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REPORT BY
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ON HIS VISIT TO SWEDEN

21 – 23 APRIL 2004

**for the attention of the Committee of Ministers
and the Parliamentary Assembly**

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INTRODUCTION

In accordance with Article 3 (e) of the Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I was pleased to accept the invitation extended by Ms Laila Freivalds, Minister for Foreign Affairs of Sweden, to pay an official visit to Sweden on 21 to 23 April 2004. I would like to thank the Minister for her invitation and for the resources she placed at my disposal, Mr Mats Åberg, Permanent Representative of Sweden to the Council of Europe for kindly accompanying me throughout my visit as well as other staff members of the Permanent Representation and the personnel at the Ministry for Foreign Affairs for their valuable cooperation and assistance in arranging this visit. During my visit, I was accompanied by Ms. Satu Suikkari and Mr. Alexandre Guessel, members of the Commissioner's Office.

During my visit, I had meetings with Ms Laila Freivalds, Minister for Foreign Affairs; Ms Mona Sahlin, Minister for Democracy and Integration issues; Ms Barbro Holmberg, Minister for Migration and Asylum Policy; Ms Ann-Christin Nykvist, Minister for Agriculture, Food and Fisheries; Mr Dan Eliasson, State Secretary to the Ministry of Justice; Members of the Swedish delegation to the Parliamentary Assembly of the Council of Europe and members of the Foreign Affairs Committee of the Parliament. I also had meetings with Mr Mats Melin, Chief Parliamentary Ombudsman, and other Parliamentary Ombudsmen, Mr Bo Svensson, President of the Supreme Court, Ms Margareta Wadstein, Ombudsman against Ethnic Discrimination; Mr Hans Ytterberg, Ombudsman against Discrimination on Grounds of Sexual Orientation; Mr Lars Lööv, the Disability Ombudsman and Mr Jens Ölander of the office of the Children's Ombudsman, as well as Mr Lars-Anders Baer, President of the Sami Parliament and representatives of Sami organisations; representatives of the Council of Roma Issues and representatives of several non-governmental organisations working on human rights issues. I visited the Märsta transit and detention centre for asylum-seekers and the Kronoberg detention and remand facility in Stockholm.

I would like to thank all those with whom I met for their excellent cooperation and the frankness of our discussions on the human rights situation in the country.

GENERAL OBSERVATIONS

1. One of the ten founding members of the Council of Europe, Sweden was among the first countries to ratify the European Convention on Human Rights in 1953. Human rights have traditionally been high on the Swedish political agenda, both in terms of its continuous efforts to maintain a high level of respect for human rights in the country, and as a part of the Swedish foreign policy to promote higher human rights standards worldwide. Sweden was the first country in the world to establish, in 1809, an office of a Parliamentary Ombudsman, which nowadays comprises the Chief Parliamentary Ombudsman and three Parliamentary Ombudsmen. Sweden has also several thematic Ombudsmen appointed by the government in the field of human rights, four of whom are tasked with counteracting discrimination based on various grounds (Equal Opportunities Ombudsman, Ombudsman against Ethnic Discrimination, Disability Ombudsman and Ombudsman against Discrimination on the basis of Sexual Orientation), and the fifth, the Children's

Ombudsman has the task of monitoring issues relating to the rights and interests of children and young people. In 2001, a National Plan of Action for Human Rights was adopted by the Government, outlining the long-term objectives and priority issues for further work in improving the protection and promotion of human rights in the country.

2. The very open manner in which issues covered in this report were discussed by all my interlocutors during the visit, reflects the thoroughness with which human rights concerns are identified and addressed in Sweden. Even in a country providing for a generally high level of respect for human rights, it was recognised that constant vigilance is required. Indeed, most of the issues raised below are already being examined domestically.

I ISSUES RELATING TO PRISONS, DETENTION CENTRES AND JUSTICE SYSTEM

Visit to the Kronobergs remand and detention centre

3. I had the opportunity to visit the Kronobergs remand and detention centre in Stockholm, which hosts both remand prisoners and those in police detention. This is the largest detention centre in Sweden, with 360 places. On the average, remand prisoners stay in the institution for approximately 5 to 6 weeks, but some for several months or even a year in cases where the suspected crime is particularly serious or complicated. A large number of the inmates are in a bad health, and have problems with alcohol and other substance abuse, and they are encouraged to participate in voluntary rehabilitation programmes. The Director and other personnel of the centre provided me with a comprehensive overview of the challenges faced in this institution, which also helped me to understand some issues of more general concern. The Director and the other personnel with whom I discussed showed impressive dedication and attentiveness to the needs of the inmates, and towards creating a positive atmosphere to alleviate their situation as much as possible.
4. I was informed that following the visits by the Committee against Torture (CPT) in 1998 and 2003, a number of reforms have taken place in response to the recommendations. It was conceded by the Director that the criticism is still valid as regards outdoor facilities. Indeed, when I saw the manner in which access to fresh air was arranged for the inmates, I could not but fully agree with this assessment. There is only a small, cage-like construction on the roof of the centre, comprising a narrow ally surrounded by high wooden walls and a small platform enclosed by a metal net, which is far too small for any proper walks or outdoor exercise. This arrangement is particularly harmful for those who stay in the institution for longer periods of time and it undoubtedly increases anxiety and other psychological problems among the inmates, particularly for those who are held in isolation for up to 23 hours a day. In truth, this situation is unacceptable. The Director was keen to find alternatives, and I strongly encourage that the necessary resources be speedily allocated for the creation of appropriate outdoor facilities.

Use of restrictions on remand prisoners

5. A problem of a more general nature that I discussed in the Centre was the manner in which restrictive regimes, in particular isolation, are used for remand prisoners. About 50 percent of the detainees in this centre were under restrictions. The maximum restrictions

entail isolation for 23 hours a day, the prohibition of all correspondence, phone calls, and communication with anyone other than their lawyers and prison staff. I was informed by the Ministry of Justice, that an attempt is made to ensure that those in isolation spend around 8 hours per day outside their cells, but that due to the high numbers of prisoners, this is not always possible. The Director agreed that the frequency of restrictions continued to be a serious problem, and the positive changes to the legislation and regulations that were adopted following the 1998 visit of the CPT¹, had not had sufficient impact in practice. There has since been a reduction of only approximately 5 percent in the use of restrictions. I was informed that the longest period a person had been in isolation in this centre was three years. Indeed it is difficult to escape the conclusion that restrictions that ought to be applied exceptionally are in fact applied almost as a rule. The Parliamentary Ombudsman confirmed that use of restrictions continued to be a general problem, and that they frequently receive complaints relating to this question.

6. I raised these issues with the State Secretary of the Ministry of Justice, who was fully aware of the problem and recognised the importance of finding ways in which the possibly excessive use of restrictions could be prevented. He informed me that approximately 40 percent of remand prisoners are detained with restrictions². In some regions the percentage is reportedly significantly higher, up to 70-75 percent in Göteborg. Under the current legislation, restrictions are ordered by a court upon the request of a prosecutor, and the detainee has the possibility of appealing such decision before the court.
7. The State Secretary explained that the relatively frequent use of restrictions is partly due to the fact that Swedish courts have a very high threshold as regards deprivation of liberty. An evaluation of the legislation regulating detention issues undertaken in 1997, indicated that the courts referred to a risk of obstructing the course of justice in 60 percent of the decisions imposing detention, which, it was stated, showed that several of the detained with restrictions would not have been detained at all were it not for this fear. Whilst this may partly explain the high proportion of the use of restrictions, it hardly justifies the apparent practice of almost automatically imposing restrictions on remand prisoners. I therefore encourage that further consideration be given to ways in which the use of restrictions could be limited only to those situations where it is absolutely necessary. It is to be recalled moreover, that restrictions ought to be imposed only for such purposes as are prescribed by the law, and not as a simple way of encouraging greater cooperation during the course of investigations.

¹ The 1998 amendments to the Code of Judicial Proceedings and to the Law on the treatment of those remanded in custody, placed under arrest etc., sought to give effect to the CPT's recommendations on the subject of providing prisoners the right to appeal against a court's decision to maintain restrictions which have been the subject of review. Also, the Prosecutor General issued an instruction in 1998 according to which prosecutors are to record the grounds for imposing restrictions on a form, and the concrete circumstances which justify the imposition of restrictions.

² For instance, the figure in April 2003, 39 percent of the total of 596 remand prisoners were detained with restrictions, and in October 2003, 42 percent of the total of 563 prisoners.

Problems relating to overpopulation in prisons

8. The Ombudsman informed me that some prisons and detention facilities are facing problems of overcrowding, with a number of knock-on effects. For instance, educational and occupational opportunities have been reduced in some institutions, since there had been no other option but to transform spaces designed for such activities into cells. I recall that the gym facilities in the Kronoberg's centre had on occasion been transformed into temporary wards. Traditionally, the Swedish probation service has enjoyed an excellent reputation for ensuring that prison time can be spent in a constructive manner. Unfortunately this is now being challenged by the problems of overpopulation. Moreover, sometimes persons for whom restrictions have not been authorized are accommodated in sections meant for isolated detainees due to a lack of places in ordinary sections. For instance, in the restriction section of the Kronoberg's centre, I met an individual detained on remand for entering the country with false identity documents, whom the prison management themselves conceded would not have been held in isolation but for the lack of spaces elsewhere.³

Police complaints procedure

9. The lack of an independent body to investigate police misconduct has been the subject of wide debate for quite some time in Sweden. Insufficient transparency in the investigative process and the fact that relatively few cases of suspected police brutality cases have ended up in court, has reportedly diminished the confidence of the public in the police. This debate increased following a number of widely publicised incidents involving deaths in police custody,⁴ and the policing of the EU Summit demonstrations in Gothenburg in 2001, in respect of which only a very small number of complaints about the conduct of the police reportedly resulted in charges.
10. The State Secretary of the Ministry of Justice informed me that a process of evaluating the system has already been going on for already some years. The Committee against Torture (CPT) recommended in 1998, that the investigative work be entrusted to a clearly independent agency, and reiterated this recommendation following its visit to Sweden in early 2003.⁵
11. A Committee with parliamentary representation, which was set up to look into this question, delivered its report in May 2003. The Committee concluded in favour of reforms to the current system rather than the establishment of an independent body.⁶ The report

³ See also paragraphs 15 and 16.

⁴ See e.g. the *Alternative Report to the Committee Against Torture regarding Sweden's Fourth Period* by a group of Swedish Non-Governmental Organisations, pp 21 – 24.

⁵ See *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Sweden from 27 January to 5 February 2003*.

⁶ One of the reasons for the conclusion was that even within a model with an independent agency, the investigations should be carried out by a police officer. It was also underlined that the units for internal investigations are to a large extent independent from other activities within the police service, and often carried out by units and prosecutors in counties other than the county where the alleged ill-treatment might have taken

resulted in a broad consultation procedure, during which certain critical comments and observations were made. The Government is currently considering how to proceed on the basis of the report and the comments thereto.

12. I was informed by the State Secretary, that a new Committee is about to be set up to provide a proposal for a properly independent authority. I welcome this development, since even though a number of guarantees were in place to ensure the impartiality of the internal investigative structure, they could not guarantee the same level of independence and impartiality as a separate structure, which is vital for maintaining the confidence of citizens in the behaviour of the police and essential to combating impunity and maintaining standards.

II REFUGEES AND OTHER PERSONS IN NEED OF INTERNATIONAL PROTECTION

Visit to the asylum centre in Märsta

13. I was able to visit the Märsta asylum centre in Stockholm, run by the Swedish Migration Service, which has a transit section and a detention section. It has 150 places for both asylum-seekers whose cases are yet to be decided, and for rejected asylum-seekers. Persons who seek asylum at the nearby Arlanda airport are brought to the centre, but also persons who later apply for asylum. The Migration Service at Märsta then decides in which of the five regions in the country the persons should go to seek asylum. All of those who have received a negative asylum decision are sent to Märsta prior to expulsion.
14. In general, the material conditions in the Centre appeared to be good, though even the transit section provided a somewhat carceral environment. The windows in the rooms could not be opened, resulting in a stifling atmosphere. Also, access to fresh air was extremely limited for those who are in the detention section, since there was only a small balcony, and no facilities for outdoor activities. I encourage that measures be taken in the centre to improve the quality of life of detained asylum-seekers by, inter alia, providing them with additional activities, as well as with appropriate outdoor facilities. The Director also informed me that more psychological assistance should be available for asylum-seekers having gone through traumatic experiences prior to arriving in Sweden.
15. Since 1997, the Migration Service has been the authority responsible for detained asylum-seekers. Asylum-seekers can be detained in the facilities of the Migration Service if their identity is not known, or prior to expulsion, particularly where there is risk of absconding. Whilst also other guarantees are used to prevent absconding, the Director informed me that the use of detention has increased in recent years. It was explained to me that this was partly due to the increase in the number of persons seeking asylum in Sweden. Whilst in 1997, there were 12.000 asylum-seekers, the corresponding figure for the past two years was more than 30.000. On the other hand, the recognition rate at the first instance has decreased from almost 40 percent between 1997-2000 to approximately 15 – 20 percent in the past few years. Moreover, almost 80 percent of the asylum-seekers arriving today do not have identity documents. The duration of detention is on average ten days, and the

place. Moreover, a complaint is always submitted to a public prosecutor, which is an authority independent of the police.

justification of its continuation must be reviewed at regular intervals by courts. In addition, the detainee can at any time ask for a review before a court. However, the legislation does not provide for a maximum time that asylum-seekers can be detained, save for minors. The director informed me that in practice, the maximum duration rarely exceeds five months, and mostly concerns persons without identity documents. I had the chance to discuss with some persons who have been in the centre for several weeks or months, and they were understandably very frustrated about the situation.

16. In my view, consideration should be given to the greater use of alternative means of ensuring the whereabouts of persons prior to deportation. Detention should not be applied where it is not absolutely necessary, nor for the purposes of dissuading future asylum-seekers. I refer also to the case I raised earlier of the foreign detainee in Kronoberg centre. Whilst the authorities maintained that she had not applied for asylum, cases of asylum-seekers being detained in ordinary detention facilities are occasionally reported. I recall that on detection by the police, and upon the request for asylum, irregular immigrants should be transferred to the care of the Migration Service. As regards those who are detained for having travelled with false documents, it is important to bear in mind that many asylum-seekers have little option but to resort to false documents to leave their country. I would like to refer to the UNHCR guidelines on detention of asylum-seekers, which recalls that Article 31 of the 1951 Refugee Convention exempts refugees coming directly⁷ from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Safeguarding the principle of non-refoulement

17. Many human rights organisations expressed concern that following September 11, 2001, there was a shift in the Government's attitude regarding the obligations arising from article 3 of the European Convention, which entails the absolute prohibition to return a person to a country where he or she may be subjected to torture or inhuman or degrading treatment. Even before, concerns had been expressed as to respect of this right in expulsion cases.
18. A case in point, which I discussed with the Minister for Asylum Matters, concerned the refoulement of two Egyptian men in December 2001, who had fled Egypt in 1991, claiming persecution. Some years later, they had reportedly been sentenced *in absentia* to prison of terrorism-related offences by a military court in Egypt. They sought asylum in Sweden, but the Government⁸ took the decision to exclude them from refugee status based on information suggesting that the men were associated with an Egyptian terrorist organisation, and that they were planning to initiate a new terrorist group in Sweden. I was informed that in its decision, the Government was, *inter alia*, guided by the UN Security Council resolution 1373, according to which states should not offer a haven for terrorists. The men were forcibly expelled from Sweden on the same day as the expulsion

⁷ It is explained in the guidelines that the term "coming directly" covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his protection could not be assured. It is clear from the travaux préparatoires, however, that the term also covers a person who transits an intermediate country for a short time without having applied for or received asylum there.

⁸ The applications were preliminarily considered by the Migration Board, but following intervention by the Swedish Security Service, it referred the matters to the Government.

decision was taken, without having the possibility of appealing against this decision. Prior to the decision on expulsion, the Swedish authorities had obtained diplomatic assurances from the Egyptian authorities that they would not be subjected to torture, ill-treatment or the death penalty, and that they would be given fair trials.⁹ Whilst the guarantees had been monitored through prison visits by personnel of the Swedish Embassy in Cairo, I was informed that the men had reportedly suffered ill-treatment on their return and that the guarantees regarding fair trial were not respected. After my visit, I was informed that the Swedish government has called for an impartial and independent inquiry with international involvement into the situation of the men after their deportation, including the reports on torture. In addition, the Constitutional Committee of the Swedish Parliament has initiated an inquiry into the responsibility of the Government in this matter, and the Parliamentary Ombudsman has decided to examine the lawfulness of the measures taken by the Security Police.

19. This disturbing case highlights the challenges that the fight against terrorism has created for the protection of human rights, and raises a number of general concerns. The first concerns the inability to contest asylum and expulsion decisions taken directly by the government on grounds of national security without applicants having access to the information on which such decisions are based, nor any possibility to appeal against such a decision.¹⁰ It is particularly important in such cases, where the risk of torture and ill-treatment is elevated, that proceedings leading to expulsion are surrounded by appropriate legal safeguards, at the very least a hearing before a judicial instance and right to appeal. Contrary proceedings clearly risk violating articles 3, 6 and 13 of the European Convention.¹¹ The second point relates to the use of diplomatic assurances regarding the treatment of deported aliens in the countries to which they are returned. This example, which is not unique to Sweden, clearly illustrates the risks of relying on diplomatic assurances. The weakness inherent in the practice of diplomatic assurances lies in the fact that where there is a need for such assurances, there is clearly an acknowledged risk of torture and ill-treatment. Due to the absolute nature of the prohibition of torture or inhuman or degrading treatment, formal assurances cannot suffice where a risk nonetheless remains. As the UN Special Rapporteur on Torture has noted, such assurances must be unequivocal and a system to monitor such assurances must be in place. When assessing the reliability of diplomatic assurances, an essential criteria must be that the receiving state does not practice or condone torture or ill-treatment, and that it exercises effective control over the acts of non-state agents. In all other circumstances it is highly questionable whether assurances can be regarded as providing indisputable safeguards against torture and ill-treatment.

⁹ According to NGOs, the written guarantees given by the Egyptian government were however more vaguely formulated, with a reference to full respect for human rights in accordance to the Egyptian constitution and law.

¹⁰ The Special Control of Aliens Act in particular gives Government significant powers regarding the deportation of suspicious individuals.

¹¹ See e.g. the case *Chahal v. the UK*, in which the European Court noted “the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim’s conduct... the activities of the individual, however undesirable or dangerous cannot be a material consideration.”

Unaccompanied children

20. I was shocked to learn that a considerable number of unaccompanied children had disappeared from the centres where they were accommodated¹². Whilst there is information indicating that the majority of these children have moved on to other countries to stay with relatives, the fate of many is unknown. According to the child rights organisation ECPAT Sweden¹³, in 2001, 69 children disappeared from such institutions and 48 of them were still missing in May 2002. The Minister for Asylum Affairs informed me that ten cases of disappeared children currently remained unresolved. It is feared that some are being abused in prostitution, or fallen victim to paedophiles and trafficking networks.
21. The authorities confirmed to me that the institutions cannot prohibit the unaccompanied child from leaving the premises, irrespective of his or her age, and that anyone who comes to seek a child is allowed to do so if the child confirms that the person is an acquaintance. The Director of Märsta asylum centre told me that once it has been established that an asylum-seeker is an unaccompanied minor, he or she is appointed a legal custodian to safeguard the child's legal interests. The competence of the legal custodian, however, mainly concerns the economic affairs of the child, and his/her possibilities to decide on matters concerning the personal relations of the child are very limited. The custodian cannot restrict the child's movements in and out of the institution.
22. It also appears that there had been certain deficiencies in the process following the disappearance of an unaccompanied child. For instance, there have reportedly been significant delays in informing the police of the disappearance of unaccompanied children, and on several occasions, the social services¹⁴ had not been informed about a disappearance, and this owing to a certain confusion as to the respective reporting obligations of the Migration Service and the police. I was informed, that the division of responsibilities between the relevant authorities are being re-examined.
23. I raised this matter with a number of authorities, including the Minister for Migration and Asylum Policies and the Minister for Democracy and Integration Issues, who recognised the seriousness of the problem, and informed me of the measures that are being undertaken to prevent such disappearances. The Children's Ombudsman and child rights organisations have been advocating for changes in the system for quite some years, and in 2002, a process for changing the legislation started with the appointment of a Committee of Inquiry, which presented its report in June 2003. The inquiry concluded that there is a need for further protection for these children, and the limitation in the competences of the legal custodian was considered to be the major problem. I welcome this development and

¹² These are special children's centres run by the Migration Service.

¹³ ECPAT Sweden is a Non-Governmental Organisation working against commercial sexual exploitation of children, i.e. child prostitution, child pornography, child sex tourism and trafficking in children for sexual purposes.

¹⁴ The Social Service Committee in the Municipality where the child lives has an overall responsibility for the well-being of the child, i.e., investigates the social situation of the child, decides on placement, approves foster homes and tries to locate the parents. The Social Service Committee may decide to place the child in one of the accommodation centres run by the Migration Board.

the information that the Government intends to place a Bill before the Parliament in October 2004 to grant the legal custodian the power to take decisions in all matters concerning the unaccompanied children, including therefore the child's accommodation.

24. However, since the process is likely to take some time, and as the report did not address the question of the protection provided to the children by the institutions themselves, I find it very important that additional measures are taken to prevent such disappearances. The Ministers stressed the importance that is attached to the child's liberty and the strong reluctance to introduce any measures restricting their freedom of movement. It was explained that a large majority of these children are teenagers, and that the authorities wish to enable them to lead lives as similar as possible to Swedish children, i.e., to go to school, the movies and visiting friends. While I fully agree with the desirability of creating an environment where the children can lead as normal lives as possible, the fact remains that unaccompanied minors lack the protection normally provided by families and are consequently particularly vulnerable. In such circumstances the duty of parental care falls entirely upon the state. This duty is not best observed by current practices, and the consequences are most unbecoming to a country which accords such priority to the respect of the rights of the child.
25. A number of measures could be taken to strengthen their protection, without necessarily resorting to the deprivation of liberty, simply by ensuring a far stricter control by the institutions themselves of the movement of the minors in their care. Moreover, children living in these institutions should be adequately informed about the serious risks of being lured into prostitution or other abuse by trafficking networks.

Asylum process

26. A discussion about increasing the effectiveness of the asylum process has been going on for quite some years, with an emphasis on the need to reduce the length of asylum proceedings, as well as to increase the legal security in matters involving aliens. The Minister of Asylum Affairs noted that the long processing times were largely due to the difficulties created by the lack of identity documents as well as possibility of having an asylum decision reconsidered several times if the applicant can present new elements to support his or her claim. I fully agree with the importance of reducing the length of the processing times, due to the negative consequences that long periods of waiting have on the asylum-seekers.¹⁵ I believe that it is important to strengthen the capacity of the Migration Service, and was pleased to learn that the Government has recently made proposals to increase the resources of the Migration Service. I consider it equally important that the possibility of having a claim re-examined be maintained, in the light of evolving circumstances.

¹⁵ As the Parliamentary Ombudsman noted, situations where asylum is denied after several years of waiting, were particularly problematic for families with children who have become well integrated into the Swedish society. In some cases, it has been possible to obtain residence permits particularly on grounds that a child has stayed in Sweden for a long period of time and become well integrated.

27. The asylum procedure involves two different authorities, the Migration Board and the Aliens Appeals Board, which is the final decision-making body in these matters.¹⁶ Appeals to regular courts cannot be made. In special cases, such as those involving considerations of national security, the Boards can submit a case to the Government for decision. Whilst the Aliens Appeals Board is an administrative agency, it was explained to me that its powers and structures are very similar to those of a court of law. This quasi-judicial body is composed of professional chairmen (in practice lawyers with professional experience as judges or other equivalent experience) appointed by the government and of Lay Assessors who have the same functions as Lay Assessors in the regular court system.¹⁷ The laymen are appointed by the government on the basis of proposals by the Parliamentary political parties which reflects the procedure in district courts whereby municipal political parties nominate the lay assessors.
28. A debate about the appeals procedure in matters relating to aliens has been going on for quite some time, and in 2001, the Parliament requested the Government to present a proposal for replacing the Aliens Appeals Board with a procedure permitting appeals to the administrative courts. Such a reform was considered to be necessary for reasons of legal security, in terms of increasing the transparency of the process, as well as creating an adversarial procedure with increased possibilities for an oral hearing, and ensuring greater clarity on the reasoning on which decisions are based.
29. I discussed this matter with the Minister for Asylum Affairs, who informed me of the developments following the request by the Parliament. The Government submitted a draft Bill to the Council of Legislation in June 2002 proposing that appeals be heard by County Administrative Courts. The Council, however, came out against the proposed reform, notably because it considered that the Aliens Act would need to be significantly amended in order to be applied appropriately in the regular court system. However, a Committee of Inquiry, tasked with adapting the aliens legislation for this purpose, submitted its proposals to the Government in June 2004. The Minister informed me that other alternatives have also been discussed such as the establishment of special courts to deal with aliens issues.
30. Even though the independence and impartiality of the individual members of the Aliens Appeals Board are not in question, and the Board's independence is guaranteed in the Constitution, a number of deficiencies, as outlined above, have been identified by domestic inquiries. For my part, I cannot but consider that decisions so intimately affecting the enjoyment of fundamental human rights, and with potentially irreversible consequences, should be subject to appeal before a judicial instance, which ought to be the final arbiter and guarantor of the respect for human rights. I consequently welcome the reforms proposed by the Parliament and encourage their adoption.

¹⁶ In addition to asylum applications, these authorities decide upon cases of expulsions, citizenship, residence permits and refugee travel documents

¹⁷ In appeals that are not of a simple nature, the Aliens Appeals Board is composed of one Chairman and at least two Lay Assessors. In determining appeals of a more complex nature, Board is composed of two Chairmen and four Lay Assessors, one of the Chairmen being the Director General of the Aliens Appeals Board. In other cases, the Chairman can make a decision alone.

III FIGHT AGAINST DISCRIMINATION AND EXCLUSION

31. A welcome emphasis has been placed in Sweden on combating racism, exclusion and discrimination. As already noted, Sweden has several Ombudsmen working in the field of non-discrimination, who, in addition to assisting individuals, play an important role in the policy making. Legislation prohibiting discrimination was strengthened in 2003 with a new Act prohibiting discrimination on different grounds outside working life, as well as with amendments to existing legislation, which broadened the scope of protection against ethnic discrimination as well as discrimination on grounds of disability and sexual orientation.¹⁸ I noted with particular interest the proactive manner in which the Government has sought to prevent racist and discriminatory attitudes and constantly monitor evolving attitudes. The Minister of Democracy, Integration and Human Rights informed me that particular attention has been paid in recent years to preventing Islamophobia, and anti-Semitism, through a Living History Project. The two policy documents adopted in 2001, namely the National Action Plan against Racism, Xenophobia and Discrimination, and the Swedish Integration Policy for the 21st Century, create a solid framework for further efforts in these areas.
32. These important developments should contribute to combating the discrimination that continues to manifest itself in areas such as access to employment, education, services and housing, affecting mainly immigrants and persons of foreign extraction, and certain minorities.
33. Human rights organisations brought to my attention certain problems relating to access to justice. It was reported that crime victims who are of foreign background often have difficulties in getting their cases heard before the courts. I was informed by NGOs that approximately 10 percent of the cases involving victims of Swedish origin do not get heard in court, whereas the corresponding figure for persons of foreign origin is reportedly 30 percent.
34. The State Secretary of the Ministry of Justice informed me that constant efforts are made to address such concerns through regular discussions with prosecutors and judges. He noted that it was generally felt that there is no structural discrimination within the administration of justice, but that, for instance, language difficulties may lead to problematic situations. I welcome the fact that the Government has commissioned an inquiry into the existence of structural discrimination in a variety of areas, including the justice system, and encourage a detained analysis of the root-causes of these problems together with the affected groups, enabling practical measures to be identified for resolving them.

¹⁸ These include amendments to the Group Proceedings Act, providing the possibility in specific circumstances of instituting class action suits in cases of alleged discrimination, as well as to the Fundamental Law on Freedom of Expression, foreseeing increased possibilities of introducing legal action against racial agitation. Moreover, a parliamentary committee has been appointed to consider coordinating legislation against discrimination on different grounds and different areas of society, which is to submit its report by July 2005.

35. I had the opportunity to meet with representatives of the Council of Roma Issues, who provided me with an overview of the situation of this minority in Sweden. The Roma population, estimated at approximately 35.000 – 45.000, comprises several different groups, the first of whom settled in Sweden in the 16th century. The history of discrimination against the Roma throughout Europe has traditionally undermined the trust of the Roma in the authorities and Sweden is no exception. Confidence has, however, been greatly restored in recent years, with the state addressing the legacy of the past, notably through the creation of a commission through which Roma women who had been forcibly sterilised between the 1930's and 1970's can seek compensation. Other positive developments include the establishment of the Council of Roma Issues in 2001 to advise the Government on Roma issues, and the ratification of the Framework Convention on the Protection of National Minorities.
36. Representatives of the Council informed me, however, that many Roma continue to suffer the effects of prejudice and discrimination in their daily lives, leading to difficulties in access to employment, education, housing, and services. Moreover, efforts are needed to address the problems of low school attendance and high drop outs among Roma children. Homelessness amongst the Roma was stated to be an increasing problem, linked to a shortage of public housing and difficulties in accessing private housing, which in turn is often caused by difficulties in accessing the labour market. Like in other European countries, it is essential that the challenges faced by the Roma are addressed in a comprehensive manner, covering all spheres of life. I welcome, that the Government is currently considering further measures to prevent and counteract discrimination of Roma in Sweden, on the basis of proposals submitted by the Ombudsman against Ethnic Discrimination at the beginning of this year, and that funds have been allocated to the Ombudsman for additional work in this area during 2004. I also find it important to improve the knowledge among the majority population about the Roma culture and traditions.

IV THE SITUATION OF THE SAMI

37. I had the opportunity to meet with representatives of the Same Parliament and Sami organisations as well as the Minister for Agriculture, who is responsible for Sami affairs within the government. The Sami are an indigenous people, with a population estimated at between 17.000 - 20.000 persons in today's Sweden. The Sami Language Act, which entered into force in April 2000, gives Sami the right to use the Sami language in legal and administrative proceedings. The Act is currently applicable in four communities, and discussions are ongoing about the extension of the applicability of this important law in other communities. The Framework Convention for the Protection of National Minorities is being implemented for the Sami. The Sami Parliament (*Sametinget*), which was founded in 1993 in Sweden, has a double role, being both an elected parliament and a Government authority. Whilst its competences are mainly advisory, it does have exclusive competences in certain areas particularly in the cultural field.

38. A positive emphasis has been placed in recent to increasing the awareness about the Sami culture and traditions in Sweden, in particular through information campaigns targeted for schools. It is believed that this has contributed to the positive developments as regards the attitudes of the majority population of the Sami, which according to a survey conducted early this year are generally positive.
39. Certain significant long-standing concerns remain unresolved, however, notably the question of land rights and the involvement of the Sami in the decision-making affecting their environment and means of subsistence, which continue to impede the ratification of the ILO Convention no. 169 on Indigenous and Tribal Peoples in Independent Countries.
40. The question of land rights is of particular importance for the traditional Sami occupations, such as reindeer herding, fishing and hunting, and are consequently essential for the protection of the Sami culture and identity. Whilst the Sami have the right to raise reindeer on land it has traditionally occupied, the enjoyment of this right is largely undermined by the fact that the breeding areas remain undefined. This uncertainty has led to a number of disputes in courts between the Sami and non-Sami landowners with conflicting interests in these areas. The representatives of the Sami Parliament noted that the legal costs involved in such court cases are often too high for the Sami villages to bear, and that the evidential requirements, which fail to take into consideration the difficulties for the Sami to obtain written documentation on their use of land, frequently place the Sami villages in a disadvantaged position as compared with the landowners with more resources. These unbalances should be addressed. At the same time, I welcome that other means of solving the conflicts have been elaborated, such as the use of mediation, as well as a project which aims at improving the dialogue and cooperation between the Sami and the landowners.
41. A Boundary Commission, which was established for the task of identifying what constitutes traditional Sami land, is scheduled to present its report in December 2004. This is hoped to be a significant step towards resolving this long outstanding and extremely important matter, with a view to adopting a regional solution enabling the ratification of the ILO Convention. I also noted with interest the ongoing work to draft a Nordic Sami Convention. A working group comprising government representatives and Sami from Finland, Sweden and Norway are preparing a proposal for such convention, with a view to presenting it to the Nordic governments by the end of 2005.
42. It is also essential to provide for greater influence of the Sami in the decision-making over the use of natural resources by others, such as forestry, mining, tourism and water power, which affect the Sami means of subsistence. The Sami villages, which are legal entities under the Swedish law, have certain competencies within their territories, for instance as regards permissions to build roads. I was however informed that other mechanisms, such as the consultation that forestry companies are to undertake with the Sami before undertaking a major deforesting project, rarely have much effect. I was pleased to learn that there is a proposal to improve the consultation mechanisms. The Minister also informed me that in 2005, a proposal will be presented on ways in which the autonomy of the Sami could be strengthened through transferral of certain additional administrative tasks to the Sami parliament.

43. Representatives of the Sami women's organisation informed me that further efforts are needed to achieve gender equality within Sami communities, in which traditional gender hierarchies continue to prevail. It was noted that this manifests itself both in under-representation of women in the decision-making process in the Sami villages and the Sami Parliament, as well as in possibilities in engaging in reindeer breeding. It was felt that the Reindeer Breeding Law discriminates against women, since it attaches different rights to different persons, depending on the tasks that they undertake within reindeer breeding. While stating that the Act is gender neutral, the Minister for Agriculture conceded that there are difficulties in its implementation. It appears essential that more support is given to programmes aimed at encouraging women's participation in the traditional livelihoods.
44. Sami children may choose to attend either state Sami schools where teaching is provided partly in the Sami language or regular municipal schools where they are entitled to mother tongue instruction. It was however noted that there is a shortage of teaching personnel, and that the number of schools offering instruction in the Sami language is insufficient. There are currently six Sami schools, and the long distances place significant difficulties for many Sami children to access such schools. I can only encourage that greater resources be allocated for teacher's training, and for the creation of more Sami schools.

V TRAFFICKING IN HUMAN BEINGS

45. Sweden has taken important measures to fight against trafficking in human beings in recent years. Since most of the victims end up in prostitution, the legislation adopted in 1999 criminalizing the purchase of sexual services is hoped to act as a deterrent to the traffickers and the potential customers. According to initial assessments, this provision has had a preventive function, and a more detailed evaluation of the impacts of this provision is currently being undertaken. Moreover, a law to combat trafficking was adopted in 2002 providing for sentences of 2 to 10 years in prison for persons convicted of trafficking in human beings for sexual purposes. In July 2004 a law will enter into force extending the criminal liability to exploitation for inter alia for forced labour and removal organs. Moreover, the government has started the preparation for a National Action Plan for combating prostitution and trafficking in human beings, especially women and children, and will be presented to the Parliament in 2005. Efforts have also been undertaken to increase the awareness of the reality that victims of trafficking face. For instance, a Swedish film, *Lilya 4-ever*, which is based on a true story of a 16-year old girl who fell in the hands of traffickers and ended up in prostitution in Sweden, has been used by the government on various occasions as an awareness-raising tool.
46. I had the opportunity to discuss with representatives of an organisation providing safe accommodation and assistance to victims of trafficking and other women in difficult situations. In the Centre, the women can participate in a number of activities, and receive psychological support in particular to increase their self-confidence. I was informed that the cooperation between the various authorities – i.e., police, the migration service, the social services and the government offices – has significantly improved through the adoption of joint plans, and that cooperation with the police and prosecutors was generally good. A number of concerns were however identified. The assistance provided to the

victims remains insufficient, and there is no authority with a clear overall responsibility for their situation which somewhat undermines assistance and protection efforts. Further attention should also be paid to the specific protection needs of child victims of trafficking.

47. It was also reported that, despite cooperation programmes with other countries in the region, including countries of origin and other countries of destination, many of the victims are lack security upon return. Within the Nordic Baltic Task Force against Trafficking in Human Beings, Sweden has taken the initiative for a cooperative pilot project for the safe return and reintegration of victims of trafficking in human beings for sexual purposes. The project is intended as a capacity building project with a focus on the development and implementation of measures for the protection and safe return of victims of trafficking. This project, which is intended to be used a best-practices model in the region, is expected to commence in 2005.
48. Currently, only those who witness at courts may be allowed to stay in Sweden, and even them only for the duration of the court proceedings; however this right is not as yet guaranteed in the legislation. As of 1st October 2004, victims of trafficking may apply for a temporary residence permit. The State Secretary informed me of ongoing discussions on further legislative reforms allowing the victims of trafficking to stay in the country for the duration of the court proceedings, and possibly, for a longer period of time. He noted however, that there is clear reluctance against offering an automatic right to permanent residence due to the risks of abuse that such system might involve. I cannot but support the initiatives of extending rights of victims to stay in Sweden, as the threat of a quick deportation may make the victims more reluctant to inform on traffickers and to act as witnesses, and more likely, once again to fall prey to trafficking networks.

FINAL REMARKS AND RECOMMENDATIONS

49. Sweden can rightfully be considered a country offering a high level of respect for human rights. Fresh challenges are typically identified and addressed in a transparent and proactive manner. It is against this background that the following recommendations are made, in conformity with article 8 of Resolution (99)50:
1. Take further action to ensure that restrictions imposed on remand prisoners are limited to those situations where they are absolutely necessary. This applies both to the frequency of the use of restrictive regimes, and their severity.
 2. Allocate resources for overcoming the problems of overcrowding in prisons, and for the creation of appropriate outdoor facilities in Kronoberg's remand and detention centre.
 3. Establish a separate and independent authority to investigate complaints relating to the conduct of the police.

4. Ensure that the detention of asylum-seekers is limited to those situations where it is absolutely necessary, and that asylum-seekers are not detained in same facilities with criminals.
5. Adopt the necessary legislative and policy changes in order to ensure that the rights contained in Articles 3 and 13 of the European Convention are respected in relation to asylum-seekers who are considered to raise concerns of national security.
6. Extend the competences of legal custodians of unaccompanied foreign children and ensure tighter control by institutions accommodating these children in order to prevent disappearances.
7. Pursue the reforms proposed by Parliament on the possibility of appealing asylum and deportation decisions before a judicial authority.
8. Continue efforts towards preventing and counteracting discrimination and racism, and promoting the greater integration of immigrants and their descendents.
9. Speed up the efforts relating to the resolution of the lands rights of the Sami, and their influence on land use in traditional Sami areas; support programmes aimed at increasing women's participation in the traditional Sami livelihoods and their participation in decision-making processes; allocate further resources for instruction in the Sami language.
10. Provide for additional support for victims of trafficking in human beings, and strengthen their protection by increasing their access to residence permits, and the support given to programmes aimed at creating safe conditions upon return.