



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/OP/SWE/1/Add.1
30 January 2009

Original: ENGLISH

SUBCOMMITTEE ON PREVENTION OF TORTURE

**REPLIES FROM SWEDEN TO THE RECOMMENDATIONS AND QUESTIONS
OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE IN ITS REPORT
ON THE FIRST PERIODIC VISIT TO SWEDEN* ****

* In accordance with the decision of the Subcommittee on Prevention at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** Request for publication by the State party on 22 January 2009, in accordance with article 16, paragraph 2, of the Optional Protocol.

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Annex

Information for those suspected of a crime and subsequently detained

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) has requested the Swedish Government to provide its response to the recommendations included in the report (CAT/OP/5/SWE/R.1) that followed the SPT's visit to Sweden on 10–14 March 2008. The Swedish Government is pleased to provide its response in the following report. The various sections A, B and C below refer to the respective sections in part VI, "Summary of recommendations and requests for information" of the SPT report. Please do not hesitate to contact us for clarifications or request for additional information.

I. RECOMMENDATIONS INCLUDED IN SECTION A – NATIONAL PREVENTIVE MECHANISMS (NPM)

2. The SPT reported that there will be a need for a profound re-examination of whether the appointment of the Parliamentary Ombudsman and the Chancellor of Justice as NPMs is sufficient and if it is in compliance of the provisions of the OPCAT.

3. In the Swedish Government's Bill (2004/05:107) to the Riksdag, in which the approval of the Riksdag was sought for the ratification of the Optional Protocol to the Convention against Torture, it was also proposed *i.a.* that the Parliamentary Ombudsman and the Chancellor of Justice be appointed as National Preventive Mechanisms (NPMs) under the Protocol. The Riksdag subsequently approved the proposed Bill. In accordance with the Riksdag's approval the Parliamentary Ombudsman and the Chancellor of Justice were appointed as NPMs. The appointment of these two institutions as NPMs was thus approved by the Riksdag. It is foreseen that the two NPMs will continue to discharge their functions in accordance with this decision of the Riksdag. It is still the view of the Government that the role and tasks of these two institutions fit well with the role of the NPMs as laid down in the Optional Protocol. Budgetary issues will be dealt with within the framework of the future annual budgetary planning processes by the Riksdag and the Government.

II. RECOMMENDATIONS INCLUDED IN SECTION B – POLICE

4. The information sheet listing the rights of persons deprived of their liberty by the police was finalised and made available to the police authorities during December 2008 and has been translated into 40 languages. The National Police Board is currently working on making the information sheet available in Persian and Kurdish. The English-language version of the information sheet is attached to this report for reference (Annex).

5. Furthermore, Sweden would like to present the framework governing the right to public defence counsel. The basic rule laid down in Chapter 21, Section 1 of the Code of Judicial Procedure (*rättegångsbalken*) is that the suspect has a right to conduct his own case. In preparing and conducting his defence, the suspect may be assisted by a defence counsel (Chapter 21, Section 3 of the Code of Judicial Procedure). This right is unconditional and applies regardless of the nature of the alleged offence.

6. It is laid down in Chapter 23, Section 18 of the Code of Judicial Procedure that when a preliminary investigation has advanced so far that a person is reasonably suspected of having committed the offence, he or she shall, when questioned, be notified of this suspicion. Chapter 24, Section 9 of the Code of Judicial Procedure provides that when a person is apprehended or arrested he or she shall be informed of the offence for which he is suspected and the grounds for the deprivation of his liberty. Moreover, it follows from Section 12 of the Decree on Preliminary

Investigations (*förundersökningskungörelsen* 1947:948) that when a person is reasonably suspected of having committed an offence he or she shall be notified of his right to a defence counsel during the preliminary investigation and the conditions under which a public defence counsel may be appointed.

7. If a public defence counsel is to be appointed for the suspect pursuant to Chapter 21, Section 3a, the leader of the investigation is under a duty to notify this to the court (Chapter 23, Section 5 of the Code of Judicial Procedure). Sweden would like to call attention to the fact that one of the most common reasons for appointing a public defence counsel – i.e. that a defence counsel is needed by the suspect in connection with the inquiry into the offence – is not mentioned in the SPT report. Thus, the requirements laid down in Chapter 21, Section 3a of the Code of Judicial Procedure are less strict than is reflected in the report.

8. A public defence counsel shall be appointed by the court without delay. The public defence counsel can in general receive reasonable compensation from public funds for work done before he or she was appointed if it was a basic condition that he or she would be appointed as public defence counsel and a request for the appointment is made within a reasonable time after the work was initiated (cf. decisions by the Swedish Supreme Court, NJA 1959 p. 12, and a Court of Appeal, RH 2004:85).

9. As pointed out in the SPT report, the right to a defence counsel coincides with the formal notification of suspicion under Chapter 23, Section 18 of the Code of Judicial Procedure (see decision by the Swedish Supreme Court, NJA 2001 p. 344). As *reasonable suspicion* is a prerequisite for apprehension or arrest, the apprehended or arrested person shall, in accordance with Section 12 of the Decree on Preliminary Investigations, be informed of his right to a defence counsel during the preliminary investigation and the conditions under which a public defence counsel may be appointed (see Fitger, *Rättegångsbalken*, p. 24: 38b).

10. In a report (*Justitieombudsmännens ämbetsberättelse* 1964, p. 106 ff.), the Parliamentary Ombudsman (*Justitieombudsmannen*) has stated that notification of suspicion fulfils an important legal function. This notification provides the suspect with several legal safeguards. Omission to notify a person who, by an objective assessment, should be considered to be under reasonable suspicion must be regarded as improper (see *Underrättsförfarandet enligt nya rättegångsbalken*, published by the Board on Procedural Issues [*Processnämnden*] 1947, p. 255, and Ekelöf, *Rättegång V*, 6th ed, p. 109).

11. The conduct referred to in the report – delaying notification under Chapter 23, Section 18 of the Code of Judicial Procedure until after 24(8) questioning is finished – must generally be regarded as inappropriate. In these situations notification should normally have been conducted at an earlier stage. From that point on, the suspect would have had the right to request that a public defence counsel be appointed. A suspect does not necessarily have to be arrested for a public defence counsel to be appointed for him, since the requirements laid down in Chapter 21, Section 3a are less strict than described in the SPT report.

12. Sweden asserts that the framework contains sufficient safeguards to ensure that a person receives information about the conditions under which a public defence counsel may be appointed as soon as he or she is considered to be under reasonable suspicion. From this point the suspect can request that a public defence counsel be appointed. It is normally at this point that the suspect has reason to fear that his or her interests may be encroached on. It should, however, be emphasised that even before this point – as a result of the amendments that entered into force on 1 April 2008 – everyone has a right to have counsel present when being questioned

by the police (Chapter 23, Section 10 of the Code of Judicial Procedure). In light of the above, Sweden maintains that the framework ensures that suspects enjoy a right to public defence counsel at as early a stage as is reasonable.

Access to Interpretation

13. The SPT refers to a recent report from the National Council for Crime Prevention (*Brottsförebyggande rådet*), in which the lack of adequate interpretation is stated as one of the major reasons why individuals of foreign origin do not enjoy equal procedural rights. The right to free assistance from an interpreter is indeed of importance in order for such individuals to enjoy equal procedural rights and the issue is considered on a regular basis within the Ministry of Justice and government agencies concerned.

14. However, it should be noted that the report from the National Council for Crime Prevention can not be used as a specific basis for assessing the quantity and quality of access to interpretation during police questioning and court proceedings. In our opinion, the report can be used as a basis for exemplifying the ways in which individuals from a foreign background experience discrimination during the process of law, e.g. in relation to situations where interpretation is necessary. Consequently, the report should not be used to draw conclusions as to the existence of a quantitative or qualitative lack of interpretation within the Swedish justice system.

15. Recommendations 4-11 have been taken into consideration by the Government through communication with the national police organisation and will be further discussed through regular dialogue with the police.

III. RECOMMENDATIONS INCLUDED IN SECTION C – REMAND PRISONS

16. In order to provide information on the legal rights and obligations associated with detention, the Prison and Probation Service is in the process of writing a paper which will be translated into several different languages. This paper will be given to all detainees upon arrival at a remand prison.

17. The Prison and Probation Service, together with the Swedish judicial authorities, is in the process of creating a new digital database with the aim of improving the possibilities for the authorities to obtain relevant information at any time during the legal process i.e. starting with a reported crime.

18. Prison and remand prison inmates have the same right to health and medical care as any other citizen in the country. Since it is safer to bring a doctor to a correctional facility or prison than to allow the inmates to travel to the nearest medical centre/hospital, the Swedish Prison and Probation Service has chosen to employ its own nurses and use its own consulting physicians. This primarily means general physicians, but since such a large percentage of inmates have various kinds of mental disorders or addictions, a number of psychiatrists are also needed.

19. All detainees are screened upon arrival in a remand prison. The screening form includes health questions such as current use of medication, diseases etc. This routine is used in order to enable the staff to spot serious illness or risk of suicide etc, and to provide the detainee with medical treatment as soon as possible.

20. During 2008 the Swedish Prison and Probation Service has taken many and extensive measures to improve suicide prevention and to deal with acute illnesses seen in prison inmates.

Several million Swedish kronor have been allocated to suicide prevention efforts. For example, over 3 800 employees have participated in an extra, one-day training programme covering issues related to suicide and acute physical illnesses.

21. In addition to this programme the Prison and Probation Service has decided to establish a project with five staff members coordinating suicide prevention work within the major remand prisons.

22. The Prison and Probation Service introduced a new training programme in 2006 that is compulsory for all staff working in prisons and remand prisons. In cases where the Swedish Parliamentary Ombudsman has forwarded criticism stemming from complaints from individuals and cases initiated by the Ombudsman herself, it has been decided that the Prison and Probation Service must review its methods and practices on a regular basis. During 2006 a total of 3 026 employees took part in the new training programme.

Restrictions

23. With regard to the committee's observations concerning restrictions, it is important to point out that, from an international point of view, relatively few people are detained while awaiting trial in Sweden. A number of those detained with restrictions would not be detained at all if there was no ground for restrictions. Sweden also has relatively short detention periods.

24. Nevertheless, the prosecutor has an obligation to limit as far as possible the restrictions on contacts with the outside world to which a detained person is subject. Restrictions should only be used when and for as long as they are necessary.

25. According to paragraph 103 of the SPT report it is not possible to appeal against a prosecutor's decision on restrictions. It should however be noted that, under Swedish law, the prosecutor's decision on specific restrictions can be examined by a district court, if the detained person requests it. He or she has the possibility to make such a request as early as at the first detention hearing. It is also possible for the detainee to make such a request at a later stage.

26. As noted in paragraph 113 of the SPT report, Sweden lacks official statistics on the time individuals are held on remand. The alleged average time spent in detention reported in the same paragraph seems to be based solely on one person's opinion and therefore cannot be the basis for further considerations. A study concerning time spent in pre-trial detention is recounted in a 1997 report from the National Courts Administration (*Anhållande och häktning – en utvärdering av 1996 års ändring av fristerna vid anhållande och häktning, DV rapport 1997:6*). The report is based on available statistics and a study of cases from the courts conducted by the National Courts Administration. In addition, surveys were undertaken among prosecution authorities, courts and lawyers. According to the report, the average time spent in pre-trial detention (counted from the person's apprehension until sentencing in the first instance) was 24 days. In 80 per cent of cases, the time spent in pre-trial detention was six weeks or less. According to the Prosecution Authority, there is no reason to believe that the situation has changed markedly since that study. It could also be noted that it is very rare that a person who is in detention after a judgment in the first instance is subject to restrictions.

IV. CONCLUSIONS, RECOMMENDATIONS AND REQUESTED INFORMATION (paras. 121-124)

27. With regard to some of the recommendations made, it may be noted that legislation is already in place. One example is the recommendation that, in the context of each fortnightly

review of the continuation of remand custody, the court should consider the necessity of continuing to impose restrictions as a separate item (a permit for restrictions lapses if the court does not allow an extension of the permit in conjunction with the court ordering that a person shall remain in detention). Another example is the principle of proportionality (applicable to the use of coercive measures according to Swedish law); restrictions are only to be applied when the reasons for them outweigh the consequent intrusion or other detriment to the suspect or another adverse interest. According to another basic principle, restrictions, as well as other coercive measures, should be lifted as soon as the grounds for them no longer exist. There is also an obligation for the prosecutor to document the reasons for decisions on restrictions and these are to be presented to the detainee, as long as this is not detrimental to the investigation. A court decision to give a prosecutor general permission to decide on restrictions must always contain information on how to appeal against the decision.

28. Other recommendations imply changes in the current legislation (e.g. that the court always should decide on specific restrictions and that such a decision should be subject to appeal). Such changes are suggested in the proposal mentioned in paragraphs 106–107 of the SPT report. This proposal is still under consideration in the Ministry of Justice. According to the current timetable, the Government intends to present a bill to the Riksdag in the summer of 2009.

29. Some recommendations concern the application of regulations. The task of deciding on specific restrictions, after having obtained general permission from a court, is assigned to an individual prosecutor. In the same way as a judge, the prosecutor has a responsibility, and ultimately a criminal liability, to follow the regulations and instructions in this field. The prosecutor's independence is limited by the possibility for a superior prosecutor (the Prosecutor-General, a director of public prosecution or a deputy director of public prosecution) to reassess a prosecutor's decision. The Prosecutor-General has the overall responsibility for overseeing that the prosecutor's application of the rules fulfils fundamental requirements of legality and consistency.

30. Concerning statistical information, the Government has instructed the Prosecution Authority to report on the number of individuals detained in 2008 and the number of cases in which restrictions were imposed. The Prosecution Authority has also been asked to describe and analyse essential differences between different parts of the country. The report will be submitted by the end of February 2009. For the moment, the requested information is therefore not available. The Government is following these matters closely.

31. The treatment of detained persons is regulated by the Act on the Treatment of Persons Arrested or Remanded in Custody. To avoid isolation and other negative consequences of longer periods spent in a remand prison, the Act contains regulations on such matters as social support, the possibility to associate with other remand prisoners and opportunities for physical activities. The Act states that, as far as possible, remand prisoners are to be offered some form of work or occupation during their time on remand.

32. The remand prisoner is normally allowed to associate with other detainees during daytime and have access to television, newspapers and other distractions in his room. These activities can in certain cases be restricted by a court decision, along with the remand prisoner's possibilities to maintain contact with the outside world through letters, telephone calls and visits. The Prison and Probation Service is currently reviewing its routines in order to be able to let detainees associate with one another during daytime.

33. Even in cases when a prisoner's contact with other prisoners is restricted by a court decision, the remand prison can arrange work, education and physical activities on an individual basis.

34. As a result of the Government's focus on measures to combat alcohol and substance abuse, the Prison and Probation Service has established addiction care teams at almost all remand prisons. The teams use the remand period to try to motivate prisoners to get to grips with their addiction, help them be placed in a prison that focuses on treatment, or in a contract treatment programme that can help the client become free from the addiction.

35. In order to strengthen the prisoners' possibilities to maintain close contact with their families while serving a prison sentence the Prison and Probation Service has taken action in several areas¹ – these efforts have been carried out in close cooperation with, and are officially approved by, the Children's Ombudsman.

36. The Swedish Prison and Probation Administration is in an expansive phase of building new prisons and remand prisons. Since 2005 a number of new prisons and remand prisons have been built in order to put the Prison and Probation Service in a better position to cope with the needs of an increasing prison and remand prison population.

37. Between 2004 and 2007 the Prison and Probation Service created 1 583 new places. This has provided a net addition of 723 places in prison and 266 places in remand prisons, due to the closure of other accommodation during the same period. It has resulted in three new prison establishments in the Central, Eastern and Western Region with a total capacity of 633 places. The plan covering the years 2008 to 2011 provides that around 1 000 new places will be created. The plan contains, for example, additional remand facilities in Stockholm, Göteborg and Malmö. Extensive repairs and maintenance work will take place alongside the construction work during this period.

38. Since 2004 the Government has allocated considerable resources to increase the number of prison places and further develop the Prison and Probation Service in the areas of security, treatment activities and vocational training. The Prison and Probation Service is currently reviewing whether adequate numbers of staff with the necessary skills are present during all hours. In some cases it has been found that there is a need for more resources, for example in Kronoberg remand prison.

¹ For example, the appointment of a "child representative" within prisons and remand prisons, accommodation rooms being designed to be appropriate for accompanying children, a visiting room at each institution being set up for children and possibilities for telephone calls free of charge

ANNEX

Information for those suspected of a crime and subsequently detained

Public Prosecutor's Office

National Police Board

You have the right to

- know what it is you are suspected of and why you are being detained
- receive the aid of a defence attorney who under certain conditions can be paid by the state
- receive the assistance of an interpreter during interrogations, as needed
- receive food and rest as needed
- receive health and medical care as needed or by your own request be examined by a doctor, unless it is apparent that a medical examination is unnecessary
- receive assistance in notifying any of your close relatives or someone else particularly close to you about where you are as soon as this can be done without compromising the investigation.

If you are not a Swedish citizen, you have the right to demand that your own country's consulate or equivalent institution be notified of your detainment and that messages from you be forwarded there.

What is going to happen?

- An interrogation will be held with you as soon as possible.
- If you are not taken into custody, you are normally obligated to remain for interrogation for a maximum of six hours. In exceptional cases, you may be obligated to remain for a further six hours.
- As soon as possible after the interrogation, you will be released unless the prosecutor decides that you should be taken into custody.
- If the prosecutor takes you into custody then the prosecutor is obligated to verify continuously that there are grounds for your continued detention.
- If you are not released, the prosecutor must, as soon as possible and no later than at noon on the third day following the decision to take you into custody, request that a court try whether you are to remain in detention. If the prosecutor decided to take you into custody prior to you being detained, the time is then measured from when you were detained instead.
- If the prosecutor requests a court trial, you will be notified of this at once.
- The court must examine the matter of your detention as soon as possible and no later than 96 hours following you having been arrested or otherwise detained.

If you are detained due to a request from another country, other rules may apply for the court's examination of your detention.

If anything is unclear regarding this information, you can contact the police.