



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Fifth periodic reports of States parties due in 2004

Addendum

SWEDEN* ** ***

[23 December 2005]

* For the initial report of Sweden, see document CAT/C/5/Add.1; for its consideration by the Committee, see documents CAT/C/SR.10 and 11 and *Official Records of the General Assembly, Forty-fourth session, Supplement No. 44 (A/44/44)*, paras. 39-75. For the second periodic report, see document CAT/C/17/Add.9; for its consideration by the Committee, see documents CAT/C/SR.143, 144, 144/Add.1 and 144/Add.2 and *Official Records of the General Assembly, Forty-eighth session, Supplement No. 48 (A/48/44)*, paras. 365-386. For the third periodic report, see document CAT/C/34/Add.4; for its consideration by the Committee, see documents CAT/C/SR.291, 292, 144 and 294/Add. 1 and *Official Records of the General Assembly, Fifty-second session, Supplement No. 52 (A/52/44)*, paras. 214-26. For the fourth periodic report, see document CAT/C/55/Add.3; for its consideration by the Committee, see documents CAT/C/SR.504 and 507 and *Official Records CAT/C/CR/28/6*.

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*** Annexes to the present report are available with the Secretariat of the Committee.

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Introduction

1. The Swedish Government submitted its initial report in October 1988 (CAT/C/5/Add.1), its second periodic report in September 1992 (CAT/C/17/Add.9), its third periodic report in November 1996 (CAT/C/34/Add.4) and its fourth periodic report in August 2000 (CAT/C/55/Add.3) pursuant to Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Sweden from 27 January to 5 February 2003. The Committee's report includes recommendations, comments and requests for information. The Committee's report and the Swedish Government's subsequent response have been made public.

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

3. The information provided in Sweden's four previous reports with reference to Articles 1, 2, 5, 6, 7, 12, and 14 is still valid.

Article 3

4. With regard to new measures in relation to Article 3, and in response to the questions raised by Mr Camara, Mr Mavrommatis and Mr Rasmussen (CAT/C/SR.504, paras. 24, 29 and 33), Sweden would like to provide information on a recent reform of the judicial system in matters pertaining to aliens and citizenship. This reform does not imply any change *per se* in the substantive provisions on non-refoulement. However, a new subsidiary ground for protection is initiated with the reform. A person who, due to external or internal armed conflict, or because of other severe antagonism in his or her home country (or country of residence in the case of stateless persons), has a well-grounded fear of being subjected to serious abuse is considered in need of protection if he or she does not fulfil the necessary conditions to be considered a refugee.
5. In this context it could also be mentioned that the Riksdag passed a Government Bill (2005/06:6) on 30 November 2005 to the effect that persecution on account of a person's gender or sexual orientation should be included within the refugee definition, instead of, as presently, in the category known as "persons in need of protection". The purpose of the amendment is to reinforce the protection for such persons in practice. This amendment will enter into force together with the new *Aliens Act* described below (cf. the following paragraph).
6. Reform of the judicial system in matters pertaining to aliens and citizenship, in particular the question of appropriate instances and the procedure to be followed by those instances, has been discussed for many years. On 14 September 2005, the Riksdag passed a Government Bill with a proposal for a new *Aliens Act* and a number of consequential amendments with regard to other acts, among others the *Act (1991:572) on Special Control in Respect of Aliens* (Government Bill 2004/05:170). The main feature of the reform is the replacement of the

existing Aliens Appeals Board with three regional Migration Courts and a Supreme Migration Court. In order to put more emphasis on the contradictorial principle, the element of hearings, will become more prominent than within the present system. The reform will become effective as of 31 March 2006.

7. The new legislation introduces a definition of “security cases” in which, for reasons pertaining to security of the realm or general security, the Security Service may recommend that an alien is either refused entry into the country or expelled or deported, or that a residence permit is denied or revoked. According to the new *Aliens Act*, the Migration Board is to determine such security cases, as well as cases dealt with under the *Act on Special Control in Respect of Aliens*, as the first instance.

8. The alien as well as the Security Service may subsequently lodge appeals with the Government. Petitions for appeal are initially to be submitted to the Migration Board. Three entities will have legal standing as parties under the appeals procedure: the applicant, the Security Service and the Migration Board. The Migration Board shall transmit the appealed case directly to the Supreme Migration Court, which shall hold a hearing and issue a written opinion. The case file, including the Court’s opinion, shall then be forwarded to the Government for decision. If the Supreme Migration Court comes to the conclusion that there are impediments to the enforcement of a decision to expel an alien, e.g. on account of a risk of torture, the Government may not decide to expel the alien. The Court’s opinion in this respect is binding upon the Government.

9. Another important feature of the above-mentioned reform is the introduction of a new ground for issuing a residence permit. Thus, when an international body with competence to examine individual complaints has concluded that a decision to refuse an alien entry, or to expel or deport an alien, is in breach of Sweden’s treaty obligations, the alien in question will be given a residence permit unless there are extraordinary reasons against doing so. No application on the part of the alien will be needed. In practice, this means that a decision by the Committee against Torture finding Sweden to be in violation of the Convention will normally result in a residence permit being issued to the alien. The same applies when another human rights body (e.g. the UN Human Rights Committee or the European Court of Human Rights) decides in favour of an alien in such a case. In cases where there are extraordinary reasons for not giving the alien a residence permit (cf. persons excluded from protection under the *Geneva Convention relating to the Status of Refugees* or very serious criminal offenders), the alien will remain in Sweden pending future developments, for instance a change in the situation in the alien’s own country.

Article 4

10. With regard to the obligation under Article 4 to ensure that all acts of torture are offences under criminal law (cf. CAT/C/SR.504, para. 23 and CAT/C/CR/28/6 para. 7 (a)), Sweden provided extensive information on relevant Swedish rules and regulations in its initial report (see CAT/C/5/Add. 1, paras. 19-26 and 31-45). It is the understanding of the Swedish Government that the Swedish legislation meets the standards of the Convention in all aspects. This view has also been shared by the Committee (see e.g. the concluding observations of the Committee following the second periodic report, A/48/44, para. 385).

11. Nevertheless, the Committee has recommended that Sweden incorporate in its domestic law the definition of torture as set out in Article 1 of the Convention and to characterize acts of torture and other cruel, inhuman and degrading treatment or punishment as specific crimes, punishable by appropriate sanctions.
12. Sweden would therefore like briefly to reiterate its views on why Swedish legislation is in full accord with the obligations under Article 4 of the Convention.
13. As a State party to the Convention, Sweden is required to ensure that its national legislation is in conformity with its obligations under the Convention. It is the understanding of the Swedish Government that the Convention does not oblige a State party to incorporate a definition of torture in domestic legislation. Reviewing the conclusions of the Swedish Government and the Swedish Riksdag when ratifying the Convention, the Swedish Riksdag in February 2000 decided that Sweden's accession to the Convention did not require any changes in criminal legislation.
14. In accordance with the *Instrument of Government*, Chapter 2, Section 5, every subject is protected against corporal punishment as well as torture and medical influence or encroachment for the purpose of extorting or preventing statements. This protection applies equally to aliens residing in Sweden. The prohibition is absolute and cannot be limited by law. As a consequence, it would not be possible under Swedish law to authorize public officials to resort to such measures.
15. Public officials and other representatives of public authorities are furthermore subject to the general penal provisions applying to actions involving the infliction of pain or suffering. As was reported in the third periodic report (CAT/C/34/Add.4, para. 7), in 1995 the *European Convention for the Protection of Human Rights and Fundamental Freedoms* was incorporated into Swedish law. This implied the introduction into Swedish law of another basic provision prohibiting torture, namely Article 3 of the European Convention, which states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".
16. As laid down in Sweden's initial report (see paras. 31-45), there are a great number of provisions in the Swedish *Penal Code* relating to acts involving the infliction of severe pain or suffering, whether physical or mental, e.g. assault (Chapter 3, Section 5), gross assault (Chapter 3, Section 6), unlawful deprivation of liberty (Chapter 4, Section 2), unlawful coercion (Chapter 4, Section 4), unlawful threat (Chapter 4, Section 5) and rape (Chapter 6, Section 1). The penalty for e.g. gross assault and unlawful deprivation of liberty is imprisonment for at least one and at most ten years. The application of these provisions has since the submission of the first periodic report not in any way been restricted. To the contrary, the criminalisation has in some aspects been widened in scope and modernised. For instance, the provisions on sexual crimes have been reformed and made more far-reaching.
17. To conclude, there is no doubt that an act of torture according to the definition in Article 1 of the Convention, would constitute a criminal offence under Swedish law, punishable by appropriate penalties which take into account its grave nature. The same applies to attempts to commit, as well as complicity or participation in such an act.

18. The Swedish Government would in this regard also like to draw the Committee's attention to the proposals and conclusions reached by the Commission on International Criminal Law, that had the task of deliberating, inter alia, whether existing Swedish criminal legislation is appropriate to punish acts of torture, especially when committed abroad.¹

19. In November 2002, the Commission submitted its report *International Crimes and Swedish Jurisdiction* (Swedish Government Official Report 2002:98), whereby it proposed inter alia a new *Act on International Crimes*, introducing new and elaborated provisions on criminal responsibility for genocide, crimes against humanity and war crimes.

20. The Commission shared the conclusion that Swedish legislation was in full accord with the obligations under the Convention. The Commission deliberated about introducing a defined crime of torture. For several reasons this was not done. First of all, the Commission found that the basic structure of the Swedish criminal legislation, made it difficult to fit in a new crime of torture defined according to the Convention. The Commission held that this could lead to cases of considerable overlapping and uncertainty as to the scope of the provision. This would be the case even more so in the future, since the proposed *Act on International Crimes* contains provisions on torture as a war crime or crime against humanity. The Commission also underlined that the word "torture" is used in the Swedish *Penal Code* in the provision on *unlawful coercion* (Chapter 4, Section 4) with a more far-reaching scope than according to the definition under the Convention.

Article 8

21. On 1 January 2004 the *Act (2003:1156) on Surrender from Sweden according to the European Arrest Warrant* entered into force in Sweden. The Act contains provisions for implementation of the European Union Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. As a result of the implementation of the Framework Decision, the *Swedish Act (1957:668) on Extradition* was amended.

22. The *Act on Surrender from Sweden according to the European Arrest Warrant* indicates the conditions under which surrender can be approved. These correspond largely to the conditions which apply for extradition. The requirement of double criminality, i.e. that the act also constitutes an offence under Swedish law, is applicable. However, surrender can also be approved in certain cases for an offence that is not a crime according to Swedish law. For surrender to be approved in such a case the offence must be included among the offences contained in a list annexed to the Act. The offence must furthermore be subject to a custodial sentence or detention order of three years or more according to the legislation of the issuing Member State.

¹ The Commission on International Criminal Law has been mentioned previously by the Swedish delegation, see the Summary record of the first part (public) of the 504th meeting, CAT/C/SR.504. para. 6.

23. The *Act on Surrender from Sweden according to the European Arrest Warrant* also includes a list of situations when surrender may not be granted, such as if the requested person has already been convicted of the offence in Sweden or in another Member State, if a pardon or a decision not to prosecute for the act has been issued, if the offence has been committed in Sweden and it does not constitute a crime in Sweden, or if the offence is already statute-barred.

24. With regard to extradition to countries outside of the European Union, the Act on Extradition continues to apply. However, with regard to extradition to the other Nordic countries, the *Act (1959:254) on Extradition to Denmark, Finland, Iceland and Norway* applies.

Article 9

25. On 1 October 2000, the *Act (2000:562) on International Legal Assistance in Criminal Matters* entered into force. Its scope of application is wide since it does not require reciprocity. This law governs international legal assistance that, upon request, can be provided towards all countries. According to this Act, Sweden can assist foreign authorities with all the measures available to Swedish prosecutors and judges in a Swedish criminal investigation or proceeding. In addition, there is nothing to prevent prosecutors and courts from assisting foreign authorities also in other ways, on the condition that such assistance does not include coercive measures.

26. Also, since the last report the co-operation within the EU in regard to mutual legal assistance has been further facilitated and made more efficient. The co-operation has developed in particular through the implementation of several new conventions and EU Council framework decisions and through the establishment of Eurojust.

27. Thus, the Swedish Government recently submitted a Bill to the Riksdag for legislation in order to implement the *Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union*, the *Protocol of 16 October 2001 to that Convention* and an *Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention and the 2001 Protocol thereto*. These instruments improve judicial cooperation in criminal matters between the Member States of the European Union and between EU Member States and Iceland and Norway. The proposed legislation was approved and entered into force on 1 July 2005. Most of the provisions implementing the Convention and the Protocol are not limited to EU Member States.

28. On 1 July 2005, a new Swedish law implementing the *EU Council Framework Decision of 22 July 2003 on the execution in the European Union of orders of freezing property or evidence* entered into force. According to the new legislation, a Swedish prosecutor may address a national decision on seizure or sequestration – in this context a freezing order – to an authority in another Member State. That other State's authority then has to execute the freezing order in accordance with the provisions of the Framework Decision. The new law also contains provisions on how another Member State's judicial decisions on freezing of property or evidence may be executed in Sweden. In short one could say that the procedure and preconditions for such execution corresponds to the provisions on execution in Sweden of a national decision issued here for a similar purpose. As a rule, a freezing order should be executed in Sweden within 24 hours after it has been received by the Swedish prosecutor.

Article 10

29. Regarding human rights education in training (CAT/C/SR.504, para. 31 and CAT/C/CR/28/6, para. 7 (g)), the following measures can be high-lighted.

30. As part of the National Action Plan for Human Rights adopted in January 2002, the Office of the Prosecutor General, the National Police Board and the Prison and Probation Administration were instructed to strengthen human rights education for their personnel.

31. On 1 January 2005 the Swedish Prosecution Service was re-organised. One of the objectives of the re-organisation was to improve the quality of the activities within the Service. As a result of the re-organisation, four Centres of Excellence have been created with different responsibilities. The Centre of Excellence located in Malmö is responsible for questions concerning human rights. The prosecutors at the Centre of Excellence in Malmö have a particular competence inter alia in the field of human rights. For several years, the Swedish Prosecution Authority has spent significant resources on education and competence development. The education in human rights has thus improved and takes place continually. A specific segment of the basic education for prosecutors is dedicated to human rights. During the years 2004 and 2005 the Office of the Prosecutor General has, in addition, organized a number of workshops concerning human rights.

32. As regards the Police, the basic training of police officers devotes a great deal of time to the issue of professional ethics and have prepared two specific text books. In line with the special ethics programme, the police services have appointed and trained special ethics supervisors.

33. Human rights form an integral part of the basic two-year police training. Human rights issues are considered from different perspectives such as the legal, the psychological, the self-protective and the use of force. The first semester of the basic police training takes as its starting points the United Nations and the Council of Europe's conventions on human rights and the paramount importance of equal rights of all persons is underlined.

34. This, in conjunction with the continuous discussion within the police force on developments of the legislation and jurisprudence as well as authoritative interpretations of Ombudsmen and the Chancellor of Justice, ensures that there is a high level of awareness among police officers on how to treat persons deprived of their liberty.

35. Within all additional training of police officers and civil employees of the Police, the powers of the Police are discussed from the perspective of legality. Once again, the equal rights of all persons are the starting point when discussing coercive measures taken by the Police.

36. During the autumn of 2000, all personnel of the Police were provided a two-hour lecture on human rights. In order to strengthen the teachers' competence in the area of human rights, some of the teachers are regularly involved in international training in the area.

37. During 2002-2003, specialised training was given to the designated human rights advisors of the police services. The purpose of the training was to provide new impetus on how training and discussions at the local level can be developed.

38. In 2002 a new organisation for staff training was created within the Prison and Probation Organisation in which human rights form an integral part in basic as well as continuous training.

Article 11

39. The National Police Board and the Office of the Prosecutor General have produced an information sheet specifying the rights of detained persons. The information sheet is still to be issued pending translation into appropriate languages.

40. The standards within police establishments as regards size, equipment etc. of cells have undergone significant improvement in recent years. The design of cells and the standards of their equipment form part of the daily work of the technical service of the police. Several improvements have for instance been made to avoid that detained persons hurt themselves or even try to commit suicide. The National Police Board has issued *Regulations on the standard and equipment of cells* (FAP 915-1). The most recent version of the regulations was decided on 18 May 2001.

41. In 2004 the National Police Board established the Ethics Council. The Council comprises members with a broad experience in areas such as ethics, law, medicine, behavioural science and social science. The Council is to be consulted on principal issues involving integrity or issues concerning working methods and equipment that can potentially come to use when the Police are using force.

Article 13

42. In December 2004, the Government appointed a special investigator to further analyse the regulations, the organisation and the routines for handling complaints against employees within the Police and the Prosecution Services. The starting point for the analysis is that all citizens shall have the utmost confidence in the way criminal investigations are carried out by the Police and Prosecution services. A key issue for the investigator is to present a proposal for the establishment of a specific body, independent from the Police and the Prosecution Services, to investigate complaints against employees of the Police and the Prosecution Services. The special investigator shall furthermore propose a mandatory procedure in cases where someone has deceased or been seriously injured in connection with an action taken by the Police (even in cases where there is no suspicion that a crime has been committed). The report, including concrete proposals, is scheduled for 31 December 2006. Meanwhile, the Government is taking steps in order to strengthen the present system of investigations of complaints against the Police.

43. Furthermore, in order to improve legal security in criminal proceedings, a possibility to provide a temporary residence permit was introduced on 1 October 2004. Such permits may be issued to victims and witnesses for the purpose of criminal investigations and judicial proceedings in criminal matters. Holders of such permits have the same right to healthcare, medical care and support according to the *Social Services Act (2001:453)* as persons with permanent residence in Sweden. It is the local municipalities and regional providers of healthcare where the victim or witness has stayed that are obliged to bear the costs for such support. The State will then reimburse those costs.

44. In addition, the Government appointed a special investigator in December 2001 in order to look into issues relating to threatened witnesses. The investigator presented a report in January 2004 (Swedish Government Official Report 2004:1) with a proposal for a national programme for personal protection. The report includes legal proposals covering evidence persons, staff within the judiciary, related persons and, in some cases, other persons. If there is a risk for criminal acts directed towards a person's or a related person's life, health or freedom, and if some additional prerequisites are fulfilled, the person may be provided protection within the programme. The protection includes security measures that are considered necessary and possible to implement.

45. The proposed programme will establish a unified model throughout Sweden and also open opportunities for co-operation with other countries. It is further proposed that persons within the programme will receive so-called personal security remuneration.

46. There has been a consultation round on the report and further considerations are currently ongoing within the Ministry of Justice.

Article 15

47. The Committee has recommended that Sweden ensure that the prohibition on the use of statements obtained by torture as evidence in proceedings is clearly formulated in domestic law (cf. CAT/C/CR/28/6, para. 7 (a) and CAT/C/SR.504, para. 28).

48. An act of torture according to Article 1 of the Convention would constitute a criminal offence under Swedish law. Therefore, if a policeman or a prosecutor uses means of torture to produce evidence, he or she will commit a criminal offence.

49. The Swedish *Code of Judicial Procedure* (Chapter 23, Section 12) clearly regulates how questionings shall be conducted:

“The use of knowingly false information, promises or hints of special advantage, threats, force, questioning for an unreasonable length of time, must not be employed during a questioning aimed at eliciting a confession or statement of particular implication. The person questioned shall not be deprived of customary meals or necessary rest,”

Consequently, the use of force or threats during a questioning would not only constitute a criminal offence but also an unlawful method of questioning.

50. According to the Swedish *Code of Judicial Procedure* prosecutors are obliged to consider all circumstances and any evidence, also those favourable to the suspect (Chapter 23, Section 4). A statement made as a result of torture has no legal value. If the prosecutor finds out that a suspect has been e.g. forced to make a confession he would therefore normally discontinue the preliminary investigation due to the fact that the evidence against the suspect would not lead to a conviction. Furthermore, if the prosecutor withholds information from the court that a suspect has been tortured he would commit a criminal offence, namely misconduct.

51. The Swedish *Code of Judicial Procedure* also contains a provision that enables the court to reject an item of evidence if the court finds that a circumstance that a party offers to prove is without importance in the case, or that an item of evidence offered is unnecessary or evidently should be of no effect (Chapter 35, Section 7).

52. If it is established that a statement has been made as a result of torture, the court can reject that statement as evidence due to the fact that it would not have any effect or legal value. If it is established during the hearing that torture has been used, the court could either reject the evidence or, in cases where the witness or suspect has already been heard in the proceedings, rule that the evidence in question has no legal value.

53. Consequently, the Swedish penal and procedural system, which is based on the principle of free examination of evidence, contains several effective provisions, including procedural safeguards, to prevent public officials from using torture in criminal investigations.

Article 16

54. In January 2005 the Swedish Government appointed a special investigator to present a proposal on a new *Act on the Treatment of Persons Arrested or Remanded in Custody*. The investigator will present a proposal in March 2006. In the directives for the special investigator the situation for prisoners subject to restrictions is one of the areas of particular concern. When it comes to this group of prisoners, the European Committee for the Prevention of torture and inhuman or degrading treatment or punishment (CPT) who last visited Sweden in 2003, has directed criticism towards Sweden.

55. The special investigator shall, in the light of Sweden's international human rights obligations, as well as in the light of the criticism from the CPT, review and evaluate the effects of the new legislation on restrictions that came into force on 1 January 1999.

56. In the area of health and medical care, the *Act (1991:1128) on Involuntary Psychiatric Care* and the *Act (1991:1129) on Forensic Psychiatric Care* were amended in 2000 with the purpose of strengthening safeguards for patients and reducing the use of coercive measures.

57. New general provisions regarding treatment during involuntary psychiatric care or forensic psychiatric care state that the use of coercive measures shall be reasonable in proportion to what should be achieved through the measures taken. Less intrusive measures are to be employed if sufficient. Coercive measures shall be exercised as gently as possible and with the greatest possible consideration towards the patient, so that he or she will not be subjected to any unnecessary infringements upon dignity and privacy. It is further stipulated that coercive measures may be used only if the patient cannot be induced, through individualised information, to participate of his or her own free will. Coercive measures may not be used to a greater extent than is necessary in order to render the patient capable of voluntary participation in the requisite care and of receiving the support needed.

58. Transition from voluntary to involuntary care now requires examination by two physicians that are independent in relation to each other. The requirement of adjudication by a

court of law following transition from voluntary to involuntary care has been reinforced. Furthermore, the demands on using an independent expert physician during court hearings have been strengthened.

59. In addition, the patient has the right to increased access to “a supportive person” during and after the release from involuntary care.

60. As regards treatment of conscripts in the Swedish national defence forces, and as a follow-up to the Swedish Government’s remark during the consideration of the fourth periodic report (CAT/C/SR.507, para. 33), the following should be mentioned. In 2002 the Government decided to amend the *Ordinance (1995:238) on Liability for Total Defense Service*. The amendment implied a considerable improvement of the protection against discrimination of conscripts.

61. In 2002 the Government also appointed a committee to consider a common regulation against discrimination for all areas of society. Discrimination of conscripts was an especially emphasized task for the committee. The committee will present its report in January 2006. Consequently, in 2006 the Government will continue its work in order to further improve the protection for conscripts on the basis of the report.

62. In January 2004, the Government commissioned the Swedish Armed Forces, the National Defense College and the National Service Administration to implement the following four tasks:

- Report strategies to counteract discriminatory attitudes;
- Guarantee that all young people, irrespective of e.g. sex, ethnic background or sexual orientation, feel comfortable, both at the time of enrolment and enlistment and during the military service;
- Guarantee that leadership within the military authorities will promote a working environment which supports equality and in which all individuals are given the same opportunities and treatment; and
- Report a plan on how managers at all levels, and other staff in key role positions, are to be trained on issues concerning equality and discrimination.

63. The authorities presented a second report on these issues, in November 2004, after which the above-mentioned efforts were made permanent through the formation of a Council working against discrimination within the three authorities.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

64. In the consideration of the fourth report, Mr. Mengija and Mr Mavrommatis (cf. CAT/C/SR.504, paras. 27 and 32) requested more details with regard to three cases against police officers following the Gothenburg summit where lack of education was allegedly invoked as a justification for reducing the penalty.

65. In response, Sweden would like to note that, according to the records, 214 complaints were filed against the Police in connection with the events at the Gothenburg summit. Out of these complaints, three cases were prosecuted. All three officers prosecuted were acquitted. In none of the acquitting verdicts was it argued that the acquittals were based on lack of education.

66. Still, it should be mentioned that after the events at the Gothenburg summit, an official Committee was established in order to look into the action taken by the Police. One of the conclusions in the Committee's report, *Gothenburg 2001* (Swedish Government Official Report 2002:122), suggested that there is a serious deficit in the training of the police officers to handle such events. Measures have been taken to remedy this deficit, in particular the development of a specific tactical concept to handle disturbances in the public order. The concept originates from Denmark where the Police for nearly ten years have worked according to a concept focusing more on dialogue than confrontation.

67. The concept includes several components out of which training is the most important. The training comprises mental preparedness, communication, legal studies, and an improved ability to see dangers and to prevent injuries without the use of force. Besides this, the Police will in these situations use special vehicles in order to be better protected from stones and other acts of violence. Such vehicles have previously not been at the disposal of the Police.

68. The objective in developing this concept is that 1 200 officers shall be trained in the three largest Regional Police Services with a view to be ready for applying the concept in the beginning of 2006. The 1 200 officers will function as a re-enforcement for the entire Swedish Police.

69. Furthermore, in a fourth prosecution, the Commanding Chief of the Police during the events in Gothenburg was charged with unlawful detention. He was accused of having unlawfully detained 650 persons at Hvitfeldtska gymnasiet (an upper secondary school where many groups of demonstrators stayed during the summit). He was acquitted in both the district court and the regional Court of Appeal.

70. The summary of the report of the above Committee includes the following: "The police assignment in Gothenburg [...] was the most complex and one of the largest ever in Sweden. It comprised 2 500 police officers. During the assignment, the Police were faced with difficult tasks and their abilities and capabilities were tried in extraordinary ways. Despite difficult circumstances, the summit and the visit of the US President were carried out without severe disturbances. Moreover, the right to demonstrate could be safeguarded in the sense that all demonstrations with permission could be carried out. The security at the hotels where delegates stayed as well as all escorts and transportations also worked well."

71. As regards the question of proper investigations, this issue was also brought up by the CPT in late 2003, following its visit to Sweden in January and February that year. The reply of the Swedish Government of 29 December 2003, quoted below, well illustrates the importance the Swedish Government attaches to a well functioning system for investigating allegations or complaints against the Police. It should be read in conjunction with what is said in relation to Article 13 above about the possible future establishment of an independent body to carry out such investigations (see Part I, para. 42).

[The CPT's criticism and recommendations]

“The CPT concludes that the basic precepts for conducting investigations into possible ill treatment, i.e. independence, effectiveness, promptness and expeditiousness, had not been observed in a number of preliminary investigations examined during its visit. Furthermore, the CPT recommends that:

- the Swedish authorities urgently reconsider the need for the investigation of complaints against the police to be entrusted to an agency which is demonstrably independent of the police;
- as long as the current system is in place, that measures be adopted to ensure that public prosecutors effectively discharge their duty to supervise the investigation of preliminary investigations involving complaints against police officers; those measures to include:
 - providing public prosecutors with clear guidance as to the manner in which they are expected to supervise preliminary investigations involving complaints against the police and ensuring that the work of public prosecutors supervising complaints against the police is subject to managerial oversight and support;
 - specifying that, in every case where it comes to a prosecutor's attention that a complainant may have sustained injuries while in the hands of the police, the prosecutor must order immediately a forensic medical examination; such an approach should be followed whether or not the complainant bears visible external injuries;
 - the introduction of strict time limits within which public prosecutors must determine whether complaints against the police which are transmitted to them are to be the subject of a preliminary investigation.

[Sweden's response]

[...]

As regards the basic precepts for investigations into possible ill treatment, the Swedish Government fully subscribes to what the CPT has outlined. They are indeed prerequisites for a high standard of the investigations concerned as well as for a high level of confidence and credibility for the police. On the basis of these outlined precepts and on an examination of a few cases, out of which the two cases described in the report seem to have occurred during the events in connection with the EU summit in Gothenburg 16-17 June 2001, the CPT draws the conclusion that the basic precepts had not been observed in a number of preliminary investigations.

Under the Constitution the Government itself cannot interfere in an individual case handled by the competent authorities in accordance with the procedures and substantial rules laid down in legislation. But, in relation to the basic precepts outlined

by the CPT, the Swedish Government wish to recall that units for internal investigations are to a large extent independent from other activities within the police services. Furthermore, a complaint is always submitted to a public prosecutor, i.e. an authority independent from the police services. In practice, internal investigations are often carried out by units and prosecutors in counties other than the county where the alleged ill treatment or offence might have taken place. The National Police Board has also issued a Regulation on immediate measures to secure evidence. There is, however, always room for improvements as regards the effectiveness and expeditiousness; [...]"

72. In response to the question from Mr Mavrommatis and Mr Camara whether Sweden offers money to asylum seekers in exchange for returning to, for example, African countries (cf. CAT/C/SR.504, paras. 24 and 32), Sweden would like to make clear that this is not the case.

73. Sweden does not offer money to African asylum-seekers, or to other categories of asylum-seekers, to return to their country of origin. Those who are refused entry or expelled may be given some money for living expenses in connection with the journey home. Returnees who have a residence permit in Sweden may in some cases be entitled to a grant in order to facilitate their return.

III. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

74. Sweden would like to offer the following comments with regard to the Committee's conclusions and recommendations on Sweden's fourth periodic report (CAT/ C/CR/28/6, paras. 7 and 8).

75. Regarding the incorporation of the definition of torture in Swedish domestic law (CAT/C/CR/28/6, para. 7 (a)), Sweden would like to refer to paras. 10-20 in Part I above.

76. On the issue whether asylum-seekers have been sent to countries of their own choice, or countries with which they have real ties (cf. CAT/ C/CR/28/6, paras. 6 (a) and 7 (b)), it is a problem of great concern that over 90 percent of the asylum-seekers in Sweden does not present any form of passports, identity cards or other documents that can prove their identity or indeed show that they are citizens of a country they claim to come from. Linguistic tests can be used together with knowledge tests as a complement to other methods of investigation regarding the origin of asylum seekers. However, such tests are never used as a sole method of determining the origin of an asylum seeker.

77. According to the *Aliens Act (1989:529)* the authorities must state the country to which the alien is to be returned instead of determining that the alien should be returned to his or her home country. In this regard, see also below under para. 91.

78. Regarding the *Act of Special Control in Respect of Aliens* (cf. CAT/C/CR/28/6, para. 7 (c)), Sweden would like to refer to the reform of the judicial system in matters pertaining to aliens and citizenship described in relation to Article 3 above (Part I, paras. 4-9).

79. Concerning the use of diplomatic assurances or guarantees (CAT/C/CR28/6, para. 7 (d)), the authorities in the ordinary asylum process can never use diplomatic assurances or guarantees. An alien refused entry or expelled may, according to the *Aliens Act*, never be conveyed to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment, nor to a country where he or she is not protected from being sent to a another country where he or she would be in such danger. This rule is unconditional. The aim of diplomatic assurances is to remove any remaining personal risk for an asylum-seeker. In very rare exceptional cases there may be a need, and be deemed possible to obtain such assurances in order to guarantee the security of a person refused entry or expelled when he or she is returned to the receiving country. If the issue of diplomatic assurances should arise in the future Sweden will take the recommendations made by the United Nations former Special Rapporteur against torture (Theo van Boven) into consideration, as well as other available international guidance concerning the formulation of assurances. It should also be mentioned in this context that there is some work going on within the Council of Europe relating to human rights and diplomatic assurances. Sweden participates in these negotiations, which may result in a recommendation on minimum requirements/standards of such assurances.

80. Regarding the investigations into the situation of human rights in the countries of origin of asylum-seekers (CAT/C/CR/28/6, para. 7 (e)), the Migration Board and the Aliens Appeals Board have access to a vast number of reports from international organisations concerning the human rights situation in the asylum-seekers' countries of origin. In addition, since 2003 the Swedish Government's own country reports on human rights are made official. The reports often reflect questions that are frequently raised in asylum cases. The authorities can also initiate investigations by themselves on general subjects as well as in individual cases through the Swedish embassies. Both the Migration Board and the Aliens Appeals Board send fact-finding missions to countries of interest.

81. Concerning the recommendation that allegations of violence committed by the police and prison guards should be investigated thoroughly (CAT/C/CR/28/6, para. 7 (f)), and more specifically on the case of Osmo Vallo, the Government established a Commission in December 2000 to examine the practice in the crime investigation related to the death of Osmo Vallo in order to prevent mistakes, like the ones that may have occurred in that investigation, in the future.

82. The Commission delivered the report *Osmo Vallo – investigation of an investigation* (Swedish Government Official Report 2002:37) to the Minister of Justice on 29 of April 2002. The report was referred to approximately 50 authorities and organizations for consideration. The Commission proposed the following:

- Mandatory *investigations of deaths and serious injuries in conjunction with police intervention* (cf. CAT/C/SR.504, para. 30). The Commission proposed that an investigation should always be implemented, under the leadership of a prosecutor, when a person has died or been seriously injured either during a stay under police arrest or by something that an employee within the police has done in service;

- Unconditional *right to aggrieved party counsel*. The Commission proposed that survivors should have an unconditional right to counsel under the *Aggrieved Party Counsel Act (1988:609)* if someone dies either during his stay under police arrest or by something that an employee within the police has done in service. The unconditional right to counsel should also apply in cases of very serious injury, such as a life threatening injury or an injury that may possibly entail a risk of permanent suffering;
- A special *investigation of the forensic operations*. The Commission proposed that a special commission should conduct a review of forensic operations. The purpose of this should, among other things, be to clarify the role of forensic pathologists and the role of the National Board of Forensic Medicine. It should also be a duty of the proposed commission to deliberate the issue of supervision of forensic operations and the forensic pathologist's professional role.

83. As mentioned above in relation to Article 13 (Part I, para. 42), the Government has appointed a special investigator to further analyse the regulations, the organisation and the routines for handling complaints against employees within the Police and the Prosecution Services, including the establishment of an independent authority to investigate such complaints. The mandate of the special investigator includes giving a proposal on how to implement mandatory investigations of deaths and serious injuries in conjunction with police intervention, and to consider the need for an extended right to aggrieved party counsel.

84. On 1 January 2005 the Swedish Prosecution Service was re-organised. As a result of the re-organisation, criminal investigations against police officers and prosecutors are handled within a special branch of the Prosecution Service, pending the proposals from the special investigator.

85. On 22 September 2005 the Swedish Government appointed a special investigator to carry out a review of the forensic operations. The findings and proposals from 2002 will be considered within the new investigation. The findings of the special investigator should be presented to the Government on 30 November 2006, at the latest.

86. With regard to the Committee's recommendations in relation to training (CAT/C/CR/28/6, para. 7 (g)), Sweden would like to refer to what has been stated above in relation to Article 10 (Part I, paras. 29-38).

87. Concerning the Committee's concern (CAT/C/CR/28/6, para. 7 (h)) regarding the lack of an explicit rule which spells out the prohibition on the use of statements obtained by torture as evidence in proceedings, Sweden would like to refer to what has been stated above in relation to Article 15 (Part I, paras. 47-53).

Summary of conclusions and recommendations of national commissions and committees

88. Below follows a short summary of the conclusions and recommendations drawn up by the national commissions and committees mentioned by the Committee in its latest concluding observations following the consideration of the fourth periodic report (cf. CAT/C/CR/28/6, para. 8).

89. The establishment, in December 2000, of a parliamentary committee to determine whether the existing framework for handling allegations of criminal actions by the police is satisfactory has been described above in relation to Article 13 (Part I, para. 42).
90. The work of the official committee to investigate the actions taken by the police in connection with the Gothenburg summit led to the report *Göteborg 2001* (Swedish Government Official Report 2002:122). In the report it was suggested that there could be a fundamental structural problem within the Swedish Police. In May 2003, the Government decided that this matter should be looked into. In the report *Structural Shortcomings within the Police* (Ds 2004:34), it was concluded that the National Police Board should exert a firmer control in areas such as training and equipment and that the Government should consider reinstating a national basic unitary chief of police education.
91. In 2003, the special commission assigned to review legislation and case law relating to the application of decisions concerning expulsion proposed amendments to the present *Aliens Act* (Swedish Government Official Report 2003:25). A Government Bill (2003/04:50) was approved by the Riksdag and the amendments entered into force on 1 July 2004. In any refusal-of-entry or expulsion-order issued by the Migration Board, the Aliens Appeals Board or, in special cases, the Government, those instances must state the country to which the alien is to be returned. If there are special reasons, more than one country may be indicated. The decision shall contain the directions about the enforcement of the refusal of entry or expulsion order that are warranted by the facts in each case (present *Aliens Act*, Chapter 4, Section 12a).
92. As mentioned above in relation to Article 4 (Part I, para. 19), in November 2002 the Commission on International Criminal Law submitted the report *International Crimes and Swedish Jurisdiction* (Swedish Government Official Report 2002:98). Among other things, the Commission proposed a new *Act on International Crimes*, introducing new provisions on criminal responsibility for genocide, crimes against humanity and war crimes. According to the proposal, Swedish courts shall have the competence to try these crimes regardless of where or by whom they have been committed. Genocide, crimes against humanity and serious war crimes shall not be subject to statutes of limitation. These proposals are based on the Rome Statute of the International Criminal Court. The provisions in the Rome Statute on crimes against humanity (Article 7) and war crimes (Article 8) contain specific provisions on torture, as a crime against humanity and war crime respectively. The Commission noted however, that the definitions of torture in the Rome Statute differ from the definition in the Convention.
93. Concerning judicial reform including a new *Aliens Act* and amendments to the *Act on Special Control in Respect of Aliens* (CAT/C/SR.504, para. 9 and CAT/C/55/Add.3 para. 5) Sweden would like to refer to what has been stated in relation to Article 3 above (Part I, paras. 4-9).
94. In relation to the Committee's positive comments with regard to the Swedish National Action Plan for Human Rights for 2002 to 2004 (CAT/C/CR/28/6, para. 4 (a)), a description of the assessment of that plan and preparations for a new action plan is provided below.
95. The National Action Plan for Human Rights, which was adopted by the Government and presented to the Swedish Riksdag as a written communication in 2002, was the first of its kind in

Sweden. In the Action Plan the Government lay the groundwork for a more concerted approach to human rights at the national level. The objectives of the action plan were to secure full respect for human rights in Sweden, generate increased knowledge and awareness on human rights issues, promote coordination of work on human rights, focusing on national government administration, and to improve education on human rights, including training for public officials.

96. During September – December 2004, Thomas Hammarberg, then Secretary General of the Olof Palme International Center in Stockholm, evaluated the first National Action Plan for Human Rights. In his recommendations for the second plan he emphasized inter alia focus on increased awareness regarding human rights issues in the appropriation directions for authorities and further improved human rights education. He also recommended that the Government Offices' website for human rights, www.manskligarattigheter.gov.se, should be further developed, and that a broader strategy concerning languages and availability for people with disabilities should be considered. The reference groups active in the process to develop the second National Action Plan have also underlined these issues. These comments, together with the recommendations from the UN Treaty Monitoring Bodies and Rapporteurs and the monitoring bodies of the Council of Europe, as well as the judgments of the European Court of Human Rights, form an important part of the basis for the next plan as was also the case concerning the first one. Now 360 different actors, for example the Ombudsmen, other national authorities and representatives of the judiciary, municipalities and county councils and non-governmental organizations, have been invited to participate in the informal reference groups in order to discuss the content of the new Action Plan. They have also been given the opportunity to forward comments in writing.

97. The second National Action Plan will contain a national baseline study as well as the actual Action Plan. It will be presented as a written communication to the Riksdag in March 2006. The plan will be applicable 2006-2009. In order to promote coordination of work on human rights the Government has merged the National Action Plan for Human Rights with the National Action Plan against Racism, Xenophobia, Homophobia and Discrimination. Activities with regard to discrimination will form an important part of the new plan. Other issues which will be emphasized are activities regarding human rights education and information, measures with regard to the organization and co-ordination of the Government's work concerning human rights as well as increased awareness regarding human rights issues in for example the appropriation directions for national authorities, and a strengthened dialogue with municipalities regarding their responsibilities in the field of human rights.

98. The human rights website that has been set up forms part of the overall information strategy. This website has information on human rights as well as fundamental and important documents, such as the main treaties, and the Swedish reports to the UN Treaty Monitoring Bodies and their concluding observations. The documents are translated into Swedish as was foreseen in the first National Action Plan.

99. Human rights education directed towards newly employed within the Government Offices is now a permanent part of their training programme. This education will be extended to other groups as well. Several public authorities and parts of the judiciary have also trained their officials, either as a part of their permanent activities, or on instruction from the Government as part of the implementation of the Action Plan.

List of references

International conventions

European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950

Convention relating to the Status of Refugees, Geneva, 28 July 1951

Convention of 27 September 1996 relating to Extradition between the Member States of the European Union

Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union

Protocol of 16 October 2001 to the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union

Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto

European Union Council Framework Decisions

EU Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

EU Council Framework Decision of 22 July 2003 on the execution in the European Union of orders of freezing property or evidence

Swedish legislation

Regeringsformen [Instrument of Government]

Brottsbalken [Penal Code]

Rättegångsbalken [Code of Judicial Procedure]

Lag (1957:668) om utlämning för brott [Act (1957:668) on Extradition for Criminal Offences]

Lag (1959:254) om utlämning för brott till Danmark, Finland, Island och Norge [Act (1959:254) on Extradition to Denmark, Finland, Iceland and Norway]

Lag (1988:609) om målsägandebiträde [Aggrieved Party Counsel Act (1988:609)]

Utlänningslag (1989:529) [Aliens Act (1989:529)]

Lag (1991:572) om särskild utlänningskontroll [Act (1991:572) on Special Control in Respect of Aliens]

Lag (1991:1128) om psykiatrisk tvångsvård [Act (1991:1128) on Involuntary Psychiatric Care]

Lag (1991:1129) om rättspsykiatrisk vård [Act (1991:1129) on Forensic Psychiatric Care]

Lag (200:562) om internationell rättslig hjälp i brottmål [Act (2000:562) on International Legal Assistance in Criminal Matters]

Socialtjänstlag (2001:453) [Social Services Act (2001:453)]

Lag (2003:1156) om överlämnande från Sverige enligt en europeisk arresteringsorder [Act (2003:1156) on Surrender from Sweden according to the European Arrest Warrant]

Förordning (1995:238) om totalförsvarspflicht [Ordinance (1995:238) on Liability for Total Defense Service]

Authority regulation

Rikspolisstyrelsens föreskrifter och allmänna råd (RPSFS 2001:12, FAP 915-1) om polisarrester [Regulation of the National Police Board (RPSFS 2001:12, FAP 915-1) on the standard and equipment of cells]

Government bills

Government Bill 2003/04:35, *Människosmuggling och tidsbegränsat uppehållstillstånd för målsägande och vittnen m.m.*

Government Bill 2003/04:50, *Åtgärder för att klarlägga asylsökandes identitet*

Government Bill 2004/05:170, *Ny instans- och processordning i utlännings- och medborgarskapsärenden*

Government Bill 2005/06:6, *Flyktingskap och förföljelse på grund av kön eller sexuell läggning*

Government official reports, Ministry publication series and Government communications

Osmo Vallo – utredning om en utredning [Osmo Vallo – Investigation of an Investigation], Swedish Government Official Report 2002:37

Internationella brott och svensk jurisdiktion [International Crimes and Swedish Jurisdiction], Swedish Government Official Report 2002:98

Göteborg 2001, Swedish Government Official Report 2002:122

Utredning om översyn av regler och praxis vid verkställighet av avvísings- och utvisningsbeslut [Commission on Review of Rules and Procedures for the Execution of Refusal-of-entry and Expulsion Orders], Swedish Government Official Report 2003:25

Ett nationellt program om personsäkerhet [A National Programme for Personal Protection], Swedish Government Official Report 2004:1

Strukturella brister inom polisen [Structural Shortcomings within the Police], Ministry Publication Series 2004:34

En nationell handlingsplan för de mänskliga rättigheterna [A National Action Plan for Human Rights], Government Communication 2001/02:83

Communications with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), (available on the CPT web site: <http://www.cpt.coe.int/en/>)

Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003, adopted on 4 July 2003

Comments by the Swedish Government to the observations by the CPT following its visit to Sweden on 27 January to 5 February 2003, submitted on 29 December 2003

List of annexes

The annexes include copies of relevant legislation, in English where available, and English summaries of some relevant Government reports. Upon request, Sweden will submit any additional or supplementary information or documents that might be of interest to the Committee.

- Annex 1 Instrument of Government, Chapter 2, Fundamental Rights and Freedoms, *English translation*
- Annex 2 Penal Code, *English translation as of 1999*
- Annex 3 Penal Code, Chapter 6, Sexual Crimes (with amendments made since 1999), *English translation*
- Annex 4 Code of Judicial Procedure, *English translation as of 1998*
- Annex 5 Act (1957:668) on Extradition for Criminal Offences, *English translation with amendments up to 2003*
- Annex 6 Lag (1959:254) om utlämning för brott till Danmark, Finland, Island och Norge, *Swedish only*
- Annex 7 Lag (1988:609) om målsägandebiträde, *Swedish only*
- Annex 8 Utlänningslag (1989:529), *Swedish only – no English text including amendments available*
- Annex 9 Lag (1991:572) om särskild utlänningskontroll, *Swedish only*
- Annex 10 Lag (1991:1128) om psykiatrisk tvångsvård, *Swedish only*
- Annex 11 Lag (1991:1129) om rättspsykiatrisk vård, *Swedish only*
- Annex 12 Act (2000:562) on International Legal Assistance in Criminal Matters, *English translation*
- Annex 13 Act (2003:1156) on Surrender from Sweden according to the European Arrest Warrant, *English translation*
- Annex 14 Förordning om (1995:238) om totalförsvarsplikt, *Swedish only*
- Annex 15 Rikspolisstyrelsens föreskrifter och allmänna råd (RPSFS 2001:12, FAP 915-1) om polisarrester, *Swedish only*
- Annex 16 Internationella brott och svensk jurisdiktion [International Crimes and Swedish Jurisdiction], SOU 2002:98, part 1, *English summary p. 21-24*
- Annex 17 Göteborg 2001, SOU 2002:122, *English summary*

- Annex 18 Utredning om översyn av regler och praxis vid verkställighet av avvisnings- och utvisningsbeslut [Commission on Review of Rules and Procedures for the Execution of Refusal-of-Entry and Expulsion orders], SOU 2003:25, part 1, *English summary p. 21-31*
- Annex 19 Ett nationellt program om personsäkerhet [A national programme for personal protection], SOU 2004:1, part 1, *English summary p. 21-27*
- Annex 20 A National Action Plan for Human Rights, Government Communication 2001/02:83, *English translation*
