elevökningen i särskolan*. National Agency for Education (Skolverket), 29.09.2000.

¹¹ *Svensk ungdomspolitik*. National Board for Youth Affairs 1999, quoted in *Barnom pågär – rapport från barnens myndighet*. The Children's Ombudsman, 2000, and the Swedish Association of Local Authorities.

3. Definition of the child (Article 1)

Minimum age of marriage

In a memorandum that has been drawn up within the Ministry of Justice¹², legislative measures have been proposed against child marriage and forced marriages. According to these proposals, all marriages entered into before the Swedish authorities shall be decided upon in accordance with Swedish law. Bearing in mind that Sweden was criticised by the Committee on this issue in connection with the latest reporting, the Children's Ombudsman believes that it has taken a long time to investigate the matter. The Children's Ombudsman believes however that the proposals comprise an important step in the right direction and hopes that the government presents a bill to the Swedish Parliament, in the near future, on this issue.

¹² Ds 2002:54 *Svenska och utländska äktenskap*.

4. Basic principles

Non-discrimination (Article 2)

Children and young people with disabilities discriminated

In the Children's Ombudsman's yearly report from 2002, *Många syns inte men finns ändå*, it emerges that many children with disabilities are excluded from certain lessons such as sport, community and nature-oriented subjects, handicrafts and domestic science. The children's comments show that they cannot, or are not allowed to, take part in all the education provided in the school. We fear that the schools have judged that the children are unable to assimilate the education, or that the schools have not made the effort to adapt the lessons so that all children can take part. Teaching resources are also lacking in schools for many children with disabilities. In general, this applies more frequently to girls than boys.

In a study covering some 70 families with children who have neuro-psychiatric disabilities, 13 per cent of the families describe that their children have been excluded from school. The reasons for this vary from the children being viewed as a danger to other pupils, to the absence of assistants for the children. In the study, a massive 40 per cent do not have the 'action programmes' that the pupils are entitled to, according to the comprehensive school ordinance.¹³

A report from Save the Children and the Swedish National Association for Disabled Children and Young People demonstrates the lack of accessibility. Less than half of those who responded felt that it was easy to go to the cinema, half of them cannot get into any youth centres, two-thirds think that accessibility is poor in restaurants and cafés.¹⁴

In the Children's Ombudsman's yearly report from 2002¹⁵, it comes to light that children with disabilities have fewer friends. Boys have fewer friends than girls. In many areas there is a lack of places or organised activities that are adapted to the needs of young people with different disabilities. Many children, both boys and girls, would like youth centres, youth cafés or similar places where they can meet others of the same age, both with and without disabilities. Many children would like more sports adapted to the disabled.

The children describe that they need a lift as their friends live so far away and buses do not go to where they want to travel. In addition, the children mention their own disability as a reason for being dependent on adults in order to meet friends. Several children mention the problem of not having access to an assistant and transportation services in their free time.

The Children's Ombudsman fears that many municipalities in Sweden will not live up to the intentions of article 2 of the CRC. Sweden's municipalities have a major responsibility to offer all children and young people equivalent education and a rich leisure and cultural life on equal terms, without discrimination, regardless of their situation or background.

¹³ *Akuten situation, för många barn med ADHD och deras familjer*. A survey in Skaraborg of Dampens Hus in Lidköping regarding the public support for children with ADHD and their families, 2002.

¹⁴ *Trappor, trösklar och tanklöshet – Barn och unga med funktionsbinder om rätt till lek och fritid*. Save the Children, 2002.

¹⁵ *Många syns inte men finns ändå – rapport från barnens myndighet*. The Children's Ombudsman, 2002.

Children and young people with foreign background

A thorough integration perspective is lacking in the Government's report. Children and young people with a foreign background are mostly dealt with in specific cases surrounding problem areas such as their own mother tongue and families with strong patriarchal values. The children's foreign background is not a factor that should immediately be associated with specific problems.

The housing policy in Sweden has contributed to increased segregation between different cultural groups and has given rise to areas around the major cities with a high number of inhabitants with a foreign background. Unemployment levels are also high in these areas and this has had a major impact on the family structures and on the children. The children in these areas are not on equal terms with other children in Sweden.

A quarter of all children in Sweden today have at least one parent with a foreign background. Ethnic segregation has become an increasingly serious problem during the last decade. Those born abroad participate to a clearly less extent in all aspects of community engagement, both when it comes to affecting their own daily life and the development of society as a whole.¹⁶

The Government's investment in socially vulnerable housing areas on the outskirts of the cities is not complete and can therefore not be evaluated yet. The purpose of this investment was to implement long-term structural changes. We consider it important for future planned measures to be sustainable and not only projects that are limited in terms of time.

Equality between girls and boys not yet achieved

Even though Sweden has come a good way along the road towards equality, we can ascertain that we often characterise children in traditional gender patterns. We also know that society invests different amounts in activities aimed at girls and boys – to the boys' advantage. This can be seen for example in resources allocated for club activities and sports facilities.¹⁷ This is an example of municipalities in Sweden not investing their resources in a way that is consistent with the content of article 2 of the CRC.

The state and the municipalities often invest more money in leisure than in culture, and more in sports facilities than in youth centres, which benefits boys to a greater extent than girls. Boys participate more in team sports and dominate the use of the resource-demanding facilities. Girls' activities, such as riding and dancing, are still only available to a limited extent under public management. The group of young people who avail themselves the least of the public support for associations and facilities are girls from the lowest social group.¹⁸

In the 2001 report, *Båda är bäst, typ*, the Children's Ombudsman presented a study that shows children's and young people's view of their own conditions on the basis of gender. It is pleasing that both boys and girls consider that they are treated equally in school as regards education. What is worrying is that the answers show that girls in senior school are bullied more with sexual words or similar taunts than boys. The boys appear to attract more negative attention in school from the staff, while the girls tend to be received more positively.

¹⁶ *Båda är bäst, typ – rapport från barnens myndighet*. The Children's Ombudsman, 2001.

¹⁷ Research results from Ulf Blomdahl, R&D, Sports Administration, Stockholm.

¹⁸ *Swedish youth policy*. National Board for Youth Affairs 1999, quoted in *Barndom pågår – rapport från barnens myndighet*. The Children's Ombudsman, 2000.

In their teenage years, many girls have poorer self-confidence, and it is reported that many teenage girls suffer from headaches, feel down or are depressed. The Children's Ombudsman considers that attention must be given to the health of young girls and women. Teenage boys, for their part, need subtle male role models in order to have the courage to become a man in their own individual way.

Research shows that the girl/woman still bears the primary responsibility for not letting herself be exploited. In everyday life, this means that girls have considerably less scope than boys. Girls may not dress however they want, they have to be careful so that a boy does not mistakenly get the impression that they are in love with him, they may not be too sexually interested, they may not get drunk, they may not go out on their own after dark, they may not spend time in dangerous places in the school.¹⁹

Discrimination of young people due to sexual orientation

There is unfortunately a lack of information about the life situation for homosexual and bisexual children and young people. A Norwegian survey paints a picture of a group of young people for whom suicidal thoughts are 6–7 times more common than among heterosexuals.²⁰ In Sweden, individual studies have been carried out where sexual orientation is related to health-related aspects other than illness, such as experiencing mental ill health or alcohol abuse.

Bullying

The Children's Ombudsman writes about bullying in chapter 6, "Family environment and alternative care", under the heading "Abuse and neglect (article 19)".

The best interests of the child (Article 3)

Custody, residence and access

The Children's Ombudsman considers that the developments that have taken place regarding the rules on custody, residence and contact in recent years, primarily through the custody reform of 1998, are generally good. However, there are some shortcomings, both in the legislation itself and in its application. According to the Children's Ombudsman, the problems are principally that the consideration of the children is being overshadowed by the interests of the parents, which is not consistent with the fundamental idea of the CRC.

In June 2002 the government adopted directives to govern the overhaul of the custody reform dating from 1998, a process expected to be completed during the autumn of 2004. The Children's Ombudsman wishes to draw attention to the fact that the rights of parents and their demands seem to be the basis also in the overhaul of the custody reform, something that is very unfortunate.

The Children's Ombudsman believes that, in this context, the legislator should introduce a Children's Code. This would give a clearer signal that the child's rights should be the starting point and also the objective of the legislation.

¹⁹ *Båda är bäst, typ – rapport från barnens myndighet*. Children's Ombudsman, 2001.

²⁰ *Levekår og livskvalitet blant lesbiske kvinner og homofile menn*. Report from Norwegian Social Research, NOVA, 1999.

Joint custody

The basic idea behind the custody reform of 1998 was that joint custody in most cases is the best form of custody for the child. According to the Children's Ombudsman, this form of custody must be the primary option foreseen in the legislation but not a presumption that in practice is impossible to deviate from. Not all parents are suitable to have custody of a child, and those who apply the law must use sole custody as an alternative also in practice. Examples of cases where practice, according to the Children's Ombudsman, is not satisfactory are when one parent, or the child in question, maintains that the other parent subjects a family member to violence or abuse.

Child expertise in courts and social welfare boards

In the directive concerning the overhaul of the custody reform it is expressly stated that the issue of family law panels should not be discussed. The Children's Ombudsman considers that this is regrettable and the issue should be studied, since many judges lack the requisite competence concerning children and their needs. The Children's Ombudsman therefore believes that a provision should be introduced into the Parental Code to the effect that all cases regarding custody, residence and contact should be heard by an appropriate expert.

The courts should also be encouraged to arrange special training on children and the needs of children, in order to achieve a child's perspective when delivering judgements regarding matters of custody, residence and contact. The Children's Ombudsman considers that it is extremely important to have an understanding of how the child should be heard in custody cases as well as the methods for interpreting the child's signals.

Out of court settlements

In our view there is a shortcoming to the extent that the authors of the directive on the overhaul of the custody reforms presume that out of court settlements always have positive effects for the child. The Children's Ombudsman believes that it is of utmost importance that the overhaul includes also an analysis of the possible negative effects that the out of court settlements have had on the children.

The purpose of the custody reform was, as mentioned above, in part to make it easier for parents to reach out of court settlements in matters of custody, residence and access. This should take place e.g. through cooperation discussions. The Children's Ombudsman considers that it is certainly best for the child in most cases, and hence highly desirable, for the parents to reach an out of court settlement. There are, however, risks associated with such a procedure that cannot be ignored. The legislator assumes that the parents, in the case of out of court settlements are acting on the basis of what is best for the child. However, the Children's Ombudsman considers that this is not always the case. The out of court settlements can lead to a situation where the parents, in order to achieve equity between themselves, ignore the needs of the child and disregard the child's right to be heard. These issues concern primarily agreements about residence and contact.

Parental right of veto

It is a fact that parents who do not live together in most cases have greater difficulty in reaching joint decisions regarding children than those who live together. The Children's Ombudsman questions why the basis of the directive for an overhaul of custody reforms must be that the same rules concerning when a decision regarding the child shall be taken by both parents should

apply in the case of joint custody after a separation or divorce as in the case of joint custody when the parents live together.

An example of a situation where the Children's Ombudsman considers that it should be possible to take decisions with the approval of only one of the two holders of custody is in the case of child psychiatric investigations. At present, should a parent so wish for any reason (for example where there is suspicion of abuse within the family), he or she can oppose the child seeing and being treated by a child psychiatrist. This is a clear example of the child's best interests being secondary to the needs of the parent.

Alternate residence and contact

The Children's Ombudsman welcomes the fact that, in the directive on the overhaul of custody reforms, there will be a review of the effects of the fact that the courts, since 1998, are able to decide on alternate residence against the will of one of the parents. The overhaul must however consider the effects that alternate residence has as in general, i.e. also when parents are agreed on the child's residence.

In her day-to-day work through discussions with judges, lawyers and the general public, the Children's Ombudsman understands that alternate residence has become increasingly common in recent years. This has led to problems, above all for the small children.

Enforcement

Also issues concerning the enforcement of decisions on custody, residence and contact, according to the Parental Code, should be part of the overhaul of custody reforms. In our view there are certain shortcomings in the rules on enforcement that should be commented on in this context. The fundamental shortcoming in the rules on enforcement is that the objective of the legislation is to get parents to abide by the decisions of the public courts. The objective must be, in our view, to guarantee the best interests of the child. In the directive for the overhaul of the custody reform it is stated that the committee should investigate how the rules could be made more effective. The Children's Ombudsman considers, however, that the perspective of the child must be made clear and that the overhaul must be carried out on the basis of the effects that the rules have for the individual child.

Another clear shortcoming is that the child does not have any express right to be heard in cases of enforcement. There is no wording in the rules concerning enforcement in the Parental Code that corresponds to article 12 of the CRC. The Children's Ombudsman proposes that the legislator introduces such a right of the child as soon as possible, as enforcement decisions concern the child to a very great extent.

It is, moreover, important that the child's need for protection is observed during enforcement, and that the enforcement does not take place more or less automatically. An almost automatic enforcement process would be most unfortunate and cannot be considered to be in the best interests of the child. The Children's Ombudsman realises that it is important in a state governed by the rule of law that the courts' decisions are complied with, and that in some cases this is also in the best interest of the child. The system must be flexible, however, and if decisions on enforcement are to be made, this must take place on the basis of the individual child and his or her situation. The Children's Ombudsman is doubtful as to whether fetching the child by the police and

finances are a suitable means of compulsion, as this can seldom be considered to favour or be in the best interest of the child.

In this context, the Children's Ombudsman also wishes to call the attention of the Committee to the legislative work that is currently taking place within the EU concerning the recognition and enforcement of judgements in cases of parental responsibility. The Children's Ombudsman is very concerned that an almost automatic enforcement process is being advocated by several countries. This would mean that the individual child's safety could be put at risk. It is also probable that the child's right to be heard would be infringed, and that the obstacle to enforcement against the will of the child that currently exists when the child has reached his or her twelfth birthday would not be applied between the Member States.

The child's right to life and development (Article 6)

Infant mortality in Sweden is at a very low level in international terms and is continuing to fall. Overall mortality among children and young people is displaying a downward trend. However, behind pleasing overall trends in various healthcare registers for children and young people below the age of 18 years in terms of illness and mortality, there are significant social differences in the occurrence of illness and injury.

The Children's Ombudsman agrees with the Government's assessment that special measures must be implemented in order to prevent suicide among young people. In youth groups, mortality as a result of suicide is not declining as it is among adult groups.

The child's right to be heard (Article 12)

The Government's report does not deal with differences in influence, either negative or positive, as regards gender, ethnic background or disability, for example. The Children's Ombudsman considers that it is of the utmost importance in order to highlight both positive and negative differences in the opportunities for different groups of children and young people to exert an influence. Neither is there a description of the potential of younger children to have an influence in society and regarding the facilities which younger children use.

Legal proceedings

The right of the child to be heard in custody cases

In 1995, a rule was introduced into the Parental Code that aimed to guarantee for the child a right to be heard in matters concerning him or her. This rule says that in matters of custody, residence and contact, consideration must be given to the child's will, in accordance with the child's age and level of maturity.

The Children's Ombudsman would like at this point to draw the attention of the Committee to the fact that the expression used in the Parental Code – "will" – means that the child must have a definite opinion about how the court should rule in order to be heard.²¹ The Children's Ombudsman considers that the expression "will" is narrower than the expression "views" and that there is therefore a risk that the child's right to be heard is restricted unless the expression is changed. The children who are able to form opinions e.g. on how he or she perceives the rela-

²¹ Government bill 1994/95:224 p. 33.

tionships of the parents, but who are unable or unwilling to take a position in the conflict, have a weaker position in custody disputes than those that have an expressed will.

It is also clear that the CRC does not allow States to stipulate a requirement that only the child who is able to express his or her views in spoken form may be heard. It is instead the ability to form opinions that should be decisive in the assessment. It is a fact that children, even at a very young age, can form opinions and do so.²² The legislator currently considers that there is no reason to hear the views of small children, as they cannot have an independent will and need help from an adult in order to express any views.²³ The Children's Ombudsman considers that such an approach is a clear sign of ignorance and does not correspond with article 12 in the Convention.

It is clear that the views of children are not reported in the reasoning of the higher courts to a greater extent today than prior to the amendments to the law in 1995. There is a clear tendency that small children's views are seldom reported from the perspective of the child in the reasonings of the court. In the experience of the Children's Ombudsman, it is common that the courts, if they report the views of small children, assume that the child has been manipulated by one of the parents. It is also uncommon for the courts to use wording that indicates they are applying the viewpoint of Committee on the Rights of the Child, to the effect that even a child that has been manipulated by an adult to a negative attitude against the other parent nevertheless experiences a genuine feeling of unease.

Another important aspect is that the child's right to express itself is absolute, i.e. courts and social welfare boards may not make any judgements as to whether it is of use for the investigation that the child is heard. There is, however, according to the travaux préparatoires of the Parental Code, a possibility for the social welfare boards to interpret the law in this way, since the legislator expressed that in most cases there was no reason to hear small children. There is also a risk that such assessments are based on the fact that it is sometimes a complicated task to hear a child in a correct manner in a custody case. Lack of knowledge must not however be a reason or excuse for ignoring the rights of the child.

The Children's Ombudsman also wishes to state that it is of the utmost importance that the child is given the opportunity to express its opinions on all issues that affect him or her. Otherwise, there is a risk that the child is seen as an object and that courts and social welfare boards consider the child as an appendage to the parents. There is also a risk that it is the needs of the parents that control the decision since it is presumed that they know what is best for their children. It is not possible to say generally that all parents act on the basis of what is best for the child regardless of whether it takes place consciously or unconsciously.

Children's right to plead before court

The Children's Ombudsman considers that the child's right to plead before court should be considered in the overhaul of the custody reform. In the directive concerning the overhaul there is no wording that indicates that this issue will be reviewed. The overhaul should include the matter of the child's right of initiative, right to argue and right of appeal. It is important to point out the principle that all people who have a legally protected interest must be entitled to have this tried by a court. In the handbook for to the implementation of the CRC that Unicef has published, it is pointed out that if the government has taken on a responsibility for determining disputes be-

²² *Implementation Handbook for the Convention on the Rights of the Child*. Unicef, 1998, s. 149.

²³ Government bill 1994/95:224 p. 30 ff.

tween parents on the custody, residence and contact with a child, then the child should also have access to a legal mechanism that makes it possible for the child to object to the parents.²⁴

Another argument in support of a right of the child to plead before court being investigated again in matters of custody, residence and contact is that such a right is required by article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 6 p. 1 states that “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

The right of contact in the Parental Code is a civil right for the child. It is not the parents who have a right of contact with the child. This is also evident from the travaux préparatoires of the Parental Code.²⁵ We thereby propose that the matter of the right of the child to plead before court should be reconsidered in the overhaul of the custody reform in order to achieve clarity as to whether the Parental Code can be considered to be in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Special representative

In a memorandum that has been drawn up within the Ministry of Justice it is proposed that children should have the right to a special representative in particularly conflictive cases concerning custody, residence and contact. The Children’s Ombudsman considers that children should be entitled to a special representative in all cases regarding custody, residence and contact. This right should also cover cases where the social services are to approve a cooperation agreement between the parents and cases concerning the enforcement of judgements and decisions on custody, residence and contact. The Children’s Ombudsman feels that a limitation of the child’s right to be heard by only giving children in particularly acrimonious cases the possibility to have a special representative is neither consistent with the European Convention on the Exercise of Children’s Rights nor with article 6 regarding the right to a fair trial in the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Children’s Ombudsman also opposes the government’s proposal for the child’s special representative in custody disputes to have as one of his or her most important tasks to help the parents reach a compromise. The Children’s Ombudsman feels that the role of the special representative must be solely to look after the interests of the child.

Within the social services

The Children’s Ombudsman feels that vulnerability and powerlessness go hand in hand. Real influence for children and young people is central for preventing mental ill health and countering a destructive trend. The Social Services Act and the Parental Code have now been reinforced as regards the obligation to give children a hearing and respect their views. It is now important for the social services and their operations to develop methods for hearing, respecting and involving children and young people in matters concerning their life situation.

²⁴ *Implementation handbook for the implementation of the Convention on the Rights of the Child*. UNICEF, 1998, p. 121, “...if the State accepts that it has a role as arbitrator when there are disputes between husband and wife, then it should accept its role as arbitrator when there is a dispute between parent and child – at least to the extent of establishing a judicial machinery for the child to make a case for arbitration.”

²⁵ Government bill 1997/98 p. 60 ff.

In the consumer surveys carried out within the social services, older children and young people represent the least satisfied group. Children and young people often express that they are not taken seriously, that it is the views of the adults which count and that they do not have anyone to turn to for their part. Moreover, users of the social services, in particular children as a group, find it particularly difficult to make themselves heard.

The Children's Ombudsman considers that young people should be involved when developing new working methods for their care and treatment. The Children's Ombudsman considers that children and young people of a lower age can also be involved in corresponding matters related to the age group in question.

Within school

The Government's report covers the trial activities that are being implemented with local boards with a parental majority as well as local boards with a student majority at upper secondary schools. We consider that these initiatives have been satisfactory and are looking forward to the evaluations currently being carried out. Various studies indicate that children and young people want influence over their working and learning environment.²⁶

As an institution, school is of considerable importance for children's and young people's view of democracy, and it therefore plays a decisive role in the development of the democratic society. School as an institution is difficult to change, in part due to the traditions that exist in the school environment, but also due to the fact that changes require the adults to have the commitment, desire and expertise when it comes to allowing the students to participate. The Children's Ombudsman wishes to point to certain areas where School must be changed. It is a question of establishing clearer links between school and society, allowing more upper secondary schools to be pupil-governed, giving an increased pupil influence over the school's means of control, organisation and their own education. It is also important for new and already active teachers to acquire knowledge about the CRC, democracy and values. This is why we welcome the initiatives that have been taken to promote this in further and basic education.

In all work aimed at increasing children's and young people's actual influence, special efforts must be made in order also to reach children and young people with disabilities. Real influence demands accessibility, both physical and linguistic. This means for example that information and teaching aids must be adapted so that they are accessible for all children and young people. Schools and other public buildings must be built so that they are physically accessible for children and young people with disabilities.

It is obvious that measures must be taken at an early age to ensure that children with a foreign background acquire real opportunities to influence, participate in and understand Swedish society. A child with a foreign background who at nursery school age and during school age is already participating in Swedish society, becomes actively bilingual, and has his or her social situation secured, has a greater opportunity to grow into a person with conditions equivalent to those of a child with a Swedish background.

Participation forums

The participation forums that are described in the Government's report to a certain extent provide young people with the potential to exert participation in municipalities, county councils and

²⁶ *Barndom pågår – rapport från barnens myndighet*. Children's Ombudsman annual report, 2000.

regions. The Children's Ombudsman's questionnaires show that few municipalities have established forms of participation or identified methods that are suitable for younger children. We consider that it is necessary to develop methods as well as a different attitude in order to provide younger children with greater participation.²⁷

The questionnaires also show that it is above all within the areas of school, culture and free time that young people have the chance of exerting influence. Substantially fewer municipalities state that children and young people have influence on more general questions such as physical planning and environmental issues.²⁸

The Children's Ombudsman considers that changes in the law are required in order to safeguard the rights to children and young people in accordance with article 12 in the CRC. The changes that we have proposed involve all municipalities having some form of structure that facilitates participation for children and young people. There should be opportunities for children and young people to put questions to authorised representatives, to bring matters and questions before committees, and to initiate opinion polls. The participation forums and structures that exist for influence should be followed up and evaluated to provide an understanding of how children and young people themselves perceive their participation.

The Government's report does not cover the formal possibilities for children and young people to influence the parliamentary system. The participation of young adults in elections has fallen during the 1990s, at the same time as young people's interest in discussing social issues has increased. There is also strong support for the parliamentary system among young people in Sweden. The Children's Ombudsman therefore considers that there is reason to analyse young people's participation in the church election in 2001, as this was the first election in which people were entitled to vote from the age of 16. Furthermore, discussions should be held regarding a reduction in the age limit to 16 years in municipal elections.

²⁷ *På god väg*. Children's Ombudsman, 1999. *Barnkonventionen i kommunerna – ett steg till*. Children's Ombudsman, 2002.

²⁸ *På god väg*. Children's Ombudsman, 1999.

5. Children's political and civil rights

Children who are stateless and children with foreign citizenship do not seem to have the same protection under the Swedish Constitution as Swedish children when it comes to a number of the rights recognised in the CRC. The Children's Ombudsman therefore wishes to raise the question whether Chapter 2 of the Instrument of Government is consistent with Articles 2, 13, 14 and 15 of the CRC. According to Chapter 2 § 22 of the Instrument of Government, there appears to be a greater scope for restricting the freedom of expression, freedom of information, freedom of religion, freedom of assembly, freedom to demonstrate and freedom of association of foreign children than is the case in respect of children with Swedish citizenship. It is also possible to adopt laws restricting foreign children's protection against being forced to reveal their opinions, according to Chapter 2 § 22 of the Instrument of Government, whereas this is not the case for children of Swedish nationality. The rights that are covered by the European Convention for the Protection of Human Rights and Fundamental Freedoms certainly apply to everyone regardless of nationality. But this Convention does not provide the same protection against a limitation by law of the above rights as does the Swedish Constitution and neither does it have the same legal status as the Constitution.

Name and nationality (Article 7)

The Children's Ombudsman welcomes the new nationality law that entered into force on 1 July 2001. This law represents an important step in the implementation of Article 7 of the CRC, as well as in the work of preventing statelessness among children. However, the Children's Ombudsman wishes to emphasise that there is still a risk that a child born in Sweden of foreign parents and lacking a permanent residence permit will become stateless in the event that its parents are stateless, or if the parents cannot transmit their own nationality to their child.

6. The family environment and alternative care

Guidance for parents (Article 5)

Taking into consideration Article 5 of the CRC, the Children's Ombudsman feels that special municipal offices should be set up to provide support to parents free of charge. The family counselling provided today by the counties should also be free of charge. It is not in keeping with the intentions expressed in Articles 2 and 5 that families in crisis only are able to receive advice and guidance depending on the municipality in which they live.

Children of parents who live alone

The Children's Ombudsman feels that reforms are necessary in order to shorten the working hours of parents with small children – which would give the child of a parent who lives alone more time with its mother or father – as well as to strengthen these families' financial situations. Many children of parents who live alone live under strained economic circumstances. Seen from the point of view of statistics, the welfare gap between children who live with both parents and those who live with only one parent is significant.

We also feel that Sweden should investigate the more profound reasons why more and more children today are living with only one adult, and how this effects those children's development. At the same time, it is necessary to investigate the ways in which society can support single parents in order to generate better chances for their children.

Children of parents with foreign background

The support provided today to parents of non-Swedish origin is insufficient. The parents' often inadequate understanding of the language and how the Swedish society works has also resulted in many parents not having the same opportunities to get involved in pre-school and school life, or in their children's leisure time activities, as do other parents. Consequently, this contributes to many parents losing their perspective over their children's lives. Not infrequently, children are obliged to serve as 'interpreters' for their parents, which is a major burden on the child.

The Children's Ombudsman believes that newly arrived parents should be given an introduction programme that examines other areas than those linked to the labour market. Special introduction programmes should be developed for children, and an individual plan – drawn up with the help of the children and their parents – should be drawn up for each parent and child. Today, society arranges relatively many supportive efforts for new immigrants when they arrive, whereas such efforts are lacking over the long term.

Children in debt

The Children's Ombudsman wishes to draw the Committee's attention to the fact that a large number of children in Sweden are in debt and have a record for non-payment of debt. According to the Swedish Consumer Agency there are some 7,400 children in the Swedish Enforcement Service's register, who together have debts of over 36 million Swedish crowns.²⁹ Further, according to the Board for Consumer Policies there are children as young as five years old who have a

²⁹ *Råd&Rön*, No. 4, 2002.

record of unpaid debts. The debts might involve purchases, subscriptions to film or record clubs, or payment for photographs of the child's school class, or even school fees or parking fines. For example, it is legally possible for parents to register their cars in their children's names, despite the fact that the age limit for a driver's licence is 18 years. This can result in the child being held responsible for its parent's parking fees.

In principle, minors cannot be charged with debts because their legal capacity is limited. This means that a child cannot, without its guardian's approval, conclude a legal agreement with anyone or assume responsibility for a debt. According to the law, parents are prohibited from allowing their children to become indebted without the approval of a chief guardian. In practice, however, many children are indebted without the knowledge of the chief guardian.

Everyone over the age of 15 who is domiciled in Sweden is automatically registered with the credit-rating agencies. No one has the right to oppose such registration. If a child has a record of non-payment in the credit-rating agencies' registers, its parents can choose between cancelling the agreement as invalid (if it has not been approved by the parent or a chief guardian), or paying the debt themselves. Problems arise when the parents either cannot or will not pay the debt or do not make any attempt to invalidate the agreement. In practice, many debt-collecting agencies wait until the child is 18 to recover the debt. Thus, a young person might begin his or her adult life with a debt or a record of non-payment that could make it considerably more difficult for him or her for instance to rent a flat or open a telephone subscription.

It is the view of the Children's Ombudsman that the current system does not correctly reflect the responsibilities, rights and duties of parents as set down in Swedish law and Article 5 of the CRC. The Children's Ombudsman feels that the Government must take measures to prevent children from being indebted or acquiring a record of non-payment. These measures might include making it a duty to report every registration of a debt in a child's name to the chief guardian, and defining clearer rules for determining whether it is the child who is the true debtor or its parents/guardians.

Unlawful removal (Article 11)

Recognition and enforcement

In the EU, work is currently under way to develop a system for recognition and enforcement of decisions in legal proceedings concerning parental responsibility and unlawful removals. The Children's Ombudsman is very concerned that the people dealing with family-law legislation in the EU do not seem to have understood the fundamental rights that the CRC guarantees to all children. The Children's Ombudsman feels that the position taken by the member states – which calls for automatic or almost automatic enforcement of decisions – is unacceptable. Automatic enforcement would mean that the protection of the child would be set aside in order to satisfy the freedom of movement of persons. We do not feel that the child's rights should be violated to meet such answer such a purpose. Automatic enforcement proceedings would imply, among other things, that the child's right to express itself and have its views taken into account in accordance with Article 12 of the CRC can be ignored, and that the courts will thus be hampered in making decisions based on assessments of the best interest of the child.

The Children's Ombudsman welcomes the Government's initiative regarding an overhaul of the law (1989:14) regarding recognition and enforcement of foreign decisions on custody etc. If an overhaul is to take place, the point of departure must be that the question be investigated from

the perspective of the child. The law embodies protective legislation that is meant to satisfy the child's need for both parents; not a protection of the needs of parents.

As regards Sweden's accession to the 1996 Hague Convention, the Children's Ombudsman believes that Sweden should await the EU's work in this area in order to avoid, as far as possible, an altogether too disparate set of rules.

Adoption (Article 21)

On several occasions, the Children's Ombudsman has urged that all legislation pertaining to adoption be reviewed in its entirety from the child's perspective. It is particularly important that awareness of the consequences of the adoption for the individual child be increased. Both of the most recent studies regarding parents' consent to adoption and homosexual couples' possibilities of being considered as adoptive parents are in this respect insufficient, according to the opinion of the Children's Ombudsman. Adoption legislation must proceed from the child's right to have parents and to be given the proper care and security. The legislation must also take into consideration the child's right to his or her own identity as stated in Articles 7 and 8 of the CRC.

The Children's Ombudsman believes that adopted children and adoptive parents do not receive sufficient support from society today to come to grips with the challenges that accompany an adoption. We also feel that a national knowledge centre is needed to gather information and increase knowledge of the adopted child's situation.

Some 1,000 children are adopted each year in Sweden. Over 90 per cent of these children were born abroad.³⁰ Almost all international adoptions in Sweden are made through the intermediary of one of the six authorised adoption organisations currently active in Sweden. Of the 1,044 international adoptions in 2001³¹, 621 were arranged through the intermediary of Adoption Centre Sweden.³² All organisations that handle adoptions to Sweden must be authorised by the Swedish National Board for Intercountry Adoptions (NIA). The Children's Ombudsman would like to see an investigation of the adoption organisations' position in Sweden, and in particular whether a conflict of interest might occur if one and the same organisation simultaneously is the centre of debate and research regarding adoption while providing training for adoptive parents as well as serving as a moulder of public opinion regarding adoption. Questions that should be studied include public scrutiny and control in adoption proceedings and who bears responsibility for – as well as the general consequences of – illegal adoption decisions.

Regular re-evaluation of care, protection or treatment (Article 25)

Children in foster family homes and "HVB homes"

The number of children in public care has increased during the '90s, and of the children in care, a larger proportion has been placed in institutions than was previously the case.³³ A large proportion (40 to 50 per cent) of placements of teenagers in foster homes (with private families) and

³⁰ *Up to 18 – facts about children and young people*. The Children's Ombudsman and Statistics Sweden (SCB), 2001

³¹ Source: The Swedish National Board for Intercountry Adoptions (NIA).

³² Source: Adoption Centre Sweden.

³³ *Supervision of treatment homes for children and young people*. The Swedish National Audit Bureau (RRV), June 2002

Homes for Care and Housing (HVB homes) are terminated at random, and the planned care is never provided.³⁴

The government commission responsible for reviewing the Care of Young Persons Act (SOU 2000:77) has proposed a number of measures whose purpose is to strengthen the rights of children at risk. These proposals, which involve reinforcing the child's right to express his or her views and the right of the child to have a family throughout his or her life, constitute, in the view of the Children's Ombudsman, an important and necessary step in implementing Articles 3, 12, 19, 20 and 25 of the CRC in Swedish legislation

In the summer of 2002, the Parliamentary Auditors submitted a report about care in foster homes.³⁵ In it, a number of deficiencies were examined and several proposals for improvement suggested. Against this background, the Children's Ombudsman feels that the following measures should be taken:

- The Government should take the initiative in seeing to it that a national strategy is drawn up for the long-term development of care in foster homes.
- The country's foster homes and the agreements that Social Services has with organisations that sell intensified foster home care should be properly mapped, taking into consideration Article 19, Item 2, of the CRC.
- Social Services should give 'parents' in foster homes more guidance regarding the special needs of children in vulnerable circumstances, as well as in the particular problems that the foster home situation generates by being engaged as a home environment by the State.
- People who run and/or work in "HVB homes" must have adequate training in behavioural science; they must be documented as being suitable for their work; and they must have undergone special training in providing care.
- The existing tools for documenting and following up Social Services' child-care work, and the methods that are used to investigate and train personnel in foster homes should be evaluated.

Moreover, the Children's Ombudsman feels that foster homes that will be taking care of refugee children should be offered training in the special needs and problems of these children, especially concerning children who arrive unaccompanied. It is also necessary to develop and train personnel in emergency homes who can quickly get involved and take care of children who come to Sweden without guardians.

At present there is a dearth of foster homes in Sweden. Therefore, the Government should initiate an effort that facilitates the work of the municipalities by recruiting more foster homes.

Considering the vital role the Social Services secretary plays in the child's life, it is also important that his or her relation to the child be a satisfactory one. The Children's Ombudsman feels that where there is a manifest and irresolvable conflict between a child in care and the child's Social Services secretary, the child should have the right to change Social Services secretary.

³⁴ *Ombändertagen. Sambällets ansvar för utsatta barn och unga. Betänkande av LVU-utredningen.* SOU 2000:77.

³⁵ Rapport 2001/02:16.

In Sweden, there is no systematic and nation-wide research concerning the effects of the psychosocial work being carried out by municipalities and county councils. Nevertheless, if society's resources are to be utilised in the best possible way, it is necessary that qualified, interdisciplinary research be done to discern how social problems and psychological illness among children can be prevented and treated, and to determine the effectiveness of the efforts already being made. Thus, research that increases knowledge of the care provided by foster homes, as well as the results and effects of such care, should be initiated.

Homelessness

There are in Sweden a number of children who, in one sense or another, are homeless. In studying the Government's report, the Children's Ombudsman did not find any mention of these children's situation. Today there are no official statistics showing how many children and young people live in homeless circumstances. The information we have about homeless children and young people is provided by various volunteer organisations that work with the homeless and encounter these children in the course of their work.

Homelessness among children and young people can be unofficial; the child or youth may be formally registered at an address at which he or she for various reasons cannot or will not reside. There are a number of different reasons for children and young people being homeless, or making themselves so, or feeling themselves to be so. This might involve the child's family being evicted from their home; or the family being housed temporarily in a hotel, with no possibility for the child to connect to its surroundings or invite friends home; or a parent might have lost his or her home as a result of being in prison, and has no fixed address where he or she can meet with the child. The situation may also be the result of discord and conflict in the home.

The Children's Ombudsman feels that it is of vital importance that these children be included in the official statistics and that the necessary efforts be made to ensure the survival and development of homeless children and young people.

Maltreatment and neglect (Article 19)

Bullying

Thus far, the Government's measures against bullying have largely consisted of campaigns, distribution of information and investigations – concrete legislative measures have been absent. Indeed, amendments to the school law in 1998 made plain that the headmaster and the staff shall counteract abusive behaviour, but the law is ineffective in that it is enormously difficult for a child who has been bullied to call the school management to account or to press for damages. The situation is made even worse by the fact that children's testimony and crimes committed against children are often disregarded.³⁶ Physical abuse, insults, molestation and sexual harassment are defined in Sweden as crimes, but when a schoolchild is subjected to such crimes, they are often dismissed by the school's administrators and other adults as examples of bullying, which is not seen as a crime *per se*. In the *travaux préparatoires* to the amendments that were made in the penal code in 1992, it was established that certain cases of bullying can be defined as molestation and should therefore be classed as crimes. However this question has never been put to the test in a higher court.

³⁶ See the Children's Ombudsman's comments under the heading 'The child's best interests (Article 3)'.

In a paper addressed to the Government in April, the Children's Ombudsman urged that bullying be defined as a crime, and that school staff shall, in certain cases, be called to account for not having intervened to try and prevent crimes, including bullying, in the schools where they work. We find it remarkable that many schools still do not have plans of action to counteract bullying, not even on paper.

A particular problem in connection with bullying is the serious degradation that many girls are subjected to. The common parlance among schoolchildren has become increasingly coarse. This degrading language contributes to contempt for women and there are strong indications that there is a connection between the use of these contemptuous insults and sexual violence committed against girls.³⁷

Children who suffer from functional disorders are more exposed to alienation and bullying in the schools than other children.³⁸ The Children's Ombudsman takes a serious view of the way these children describe their daily situations, explaining how they are exposed to taunts that are linked to their disorders and how they learn to live with the harassment their classmates heap on them.

Homo- and bisexual young people cannot in general see themselves reflected anywhere in the school environment, nor can they get support or help in building up a secure and solid self-identity. Being subject to insults does not necessarily mean being treated prejudicially in an active manner. Insulting treatment can just as easily take the form of being frozen out, or being treated as if one didn't exist.

In the work that was initiated by the Government – and is being advanced in the schools today – to foster fundamental values, homophobia has been excluded. The Children's Ombudsman finds this regrettable.

In the view of the Children's Ombudsman, stronger measures against bullying are necessary if Sweden is to live up to the requirements set down in, above all, Articles 19, 28 (2), 29 (1d) and 37 (a) in combination with Articles 2 and 4. In particular, bullying should be defined as a crime and the school staff's obligation to intervene against bullying should be made more concrete.

Child battery and abuse

Since the beginning of the '80s, the cases of child battery reported to the police have increased. For children in the 0–6 age group, the number of reports in 1999 was four times that of 1981. For children in the 7–14 age group, the increase was fivefold³⁹. This does not mean that child battery has actually increased, but more likely that it has become more common to report the crime to the police. However, the grey zone, in other words, the number of unreported cases of child battery, continues most likely to be very large.

The Parliamentary Committee against Child Abuse has submitted a number of proposals whose purpose is to reduce child abuse.⁴⁰ The Children's Ombudsman looks forward to the Government's submitting corresponding proposals in its proposition. In addition, the Children's Ombudsman has submitted still other proposals with an eye to further encouraging the work against child abuse. We assert that 'Child abuse occurs when an adult subjects a child to physical or psy-

³⁷ *Flickan och skulden*. Katarina Wennstam. Albert Bonniers Förlag, 2002.

³⁸ *Många syns inte men finns ändå – rapport från barnens myndighet*. The Children's Ombudsman, 2002.

³⁹ *Up to 18 – facts about children and young people*. The Children's Ombudsman and Statistics Sweden (SCB), 2001

⁴⁰ *Betänkandet barnmisshandel. Att förebygga och åtgärda*. SOU 2001:72.

chological violence, sexual molestation or maltreatment, or neglects to satisfy the child's fundamental needs'. This definition corresponds to the provision in Article 19, paragraph 1, of the CRC. The Children's Ombudsman feels that the definition should be entered into the penal code in accordance with Article 19, paragraph 2.

Competence regarding children's issues should be a basic element in the training of social workers, lawyers, police, midwives, doctors, psychologists, nurses and dentists. Information about the methods used in investigations and talks, especially where children in crisis are concerned, must also be part of the basic education for these occupations'.

Children who are battered are often obliged to seek health care. The provisions on the basis of Article 3 of the CRC should be introduced into the legislation governing health and dental care, as well as into the law governing occupational operations in the health care area. These laws should also be supplemented by provisions concerning children's rights to express their views in all matters affecting them, as provided for by Article 12 of the CRC.

The compulsory reporting of incidents of child abuse

The Children's Ombudsman wishes to emphasise the importance of the duty to report incidents of child abuse in ensuring that children in Sweden receive the protection they are entitled to under Article 19 of the CRC. Social Services' investigations show that the number of reports of children being ill-treated seems to have increased during the reporting period⁴¹. However, the variations are great among different municipalities, and the rate of reporting is low among all the occupational groups whose work concerns children and young people⁴². The Children's Ombudsman feels that the compulsory reporting of incidents of child abuse is still not working satisfactorily. If Sweden is to live up to the requirements of Article 19 in combination with Article 4 of the CRC, the Children's Ombudsman believes that anyone who neglects to fulfil the duty to report should be subject to fines.

⁴¹ The National Board of Health and Welfare follows up and evaluates 1999:2.

⁴² SOU 2002:72, pg. 165.

7. Basic Health and Welfare

Children with disabilities (Article 23)

A national action plan for disability policy

The Children's Ombudsman welcomes the fact that the Swedish Parliament has adopted an action plan for its national disability policy. It is particularly important to identify and remove obstacles to full participation in society and to give children and young people with disabilities the preconditions for independence and self-reliance.

An important part of the overall policy is to fight all forms of discrimination against persons with disabilities. In the 2002 Annual Report the Children's Ombudsman reported, for example, that children and young people with disabilities are exposed to bullying to a higher degree than other children and young people. In order for children and young people to be able to develop properly, a holistic view of the child or young person is a necessity. An important factor in this respect – besides access to education and health and medical care – is a rich and meaningful free time.

Resources for everyday activities in schools are, as a rule the responsibility of the relevant county council under the terms of Sweden's Health and Medical Services Act. However, many necessary teaching resources are not covered by the Health and Medical Services Act, for instance teaching aids in the school. It is not easy to determine the dividing line between pedagogic aids and personal resources for daily life.

There are different ways of solving the educational situation for pupils with disabilities and it should be possible to do much more if inputs were coordinated on the municipal and regional level. We view in a positive light the fact that the government has drawn attention to the issue and awaits the report's analysis concerning the supply of teaching within the educational system.

Act on support and services for persons with disabilities

The Act (1993:387) on Support and Services for some Disabled Persons (LSS) offers those individuals with disabilities covered by the act the opportunity of obtaining different types of support from society. LSS is basically a good law and unique in an international perspective. Nevertheless, the Children's Ombudsman wishes to point out in this context that the law until now has lacked a clear child and youth perspective. This shortcoming is evident both from the formulation of the law and – in certain parts – from its material content. Neither has society managed to develop methods in a unified way to evaluate authorised and implemented investments with the object of improving the quality of future investments. In addition, guidelines for the handling of applications relating to investments under the terms of LSS are lacking. It is to be feared that this will lead to decisions, to a certain extent, being arbitrary and random.

Children need to be given a clearly stated right to express their views in the processing of applications for support and service that directly affect them. Methods of talking to children need to be developed and be conveyed to the officer concerned. It is of serious concern that decisions that are crucial to the everyday life of children may be taken without the child in question having the opportunity, according to his or her capacity, to express his or her view.

The fact that the current formulation of LSS is unclear in respect of the right of the child to take legal action has been shown to lead to problems in the application. It is, therefore, the opinion of the Children's Ombudsman that an overview of LSS should be carried out with the purpose of granting children the right to take legal action and to clarify other aspects of the child's legal position.

Legislators should consider extending the list of available forms of support to include the right for siblings and parents to receive supporting and relieving services.

Legislators should also indicate that the principal purpose of the granting of short-term stay outside the home is the child's right to a stimulating change of environment.

Several legal cases, concerning disabled children's difficulty in having their personal assistant with them during school hours, related to the uncertainty as to whether the decision on allocation of a personal assistant, according to LSS, must be deemed as secondary in relation to Sweden's Education Act and the principal's overall responsibility for planning and implementation of school activities. For this reason the legislators need to establish clearly the child's right to his or her assistant.

It is unacceptable that individual children with disabilities may end up in the situation, contrary to the law, of having received a positive decision – that cannot be appealed against – on authorisation of support, in accordance with LSS, that is then not implemented by the responsible authority. Legislators must review this problem and make those adjustments that are required with the objective of preventing such situations arising.

The need of better coordination between the responsible authorities concerned must indeed be underlined. Better coordination between those implementing investments granted would also be desirable in order to facilitate the everyday life of children with disabilities.

Suitability of Assistants

Children and young people with disabilities who are granted a personal assistant are in a position of great dependence on this person. The personal assistant has the job of helping the child with many different everyday tasks and is frequently together with the child in intimate and other vulnerable situations. This may, for example, concern helping the child to communicate with others, to handle his or her hygiene, going to the toilet, getting dressed and undressed as well as to eat.

It is the view of the Children's Ombudsman that personal assistants, on recruitment, must be covered, for example, by the checking of records. Such checks should otherwise cover all employees within pre-school, school, those responsible for the welfare of schoolchildren, employees at the different institutions for children and young people as well as those recruited by social services as relief families, contact families or such like. Individuals accepted on different educational programmes that lead to professional careers in these different fields should also be covered by record checks. The checking of records should also be introduced for those persons who work in private businesses that focus on children and young people.

Besides the checking of records the Children's Ombudsman believes that it is important for social services and the other principals that recruit personal assistants for children and young people to develop methods to test the individual's suitability for the employment. It should be clearly stipulated in the regulations that the child – on recruitment of the assistant – should have the

the right to express an opinion and that the child's wish should be assigned decisive significance when decisions on recruitment are to be made.

Transportation service for the disabled

During 2002 the government has appointed a special investigator whose job it is to look over certain mobility service issues. From the committee directive it is clear that the person conducting the investigation will have the Swedish National Road Administration's report on the mobility service's development and present state as the starting point for his work. The Children's Ombudsman, like the report of the National Road Administration, calls attention to the fact that children are not referred to at all in this Act and not in the preparatory work either. The Children's Ombudsman believes that it is a good idea for the law to be looked over, but is critical of the fact that the committee directive does not especially highlight the needs of children and young people.

The Children's Ombudsman believes that children and young people with disabilities must self-evidently have the same right to leisure activities as others. In a number of municipalities transportation is only granted to children if there are 'special' or 'particular' reasons. There are indeed municipalities that do not grant mobility service to children at all. Parental responsibility is often referred to as cause of the child's limited rights. Trips that are not deemed necessary are not allowed. Necessary trips mean only trips to school or similar daily activities. Trips to leisure activities are not included under necessary trips. This means that many children and young people do not have the same opportunity of participating in leisure activities as others.

The Children's Ombudsman believes that greater account must be taken of the individual child's needs in assessing the child's right to mobility service. Children have other needs than adults in respect of the transportation service. Some examples follow:

- Children who use the transportation service need to have the same driver on each occasion. This provides security.
- Children have a need of greater flexibility so as to be free to make spontaneous visits to friends or for recreational activities.
- Children with disabilities sometimes need to travel over municipal borders in order to be able to take part in leisure activities that are adapted to the disability.
- Children find it difficult setting in time and to cope with waiting in the transport service that is collecting and dropping off a number of children. Car-pooling does not therefore operate so well for children with disabilities.
- Children should be able to share the company of an adult and also a sibling that is also dependent on parents without it being a burden on family in financial terms.
- The child's right to mobility service shall not be limited to a certain number of journeys; they should be able to participate as actively as other children.

Easily available information is important

The Children's Ombudsman emphasises the need for some existing structure in the community to be given responsibility for meeting the special needs of children with disabilities and their par-

ents for advice, information, support and help.⁴³ The parents of a child with disability must familiarise themselves with many regulations, establish contacts with different authorities and organisations in order to obtain practical help with the needs of the child. It would therefore be a good idea if some authority were given the overall responsibility and obligation to inform parents about all the different rights and opportunities that the child and the parents have.

The guide that The Swedish Disability Ombudsman has produced on rights for children and young people with disabilities and their families fulfils a very important function. It is of great importance that such information be available in several languages.

Health and Medical Care (Article 24)

Physical health of children and young people

The Children's Ombudsman agrees with the Swedish government's description of the health situation for children and young people as being satisfactory in general terms. Children's rights to the best attainable health in accordance with article 24 and article 2 of the CRC may, however, not be said to be guaranteed since health standards vary between children from different socio-economic groups in society and also geographically in Sweden.

Behind these gratifying trends, as a whole, in different public health records in relation to illness and death rates for children and young people under 18, there are significant social differences in the occurrence of illness and injury. It has, for example, been demonstrated in respect of the occurrence of caries, teenage abortions and injuries, both accidents and self-inflicted injuries.

Analysis of records for deaths and admission to hospital for the period 1990–1994 show tangible social differences in the frequency of injury particularly in relation to motor vehicle accidents for boys and self-inflicted injuries amongst girls. Amongst small children below school age no differences due to socio-economic position were shown. Child health care that reaches more or less all pre-school children may be deemed to explain this.⁴⁴ Such differences were also demonstrated in an earlier thesis with data from the 1980s.⁴⁵ There is therefore reason to fear that these differences survive even during recent years.

There are also threatening clouds in respect of the physical health of children and young people:

- Overweight is increasing amongst children.
- Allergies/asthma is increasing amongst children.
- Diabetes is increasing amongst children; this is considered to have a direct link with obesity and physical inactivity. Research appears to show that a high living standard with accompanying rapid growth in the height and weight of children is what constitutes the risk factor.
- Eating disorders such as anorexia and bulimia appear to be on the increase according to several professional groups.

⁴³ *Många syns inte men finns ändå – rapport från barnens myndighet*. Children's Ombudsman, 2002.

⁴⁴ *Sociala skillnader i skador bland barn och ungdom*. Child Safety Delegation, SOU 2002:68.

⁴⁵ *Social Structure and Children's Life Chances – an Analysis of Child Mortality in Sweden*. Viveca Östberg, Swedish Institute for Social Research. 26, 1996.

Mental health of children and young people

The Children's Ombudsman is critical of the failure of the Swedish government to describe more fully developments as regards the mental health and well-being of children and young people.

Psychosomatic disorders increased significantly from the mid-1980s to the end of the 1990s. At the end of the 1990s children and young people aged 11–15 felt as much anguish, anxiety and sleeplessness as older people – something that had not been the case earlier. Girls mention more psychosomatic disorders than boys. Symptoms are headache, stomach pains, back pain and sleeping problems. 16 per cent of children are, additionally, sad or depressed and 23 per cent are often tense and nervous.⁴⁶

Eating disorders are a serious problem that afflict mainly young girls. Anorexia nervosa and bulimia are illnesses that affect more than one in a hundred teenage girls and more than one in a thousand boys. On average, anorexia lasts three and a half years and is thereby one of the most common illnesses amongst teenage girls. Less than a half have received psychotherapy and a quarter seems never to have sought treatment.⁴⁷ These are serious illnesses and the Children's Ombudsman believes that it is a highly unsatisfactory situation that these patients are not offered both psychiatric and somatic care.

Work to improve the health of schoolchildren

The Children's Ombudsman welcomes the fact that the government takes as its starting-point the fact that a good learning environment promotes good health and the responsibility for children and young people – not just those with confirmed physical and psycho-social health problems – lies with the entire staff of the school. It is of the greatest importance that the work to promote the health of schoolchildren becomes mainly one of prevention and health promotion.

In a recently carried out survey, school nurses, school psychologists and school welfare officers gave a unanimous picture of the state of health of children and young people today compared with ten years ago. More than 90 per cent of those asked consider that the state of health of pupils is worse now than ten years ago. What has increased most are the pupils' stress, concentration problems, depression, recurring pains and tiredness, disorders arising from anxiety, eating disorders, tinnitus, overweight, allergies and asthma, low self-esteem and problems in relationships with adults.⁴⁸

A similar picture is presented by the National Board and Health and Welfare in a survey of school health-care in ten municipalities in the southern health region.⁴⁹ The results show that many schoolchildren are in need of care and treatment. Special problems are allergies, asthma, eating disorders, concentration problems and psychosocial problems. A clear majority of those in charge of activities, school doctors as well as school nurses also realised that access to school psychologists and school welfare officers was insufficient in their own field of activities.

⁴⁶ *Svenska skolbarns hälsövanor 97/98 – tabellrapport*. Swedish Public Health Institute, 2000:5 and 'Många syns inte men finns ändå'. Children's Ombudsman, 2002.

⁴⁷ *Barn och ungdomars hälsa in Folkehälsövanor 2001*. National Board of Health and Welfare.

⁴⁸ *Elenhälsa – rapport från enkätundersökning bland skolsköterskor, skolpsykologer och skolkuratorer*. Swedish Association of Medical Officers, the Swedish Union of Professionals (SSR), the Swedish Psychological Association and the Children's Ombudsman 2002.

⁴⁹ *Skolhälsovården i tio kommuner i Sydsvetige*. National Board of Health and Welfare, 2002.

The Children's Ombudsman has asked schoolchildren about school health care and pupil welfare. Sixty per cent of the schoolchildren expressed a wish for school nurses to be present in school more often. 25 per cent of the schoolchildren replied that they did not have school welfare officers at their school and 30 per cent had no school psychologist. In addition to this, 72 per cent of the schoolchildren wanted the politicians to work to ensure there are special teachers and other support for schoolchildren that require extra assistance and 57 per cent that health-care staff must be present at school every day.⁵⁰

The situation is alarming and the Children's Ombudsman has, on several occasions, clearly highlighted the importance of access to school doctors, school nurses, school welfare officers, educational psychologists and pedagogical specialists being written into the new school law. At present, a special regulation of the need for these professional categories in pupil welfare is lacking, with the exception of school doctors and school nurses. In addition the resources, organisation and content of pupil health care vary from one municipality to another.

A well-organised health system for school pupils demands a holistic approach from parliament and government.

Stress in the daily life of children and young people

The Children's Ombudsman wishes to confirm the picture that the government presents regarding stress in the everyday life of children and young people. The Children's Ombudsman is concerned about the tendency for more and more children and young people to experience stress in their everyday life, a situation at odds with article 6 relating to the right to life, survival and development. Already in its 2001 annual report the Children's Ombudsman affirmed that stress is a growing problem amongst children and young people,⁵¹ which is confirmed by a number of researchers⁵², as well as by Sweden's National Agency for Education⁵³, the National Board of Health and Welfare⁵⁴ and the Welfare Report⁵⁵.

Stress-related symptoms amongst children and young people are increasingly being observed and according to surveys by the National Agency for Education stress has increased primarily for upper secondary school pupils, especially girls on study-preparation programmes. The situation for children and young people in school is becoming more pressurised the higher up in the school system they get. This relates to the pace of training and the extent they receive the help they need. Just over one in three young people at the senior level of compulsory school and upper secondary school always or often feel stressed in school and this share is increasing.⁵⁶ In a standard of living survey, that was carried out in 2000, 42 per cent of children and young people in the age range 10–18 mention being stressed at least once a week.⁵⁷ An equally large proportion

⁵⁰ From Children's Ombudsman's questions to contact classes, spring term 2002.

⁵¹ *Båda är bäst, typ – rapport från barnens myndighet*. Children's Ombudsman, 2001. *Barns och ungas stress i skolan – en studie i hur barn och unga påverkas av sin fysiska och psykosociala arbetsmiljö i skolan*. Children's Ombudsman, Dec 2000. *Kommunikation med förskolebarn och deras tankar om stress*. Children's Ombudsman, 2001.

⁵² *Hälsa och välbefinnande*. Viveca Östberg. *Barns och ungdomars välfärd*, SOU 2001:55. Memorandum from lectures on the subject of stress by Lennart Levi, Martin Ingvar and Peter Währborg in April 2002. *Barns och ungdomars välfärd*. Anthology from the Welfare Committee 2001, SOU 2001:55.

⁵³ *Attityder till skolan 2000*. National Agency for Education, report 1997.

⁵⁴ *Skolhälsovården i tio kommuner i Sverige 2002*. National Board of Health and Welfare.

⁵⁵ *Child and Youth Welfare*. SOU 2001:55. Welfare Committee.

⁵⁶ *Attitudes to school 2000*. National Agency for Education report 197, 2001.

⁵⁷ *Barns och ungdomars välfärd*. SOU 2001:55. Welfare Report Committee

of stressed children and young people aged 10–16 were found in the Children’s Ombudsman’s panel of school classes in spring 2002.⁵⁸

Nearly 50 per cent of the children and young people asked by the Children’s Ombudsman, in the 2002 survey, state they felt disturbed in the classroom. This is a remarkable fact and it cannot be consistent with article 28.2 of the CRC.

Many young homosexuals live under particular stress, a stress that is connected with the position of homosexuals in society. As a young homo- or bisexual and not open in all contexts one has to be alert, think what one says and does. Some experience this sense of being an outsider as very trying.

The question of stress in the everyday life of children affects all areas including the home and pre-school, school and recreation and therefore the issue of counteracting it everyone’s concern. The Children’s Ombudsman sees a growing problem and feels great concern since no authority at present has an overriding responsibility and a coordinating obligation to counter stress in the everyday life of children and young people.

Child and youth psychiatry

The Children’s Ombudsman wholly concurs in the government’s judgement that it is extremely important to improve the care of children and young people suffering from mental ill-health.

A survey of the situation in the field of child and youth psychiatry, carried out by the Children’s Ombudsman in the early summer of 2002, showed, from many parts of Sweden, almost a doubling – in ten years – of the number of those applying to psychiatric clinics. There are considerable variations between the different county councils/health districts and this, in our view, creates divisions between different groups of children and young people depending on where in the country they live. This situation, we believe, is deemed to be inconsistent with article 2 of the CRC.

Many of those in charge in the field of child and youth psychiatry draw attention to the importance of measures taken at an early stage. Measures are required on a broad social basis in order to enhance the situation of the family, the environment of children at pre-school and at school and their social conditions. Cooperation and coordination across operating divisions and spheres of authority are highlighted so as to enable the implementation of the good intentions in the national action plan for health and medical care development as regards the health and well-being of children and young people.⁵⁹

Worrying development – practices and lifestyles engendering ill-health

Drug and alcohol abuse amongst young people shows an increase during the last ten-year period; this we see as a very worrying development. The proportion of girls and boys that have tried drugs has increased each year during the period 1992 to 2001. At the end of the 1980s the percentages were at the lowest since 1971 when the surveys were first introduced. During the years

⁵⁸ From Children’s Ombudsman’s questions to contact classes, spring term 2002

⁵⁹ The Children’s Ombudsman has, during the early summer of 2002, contacted unit managers across the country via telephone interviews or questions by e-mail. From the 21 county councils/regions (including Gotland’s health administration) answers have come from 18 county councils/regions; in twelve the replies represent the entire county council/region and in six replies one, two or three of the public health districts within the county council/region.

1990–2001 both boys’ and girls’ intensive consumption of alcohol has increased. It was, however, higher at the end of the 1970s.⁶⁰

The abortion figures for the first half of 2002 are higher than the six-monthly figures for the previous years 1996–2001, which calls for vigilance in respect of this trend.⁶¹

The significance of food for children’s capacity to learn is important. A large proportion of school pupils don’t have breakfast and are careless about lunch. Many schools have therefore started with a breakfast programme. According to the Education Act the municipalities are responsible for serving school meals free of charge but there are no demands as regards quality. Twenty minutes lunch is a reality for many children in Sweden. Almost four-fifths of the children and youngsters included in the Children’s Ombudsman’s panel of school classes believe that politically active adults should work for better food at school.⁶²

The environment in the school dining-halls is something that many children wish to change. Lower noise levels, fresh vegetables and enjoying one’s meal without disturbance are recurring requests. Just over four out of ten children on our school class panel – in spring 2002 – thought that the noise level in the dining-hall during their lunch break was high.⁶³

Female genital mutilation

Female genital mutilation is an inhumane, offensive and dangerous phenomenon that, despite a clear legal prohibition in Sweden, still occurs. The Children’s Ombudsman believes that legislation is sufficient but there are shortcomings in the application. A consequence of this state of affairs is that nobody in Sweden has so far been convicted for this offence.

It is, primarily, through preventive work that the struggle against female mutilation can succeed. Above all, measures need to be focused on increasing knowledge about the issue both amongst the immigrant groups affected as well as the concerned professional groups.

The Children’s Ombudsman, in its work of delivering an opinion, has demanded that the government take an initiative for a national action plan against female genital mutilation. An action plan is required in order – in a calm and collected way – to reinforce the measures against this phenomenon and it should comprise information inputs to the following groups:

- Personnel active in environments where girls and women are to be found.
- Ethnic groups where genital mutilation exists.
- Girls in the ethnic groups affected.
- Authorities charged with upholding the law.

⁶⁰ *Up to 18 – facts about children and young people*. Children’s Ombudsman and Statistics Sweden (SCB), 2001.

⁶¹ *Aborter 1996–2001*. Summaries from the National Board of Health and Welfare.

⁶² From Children’s Ombudsman’s questions to the contact classes, spring term 2002.

⁶³ From Children’s Ombudsman’s questions to the contact classes, spring term 2002

Male circumcision

The Children's Ombudsman was mostly positive to the introduction of legal regulation in 2001 establishing guarantees to ensure that circumcision takes place in a satisfactory way and as required by the respect of the best interests of the child.

The Committee has commented on article 24 (3). The Committee has, *inter alia*, stated that 'Practices which should be reviewed in the light of the Convention's principles include: all forms of genital mutilation and circumcision'.⁶⁴

In Sweden, and in the wider world, it is being questioned whether male circumcision is a practice covered by article 24 paragraph 3 of the CRC. The Children's Ombudsman believes it to be desirable if the Committee would provide general guidelines on how circumcision of boys is to be considered.

Social support and child-care (Article 26 and 18:3)

Children of unemployed and parents on parental leave

All children in Sweden have a right to pre-school prescribed in law. The children of unemployed persons had a right to pre-school activities also before 1st July 2001 but the wording was not interpreted to the benefit of these children in all municipalities. A clarification of legislation has been carried out in respect of both children of unemployed persons and children of parents on parental leave for siblings concerning their right to pre-school activities. This is something that we believe to be positive.

Early linguistic stimulus important

There are still groups that in reality do not take advantage of the opportunity of early language stimulus for their children. For those families who do not wish to leave their children in a pre-school other intermediary forms, where Swedish teaching for their parents as well as other training may be combined with the child's language training, are needed. Examples of good working methods are to be found, for instance, within the framework of the open pre-school but these are not widely spread and the open pre-school has been discontinued in many municipalities.

Child-care and its quality

Sweden is a leading country where pre-school is concerned. The view of the child, the approach of the educationalists, the quality of the documents outlining objectives and the scope of the expansion is well developed in the Swedish pre-school. This well accords with article 29.1 of the CRC concerning the development of the child's full opportunities relating to personality, aptitude and psychological and physical faculties.

In its annual reports to the government the Children's Ombudsman has frequently expressed concerns about the size of the children's groups that are much too large as far as the smallest children are concerned. Parents that have contacted the Children's Ombudsman state that they harbour great anxiety about the children not being observed, that care services are insufficient and that the high quality outlined in the document of objectives is not realised in practice. This anxiety thus remains, despite the OECD's high marks for pre-schools and the fact that Sweden

⁶⁴ *Implementation handbook for the Convention on the Rights of the Child*, p. 335. Unicef, 1998.

has set its sights high and that we have qualified pre-school teachers and good documentation relating to objectives.

The research synthesis in the area that has been carried out may be summarised in such a way that in those children's groups that include more than 15 children the teachers have worse pre-requisites for being able to achieve targets with their activities. So far as the smallest children – in the 1–3 year-old age range – are concerned researchers recommend 10 children and an absolute maximum of 12 children in the groups. The National Agency for Education's latest study in 2002 shows that the children's groups are significantly larger than this and the norms recommended by the researchers are only met by a few pre-schools.

The most common number of children in a children's group aged 1–5 is 18 children, according to this study. Since the conditions are not equivalent in different parts of Sweden it happens that the children's groups have 22 pre-school children or more in 10 per cent of the cases.⁶⁵ The National Agency for Education affirms in its 2001 survey that since control by regulation was replaced by control by targets the number of children in the groups has continuously increased.⁶⁶ The number of children per employee within pre-school in 1990 was 4.2 and the corresponding figure for 2001 was 5.3 children.⁶⁷

The Children's Ombudsman believes it difficult for the educational staff to achieve the objectives contained in the Education Act and the curriculum under these conditions.

The Children's Ombudsman also believes that a national evaluation of the quality in pre-school should be carried out on a regular basis whereby the predicament of small children should especially be highlighted, that guidelines should be issued specifying the quality requirements and a recommended size for the children's groups as well as a maximum limit, that the need for guidance is made clear to local councillors and their executive staff with responsibility concerning requirements from the evaluation in consultation with those out in the field in a target-driven organisation.

⁶⁵ *Grupper i förskolan – en kartläggning 2002*. National Agency for Education.

⁶⁶ *Strukturella faktorer och pedagogisk kvalitet i barnomsorg och skola 2001*. National Agency for Education.

⁶⁷ *Up to 18 – facts on children and youth*. Children's Ombudsman and Statistics Sweden (SCB), 2001.

8. Education, recreation and cultural activities

Education, including occupational training and practical occupational experience (Article 28)

Nine-year compulsory school – varying achievement of targets

The Children's Ombudsman shares the view contained in the report of the Swedish government concerning inadequate achievement of targets. In the report it is said that 'it is each municipality's responsibility to analyse its own results and take appropriate measures.' The Children's Ombudsman wishes to caution, however, that the ultimate responsibility for the fulfilment of goals at the compulsory-school level remains with the government which also has the responsibility for the application of the CRC within the country. An unsatisfactory tendency may be distinguished in respect of the number of pupils that leave nine-year compulsory school's grade 9 without a certificate in all subjects. This proportion has increased from 20.4 per cent in 1998 to 25.7 per cent in 2001. For pupils with a foreign background the proportion is significantly higher, namely 38.7 per cent in 2001.⁶⁸

The Children's Ombudsman sees a tendency for the schools not to live up to the intentions laid down in the legislation, the guideline documents and the CRC. Each municipality has a special responsibility for ensuring that all children have the right to education, without discrimination, regardless of life circumstance or background.

Teaching in Swedish and mother tongue

All children have the right to teaching in their own mother tongue. Children's access to native-language instruction in school and native-language support at pre-school has declined on account of reduced resources in the municipalities. This has meant that also the children's knowledge of the Swedish language has substantially declined. Studies show that children of a foreign background nowadays have worse knowledge in Swedish than previous generations of children with foreign backgrounds. The language has a strong connection with the child's identity.

The Children's Ombudsman is of the opinion that multilingualism is an asset for both the individual and society as a whole. The Children's Ombudsman wishes to emphasise the importance of children developing and upholding their first language. Without access to a developed first language all attempts to learn a new language are limited. The Children's Ombudsman thinks that the government should take measures in order to expand native-language support and native-language teaching and that Swedish as a second language should be guaranteed to children with another mother tongue than Swedish in pre-school and at school.

The responsibility for native-language teaching should lie with the municipalities and five pupils should not be required for native language teaching to be offered. Each child is an individual and has the right to his or her language according to the CRC.

We believe that the same provisions should apply to all children in the five national minorities regarding their right to receive teaching in their own mother tongue, even where it is not the

⁶⁸ *Barnomsorg, skola och vuxenutbildning i siffror 2002. Del 1 Betyg och utbildningsresultat.* National Agency for Education, report 212.

language of daily social intercourse in the home and even where the number of children is less than five.

Leisure, recreation and cultural activities (Article 31)

Schoolchild care

The Children's Ombudsman fails to find in the government's report a description of schoolchild care.

The Children's Ombudsman considers that the negative tendencies within schoolchild care for children from 6–12 years have continued and that many misgivings have turned out to be justified. The Children's Ombudsman views this very seriously. The number of children per staff member in 2001 was 17.4 children per worker/year compared with 8.3 in 1990.

Group sizes within schoolchild care have risen sharply during the 1990s at the same time as the occupational role of recreational educationalists has changed and become more school-oriented.⁶⁹ In after-school recreation centres for the younger schoolchildren and children in pre-school classes (ages 6–10), the children's groups are so large that the Children's Ombudsman questions whether activities attain the quality that is intended.

Since there is no general advice relating to premises and environmental factors as well as children, educationalists and parents find it hard to assert quality demands. This may also relate to pure safety factors. The Children's Ombudsman views with concern the fact that the recreation centre premises and its outdoor environment may be threadbare and fail to contribute to child development or inspire creativity and the development of different interests and talents as prescribed in the curriculum.

The introduction of the pre-school class led to a dominance of six-year-olds that pushed out the age-groups that the after-school recreation centres were previously dedicated to. The large numbers of six-year-olds that have been introduced means that the age composition is radically changed. This has led to activities no longer being as interesting and focused on the nine- and ten-year-old children. In those municipalities where the integration of the different ages has been taken seriously and the staff, outdoor environment and premises have been adjusted to the new situation both the school environment and the recreation centre environment have, in many cases, gained from this integration.

Activities for 10–12 year-olds

The Education Act states that the municipalities should offer activities for children up to twelve years old and that this may be carried on in the form of after-school recreation centres or open recreation activities for children of 10 to 12 years old. In 2001 only eight per cent of the children in these ages were enrolled in after-school recreation centres. A further five per cent were estimated to participate in open free-time recreation activities. According to the Children's Ombudsman most municipalities do not accept their responsibility in offering activities for children aged 10–12 in relation to the requirement.

⁶⁹ *Att bygga en ny skolform för 6-åringarna. Om integrationen förskoleklass, grundskola och fritidsbarnhus.* Report 201, National Agency for Education 2001.

During the years 1989–1992, the baby boom was widely talked about. Each year roughly 20,000–25,000 more children were born than during the previous years in the 1980s. These children are now between ten and thirteen years old.

The National Agency for Education's evaluation on the basis of case-studies of open recreation activities in 2000 was that they were of low quality. Neither gender perspective nor the right to influence were satisfied.⁷⁰ The National Agency for Education's studies show that the active inventory of demand for places in the open recreation activities takes place to a fairly limited extent.⁷¹ We believe that such steps must be taken and that children of the age in question must be asked what kind of activities they want.

The Children's Ombudsman believes that they themselves must be able to control the content of their activities significantly more than in the traditional recreation centre.

Cultural policy

The Children's Ombudsman wishes to draw special attention to the fact that the child's participation in cultural life is not regulated in special laws in Sweden. On the other hand, the parliament and government through cultural-political goals have emphasised the importance of the child's possibility of participating in cultural life.

One of the basic principles of the CRC is the child's right to life and development. All children must have the possibility to develop according to their capacities. The arts may be one way of expressing themselves or making their voice heard. To play instruments, to sing, to dance or act in the theatre enriches life, develops a child and is one way of strengthening self-confidence. Games are spontaneous cultural expressions; the ability of children to play is a prerequisite for their well-being and development. The Children's Ombudsman fails to find in the government's report a description of how this is to be implemented. Children with disabilities require special support to develop their play and to be able to participate together with other children.

Right to recreation

The Children's Ombudsman fails to find in the government's report a description of the opportunities for free time and recreation available to children and young people. Society's support for children and young people, and their right to a relaxing and stimulating free time outside the school is largely unregulated, and neither are there any good statistics to establish whether what is on offer reaches the children and young people in an equitable way. Research shows that the distribution of public funds is unequal and to the advantage of boys.⁷²

The Children's Ombudsman seeks national surveys that illuminate how the range of what is on offer reaches children and young people and with the opportunity of following the development from both a gender and socio-economic perspective. Without such perspectives it becomes impossible, according to the Children's Ombudsman, for the government and others to adjudge if Sweden's children and young people have equivalent conditions in respect of the opportunity for free time, recreation and cultural activities.

⁷⁰ *Barns omsorg*. Report 203, National Agency for Education, 2001.

⁷¹ Newsletter of the National Agency for Education 1/2/2002.

⁷² Research results from Ulf Blomdahl, R&D Sports Administration in Stockholm.

The investments in free time and culture are vulnerable from the perspective of equality since there is no legally enacted right to either free time or culture. When the municipalities and municipal districts seek to keep to budgetary limits they invest in areas that are prescribed by law. The legal protection that exists for the library does not mean a guarantee for investments in children's libraries or children's and youth activities.

The lack of protection in the law may have as a result that good activities with a very good effect on the everyday lives of children and young people disappear which may be costly for society in the longer term. Even if many municipalities have invested in recreation centres, playground activities, club support, educational associations etc. in other quarters see the opposite; for instance playground activities, children's activities and other holiday activities being closed. The situation in many municipalities reflects the insufficient opportunity for children and young people to gain a hearing for their interests and requirements. This entails a major risk that the right to equal conditions is ignored.

The Children's Ombudsman fears that many municipalities in Sweden do not live up to the CRC's intentions relating to the child's right to life and development as well as the right to leisure time, recreation and cultural activities. Sweden's municipalities have a major duty to offer all children and young people a rich recreational and cultural life on equal terms without discrimination regardless of the individual's life situation or background.

9. Special protective measures

Refugee children (Article 22)

Unaccompanied refugee children

During the spring of 2002 the Children's Ombudsman participated in the government mission to 'improve the reception of children from other countries that come to Sweden without accompanying legal guardians'.⁷³ We support, in principle, the proposals in the study and wish to particularly highlight the following proposed measures.

The Children's Ombudsman believes that all foreign persons regardless of age have the right to seek asylum according to principles of international law, the 1951 Convention relating to the Status of Refugees and article 22 of the CRC. This should be explained and introduced into Swedish law.

The Children's Ombudsman considers that a representative for children seeking asylum without a known guardian in Sweden shall be appointed within 24 hours after the child has arrived in Sweden. The representative shall have an overall guardianship for the child. A new law that gives the representative greater powers and a strong responsibility for the refugee child arriving alone should be produced as soon as possible. Article 22 in the CRC should in this connection serve as guidance.

While awaiting the change in the law, immediate measures should be adopted so that children seeking asylum who arrive alone are assured equivalent rights to those of other children in Sweden in accordance with article 2 in the CRC.

The responsibility for accommodation, care and security should be held by the municipality's social services, in the view of the Children's Ombudsman. This calls for specific competence and special actions that are adapted for the special needs of these children, as stated in more detail in article 20 of the CRC. For this reason, a limited number of municipalities, following an agreement with the state, should be responsible for the child's reception, accommodation, care and security in close cooperation with the child's representatives.

Issues of secrecy between the different authorities, other persons concerned and the child should be clarified so that the child's integrity is not violated in a way that is inconsistent with article 16 in the CRC.

Information on the reception of unaccompanied children should be transmitted to the children as well as to municipalities, county councils, authorities concerned and other interested parties.

Children in hiding

During the years 1993–1998 almost 21,000 asylum-seeking children received a final decision on refusal of their application and were ordered to leave the country. At the end of 1998 almost 60 per cent of these had left the country. A quarter has received permanent residence permits. Six

⁷³ *Förbättringar i mottagandet av barn från annat land som kommer till Sverige utan medföljande legal vårdnadshavare (s.k. ensamkommande barn) – Redovisning av regeringsuppdrag*. National Board of Health and Welfare and National Migration Board, 2002.

per cent absconded with their families without the authority's knowledge and ten per cent are missing.⁷⁴ What has happened to the 3,300 children or so that absconded or went missing is therefore unknown to the authorities. It is probable that a large number of these children remain in Sweden, but not all of them. It is difficult to estimate how many children are currently living illegally in Sweden.

Foreign children that live in Sweden fall within the country's jurisdiction regardless of their legal position. Children that are kept hidden in Sweden in order to avoid expulsion from Sweden must therefore, according to article 2, paragraph 1 of the CRC, have access to the rights guaranteed by the CRC. According to Swedish law, those children that are staying illegally in Sweden are not covered by the rights that all other children enjoy.

The Committee has, in its recommendations to Norway (IRCO, Add. 23 paragraph 12), stated "The Committee notes that all children that have had their asylum requests rejected but remain in the country have had their rights to health care and education provided *de facto* but not *de jure*. It is the view of the Committee that such services should be provided as a matter of principle according to the letter and spirit of articles 2 and 3 of the CRC."⁷⁵

Neither in Sweden do children in hiding have a right to health and medical care regulated by law as until now this has been solved through agreements. In accordance with article 24, and against the background of the proposal of the Swedish Parliamentary Committee on the Rights of the Child (SOU 1996:115), these hidden children do today certainly have a right to health and medical care. This is provided implicitly in an agreement between the State and the Swedish Federation of County Councils. This right should be regulated under Swedish law, e.g. the law on reception of asylum-seekers and/or the Health and Medical Care Act.

Children in hiding must also have the right to pre-school and school which they do not have in Sweden at present. This should also be regulated in Swedish law, taking into account article 28 in the light of article 2 and the Swedish Parliamentary Committee's recommendation referred to above.

An additional three groups of children who live permanently in Sweden do not yet have a right to medical care, pre-school and schooling. These are children that are members of the family of asylum-seekers but who have not themselves sought asylum; children of parents that are illegal immigrants but have not applied for asylum; children that come to Sweden for the purposes family reunification but who do not have a permanent residence permit on arrival.

The Children's Ombudsman believes that these groups should have the right to health and medical care as soon as possible and, in the long term, also to pre-school and school provision in accordance with article 2, in combination with articles 24 and 28 in the CRC.

The CRC furthermore contains a series of social, economic and cultural rights that the children in hiding today do not have access to in Sweden. In many countries in Europe, and the rest of the world, large groups of children live without the legal permission of the country concerned. The Children's Ombudsman believes it would be desirable for the Committee to give general guidelines as to how these children should be treated from a legal point of view, which country has responsibility for their rights and how the children are to be given the possibility of exercising these rights.

⁷⁴ *När barn lever gömda*. National Board of Health and Welfare, June 1999.

⁷⁵ *Implementation Handbook*, p. 26.

Sexual exploitation and sexual abuse (article 34)

From attitudes to offences

The climate in school and, above all, the use of language has become cruder during recent years. Many girls in Sweden are subject to sexual harassment in the form of contact in its many forms, on parts of the body that an adult would consider a violation of integrity and probably illegal if he or she were subject to the same at work. It is also common that girls are on a daily basis exposed to disparaging words. It is clearly the case that this problem does not receive sufficient attention from school personnel and that the behaviour is not handled in a correct manner. It is extremely important that boys, at an early stage, learn to take responsibility for their sexuality and that the self-esteem and self-image of girls is improved in the school environment instead of deteriorating.

Several legal cases that have received attention during recent years have shown that the use of coarse language in school in the long term has led to serious offences being committed against girls. It is not uncommon that the girls are subject to rapes, sexual abuse and physical assaults by boys or men in their surroundings. It is, therefore, very important to draw attention to the problems associated with the crude use of language in school and it is also high time that all adults accept their responsibility to stop more girls being exposed to taunts, the spreading of rumours and sexual harassment. It is also up to the adults to teach young boys that they have responsibility for their own sexuality.

Sexual abuse

In 2000 no less than 2,562 cases of sexual crimes against children were registered in Sweden.⁷⁶ Studies show that the real number of cases is probably four times as large. Most sexual abuse is committed against children at the pre-puberty stage when children are very vulnerable and find it hard to defend themselves.

A government enquiry has presented proposals that in several important respects aims to strengthen the protection of the child against sexual exploitation and sexual abuse.⁷⁷ Amongst other things, the proposals include penalty regulations for persons who use children for sexual exploitation. The Children's Ombudsman finds it regrettable that not all the proposals in the enquiry have yet been taken up by the government, despite urging from the Committee to strengthen the protection of children against sexual exploitation.

The Children's Ombudsman believes that the principle that the individual who has reached the age of 15 has the right to decide over his or her sexuality cannot fully prevail. The special protection for the sexual integrity of young people should apply until they have reached the age of 18, in accordance with article 1 of the CRC and in interpretation of articles 19, 34 and 35.

The regulation on sexual exploitation in the Swedish Criminal Code should contain an absolute and extended protection for young people, who have not reached the age of 18, against abuse by those close to them or other adults that have a special responsibility for them.

In addition, we consider that a new provision concerning rape of children under 15 should be introduced. This provision should be applicable irrespective of the use of force, since experience

⁷⁶ *Up to 18 – facts on children and young people*. Children's Ombudsman and Statistics Sweden (SCB), 2001.

⁷⁷ SOU 2001:14.

and research have shown that sexual abuse against children are seldom carried out with violence or threats.

Moreover, the Children's Ombudsman believes that a new legal provision covering sexual abuse against children should be introduced. It should be applicable for sexual offences against children under 15 that are not covered by the provision on rape against children. A special, new penalty regulation on sexual violation of children should also be introduced.

The "dual criminality requirement"

The "dual criminality requirement" should be limited when in cases of sexual crimes against children under 18. It cannot be deemed satisfactory that Swedish citizens, who would be convicted for sexual offences in Sweden, travel abroad to commit sexual abuse against children and thereby avoid criminal liability. This is important, not least against the background of the international dimension of the CRC that calls for international cooperation in order to implement the rights in the convention.

Sexual exploitation

The Swedish parliament recently passed a government bill introducing in the Criminal Code new provisions concerning human trafficking for sexual purposes. The regulation came into force on 1st July 2002. The Children's Ombudsman believes that the change in the law is a step in the right direction but that it is regrettable that the government did not at the same time propose to abolish the "double criminality requirement" for this crime. In addition, the Children's Ombudsman finds it surprising that the government did not consider that there were reasons to propose a more severe penalty scale in cases where the victim was a child.

Moreover, the Children's Ombudsman believes that the protection for young people against being used for sexual posing should be strengthened. On the basis of the Convention on the Rights of the Child, article 34, with its requirement for protection for young people below the age of 18 against being exposed to sexual exploitation, there should be complete disregard of the young person's own attitude in the case of certain forms of serious exploitation in a pornographic context.

The Children's Ombudsman considers that it is of great importance that society indicates that it is a serious offence to purchase sexual services from young people and therefore the severity of the penalty should be increased. It is important that persons under 18 are protected in an effective way against being drawn into prostitution.

Criminal cases concerning offences against children

A serious problem is that most sexual offences against children do not lead to prosecution. Investigations show, moreover, that the frequency of prosecution has declined over recent years, from 12 per cent in 1996 to 6 per cent in 1998 and 2000.⁷⁸ There are also large variations between the prosecuting authorities so far as the preliminary investigations are concerned. It is unsatisfactory for the legal rights of the child that, in this case, there is no unified practice.

The Prosecutor-General considers that the quality of the preliminary investigations concerning the ill-treatment and sexual abuse of children must be raised. The Prosecutor-General has there-

⁷⁸ *Sexual abuse of children*. Diesen, Christian et al. Stockholm, 2001, p. 100.

fore proposed that the main procurement of evidence, in the form of interrogation of the injured party, must be supported by other evidence that can verify the information that the injured party supplies and this documentation must be such that even on subsequent scrutiny – after a longer or shorter period – it can establish the course of events.⁷⁹

The Children’s Ombudsman is critical towards the specific formulation stated above in these guidelines and believes that they may lead to a reduction in the number of reports of child abuse and sexual offences against children. As a result of this, the child risks having a lowered status as witness in legal cases.

Where an alleged sexual offence against a child is the subject of a criminal procedure, the victim of the offence is as a rule not present in the court – instead, the child’s account normally takes the form of a video recording of the police questioning. The quality of the police interrogation is thereby also of great significance for the evaluation of the evidence and for the outcome of the trial. During the assessment of the evidence in Court, the video interrogation is played back and the content is set, together with possible supporting evidence, against the suspect’s version of what happened. This means that at the trial a child stands against an adult, a video recording against a person present in the courtroom and a ‘static’ statement against a ‘dynamic’ one. The child who only expresses him- or herself through a video interrogation is therefore in an inferior position in terms of evidence in relation to the accused.⁸⁰ The Children’s Ombudsman believes that police and prosecutor, already during the preliminary investigation, must seek the participation of the defence since failure to organise this in a satisfactory manner affect the child in such a way that the child’s account may be judged less reliable than where the defence is given the opportunity of asking supplementary questions.

Children belonging to a minority or indigenous people (Article 30)

The Children’s Ombudsman is positive to the government’s efforts to provide information about the Saami (Lapps) and Saami culture and believes that similar efforts to establish national information centres should be carried out also for the other national minorities.

The Children’s Ombudsman finds missing in the government’s report an account of the situation in Sweden for children belonging to the five national minorities. We believe that the government needs to invest more resources in surveying the situation for these children.

The discrimination against children belonging to national minorities in Sweden does not generally take place at the official level. Even the government states this in its report. The Children’s Ombudsman believes that there is a lack of concrete proposals relating to how the unofficial discrimination in Swedish society should be countered.

⁷⁹ *Guidelines for cases concerning child battery and sexual molestation of children, 12/7/2002.* Prosecutor-General, Development Department.

⁸⁰ *Sexual abuse of children.* Diesen, Christian et al. Stockholm, 2001, p. 17.

Annex: Observations of the Committee on the Rights of the Child

Below there is a brief survey of the viewpoints of the Committee on the Rights of the Child from earlier reports and the comments of the Children's Ombudsman on the measures that the government has adopted:

- 1) Against the background of the risk that children and families have differing access to services in the community, depending on how the municipality where they live observes the Convention on the Rights of the Child, the government is encouraged to intensify its efforts in ensuring that the municipalities in Sweden observe and respect the Convention.**

The Children's Ombudsman refers to chapter 1, 'Introductory Viewpoints as well as to chapter 2, 'General Measures', in this statement.

- 2) The Government is urged to review the role and independence of the Ombudsman.**

The Children's Ombudsman refers to chapter 1 'Introductory Viewpoints' in this statement and also states that the provisions on the Children's Ombudsman that are now introduced in law are appended to the government's report to the Committee on the Rights of the Child.

- 3) The government is urged to review the effects of the budgetary cuts of the 1990's and renew efforts when it comes to implementing – to the very maximum of available resources - the Convention on the Rights of the Child, i.e. budget impact analyses.**

The Children's Ombudsman refers to chapter 2, 'General Measures' in this statement.

- 4) The Committee welcomed the government's initiative to review the legal regulation on the minimum age of marriage. The government is urged to consider changes in the law in order to increase protection from the harmful effects of early marriage and also remove discrimination among children in this respect.**

The Children's Ombudsman refers to chapter 3, 'Definition of the Child' in this statement.

- 5) The government is urged, on the basis of the principle of non-discrimination, to reconsider its policy in respect of the children of illegal immigrants, the so-called children in hiding, and their access to social services in addition to emergency medical care.**

The Children's Ombudsman refers to chapter 9, under the heading 'Children in emergency situations' in this statement.

- 6) The Committee expresses its concern regarding the increasing number of incidents of racism and hostility to foreigners and shares the government's concern that the current legislation on illegal discrimination and agitation against ethnic groups is insufficient. The government is urged to continue on the stated commitment and change legislation and take all appropriate measures to counteract racism and xenophobia so that children are protected against all forms of discrimination.**

The Children's Ombudsman refers to chapter 4 'Basic Principles' in this statement.

- 7) **When it comes to the right of children to obtain nationality the government is urged to complete the revision of the Citizenship Act law already initiated taking into account article 7.**

The Children's Ombudsman refers to chapter 5, 'Political and Civil Rights of Children' in this statement.

- 8) **The Government is encouraged to adopt measures to protect children from access to pornographic material.**
- 9) **In relation to article 11 the Committee stated that Sweden is a party to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children and the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Committee encouraged the State party to continue its efforts to reach bilateral agreements to the same effect with those states that are not parties to the two above-mentioned conventions, and to review existing legislation relating to the recognition of foreign custody decisions, as well as to consider the ratification of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.**

The Children's Ombudsman refers to chapter 6, 'Family Environment and Alternative Care', section 'Illegal Removal of Children', in this statement.

- 10) **To promote access to family counselling services. The Committee notes that there exist differences between municipalities in respect of charging fees for family advice and that a remarkably large number of families refrain seeking help for this reason. The Committee recommends the government to review this issue so as to make it easy for families to have access to family counselling, in particular the most vulnerable groups.**

The Children's Ombudsman refers to chapter 6, 'Family Environment and Alternative Care', in this statement.

- 11) **The Committee is concerned that the compulsory reporting of incidents of child abuse does not function satisfactorily and recommends the government to adopt measures to improve the protection of children in accordance with article 19 of the Convention.**

The Children's Ombudsman refers to chapter 6, 'Family Environment and Alternative Care', section 'Abuse and Neglect', in this statement.

- 12) **With reference to the articles 2, 26, 27 and 30 the government is encouraged to ensure that everyone, particularly the poorest families, have access to social benefits and that the public is better informed about its rights.**

The Children's Ombudsman refers to chapter 6, 'Family Environment and Alternative Care' and chapter 7, 'Basic Health and Welfare', in this statement.

- 13) **The Government is encouraged to adopt measures to prevent bullying in the schools, to collect information about bullying and to make children participate in handling the problems.**

The Children's Ombudsman refers to chapter 6, 'Family Environment and Alternative Care', in this statement.

- 14) **The Children’s Ombudsman encourages the government to review its policy so far as the access to day-care services for children of unemployed parents, taking into account of the child’s right to education and recreation activities in accordance with the articles 2, 3, 28 and 31, particularly taking into account the efforts to increase the role of pedagogy in pre-school and day-care centres.**

The Children’s Ombudsman refers to chapter 7, ‘Basic Health and Welfare’, in this statement.

- 15) **The Committee is concerned about the increasing substance abuse among adolescents. The government is encouraged to take systematic measures for the collection of statistics and monitoring especially where drug abuse among vulnerable groups is concerned.**

The Children’s Ombudsman refers to chapter 7, ‘Basic Health and Welfare’, in this statement.

- 16) **The Committee is concerned about the need to increase protection against sexual exploitation for the 15-18 age-group and encourages the government to continue efforts to ensure children up to 18 years old a better protection against sexual exploitation.**

The Children’s Ombudsman refers to chapter 9, ‘Special Protective Measures’, in this statement.

- 17) **Finally, against the background of article 44 paragraph 6 in the Convention on the Rights of the Child, the Committee on the Rights of the Child recommends that the second periodic report, and the written replies submitted by the government, be given greater public diffusion together with the Concluding Observations of the Committee and summary records of the relevant meetings. Such a wide distribution should create debate and awareness on the Convention on the Rights of the Child and its implementation, particularly within the government, the relevant ministries, the Swedish parliament and non-governmental organisations.**

The Children’s Ombudsman refers to chapter 1, ‘Introductory Viewpoints’, in this statement.