# SWEDEN

**CAT Optional Protocol Article 4**

**a) Reports on the Visit of the Subcommittee on Prevention**

**OPCAT, CAT/C/40/2 (2008)**

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III. VISITS BY THE SUBCOMMITTEE

## A. Establishing the programme of visits

14. During its first year, the Subcommittee carried out two visits as part of its initial phase of preventive work. The initial programme of visits was sui generis, as the Subcommittee was obliged under the Optional Protocol to make an initial choice by drawing of lots for States to be visited. Maldives, Mauritius and Sweden were the countries drawn by lots. Subsequently, the Subcommittee decided on the States to be visited by a reasoned process, with reference to the principles indicated in article 2 of the Optional Protocol. The factors that may be taken into consideration in the choice of countries to be visited by the Subcommittee include date of ratification/development of national preventive mechanisms, geographic distribution, size and complexity of the State, regional preventive monitoring and urgent issues reported.

15. In 2007, the Subcommittee began to develop its approach to the strategic planning of its visit programme in relation to the existing 34 States parties. The Subcommittee took the view that, after the initial period of its development, the visits programme in the medium term should be based on the idea of eight visits per 12-month period. This annual rate of visits is based on the conclusion that, to visit States parties effectively in order to prevent ill-treatment, the Subcommittee would have to visit each State party at least once every four or five years on average. In the Subcommittee's view, less frequent visits could jeopardize the effective monitoring of how national preventive mechanisms fulfilled their role and the protection afforded to persons deprived of liberty. With 34 States parties, this means that the Subcommittee must visit, on average, eight States every year.

16. In the initial phase of visits, the Subcommittee developed its approach, working methods and benchmarks, and established ways to work in good cooperation and confidentiality with States parties with whom it began to build an ongoing dialogue. It also began to develop good working relations with national preventive mechanisms or with institutions which might become them. At this stage, the secretariat necessary to support a full programme of visits was not in place. The Subcommittee consequently carried out visits at less than maximum capacity during the period covered by the present report.

17. For the longer term, the point at which ratifications or accessions will reach a total of 50 remains an unknown variable in the strategic planning of visits. Following that event, the Subcommittee will become a 25-member body,[16] with a concomitant requirement for an increase in

budgetary resources. The Subcommittee anticipates a period of adjustment at that stage, before it is able to use its increased capacity to the full.

## B. Visits carried out in 2007 and early 2008

18. The Subcommittee visited Mauritius from 8 October to 18 October 2007 and the Maldives from 10 to 17 December 2007; it visited Sweden from 10 to 15 March 2008.[17] During these visits, the delegations focused on the development process of the national preventive mechanism and the situation with regard to protection against ill-treatment, particularly of people deprived of their liberty in police facilities, prisons and in facilities for children.

19. At the end of 2007, the Subcommittee announced its forthcoming programme of regular visits in 2008, to Benin, Mexico, Paraguay and Sweden.[18] The Subcommittee also made plans for a number of preliminary visits to initiate the process of dialogue with States parties.

20. The initial visit to a State party is an opportunity to deliver important messages about the Subcommittee and its core concerns to the State party and to other relevant interlocutors. The Subcommittee stressed the confidential nature of its work, in accordance with the Optional Protocol. On its first three visits, it met with many officials in order to establish cooperative relations with the States parties and to explain fully its mandate and preventive approach. The Subcommittee also met with members of developing national preventive mechanisms and with members of civil society.

21. The first two visits involved a larger number of Subcommittee members than would normally be the case, in order that all members could take part in at least one visit in 2007. This was part of the Subcommittee's strategy to develop a consistent approach on visits despite the changing composition of delegations on visits. The visit to Sweden was of shorter duration. The Subcommittee adopted a more targeted approach, taking into account the preventive visiting already undertaken in Sweden and based on consultation and cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[19]

22. At the end of each visit, the delegation presented its preliminary observations to the authorities in confidence. The Subcommittee wishes to thank the authorities of Mauritius, the Maldives and Sweden for the spirit in which its delegations' initial observations were received and the constructive discussion about ways forward. At the end of the visit, the Subcommittee asked the authorities for feedback on the steps taken or being planned to address the issues raised in the preliminary observations. In addition, after each visit, the Subcommittee wrote to the authorities requesting updated information on any steps taken since the visit, on certain issues which could be or were due to be addressed in the weeks following it. The Subcommittee indicated that the immediate replies communicated by the authorities would be reflected in the visit report.

23. The drafting of the first visit report was begun in 2007. The process of its completion is taking longer than desired, owing to the staffing situation in the secretariat of the Subcommittee [...]. The authorities will be asked to respond in writing to the visit report; the Subcommittee hopes that, in due course, the authorities will request that the visit report and their response to it be published.[20]

Until such time, the visit reports remain confidential.

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16/ In accordance with Article 5 (1) of the OPCAT.

17/ For details of the places visited, see annex III.

18/ The three countries chosen by initial drawing of lots - Mauritius, Maldives and Sweden - were announced in June 2007 as countries to be visited in the initial programme of visits. For the programme of regular SPT visits in 2008, see annex IV.

19/ Article 31 of the OPCAT encourages the SPT and bodies established under regional conventions to consult and co-operate with a view to avoiding duplication and promoting effectively the objectives of the OPCAT.

20/ In accordance with Article 16,2 of the OPCAT.

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**Annex III**

VISITS CARRIED OUT IN THE PERIOD COVERED BY THE FIRST ANNUAL REPORT

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**3. First periodic visit to Sweden: 10-14 March 2008**

Places of deprivation of liberty visited by the delegation:

NATIONAL POLICE SERVICE

*Police detention centres*

- Kronoberg (Stockholm)

*Police stations*

- Norrmalm (Stockholm)
- Södermalm (Stockholm)
- Solna (Stockholm region)
- Uppsala

PENITENTIARY SERVICE

*Prison establishments*

- Kronoberg remand prison (Kronoberg häktet, Stockholm)
- Uppsala remand prison (Uppsala häktet Blankahuset)
- Uppsala remand prison (Uppsala häktet Salagatan)

**Annex IV**

PROGRAMME OF REGULAR SUBCOMMITTEE VISITS FOR 2008

Sweden: 5 days (10-14 March)
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**OPCAT, CAT/OP/SWE/1 (2008)**

# REPORT ON THE VISIT OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT TO SWEDEN* **

## Preliminary remarks

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) was established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The SPT began its work in February 2007.

2. The aim of the OPCAT is "to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty", in order to prevent ill-treatment. The term ill-treatment should be interpreted in its widest sense, to include inter alia ill-treatment arising from inadequate material conditions of deprivation of liberty. The SPT has two pillars of work: visiting places of deprivation of liberty to examine current practice and system features in order to identify where the gaps in the protection exist and which safeguards require strengthening; and assisting in the development and functioning of bodies designated by States Parties to carry out regular visits - the national preventive mechanisms (NPMs). The SPT focus is empirical - on what actually happens and what practical improvements are needed to prevent ill-treatment.

3. Article 11 paragraph c) of the OPCAT provides that, for the prevention of torture in general, the SPT shall cooperate, inter alia, with other United Nations organs and mechanisms as well as with regional and national institutions. Article 31 provides that the SPT should also consult and cooperate with bodies established under regional conventions with view to avoiding duplication and promoting effectively the objectives of the OPCAT.

4. Under the OPCAT, a State Party is obliged to allow visits by the SPT to any places under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. States Parties further undertake to grant the SPT unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons as well as their conditions of detention. They are also obliged to grant the SPT private interviews with persons deprived of liberty without witnesses. The SPT has the liberty to choose the places it wants to visit and the persons it wants to interview. Similar powers are to be granted to NPMs, in accordance with the OPCAT. The work of the SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, in accordance with article 2, paragraph 3 of the OPCAT.

## Introduction

5. In accordance with articles 1 and 11 of the OPCAT, the SPT visited Sweden from

Monday 10 to Friday 14 March 2008.

6. In this first visit to Sweden the delegation of the SPT concentrated its work on the evaluation of basic safeguards for the prevention of ill-treatment at the early stage of deprivation of liberty by the police, as well as on the evaluation of the regime of remand prisoners held under restrictions. The delegation also examined the readiness of the designated NPMs to carry out their mandate as envisaged by the OPCAT and possibilities for future cooperation.

7. The delegation consisted of the following members of the SPT: Mr. Zdeněk Hájek (Head of the delegation), Ms. Marija Definis-Gojanovic and Mr. Wilder Tayler Souto.

8. The SPT members were assisted by Mr. Avetik Ishkhanyan, expert , and Ms. Helle Dahl Iversen and Ms. Kukka Savolainen, staff members of the Office of the United Nations High Commissioner for Human Rights, as well as by three interpreters.

## I. COOPERATION

### A. Facilitation of the visit

9. In advance of the visit, the Swedish authorities had designated Ms Victoria Li, Deputy Director from the Ministry for Foreign Affairs, to act as liaison officer for the SPT visit. In preparation for the visit, the SPT requested and was provided by the authorities with extensive documentation of the legislation relating to deprivation of liberty as well as lists of places of deprivation of liberty. The SPT wishes to express its appreciation for the good facilitation of the visit and for the excellent cooperation by the Swedish authorities and the officials and staff working in the locations visited, and to thank the liaison officer, Ms. Li, for her efforts to that end.

### B. Meetings at central level

10. The delegation held meetings at central level with many officials, and discussed with the senior officials and staff in establishments visited and members of civil society. Furthermore, the delegation had a meeting with the Parliamentary Ombudsmen and the Chancellor of Justice on the issue of National Preventive Mechanisms (NPMs). A full list of officials and others with whom the delegation met can be found in Annex I.

### C. Places of deprivation of liberty visited by the delegation

11. During the visit, the delegation reviewed the treatment of persons deprived of their liberty at different institutions, the safeguards for their protection, and conducted private interviews with detainees. A full list of places of deprivation of liberty visited can be found in Annex II.

### D. Access

12. The delegation was granted unrestricted access to all the places it wished to visit and to information requested and had the opportunity to interview persons deprived of their liberty in private, in full accordance with the OPCAT.

### E. Ongoing dialogue

13. The many meetings with both ministerial officials and senior officials and staff members working at the locations were very helpful in understanding the framework of the system of deprivation of liberty in Sweden. The SPT wishes to thank the Ministries and institutions for the valuable information provided.

14. At the end of the visit the delegation presented its preliminary observations to the Swedish authorities in confidence. The SPT is grateful to the authorities for the spirit in which the delegation's observations were received.

15. The following report, produced in accordance with article 16 of the OPCAT, sets out the findings of the delegation and the SPT's observations and recommendations concerning the treatment of people deprived of their liberty.

16. One of the crucial factors preventing ill-treatment is the existence of a fully functioning system of independent visits to monitor all places where person may be deprived of their liberty. For this reason, section II of the report is devoted to a discussion of the development of the national preventive mechanism (NPM) in Sweden.

17. In subsequent sections of the report the SPT examines the concrete situations of people deprived of their liberty in different settings in the light of fundamental safeguards and the access thereto, which the SPT considers will, if properly established and/or maintained, diminish the risk of ill-treatment of persons deprived of their liberty. The SPT makes recommendations concerning changes to improve the situations encountered and to ensure the development and improvement of a coherent system of safeguards in law and in practice.

18. The visit report is an important element of the dialogue between the SPT and the Swedish authorities aimed at preventing torture and other cruel inhuman or degrading treatment or punishment. In accordance with article 16 of the OPCAT, this report remains confidential until such time as the authorities of Sweden request its publication. The SPT is looking forward to continuing the constructive discussion about ways forward.

## II. DEVELOPMENT OF THE NATIONAL PREVENTIVE MECHANISMS

### A. Introduction - OPCAT

19. Under the terms of the OPCAT, the SPT is empowered to cooperate with States parties in the implementation of the Protocol, advising and assisting them in the launching of NPMs, without which the new system would be neither effective nor efficient for purposes of achievement of the

objective of preventing torture and other cruel, inhuman or degrading treatment or punishment (OPCAT, article 2, paragraph 4, and article 11, paragraph (b), section (i).

20. During its visit to Sweden, the SPT decided to discuss the readiness of the designated NPMs, i.e. the Parliamentary Ombudsmen (Riksdagens ombudsmän) and the Chancellor of Justice (Justitiekanslern), to carry out the tasks, as envisaged by the OPCAT for NPMs. Information gathered prior to the visit gave contradictory signals as to the views and disposition of these institutions to perform the tasks required from a NPM under the OPCAT. Furthermore, both institutions had previously make recommendations to the effect that they did not consider that they would currently meet the criteria for NPMs set out in the OPCAT and that they therefore should not be given the responsibility of acting as NPMs. They also stated that they lacked the necessary resources to undertake the mandate of the NPM.

21. In a meeting with representatives of the Ministry of Justice, the SPT gathered the Government's views on the designation process, and it also met with the designated NPMs themselves. In addition, the SPT met with interested non-governmental organizations (NGOs) on this issue. Some NGOs, while expressing the view that they had been adequately consulted, maintained that the NPM should be a newly established institution rather than the designated pre-existing ones. For other NGOs, this remained an open question while stating at the same time that the current situation was not satisfactory.

## B. Legal framework and designation process

22. Sweden ratified the OPCAT on 14 September 2005. The ratification took place through the ratification bill (Prop.2004/05:107, Svensk godkännande av fakultativt protokoll till FN:s convention mot tortyr m.m.) that was presented by the Swedish government to the parliament (Riksdagen) and which was debated and adopted by the latter. The ratification bill also included a proposal for the designation of the NPMs. In order to incorporate the visiting mandate of the SPT in domestic legislation, Sweden has made changes to the Act on the undertakings of Sweden against torture (1988:695). Originally, the Act enshrined the mandate of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the basis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the SPT is now given a similar mandate as the CPT.

23. Under the governmental proposal, two existing institutions in Sweden, the Parliamentary Ombudsmen and the Chancellor of Justice would be designated as the official Swedish NPMs. The government's bill provided that the mandate of these existing monitoring mechanisms fulfils the requirements of the OPCAT as to the NPMs and that there was therefore no need for any legislative amendments in respect of the designation of the NPMs. However, both institutions presented submissions to the parliament wherein they objected to being designated as the NPMs due to, inter alia, their mandate and lack of resources. In spite of these objections, the parliament adopted the ratification bill, designating these two institutions as the NPMs. The legislation relating to the mandate of the Parliamentary Ombudsmen and the Chancellor of Justice was not amended.

24. According to the ratification bill, the NPM designations would not entail any additional budgetary implications, given that a national supervisory function was already included in the mandates of both institutions.

25. The representatives of the Ministry of Justice noted that the government had made an assessment prior to the ratification of the OPCAT that the institutions that had now been designated as NPMs fulfilled the requirements of the OPCAT as they were already monitoring places where persons were deprived of their liberty. However, they recognized that the two institutions themselves had expressed an uncertainty as to whether they would be in a position to meet these requirements, including the monitoring function. The representatives also noted that the OPCAT refers to a system of regular visits but it does stipulate how often such visits should take place. The government had not found any reason to establish a dual system when Sweden already had institutions with monitoring tasks, and it highlighted that the Parliamentary Ombudsmen were fully independent from the government.

26. The representatives of the Ministry of Justice underlined that the Ombudsmen are responsible to the parliament, not the government. Financial resources are allocated to the institution from the parliament, taking into account the institution's annual report, but it is for the Ombudsmen themselves to decide how they want to distribute the funds received. The representatives noted that in the government's view the visits undertaken were regular enough but if the activities of the two existing institutions were deemed insufficient to fulfil the obligations under the OPCAT, the ratification bill included a reference to the possibility of revisiting the designation decision in the future.

27. As regards the Chancellor of Justice, the representatives of the Ministry of Justice observed that he or she is appointed by the Swedish government and represents the government in various legal matters as its ombudsman. However, the final decision as regards budgetary funds for the Chancellor's Office lay with the Parliament.

28. In the course of the meeting, the SPT delegation referred to three objections previously voiced by the institutions themselves; the Parliamentary Ombudsmen had noted that the designation might influence their independence, and both institutions had objected to the fact that no additional resources had been allocated and that this would affect the regularity of visits. The SPT delegation also noted that in their view new tasks required more resources.

## C. Discussions with the NPMs

### 1. The Parliamentary Ombudsmen

29. The SPT delegation had a fruitful discussion with the four Parliamentary Ombudsmen.[1] The Ombudsmen described their powers, many of which fall within the remits of OPCAT, while others go beyond it. These powers included, inter alia, carrying out (unannounced) visits, a right to start investigations at its own initiative (sometimes as a result of such visits) and to examine individual complaints. The Ombudsmen reiterated their reluctance to perform the NPM functions and

reaffirmed that in the present circumstances they did not consider themselves to be the NPM. While recognizing that some of the characteristics of the NPM were similar to the Ombudsman function, including the possibility of visiting places of detention, the Ombudsmen stated that their freedom of action and independence would be limited if they were to be made responsible for all monitoring visits, and that they lacked the necessary resources to be able to carry out the task. The Ombudsmen also considered their institution to be driven by complaints received and mostly reactive in character and that their ability to initiate inquiries and work in a preventive way, as required by the OPCAT, was therefore limited.

30. The foremost objection of the Ombudsmen was that their designation was of a constitutional nature and they emphasized their independence for the government and the parliament. The Ombudsmen cannot ever receive instructions from the government as this would be in contradiction with their well-established independent position as arranged in the constitution. Assuming the role of the NPM as required by the OPCAT and thus undertaking the mandatory methodology of regular visits would be similar to receiving instructions from the government. This would jeopardize the Ombudsmen's discretion to choose how to best discharge their mandate as assigned by law and would conspire against the extraordinary character of the institution.

31. The Ombudsmen also raised concerns about the lack of additional resources allocated to undertake the NPM functions and highlighted their limited number of staff. With regard to the expertise of the Ombudsmen and their staff, the Parliamentary Ombudsmen observed that they were all lawyers. The visits were carried out by one of the four Ombudsmen plus a team. The office does not have medical expertise itself and it does not employ outside experts. It underlined that it is mainly interested in the legal aspects. All in all, the Ombudsmen did not consider themselves to have been formally designated as a NPM and reiterated that they firmly declined to be entrusted with this task.

### 2. The Chancellor of Justice

32. The SPT also met with the Office of the Chancellor of Justice (Justitiekanslern).[2] The Office noted that it had wide supervisory powers. It also underlined that the Chancellor was appointed by the government but it did not take any instructions from the government and the Chancellor could not be dismissed.

33. The main concern expressed by the Office was that it had not been given sufficient resources as required to perform the additional tasks deriving from its designation as a NPM, including regular inspections. The Office also observed that it saw itself and operated also as a complaint-driven and thus reactive institution and that all staff members were lawyers. However, the Office considered that if sufficient resources were to be allocated, it could perform the task, including by setting up an investigative, multi-disciplinary team.

## D. Evaluation

34. The SPT would like to stress that it has the utmost respect for the work of these two

experienced and distinguished institutions. Based on the results of the meetings with these institutions, however, the SPT delegation was left with a certain degree of perplexity as to the prospects for these bodies to fulfil the NPM mandate. Indeed, the designation of the Ombudsmen and the Chancellor of Justice as NPMs does not appear to have produced the slightest impact on their day-to-day methodologies and practices. They continue to do what they have always done and regard themselves as essentially reactive bodies. The SPT delegation could not detect any change in their mandate, methodology, intensity or regularity of activities that reflects their new OPCAT related functions.

35. It is not for the SPT to give an opinion as to the constitutionality of the designation process. This is reserved for the Swedish authorities. The SPT, however, will need to assess Sweden's compliance with the provisions of OPCAT. In these circumstances, the lack of additional resources, constitutionality challenges and the perception that the two designated institutions have of themselves and their methodologies, might, in the view of the SPT, influence the prospect of a comprehensive and effective prevention work in Sweden under the OPCAT.

36. The SPT is of the view that preventive work requires a significant degree of pro-activeness. While registering, investigating and adjudicating individual complaints constitute very important components of a comprehensive plan of human rights protection, they do not meet per se the ultimate requirements of prevention. Prevention necessitates the examination of rights and conditions from the very outset of deprivation of liberty until the moment of release. Such examination should take a multi-disciplinary approach and involve, for example, the medical profession, children and gender specialists and psychologists in addition to a strict legal focus. This means the monitoring of compliance with the vast array of human rights directly or indirectly affected by deprivation of liberty, even in cases where no complaints have been received. The ideal and ultimate goal of prevention is to counter the need for any complaints in the first place.

### E. Recommendations

37. Given the complexities and ambiguities of the present situation of the NPMs in Sweden, the SPT will need to further study this issue to reach a comprehensive conclusion. However, the SPT can already anticipate that there will be a need for a profound re-examination, including consultations with the Parliamentary Ombudsmen and the Chancellor of Justice as well all other relevant stakeholders, as to the decision originally taken by the government to designate these institutions as the NPMs.

38. The SPT is of the view that if the Parliamentary Ombudsmen and the Chancellor of Justice are to be responsible for undertaking visits to places of detention, in compliance with the Sweden's obligations set out under the OPCAT, the relevant Swedish authorities should examine their current mandates, to ensure that they are in a position to comply fully with all the requirements inherent to this task. When conducting their activities as NPMs, their visiting methodology should reflect a preventive approach, which, although complementary, differs substantially from their current, complaint-driven activities. The Swedish authorities should also ensure that these bodies receive the necessary additional resources and training to function as NPMs.

38. The SPT emphasizes that to be in a position independently to exercise the minimum powers assigned to it in article 19 of OPCAT an NPM must have structures equipped with the human, material and financial resources which will enable it to function satisfactorily in the light of the number and distribution of places of detention (OPCAT, article 4) and the numbers of persons to be visited regularly and with a periodicity which is reasonable for adequate monitoring. In this connection the Paris Principles offer an adequate set of standards to ensure the genuine functional independence of the NPMs and the persons who form part of it.

40. As a body complementing, at a national level, the work of the SPT, the NPM is in a frontline position to ensure the continuity of the dialogue with the national authorities on the issues relating to prevention of ill-treatment. To this end, the NPM should make recommendations to the competent authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment. In doing so, the NPM should pay due attention to the relevant norms of the United Nations as well as the recommendations made by the SPT, if such recommendations are made public or communicated to the NPM in accordance with article 16 of OPCAT. Furthermore, one of the key aspects of the work of the NPM is to maintain direct contact with the SPT and facilitate exchange of information in order to follow up the compliance of the reports of the SPT, if those reports are made public in accordance with article 16 of OPCAT.

41. **The SPT wishes to indicate some guidelines concerning certain key features of NPMs and recommends that the government takes these features into account when re-examining its decision:**

**(a) The mandate and powers of the NPM should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of liberty as per OPCAT shall be reflected in that text;**

**(b) The NPM should be developed by a public, inclusive and transparent process of establishment, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the NPM, the matter should be open for debate, involving civil society;**

**(c) The independence of the NPM, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position which could raise questions of conflict of interest;**

**(d) Selection of members should be based on stated criteria relating to the experience and expertise required to carry out NPM work effectively and impartially;**

**(e) NPM membership should be gender balanced and have adequate representation of ethnic, minority and indigenous groups;**

**(f) The State shall take the necessary measures to ensure that the expert members**

**of the NPM have the required capabilities and professional knowledge. Training should be provided to NPMs;**

**(g) Adequate resources should be provided for the specific work of NPMs in accordance with Article 18, 3 of the OPCAT; these should be ring-fenced, in terms of both budget and human resources;**

**(h) The work programme of NPMs should cover all potential and actual places of deprivation of liberty;**

**(i) The periodicity of NPM visits should ensure effective monitoring of such places as regards safeguards against ill-treatment;**

**(j) Working methods of NPMs should be developed and reviewed with a view to effective identification of good practice and gaps in protection;**

**(k) States should encourage NPMs to report on visits with feedback on good practice and gaps in protection to the institutions concerned, as well as with recommendations to the responsible authorities on improvements in practice, policy and law;**

**(l) NPMs and the authorities should establish an on-going dialogue based on the recommendations for changes arising from the visits and the action taken to respond to such recommendations, in accordance with Article 22 of the OPCAT;**

**(m) The annual report of NPMs shall be published in accordance with Article 23 of the OPCAT;**

**(n) The development of NPMs should be considered an on-going obligation, with reinforcement of formal aspects and working methods refined and improved incrementally.**

42. **The SPT invites the authorities to take into account the views of the SPT expressed in paragraphs 37 to 41, and requests the Government to provide information on any new developments in respect of the NPMs within six months.**

## III. SITUATION OF PERSONS DEPRIVED OF THEIR LIBERTY

### A. Police facilities

#### 1. Basic safeguards

43. The SPT considers that the right to inform a close relative or another third party of their choice of the deprivation of liberty, the right of access to a lawyer and the right of access to a doctor are fundamental safeguards against ill-treatment which should apply from the very outset of deprivation of liberty. For the proper exercise of these rights, it is fundamental that the persons

obliged to remain with the police are informed without delay of all their rights, including those mentioned above and the relevant procedural rights that the person concerned may exercise.

### (a) Information of rights

44. There is no clear provision in the Swedish legislation on the duty to inform the person obliged to stay with the police about his/her rights, and no system for reading people their rights at the moment of apprehension is established in practice.

45. In a meeting with the National Police Board (Rikspolisstyrelsen) the delegation was told that a person questioned by the police is informed about his/her rights at the first questioning which takes place as soon as possible after apprehension (the so called 24 (8) questioning, the number referring to the relevant section in the Code of Judicial Procedure, Rättegångsbalk). This information is given orally, and includes at least information on the right to have a defence counsel. The person concerned is also informed of the reasons for the apprehension. This was also confirmed by the officers in charge whom the delegation met in the police stations visited.

46. However, it remained unclear to the delegation as to which rights, other than the right to have defence counsel, the persons concerned are and should be informed about. Furthermore, on the basis of the interviews with the detainees, the delegation gained the impression that information on rights was not provided in either a consistent or a systematic manner in all police stations. However, most of the detainees interviewed by the delegation said that they were informed about the right to have a lawyer.

47. Initially, the delegation was informed by Rikspolisstyrelsen that an information sheet listing the rights of the persons who are obliged to stay with the police had already been drawn up, that it was available at police stations in Swedish, and that it would be translated in several languages. The delegation was later notified in writing that such a sheet exists in draft form, but that it had not yet been distributed to the police stations because the authorities were investigating whether there was a need to harmonize it with the provisions of the Proposal for a Council Framework Decision on Certain Procedural Rights in Criminal Proceedings Throughout the European Union (COM(2004) 328 final). Once finalized, the sheet would be translated into all official EU languages and into five minority languages spoken in Sweden, and distributed to police stations.

48. The provision of information on rights is an important safeguard as well as a prerequisite for effective exercise of due process rights and the prompt production of the person concerned before a judge. **The SPT emphasizes the duty of the Swedish authorities to ensure that all persons obliged to stay with the police are made aware of their basic rights as well as of all the relevant procedural rights that such persons may exercise at this stage of the proceedings. The SPT also stresses the obligation on the part of the police to assist in the exercise of all such rights as from the very outset of deprivation of liberty.**

49. **The SPT recommends that the information sheet listing the rights of the persons**

**obliged to stay with the police be finalized as soon as possible and distributed to all police stations. Information on rights should be given orally for persons who do not know how to read and through interpretation for persons who do not have sufficient knowledge of any of the languages in which the written version is produced. The SPT would like to receive a copy of this sheet and, in due course, confirmation that such a sheet is available in all police stations and in use.**

**(b) Notification of deprivation of liberty**

50. Under the legislation in force at the time of the visit (Code of Judicial Procedure, chapter 24, section 9), the police had a duty to notify the immediate relatives or other persons particularly close to the person concerned of the arrest (anhållandet) as soon as this could be done without causing harm to the investigation. However, at the locations visited the delegation was informed that usually the family is notified as soon as possible, generally about two or three hours after the apprehension, if the person concerned wishes that the family be notified and if there is no risk that the notification would hinder investigations. At Uppsala the delegation was also told that there is rarely any reason to assume that this notification would hinder investigations. The delegation thus understood that, in practice, the family could be notified even if the person was apprehended but not arrested.

51. The SPT notes with concern, however, that from the interviews with the detainees the delegation understood that not all detainees were systematically informed about the right to have a family member notified of the custody. Furthermore, some detainees alleged delays in the notification, and even alleged that the exercise of this right was denied.

52. The authorities informed the delegation that upon entry into force of the new act on 1 April 2008 (adding a new section 21 a) to Chapter 24 of the Code of Judicial Procedure), the family members or a relative of a person apprehended (gripen) by the police must be notified about the deprivation of liberty as soon as it may be done without harming the investigations. However, if the individual concerned does not wish his/her relatives to be informed, this is not done unless there are weighty reasons not to respect the person's wish. This may be the case, for example, when the person concerned is a minor.

53. The SPT welcomes this new provision and understands that it has entered into force (law 2008:67). However, although it now brings the obligation to notify the deprivation of liberty as from the moment of apprehension, the exception enabling a delay of the notification remains broadly worded. Thus it still allows the police wide discretion as to the actual timing of the notification. **The SPT recommends that the Swedish authorities take the necessary steps to ensure that this new provision is effectively applied in practice. The notification should take place as soon as possible after apprehension, and the persons apprehended by the police should be systematically informed about this right. The SPT emphasizes that the possibility to delay the notification should be applied in a restrictive manner; such a delay should always be proportionate and not longer than strictly necessary.**

54. In addition to this change made to the Code of Judicial Procedure, the SPT understands that

another new provision on notification of deprivation of liberty has entered into force. Under the new section 17 a) of the Police Act, the family members or close relatives of those persons who have been taken into temporary custody (omhändertagits) under the Police Act, some other act listed in its section 11, or are otherwise obliged to stay with the police, shall be notified of the deprivation of liberty. This provision covers, for example, all cases where a person is brought or invited to give a statement to the police but is not suspected of having committed a crime. **The SPT welcomes this new provision and recommends that the Swedish authorities take the necessary steps to ensure it is effectively applied also in practice, and that all persons obliged to stay with the police are systematically informed about this right.**

**(c) Access to a lawyer**

55. Under section 3 of the chapter 21 of the Code of Judicial Procedure, a person suspected of having committed a crime has a right to have defence counsel (försvarare) present at a police questioning. Furthermore, the SPT understands that after the entry into force, on 1 April 2008, of the amendments made to section 10 of chapter 23 of the above mentioned Code, any person heard by the police during preliminary investigation has now a right to have counsel (biträde) present when giving a statement to the police, provided that this is not to the detriment of the investigation. These persons include, among other, those who are not yet reasonably suspected (skäligen misstänkta) of having committed a crime but who may become a suspect as well as witnesses. The persons concerned have to request this possibility and must cover the expenses of such assistance themselves or benefit from pro bono assistance.

56. **The SPT welcomes this new provision as it now allows the presence of counsel from the very beginning of the deprivation of liberty and for all persons obliged to remain with the police. It also reflects the fact that the person giving statement to the police is not necessary a suspect but may later become one. The SPT recommends that the Swedish authorities take the necessary steps to ensure that this new provision is effectively applied in practice and that the persons obliged to stay with the police are systematically informed about this right.**

57. In spite of this positive change in legislation, the SPT decided to study further the question of access to a lawyer, including the appointment of a public defence counsel.

58. As noted above, under chapter 21, section 3 of the Code of Judicial Procedure, in preparing and conducting his defence, a suspect may be assisted by defence counsel. Under chapter 21, section 3 a), a public defence counsel (offentlig försvarare) shall be appointed in the following three cases: the suspect under arrest (anhållen) or remanded in custody (häktad) [3] so requests; the person is suspected of having committed a serious crime as defined in that section; and in cases laid down in paragraph 2 of that section. Furthermore, the delegation was informed by the Swedish Bar Association that in practice, a person questioned by the police (who is not arrested or detained) cannot have a public defence counsel appointed until he or she is formally notified, in accordance with chapter 23, section 18 of the Code Judicial Procedure, of being reasonably suspected (skäligen misstänkt) of committing the offence.

59. Under chapter 24, section 8 of the Code of Judicial Procedure, a police officer or a prosecutor shall question as soon as possible anyone apprehended by the police (the so called 24 (8) questioning). The SPT understands that this is also the first questioning of the person by the police. During the visits to police stations, the delegation was informed that, before the police will start conducting this questioning, the apprehended person is asked whether he wishes defence counsel to be present. In the affirmative, the questioning is interrupted until counsel can be present. At a police station visited, the delegation was informed that in practice, if the suspect does not have defence counsel, the police may contact the prosecutor for an arrest decision in order for public defence counsel to be appointed. Also some of the detainees interviewed noted that the first questioning was postponed until the moment the defence counsel could be present; however, some detainees alleged that it took several days before this happened.

60. The SPT is concerned about the fact that, although under the legislation in force all suspects now seem to enjoy equal access to a lawyer from the outset of the deprivation of liberty, in practice those persons who are dependent on the system of public defence cannot enjoy this right before the strict requirements set out in section 3 a) are met. Furthermore, the formal notification of a person as a suspect in accordance with chapter 23, section 18 of the Code of Judicial Procedure does not necessarily take place in the beginning of the so called 24 (8) questioning, and under chapter 24, section 8 of the aforementioned Code, the prosecutor should take the possible decision to arrest *after* that questioning has taken place. The new provision on the possibility to have a counsel present in preliminary investigations does not change this assumption (although the requirements for professional qualifications for counsel are similar to those of a defence counsel), as not all persons may benefit from this assistance, for example due to financial reasons.

61. From a preventive point of view, access to a lawyer is an important safeguard against ill-treatment which is a broader concept than providing legal assistance solely for conducting one's defence. The presence of a lawyer in the police questioning may not only deter the police from resorting to ill-treatment or other abuses during questioning but it may also work as a protection for police officers in case they face unfounded allegations of ill-treatment, both of which situations undermine mutual trust. In addition, the lawyer is the key person in assisting the person deprived of liberty in exercising his or her rights, including access to complaints mechanisms. Furthermore, delayed access to a defence counsel would be unfortunate since it is often the information given at the first questioning which is of decisive importance for the outcome of the criminal proceedings. The SPT emphasizes that all persons deprived of their liberty should enjoy equal access to a lawyer and that as early a stage of the deprivation of liberty as possible, preferably already at the first police questioning. **In light of the above, the SPT recommends that the authorities ensure that all persons enjoy equal access to defence counsel not only in law but also in practice. Necessary steps should be taken to extend the right to public defence counsel to as early a stage of the deprivation of liberty as possible.**

**(d) Access to a doctor**

62. The Swedish legislation does not include a specific legal provision on access to a doctor for a person held by the police. In the absence of such a provision, whether a person is transported to

the hospital or a request to see a doctor is granted is decided by the officer in charge.

63. However, in the locations visited, the delegation was informed that in practice medical assistance is provided in all cases of obvious need. The officers in charge at different police stations visited indicated that, if a person apprehended by the police or held in police custody bears symptoms of illness or marks of injuries, or if his/her state of intoxication may cause health problems, the police would escort such a person to a public hospital. Persons held by the police could also see a doctor upon request. At Solna police station the delegation was informed that it is also possible to call a doctor to come there; the doctor is on call and would come within one hour.

64. From the discussions with the officers in charge at locations and interviews with the detainees, the delegation concluded that access to a doctor was not problematic in practice. However, the SPT regrets that requests to see a doctor are evaluated and thus left to the discretion of the police officer in charge. From the point of view of prevention of ill-treatment, it is important that the duties of the police officers towards persons under their responsibility are clearly established in law. This would not only allow the persons deprived of their liberty to properly exercise their rights, but would also rule out the risk that some police officers would use their discretionary powers in a restrictive manner. **The SPT emphasizes that requests to see a doctors should not be screened by police officers and recommends the right to have access to a doctor be firmly established in a specific legal provision and that the persons obliged to stay with the police are systematically informed about this right at the outset of the custody.**

### (e) Recording of custody

65. The registers were kept in a systematic manner and included detailed information on the full period spent in police custody. Issues regarding recording of custody are discussed in greater detail in section III. B, (a) (iii) below.

### (f) Conclusions

66. The recommendations of the SPT concerning the basic safeguards are laid down in the respective sections above. In conclusion, the SPT would like to stress that basic safeguards should be formally provided by law with all possible exceptions clearly identified. Application of such basic safeguards should never depend merely on the good will and understanding of staff.

## 2. Allegations of ill-treatment

67. Section 12 of Chapter 23 of the Code of Judicial Procedure specifically prohibits eliciting confession or a statement of particular implication by using false information, promises or hints of special advantage, threats, force and questioning for an unreasonable length of time during questioning.

68. The SPT welcomes the fact that the delegation did not receive any allegations of ill-treatment by the police at the time of apprehension or during interrogations. There were no allegations of ill-

treatment by staff during the time spent in custody either. The detainees generally referred to a correct and professional approach and attitude on the part of police officers, investigators and wardens, the only exception being a few complaints of use of harsh language by staff in some police stations.

### 3. Material conditions

69. The delegation was informed that persons suspected of having committed a crime may be held in police arrest for a maximum of 96 hours from the moment of apprehension, which corresponds to the time when the Court must decide on the need to place the person in remand custody.

70. *The Kronoberg police detention facility* which is under the responsibility of Kriminalvården and not the police, is located in the same complex as the remand prison (unit 7:3.). There were three types of cells in that unit, all more basically equipped than those at the remand prison itself. The most basic so called sobering-up cells (3.96 m x 2 m) where persons are held mainly under the Act on Police Interventions against Intoxicated Persons (Lag om omhändertagande av berusade personer m.m., LOB), had a washable mattress on the floor, venetian blinds in windows and a water tap. It is important that also these cells fulfil good hygienic standards, are well ventilated, and enjoy access to natural light.

71. The second type of cells was of the same size, but equipped with a sleeping platform and a mattress The SPT understood that these cells may be used to accommodate arrested persons and persons taken into temporary custody (omhändertagen) by the police under section 11 of the Police Act, and intoxicated persons if their conditions so allow. Windows were covered with bars, glass and venetian blinds. These cells were of a reasonable size and offered good conditions given that they were intended for only one detainee to be held overnight.

72. The third type of cells was somewhat bigger (3.89 m x 2.8 m), again with a mattress on the floor only, with double doors, the outer door being a metal door and inner made of glass. The SPT understood that they were used as observation cells or for holding a person whose behaviour may put the security of other detainees or staff members at risk.

73. At the time of the visit, 18 of the total of 20 cells were occupied. In addition, three persons under arrest were apparently placed in units in the remand prison.

74. The *Solna police station* had 17 cells (2.4 m x 3.4 m) equipped with a sleeping platform, mattress, pillow, fixed table and chair and a fully partitioned sanitary annex with toilet and sink. In addition, there were five so called sobering up cells (sized 2.4 x 3.4 m) equipped with mattresses and a water tap, and two equipped with bed, but without table or chair. The cells were reasonably clean, ventilated and lit, and had big windows covered by bars, glass and venetian blinds. The cells were also of a reasonable size and offered good conditions given that they were intended to accommodate one detainee overnight. At the time of the visit, nine of the total of 17 cells were occupied.

75. At the *police detention facility at Uppsala Blankahuset* there were eight cells equipped with a bed with a mattress, a table and a chair by the window, and with an annexed toilet and a washbasin. The cells were used to accommodate only one person. The cells were also of a reasonable size and offered good conditions given that they were intended to accommodate one detainee overnight. There were also seven so called sobering up cells equipped with a mattress on the floor and a water tap. According to the staff working at the facility, also these cells are for one person, however, exceptionally more persons may be held in a same cell. Later the staff noted that this had never happened. At the time of the visit, five of the total of 15 cells were occupied.

76. The delegation noted with concern that a detainee interviewed by the delegation had allegedly spent five days after apprehension in one of these sobering up cells. **The SPT recommends that the sobering up cells are not used for holding persons for longer than the time the persons may be held with the police under the Act on Police Interventions against Intoxicated Persons, i.e. normally for a maximum of eight hours.**

77. *Södermalm police station* is the only police station in Stockholm where women can be held in detention. It had ten cells equipped with a sleeping platform, mattress, pillow, fixed table and chair by the window and a fully partitioned sanitary annex with toilet and washbasin. The cells were for single occupancy. The cells were of a reasonable size, reasonably clean, ventilated and lit and offered good conditions given that they were intended to accommodate one detainee overnight. There were also ten so called sobering up cells equipped with a sleeping platform.

78. At the time of the visit, 13 out of the total of 20 cells were occupied, out of which two by women. The women were held in the same unit as men, and at the time of the visit, there was only one male warden on duty. **The SPT recommends that the authorities ensure that there is a female warden present at the time female detainees are held in police custody.**

79. The *Norrmalm police station* is adjacent to Kronoberg remand prison, and therefore does not have its own holding facility. However, there were six holding cells (1.8 m x 2.3 m) where persons may wait, for example, to be interrogated. The cells had glass wall, and were well lit by artificial light and air-conditioned. They were equipped with wooden bench, and upon request, blankets. The delegation was told that these cells were used only for very short periods of time, up to few hours maximum. Similar holding cells were used at *Uppsala Blankahuset.*

80. The SPT concludes that material conditions in custody were in general of a good standard, given the short period of stay in police establishments. The cells were generally of a sufficient size, well lit, ventilated and clean. However, in the police establishments visited, the detainees were not provided with the possibility for outdoor exercise. **The SPT recommends that outdoor exercise should be guaranteed to all detainees who have to stay in police custody for more than 24 hours.**

### 4. Access to interpretation

81. The SPT had some prior concerns about access to interpretation during the police questioning

and court proceedings. However, during the visit, the representatives of the Ministry of Justice explained to the delegation that the authorities considered the provision of necessary interpretation as an obligation, since in the relevant passage in the law the word "skall" was interpreted as "shall" and not as "may". In addition, the person concerned did not need to make any particular request to have an interpreter; interpretation was provided ex officio.

82. However, the delegation noted that the Swedish Bar Association had some concerns as to the realization of this right in practice. According to information provided by the Association, in a recent report from the National Council for Crime Prevention (Brottsförebyggande rådet), the lack of adequate interpretation is given as one of the major reasons why individuals of foreign origin do not enjoy equal procedural rights.

83. The SPT emphasizes that every person who does not understand the Swedish language should be provided with free assistance of an interpreter in all cases where he or she is gives a statement to or is questioned by the police, is heard by the court or wishes to communicate with his/her defence counsellor in connection with his/her case. **The SPT recommends that the authorities take steps to ensure that access to interpretation is guaranteed in practice.**

## B. Remand prisons

84. As noted in the introductory chapter above, the delegation targeted its visit on the evaluation of the regime of remand prisoners under restrictions, but reviewed also some other issues relating to remand custody. For that reason it interviewed only those remand prisoners who, at the time of the visit, were held under restrictions. [4]

### 1. Basic Safeguards

#### (a) Access to a Lawyer

85. All the detainees interviewed by the delegation and asked whether they had a defence counsel replied affirmatively, and noted that they enjoyed unrestricted access to their counsel and could discuss with them in confidence. This applied equally to private or public defence counsel. The SPT welcomes this very positive state of affairs.

#### (b) Information on rights and about the rules applicable in the remand custody

86. Under chapter 12 section 5 of the Remand Regulations (Kriminalvårdens föreskrifter och allmänna råd för behandling i häkte, KVFS 2007:1), the detainee should be informed upon arrival, among other things, about his/her rights and duties in remand custody. However, it does not clearly specify what those rights include. Section 14 specifies that the detainee shall be given information, among other things, on applicable rules and the regime in the remand prison. At Uppsala Salagatan remand prison the delegation was provided with an example of the information sheet, giving the detainees the information required in section 14 and some other practical information on, for example, visits and possibilities to see a nurse or a doctor (Klientinformation - Information för

anhålna och häktade, Häktet Uppsala Salagatan). In Kronoberg, a sheet of paper describing some basic rules was attached to each cell, and a detainee also showed the delegation an information sheet describing the rules in greater detail (Information och ordningsregler vid häktet).

87. Several detainees interviewed by the delegation in both Uppsala and Kronoberg remand prisons alleged, however, that they had been given only very summary or even no information on the applicable rules or about their rights. In the view of the SPT, the prerequisite for the proper exercise of rights is that upon arrival, detainees are promptly informed about their rights and the applicable rules and the regime. **The SPT recommends that in accordance with the legislation in force, the detainees are systematically given information on their rights, the applicable rules and the regime in remand custody. The information should be given in a language the detainee can reasonably be supposed to understand.** The document used in Uppsala Salagatan remand prison could be used as an example.

### (c) Recording of custody

88. During its visits to the remand prisons, the delegation also paid attention to the keeping of registers and recording of custody. All information related to a detainee is saved on computer, from personal information to restrictions, and from decisions concerning visits to complaints. Also a journal was kept in the file of each individual detainee where everything related to that person was registered (including possible complaints, the time when restrictions were lifted, the possibility for the detainee under restrictions to call certain persons, use of restriction due to security reasons etc.).

89. The delegation noted that the registers were kept in a systematic manner and contained detailed information on the situation of each remand prisoner. Access and read-only rights were granted on the basis that this was necessary for performance of a staff member's official duties. The detainee has a right to see all information about him/her that is included in the system.

90. However, although the record system itself was computerised, the delegation learned that much of the information was recorded from different paper forms forwarded to the remand prison upon arrival of the detainee. For example the staff working at the register office of one establishment visited were of the opinion that the system they now use is not very practical and noted the need for a centralized record system specifically designed to record the person's entire period in custody from the time of arrest or even apprehension to the time the person leaves the remand prison. This would mean that ideally the police, prosecutors, courts, remand prison staff and probation authority would have access to the same system and could fill in information related to their respective fields of responsibility. The delegation understood that there had also been some discussion between the authorities on the need to develop such a record system.

91. In the view of the SPT, a centralized record system would offer multiple advantages contributing to the prevention of ill-treatment: information on an individual case would need to be entered only in one system and updated there, which would prevent possible duplication of work and overlapping of information, as well as the risk of having conflicting information in different registers. It would also allow easy access to all relevant information at once, and there would no

longer be a need to transfer information in written forms - an unreliable practice which leaves room for unintentional errors. In addition, having all relevant information readily accessible would render it easier for the authorities to oversee the custody period of an individual detainee or to examine a possible complaint, as well as for the detainee him/herself to exercise the right to see what information is registered on his/her case. **In light of the above, the SPT recommends that the authorities examine the possibility of establishing a centralized system of registers to which all relevant stakeholders would have access. Particular attention should be paid to data protection issues, and access to the system be granted depending on the field of responsibility of each authority and duties of the staff members.**

**(d) Medical screening upon arrival**

92. Under chapter 2, section 7 of the Remand Regulations, a detainee shall be offered the opportunity to be seen by a nurse as soon as possible after entry. If upon this screening it appears that there is a need for a medical examination, the detainee shall have the possibility to be examined by a doctor as soon as possible. In all remand prisons visited, in practice the nurse performed the initial screening of new arrivals.

93. The delegation understood that before a detainee sees a nurse, the staff has already briefly interviewed the detainee about his/her state of health upon arrival, and that he or she may also have been requested to complete a questionnaire on health matters. The delegation was also provided with a copy of this questionnaire. However, the delegation remained uncertain whether this is a usual practice or done only occasionally. **The SPT requests the authorities to clarify whether or not brief initial screening on medical issues is conducted routinely by non-medical staff.**

94. In the meeting with the Swedish Prison and Probation Service (Kriminalvården) the delegation expressed its concern about the high number of suicides in remand custody in the course of 2007. According to the statistics, there had been 11 such cases that year and already one case in 2008 at the time of SPT's visit. The delegation was informed that Kriminalvården has taken some measures to prevent suicides in custody, for example specific regulations concerning risk assessment were provided last year. All suicide cases are also reported to the National Board of Health and Welfare. According to Kriminalvården, a questionnaire has been developed to evaluate the suicide risk.

95. In the visits to the remand prisons, the delegation was informed that this evaluation of suicide risks is conducted by staff members carrying out the entry assessment. If on the basis of that evaluation there appears to be a suicide risk, the person concerned will be checked every 15 minutes before he/she can be assessed by a doctor. Furthermore, the officer in charge of the prisons in the Uppsala region (Kriminalvårdchef) informed the delegation that detainees who are at suicidal risk (in consultation with a doctor and if the prosecutor allows) are not placed in individual cells but together with another detainee.

96. However, from the discussions with the staff members it became clear that the staff felt that they were not properly trained to conduct an evaluation of this kind. Although the interview took

place in private, the staff told the delegation that the situation was difficult for both the detainee and the staff member, especially if the staff member was considerably younger than the detainee, and they were of the opinion that asking very direct questions on a very sensitive matter and without proper training was against the detainee's integrity. For those reasons they also questioned the results and meaningfulness of such an interview.

97. In SPT's view, newly arrived detainees, especially those under restrictions, should be medically screened either by a doctor or a nurse. In addition, the SPT emphasizes that all questioning on health matters shall be conducted in accordance with the principle of medical confidentiality. Non-medical staff should not have access to the medical files of the detainees and staff without special training should not be involved in gathering medical information or in assessment of suicidal risks.

98. **The SPT recommends that the authorities ensure that all detainees are medically screened upon arrival. If the initial screening is performed by a nurse, the detainees should be offered the opportunity to be seen by a doctor as soon as possible after arrival.**

99. **Furthermore, the SPT recommends that the detainees are questioned on health matters, including screening of suicidal risk, only by properly trained staff, and that medical confidentiality is scrupulously respected. Custodial staff should be trained to recognize symptoms of stress conducive to an elevated risk of suicide; if they estimate that a detainee would be at such a risk, they should bring this to the attention of the medical staff immediately.**

### 2. Allegations of ill-treatment

100. The delegation did not receive any allegations of ill-treatment by staff in remand prisons. On the contrary, many detainees interviewed appreciated the commitment of the staff as well as their professionalism and human approach.

### 3. Restrictions

101. During the visit, the delegation paid attention to the long-standing dialogue between the Swedish authorities and other international and regional monitoring bodies on the issue of the application by the public prosecutor and the courts of restrictions on person held on remand custody. It especially noted the on-going debate on this matter among the Swedish authorities.

102. According to Kriminalvården, the percentage of remand prisoners held under restrictions varies significantly between regions. According to its estimations, in the western region it may be up to 60 - 70 %, in Stockholm region some 40 %, the proportion being lower in the north, approximately 20 - 30 %. However, it was emphasized that these were only estimations, as there are no official statistics on the use of restrictions.

#### (a) Legal framework

103. Under Chapter 24, section 5 a) of the Swedish Code of Judicial Procedure (Rättegångsbalk), if the District Court decides to detain a person, it shall simultaneously, at the request of a prosecutor, consider whether the detained person's contact with the outside world may be restricted. Under the same section, this restriction is possible only if there is a risk that the suspect will remove evidence or in other ways impede the investigation. The court must review the decision concerning restrictions once a fortnight at the same time as it holds a new hearing on continuation of the remand custody. The person concerned may appeal the District Court's general decision to impose restrictions. However, it is not possible to appeal the prosecutor's decision on individual restrictions.

104. The prosecutor uses a specific form to request general permission to impose restrictions (Anvistningar angående gripen/anhållen/häktad) which should, after a change made in legislation in 2005, include the grounds for the request. The request itself as well as its grounds is presented orally at the remand hearing. The delegation was informed in a meeting with the Local Public Prosecution Office in Stockholm that the request does not usually need to be supported by any concrete evidence; a risk that the person might impede investigations suffices.

105. Permissible individual restrictions are laid down in the Act on the Treatment of Persons Arrested or Remanded in Custody (Lag om behandlingen av häktade och anhållna m.fl). These include restrictions on association with other detainees, visits, letters, telephone calls and access to newspapers, radio and television. Prosecutors are not required to specify at the court hearing which restrictions they intend to apply; this is left to the discretion of the prosecutors. Under chapter 1 section 2 of the Regulations and General Advice on Treatment in Remand Custody (Kriminalvårdens föreskrifter och allmänna råd för behandling i häkte, KVFS 2007:1), the individual restrictions decided by the prosecutor have to be reviewed by the remand prison staff and registered in the client administration system.

106. The Ministry of Justice informed the delegation that it is currently considering a proposal prepared by a working group for a new Act on the Treatment of Persons Arrested or Remanded in Custody ("Ny häkteslag", SOU 2006:17) and that, based on the suggestions in the study, the Government intends to present a bill for a new act to the Parliament in autumn 2008. [5]

107. The main changes proposed in the study are: that the prosecutors would have to specify in the request which restrictions they wish to impose; that the court should decide on each individual restriction; and that there would be a right to appeal on the District Court's decision on specific restrictions. In addition, the delegation was informed by the Ministry of Justice that the Government has, in its annual letter 2008 for prosecutors, asked the Public Prosecution Offices to account for how many persons have been detained in 2008 and in how many cases restrictions have been imposed. On the basis of information received, the Government will describe and analyze essential differences between different parts of the country and the findings will be reflected in the new draft law.

**(b) Reasons for restrictions**

108. As the court proceedings in Sweden are based on the principle of immediacy, the court may

base its judgements only on what has been presented orally in the court hearing. The authorities argue that for this reason restrictions are often necessary to ensure that the suspect cannot impede the investigations by, for example, trying to influence the statements of witnesses or possible accomplices.

109. The SPT understands that the restrictions are sometimes lifted during the investigation at the time when the police have gathered enough material evidence. In addition, restrictions could also be lifted gradually. However, the SPT was informed by both prosecutors and the senior officials working at remand prisons, that remand prisoners are often held under some restrictions until the moment when the court proceedings are initiated, or even until the moment the court gives its decision, as it is considered that until that time there may be a risk that the suspect would try to harm the investigations.

**(c) Facts found**

110. From its discussions with the authorities and interviews with the detainees the delegation was given to understand that the judges do not usually question the prosecutor's evaluation as to the need to impose restrictions; when there are grounds to remand a person in custody, the attached request for restrictions is usually accepted without remark. In the meeting with the Local Public Prosecution Office in Stockholm the delegation was informed that complaints against decisions on restrictions are rare.

111. However, in the meeting with the Local Public Prosecution Office in Stockholm, the delegation was also informed that the authorities recognize the need to address routine approach to the requests for restrictions. The delegation was informed that, in an attempt to tackle this phenomenon, there is a new practice in place in the Stockholm region: a new judge always reviews the need to continue remand custody and decides on restrictions. The prosecutor is thus required to substantiate the case at every review.

112. At the time of the SPT visit, 47 % of the detainees held at Kronoberg, 50 % at Uppsala Salagatan and 30 % at Uppsala Blankahuset respectively were subjected to restrictions. From the discussions with the authorities and the staff working at remand prisoners and from the interviews with the detainees themselves, the delegation learned that the most commonly applied restrictions were on association with other detainees, visits, letters and telephone calls.

113. The delegation was informed that there are no official statistics as to the time persons are held on remand. However, for example in Kronoberg remand prison the officer in charge noted that the longest time someone had been held there was three years, but estimated that usually detainees are held there for 1 year maximum, the average being three to four months. In the meeting with the Local Public Prosecution Office in Stockholm, the delegation was informed that, if a person stays in remand custody for a longer period than three to four weeks, the possible restrictions are usually gradually lifted. This was the case in particular with regard to restrictions on access to newspapers, magazines, television or radio; other restrictions were usually maintained for longer periods. This was also confirmed both by staff working at remand prisons and by the detainees themselves.

114. Almost all detainees interviewed by the delegation stated that they had not been given much information about the imposition of restrictions and remained unaware of the reasons for them as well as about the possibilities to challenge the court's decision. In particular, they said that they did not understand why their contacts with family members were restricted. Later, the delegation observed that, at least in those examples of decisions on continuation of the remand custody (Protokoll) shown to the delegation by the staff, no grounds for continuing the imposition of restrictions were recorded, nor any information on individual restrictions, as this matter was decided later by the prosecutor.

115. Furthermore, almost all detainees interviewed noted that they would appreciate the possibility to communicate more with the staff members; also the staff members regretted having little or no time to talk with the detainees, mainly due to shortage of staff. In addition to staff members, a number of persons from outside of the remand prisons work with the detainees. They may receive visits, for example, from a chaplain or other religious representative, a volunteer from the Swedish Red Cross, or a so called motivator assisting the detainees with drug problems. These visits, although allegedly quite infrequent and insufficient in number, were appreciated by the detainees interviewed.

116. In all remand prisons, in addition to having the possibility for the daily one hour outdoor exercise, they could use facilities for physical exercise usually two to three times a week. At Uppsala Salagatan they also had access to TV-room with video games for one hour every other day, as the cells were not equipped with televisions. The SPT notes with concern, however, that several detainees interviewed by the delegation in Kronoberg alleged that in practice the one hour's time for outdoor exercise was not always respected but varied between 20 minutes and one hour, depending on the availability of staff to supervise them.

117. The application of restrictions thus means that detainees may find themselves isolated in their cells for up to 22 or 23 hours per day, usually without any other activities than the possibility to order books from the public library, reading newspapers and magazines and watching television (in Kronoberg and Blankahuset), if access to those is not restricted. The SPT notes with regret that only one detainee interviewed reported having access to work while on remand.

118. Apparently the staff working in the remand prisons endeavoured to alleviate the situation of persons held under restrictions with the means available. The delegation was informed that the detainees might, for example, be offered the possibility to request the prosecutor to provisionally lift the restrictions and grant permission for a call to a certain person, a visit by a certain person or association with some other detainee held under the same restrictions. The prosecutor then decided whether or not to grant permission. For example, the staff at Uppsala Salagatan noted that they did this in particular with respect of those who were not psychically well and with juveniles. This was done relatively often, and the delegation was also given a form used to this effect. This practice was confirmed in a meeting with the Local Public Prosecution Office in Stockholm. In addition, some of the detainees said that the staff had contacted the prosecutor and that they were then allowed to receive visits or call a family member. However, some detainees alleged that this procedure was rather lengthy.

119. In addition, the delegation was informed by both the representatives of Kriminalvården and staff at Kronoberg that, once restrictions were lifted, the staff endeavoured to transfer the detainees to another remand prison where they could enjoy more open conditions. However, the delegation was also informed that this was difficult to do in practice as many remand prisons were operating at full capacity. It was added that a detainee might request to stay in certain remand prison for family or other reasons and that sometimes the transfer was not possible due to reasons relating to preliminary investigations or court proceedings.

120. The delegation formed the view that both Kriminalvården and the staff working at remand prisons visited were concerned about the routine application of restrictions and the possible effects of the prolonged isolation on the detainees. The delegation also noted that the psychiatrist working at Uppsala Salagatan indicated that persons held under restrictions for prolonged periods of time usually developed some symptoms of mental problems, most commonly depression or anxiety. However, he emphasized that he could not draw any conclusions as to at what stage these problems may appear, if they do, as that depended on the background of the individual concerned. Also the psychologist working at Kronoberg remand prison noted that persons held under restrictions might be at increased risk of developing symptoms of mental problems, but noted that no scientific evidence had yet been gathered on impact of restrictions on mental health of detainees.

### (d) Conclusions and recommendations

121. The SPT understands that in some cases imposition of restrictions is unavoidable due to legitimate investigation purposes. However, the SPT emphasizes that restrictions must not be used in a routine manner but rather as the exception. Their imposition should always be based on concrete grounds laid down in law and they should be individualized and proportionate to the case at hand. The SPT has also studied carefully the recommendations made by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the practice of imposing restrictions and shares its views on this issue. As the Swedish Government is currently studying the need for legislative change and not all recommendations of the CPT are reflected in the legislation in force, some of the recommendations of the SPT below are similar to those made by that regional treaty body.

122. **The SPT welcomes the steps taken by the government to study the need for legislative change. The SPT recommends that:**

- **The authorities implement the plans to review the legislation regarding restrictions. The grounds for imposing each individual restriction should be clearly described in law.**

- **Public prosecutors are reminded that permission to impose restrictions should only be requested when this is strictly necessary in the interest of criminal investigations.**

- **When requesting the court to decide on restrictions, a prosecutor should be obliged**

**to specify the individual restrictions requested and present grounds for each restriction. The District Courts should decide on the specific restrictions instead of only giving a general permission for imposing them.**

- **When deciding on restrictions in an individual case, the court should weigh the necessity to impose the restriction and seriousness of the alleged harm to the investigation against the circumstances of the individual concerned.**

- **In the context of each fortnightly review of the continuation of remand custody, the necessity to continue to impose restrictions should be considered as a separate item. Restrictions should be lifted immediately when the grounds for their imposition no longer exist.**

- **The decision to impose specific restrictions should be subject to appeal.**

- **The detainees should be informed in writing about the form of restrictions and about the reasons for them, as well as about the possibilities to challenge the court's decision.**

123. In SPT's view, the rules regarding restrictions should be applied in a uniform manner throughout the country and restrictions should be used as exceptional means rather than the rule. Furthermore, the current absence of systematically collected data on the application of restrictions and their effects makes proper oversight of this phenomenon impossible. Systematic gathering of official statistics would enable the authorities to analyse the application of the rules relating to restrictions and its variations across regions. **To ensure uniform and appropriate application of the legislation relating to restrictions, the SPT recommends that:**

- **Clear guidelines be established on the application of restrictions for both District Court judges and for prosecutors.**

- **Prosecutors and judges be provided with training on the rules and good practice regarding restrictions.**

- **The heads of the Local Public Prosecution Offices should exercise strict oversight of the requests for restrictions made by individual prosecutors.**

- **Systematic gathering of official statistics be introduced, concerning the use of restrictions, including the number of persons held under restrictions, the type of restrictions imposed, regional distribution and the time period held under restrictions. These statistics should be analysed and made available to all relevant stakeholders.**

124. **The SPT requests information on the result of the analysis of the information given by the Public Prosecution Offices on the number of persons detained in 2008 and on number of**

**persons held under restrictions, and on any draft legislation aimed at reviewing of the system of imposing restrictions.**

125. As there are situations where imposing restrictions may be necessary, particular attention should be paid to the regime enjoyed by detainees held under restrictions. In SPT's view, in this respect the main problem is isolation: the time spent outside cells, including outdoor exercise, and contacts with outside world are limited, and staff have little or no time to talk with the detainees. It is also difficult to offer educational, work or other activities for this category of persons. In addition, the lack of information on the progress of the investigation process as well as on the reasons for restrictions may adversely affect the well-being of a detainee. The SPT notes that these concerns were shared by Kriminalvården as well as by the senior officials and staff working in the remand prisons visited.

126. Although under the section „general advice" of chapter 3 section 1 (gemensam vistelse) of the Remand Regulations and under Chapter 4 Section 6 (besök) there are reference to the practice of negotiating with the prosecutor about provisional lifting of the restrictions in an individual case, this seems to be an ad-hoc practice applied by the staff working in the remand prison rather than a formally established administrative procedure. In SPT's view, application of such practices designed to alleviate the effects of isolation which directly relate to the well-being of detainees held under restrictions should not depend merely on the good will and understanding of staff.

127. Prolonged stays under restrictions in a remand prison, with limited contact with the outside world and especially without the possibility of association, may not only have detrimental psychological effect on the detainees concerned but also negatively influence the management and conditions of prison life. In certain circumstances it can even amount to inhuman and degrading treatment. **To prevent the adverse effects of prolonged isolation the SPT recommends that:**

- **The practice of discussing with the prosecutor provisional lifting of the restrictions in an individual case be more firmly established in the law or regulations.**

- **All staff members working in direct contact with the detainees be provided with training to recognize possible symptoms of stress due to isolation.**

- **The detainees be offered wider opportunities to use the facilities available for work, exercise, and other activities, either in or outside the cell. The one hour time for daily outdoor exercise should be seen as a minimum time guaranteed for all detainees, including those held under restrictions.**

- **The opportunities be increased for detainees to discuss with outside volunteers and staff members as well as to associate with a limited number of other detainees.**

**4. Material conditions**

128. State of repair of the cells in remand prisons visited were of a very good standard in all

establishments visited, and especially in the new remand prison in Uppsala where cells were provided with integral sanitary facilities. The separate sanitary facilities were also in good state of repair and fulfilled good hygienic standards. Cells were of a sufficient size, clean, well lit and ventilated; the cells in Kronoberg and Uppsala Blankahuset were also equipped with televisions. However, in all remand prisons visited, the outdoor exercise facilities available for detainees held under restrictions were rather small, without any equipment and of an oppressive nature.

129. Particular attention needs to be paid to the outdoor exercise facilities, since for most of the detainees held under restrictions this is the only time they can spend outside the cell. **The SPT recommends that outdoor facilities available for the detainees held under restrictions be enlarged and offer possibilities for adequate physical exercise.**

**5. Other issues**

**(a) Regime in remand prisons**

130. During discussions with senior officials working in the remand prison visited, they noted that the high number of persons held under restrictions and the low level of staffing made it difficult for them to organize the daily routines and run a less restrictive regime for those detainees who were not subject to restrictions. In this respect the SPT recalls in particular the explicit provisions on the right to association under section 3 of the Act on Treatment of Remanded and Arrested Persons and Chapter 3 section 1 of the Remand Regulations.

131. Furthermore, due to lack of space it was difficult to accommodate persons held under restrictions in separate units from those detainees not held under restrictions; they were, however, separated to the extent possible. Men and women held under restrictions were also often held in same units. This was observed in practice in all remand prison visited. This lack of space also contributed to the fact that the regime in remand prisons, in particular at Kronoberg, was more restrictive than necessary. The SPT understands that the authorities are constructing a new remand prison in Sollentuna, which is planned to be opened in 2010, and which would alleviate the existing situation. **The SPT recommends that the relevant authorities ensure that those remand prisoners not held under restrictions, and who could have a more open regime, do so in practice. To this end, the SPT encourages the authorities to allocate the space available in a way that detainees not under restrictions are not accommodated in the same units as those who are under restrictions.**

**(b) Healthcare in remand prisons**

132. Under chapter 2, section 7 of the Remand Regulations, the medical personnel and the officer in charge shall be notified without delay if a detainee bears symptoms of an illness or an injury. In an acute case the detainee shall be offered medical care immediately. The delegation was informed by Kriminalvården that there were no prison hospitals as such in Sweden and, if necessary, the detainees were hospitalized in public hospitals. Prisons provided out-patient care and there were nurses working in the institutions, but no medical specialists worked in institutions on a full-time

basis.

133. The officer in charge of the prisons in the Uppsala region informed the delegation that a nurse is working at remand prisons from 08.00 to 16.00 on a daily basis. A psychiatrist and a general practitioner work for two hours per week at Salagatan and three hours at Blankahuset. During weekends they are on call. In a case of need, a prisoner will be transported to a public hospital. A similar system was also in place at Kronoberg remand prison.

134. In all remand prisons visited, a detainee must submit an application if he/she wishes to be seen by a nurse or a doctor. This information was also included in the information sheet on applicable rules. The nurse is entitled to give basic medication, and also delivers medicine prescribed by a doctor. Certain prison staff is responsible for delivering medication during the weekends. Individual doses, however, are prepared in advance by the nurse or the doctor.

135. Furthermore, the nurse working in the Salagatan Remand Prison noted that if a detainee is transferred from another prison, his/her medical file is included in the documents, and in a case of a newcomer, a new file is opened. According to her, the medical file of a detainee contains information on his/her medical history, the possible wish to be tested for HIV/AIDS and hepatitis, and information on the screening of the risk of suicide.

136. From the interviews with the detainees the delegation concluded that access to a doctor upon request was not problematic in practice. However, the SPT notes with concern that some of the detainees interviewed alleged delays in having access to a doctor or to a hospital. **The SPT recommends that the authorities ensure that the requests to see health care personnel are met without delay.**

137. As to care of persons in need of psychiatric or psychological assistance, the delegation noted with concern that staff members in a remand prison visited by the delegation alleged that psychiatric hospitals in particular had a tendency to return to remand prison detainees who, in their opinion, would still require more intensive medical attention than was possible for the remand prison to offer. In SPT's view, this practice may compromise the health and safety of the detainee, as well as place staff without medical training under such a responsibility of care that they should not be required to assume. **The SPT recommends that the authorities ensure that the detainees requiring medical attention in a hospital are not returned to the remand prison before it can be ensured that their state of health corresponds to the level of care that the remand prison may offer.**

### (c) Staffing

138. The delegation observed that staff working in the remand prisons visited appeared to be attentive to the needs of detainees and conscious about their responsibilities towards them. The professional attitude of staff contributed greatly to the management of the daily routines in remand prisons and the general atmosphere was good in all establishments visited. The SPT notes with satisfaction that many detainees interviewed by the delegation spoke very favourably about staff.

139. However, the SPT notes with concern that several senior officials reported that the cuts in the number of staff have reached the point that they affect the day-to-day work in remand prisons. According to them, these cuts have resulted in the regime becoming more restrictive and security-oriented; they feared that this situation might also have implications for the quality of their work.

140. The level of staffing has a direct effect not only on the safety and security of both the detainees and staff, but also on the possibilities for staff to organize the day-to-day work and on the regime of the institution as a whole. Adequate levels of staffing also prevent cases of burn-out among staff-members and allow them to exercise their full professional capacity instead of concentrating only on running the daily routines. **The SPT recommends that the authorities ensure appropriate levels of staffing at all times, which are sufficient not only to offer adequate supervision of detainees but also to organise the daily work in a manner that meets the needs of both detainees and staff.**

141. The SPT is also concerned about the allegedly high staff turn-over. For example, according to the officer in charge of the prisons in the Uppsala region the work in a remand prisons was "transit job" for many students and that it was very difficult to recruit persons with longer work experience to work in a remand prison. According to her, the profession would also need to be more gender-balanced, as most of the persons applying for and getting the posts were women. **The SPT shares these concerns presented by the senior officials and recommends that the relevant authorities ensure continuity of staff and their proper training to carry out all duties relating to this demanding work.**

## IV. SUMMARY OF RECOMMENDATIONS AND REQUESTS FOR INFORMATION

### A. NPM

142. The SPT wishes to indicate some guidelines concerning certain key features of NPMs and recommends that the government takes these features into account when re-examining its decision:

(a) The mandate and powers of the NPM should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of liberty as per OPCAT shall be reflected in that text;

(b) The NPM should be developed by a public, inclusive and transparent process of establishment, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the NPM, the matter should be open for debate, involving civil society;

(c) The independence of the NPM, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position which could raise questions of conflict of interest;

(d) Selection of members should be based on stated criteria relating to the experience and

expertise required to carry out NPM work effectively and impartially;

(e) NPM membership should be gender balanced and have adequate representation of ethnic, minority and indigenous groups;

(f) The State shall take the necessary measures to ensure that the expert members of the NPM have the required capabilities and professional knowledge. Training should be provided to NPMs;

(g) Adequate resources should be provided for the specific work of NPMs in accordance with Article 18, 3 of the OPCAT; these should be ring-fenced, in terms of both budget and human resources;

(h) The work programme of NPMs should cover all potential and actual places of deprivation of liberty;

(i) The periodicity of NPM visits should ensure effective monitoring of such places as regards safeguards against ill-treatment;

(j) Working methods of NPMs should be developed and reviewed with a view to effective identification of good practice and gaps in protection;

(k) States should encourage NPMs to report on visits with feedback on good practice and gaps in protection to the institutions concerned, as well as with recommendations to the responsible authorities on improvements in practice, policy and law;

(l) NPMs and the authorities should establish an on-going dialogue based on the recommendations for changes arising from the visits and the action taken to respond to such recommendations, in accordance with Article 22 of the OPCAT;

(m) The annual report of NPMs shall be published in accordance with Article 23 of the OPCAT;

(n) The development of NPMs should be considered an on-going obligation, with reinforcement of formal aspects and working methods refined and improved incrementally.

143. The SPT invites the authorities to take into account the views of the SPT expressed in paragraphs 37 to 41, and requests the Government to provide information on any new developments in respect of the NPMs within six months.

**B. Police**

144. The SPT emphasizes the duty of the Swedish authorities to ensure that all persons obliged to stay with the police are made aware of their basic rights as well as of all the relevant procedural rights that such persons may exercise at this stage of the proceedings. The SPT also stresses the

obligation on the part of the police to assist in the exercise of all such rights as from the very outset of deprivation of liberty.

145. The SPT recommends that the information sheet listing the rights of the persons obliged to stay with the police be finalized as soon as possible and distributed to all police stations. Information on rights should be given orally for persons who do not know how to read and through interpretation for persons who do not have sufficient knowledge of any of the languages in which the written version is produced. The SPT would like to receive a copy of this sheet and, in due course, confirmation that such a sheet is available in all police stations and in use.

146. The SPT recommends that the Swedish authorities take the necessary steps to ensure that this new provision is effectively applied in practice. The notification should take place as soon as possible after apprehension, and the persons apprehended by the police should be systematically informed about this right. The SPT emphasizes that the possibility to delay the notification should be applied in a restrictive manner; such a delay should always be proportionate and not longer than strictly necessary.

147. The SPT welcomes this new provision [the new section 17 a) of the Police Act] and recommends that the Swedish authorities take the necessary steps to ensure it is effectively applied also in practice, and that all persons obliged to stay with the police are systematically informed about this right.

148. The SPT welcomes this new provision [amendments made to section 10 of chapter 23 of the Code of Judicial Procedure] as it now allows the presence of counsel from the very beginning of the deprivation of liberty and for all persons obliged to remain with the police. It also reflects the fact that the person giving statement to the police is not necessary a suspect but may later become one. The SPT recommends that the Swedish authorities take the necessary steps to ensure that this new provision is effectively applied in practice and that the persons obliged to stay with the police are systematically informed about this right.

149. The SPT recommends that the authorities ensure that all persons enjoy equal access to defence counsel not only in law but also in practice. Necessary steps should be taken to extend the right to public defence counsel to as early a stage of the deprivation of liberty as possible.

150. The SPT emphasizes that requests to see a doctors should not be screened by police officers and recommends the right to have access to a doctor be firmly established in a specific legal provision and that the persons obliged to stay with the police are systematically informed about this right at the outset of the custody.

151. The SPT recommends that the sobering up cells are not used for holding persons for longer than the time the persons may be held with the police under the Act on Police Interventions against Intoxicated Persons, i.e. normally for a maximum of eight hours.

152. The SPT recommends that the authorities ensure that there is a female warden present at the

time female detainees are held in police custody.

153. The SPT recommends that outdoor exercise should be guaranteed to all detainees who have to stay in police custody for more than 24 hours.

154. The SPT recommends that the authorities take steps to ensure that access to interpretation is guaranteed in practice.

### C. Remand prisons

155. The SPT recommends that in accordance with the legislation in force, the detainees are systematically given information on their rights, the applicable rules and the regime in remand custody. The information should be given in a language the detainee can reasonably be supposed to understand.

156. The SPT recommends that the authorities examine the possibility of establishing a centralized system of registers to which all relevant stakeholders would have access. Particular attention should be paid to data protection issues, and access to the system be granted depending on the field of responsibility of each authority and duties of the staff members.

157. The SPT requests the authorities to clarify whether or not brief initial screening on medical issues is conducted routinely by non-medical staff.

158. The SPT recommends that the authorities ensure that all detainees are medically screened upon arrival. If the initial screening is performed by a nurse, the detainees should be offered the opportunity to be seen by a doctor as soon as possible after arrival.

159. The SPT recommends that the detainees are questioned on health matters, including screening of suicidal risk, only by properly trained staff, and that medical confidentiality is scrupulously respected. Custodial staff should be trained to recognize symptoms of stress conducive to an elevated risk of suicide; if they estimate that a detainee would be at such a risk, they should bring this to the attention of the medical staff immediately.

160. The SPT recommends that:

- The authorities implement the plans to review the legislation regarding restrictions. The grounds for imposing each individual restriction should be clearly described in law.

- Public prosecutors are reminded that permission to impose restrictions should only be requested when this is strictly necessary in the interest of criminal investigations.

- When requesting the court to decide on restrictions, a prosecutor should be obliged to specify the individual restrictions requested and present grounds for each restriction. The District Courts should decide on the specific restrictions instead of only giving a general

permission for imposing them.

- When deciding on restrictions in an individual case, the court should weigh the necessity to impose the restriction and seriousness of the alleged harm to the investigation against the circumstances of the individual concerned.

- In the context of each fortnightly review of the continuation of remand custody, the necessity to continue to impose restrictions should be considered as a separate item. Restrictions should be lifted immediately when the grounds for their imposition no longer exist.

- The decision to impose specific restrictions should be subject to appeal.

- The detainees should be informed in writing about the form of restrictions and about the reasons for them, as well as about the possibilities to challenge the court's decision.

161. To ensure uniform and appropriate application of the legislation relating to restrictions, the SPT recommends that:

- Clear guidelines be established on the application of restrictions for both District Court judges and for prosecutors.

- Prosecutors and judges be provided with training on the rules and good practice regarding restrictions.

- The heads of the Local Public Prosecution Offices should exercise strict oversight of the requests for restrictions made by individual prosecutors.

- Systematic gathering of official statistics be introduced, concerning the use of restrictions, including the number of persons held under restrictions, the type of restrictions imposed, regional distribution and the time period held under restrictions. These statistics should be analysed and made available to all relevant stakeholders.

162. The SPT requests information on the result of the analysis of the information given by the Public Prosecution Offices on the number of persons detained in 2008 and on number of persons held under restrictions, and on any draft legislation aimed at reviewing of the system of imposing restrictions.

163. To prevent the adverse effects of prolonged isolation the SPT recommends that:

- The practice of discussing with the prosecutor provisional lifting of the restrictions in an individual case be more firmly established in the law or regulations.

- All staff members working in direct contact with the detainees be provided with training

to recognize possible symptoms of stress due to isolation.

- The detainees be offered wider opportunities to use the facilities available for work, exercise, and other activities, either in or outside the cell. The one hour time for daily outdoor exercise should be seen as a minimum time guaranteed for all detainees, including those held under restrictions.

- The opportunities be increased for detainees to discuss with outside volunteers and staff members as well as to associate with a limited number of other detainees.

164. SPT recommends that outdoor facilities available for the detainees held under restrictions be enlarged and offer possibilities for adequate physical exercise.

165. The SPT recommends that the relevant authorities ensure that those remand prisoners not held under restrictions, and who could have a more open regime, do so in practice. To this end, the SPT encourages the authorities to allocate the space available in a way that detainees not under restrictions are not accommodated in the same units as those who are under restrictions.

166. The SPT recommends that the authorities ensure that the requests to see health care personnel are met without delay.

167. The SPT recommends that the authorities ensure that the detainees requiring medical attention in a hospital are not returned to the remand prison before it can be ensured that their state of health corresponds to the level of care that the remand prison may offer.

168. The SPT recommends that the authorities ensure appropriate levels of staffing at all times, which are sufficient not only to offer adequate supervision of detainees but also to organise the daily work in a manner that meets the needs of both detainees and staff.

169. The SPT recommends that the relevant authorities ensure continuity of staff and their proper training to carry out all duties relating to this demanding work.

**Annex I**

**List of officials and others with whom the delegation met**

**A. National Authorities**

**Ministry for Foreign Affairs**

| | |
|---|---|
| Mr. Carl-Henrik Ehrenkrona | Director-General for Legal Affairs |
| Mr. Bosse Hedberg | Deputy Director-General |

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| Mr. Klas Nyman | Deputy Director |

**Ministry of Justice**

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|---|---|
| Mr. Magnus Graner | State Secretary |
| Mr. Ari Soppela | Deputy Director-General |

With participation of representatives from the following divisions:

Division for Crime Policy

Division for Police Issues, public order and Safety

Division for Procedural Law and Court Issues

Division for Prosecution Issues

Division for Management of Migration Affairs

Division for Migration Law

Division for Migration and Asylum Policy

**Ministry of Health and Social Affairs**

| | |
|---|---|
| Mr. Björn Reuterstrand | Director-General for Legal Affairs |
| Ms. Angela Ost | Deputy Director, Division for Social Service |
| Mr. Daniel Zetterberg | Desk Officer, Division for Health Care |
| Mr. Mihail Stoican | Desk Officer, Child Policy Coordination Unit |
| Ms. Asa Hard af Segerstad | Legal Director, National Board of Institutional Care |

**The National Police Board**

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|---|---|
| Mr. Ralf Hedin | Deputy Director-General |
| Ms. Lotta Gustavson | Director-General for Legal Affairs |
| Mr. Kenneth Holm | Head of Division for Development |
| Ms. Lena Tysk | Head of Division for Crime Prevention |

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| Mr. Tommy Sundlén | Head of Division for Investigation and Prosecution |
| Mr. Lars-Gunnar Johnsson | Acting Head of Division for International Co-ordination |

**The Local Public Prosecution Office in Stockholm**

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| Ms. Kerstin Skarp | Head of Division, chief prosecutor |
| Mr. Per Lindqvist | Deputy chief prosecutor |
| Ms. Eva Finné | District prosecutor |
| Ms. Karin Lindkvist | District prosecutor |
| Ms. Silvia Ingolfsdottir | District prosecutor |
| Ms. Elisabeth Kindblom | District prosecutor |

**The Prison and Probation Administration**

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|---|---|
| Mr. Lars Nylén | Director-General |
| Mr. Ulf Jonson | Deputy Director-General |
| Ms. Inga Mellgren | Head of Region Stockholm |
| Ms. Monika Klingström | Head of Region South |
| Mr. Lennart Palmgren | Head of Region West |
| Ms. Gunilla Ternet | Head of Region Mid-country |
| Mr. Christer Karlsson | Head of Region East |
| Mr. Svante Lundqvist | Head of Region North |
| Mr. Christer Isaksson | Head of Security |

**The Children's Ombudsman**

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|---|---|
| Ms. Lena Nyberg | Ombudsperson |

**B. National Preventive Mechanisms**

**Office of the Parliamentary Ombudsmen**

| | |
|---|---|
| Mr. Mats Melin | Chief Parliamentary Ombudsman |
| Ms. Cecilia Nordenfelt | Parliamentary Ombudsman |
| Ms. Kerstin André | Parliamentary Ombudsman |
| Mr. Hans-Gunnar Axberger | Parliamentary Ombudsman |

**Office of the Chancellor of Justice**

| | |
|---|---|
| Mr Håkan Rustand | Acting Chancellor of Justice |

**C. Non-Governmental Organisations**

Swedish Red Cross

Swedish Bar Association

Swedish Helsinki Committee

**Annex II**

**List of places of deprivation of liberty visited by the SPT**

**A. Police**

**Police Detention Facilities**

- Kronoberg (Stockholm), administered by Kriminalvården

**Police Stations**

- Norrmalm (Stockholm)
- Södermalm (Stockholm)
- Solna (Stockholm region)
- Uppsala (Blankahuset)

**B. Penitentiary Service**

**Prison establishments**

- Kronoberg remand prison (Kronoberg häktet, Stockholm)
- Uppsala remand prison (Uppsala häktet Blankahuset)
- Uppsala remand prison (Uppsala häktet Salagatan)

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

** Report transmitted in confidence to the State party on 16 July 2008, in accordance with article 16, paragraph 1 of the Optional Protocol. Request for publication by the State party on 23 July 2008, in accordance with article 12, paragraph 2, of the Optional Protocol.

1/ A Parliamentary Ombudsman is an individual elected by the Riksdag (the Swedish parliament) to ensure that courts of law and other agencies as well as the public officials they employ (and also anyone else whose work involves the exercise of public authority) comply with laws and statutes and fulfil their obligations in all other respects. The Swedish government is not allowed to interfere with the work of the ombudsmen.

2/ The Chancellor of Justice is appointed by the Government of Sweden. A detailed account of the duties of the Chancellor of Justice is set forth in two legal instruments: The Act (1975:1339) concerning the supervision exercised by the Chancellor of Justice and the Ordinance (1975:1345) concerning the duties of the Chancellor of Justice.

3/ The SPT noticed that the English translation of the chapter 21, section 3 a) did not entirely match with the original wording of the section, the word "häktad" being translated by the term "detained" and not by "remanded into custody". As the word "detained" refers generally to a person deprived of liberty, the translation as it now stands may cause misinterpretations.

4/ In the paragraph b) the word detainee refers only to that category of persons.

5/ In connection with the examination of the fifth periodic report of Sweden to the Committee against Torture (CAT/C/SWE/5) in May 2008, the head of the delegation of Sweden indicated that this submission would happen within a year's time.

**CAT, CAT/C/42/2 (2009)**

## III. VISITING PLACES OF DEPRIVATION OF LIBERTY

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### B. Visits carried out from April 2008 through March 2009

20. The SPT carried out visits to Benin in May 2008, to Mexico in August/September 2008 and to Paraguay in March 2009. During these visits, the delegations focused on the development process of the national preventive mechanisms and on the situation as far as protection of people held in various types of places of deprivation of liberty is concerned.[12]

21. In early 2009, the SPT announced its forthcoming programme of work in the field for the year, including visits to Paraguay, Honduras and Cambodia and in-country engagement in Estonia. The SPT also carried out preliminary missions shortly before the planned regular visits to Mexico and Paraguay to initiate the process of dialogue with the authorities. The preliminary meetings proved to be an important part of preparation for the visits, representing an opportunity to fine-tune the programme and enhance facilitation of the work of the delegation. Preliminary missions form an integral part of the work involved in SPT visits.

22. During visits, SPT delegations have engaged in empirical fact-finding and discussions with a wide range of interlocutors, including officials of the ministries concerned with deprivation of liberty and with other government institutions, other State authorities such as judicial or prosecutorial authorities, relevant national human rights institutions, professional bodies and representatives of civil society. If the national preventive mechanisms are already in existence, they are important interlocutors for the SPT. SPT delegations have carried out unannounced visits to places of deprivation of liberty and have had interviews in private with persons deprived of their liberty. They also engaged in discussions with staff working in custodial settings and, in the case of the police, also with those working in the investigation process.

23. Among its principal methods for fact-finding on visits, the SPT uses the triangulation of information gathered independently from a variety of sources, including direct observation, interviews, medical examination and perusal of documentation, in order to arrive at a view of the particular situation under scrutiny as regards the risk of torture or other cruel in human or degrading treatment or punishment and as regards the presence or absence, strength or weakness of safeguards. SPT delegations draw conclusions on the basis of its cross-checked findings made during visits.

24. During the year the SPT noted with satisfaction that some States parties plan to or are in the process of implementing the Istanbul Protocol as a tool to document torture, first of all in the fight against impunity. The SPT has analysed the usefulness of the Istanbul Protocol, not only in the fight against impunity, but also in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, and has identified some challenges. The analysis appears in annex VII. Considering the validity and usefulness of the Istanbul Protocol as a soft law instrument, the SPT

is of the view that States should promote, disseminate and implement the Protocol as a legal instrument to document torture cases of people deprived of their liberty through medical and psychological reports drafted under adequate technical standards. These reports can not only constitute important evidence in torture cases but, most importantly, they can contribute to the prevention of cruel, inhuman and degrading treatment. The Subcommittee on Prevention of Torture notes that it is crucial that doctors and other health professionals be effectively independent from police and penitentiary institutions, both in their structure - human and financial resources - and function - appointment, promotion and remuneration.

25. At the end of each regular SPT visit, the delegation presented its preliminary observations to the authorities orally in a confidential final meeting. The SPT wishes to thank the authorities of Benin, Mexico and Paraguay for the spirit in which the initial observations of its delegations were received and the constructive discussions ensuing about ways forward. After each visit the SPT wrote to the authorities, reiterating key preliminary observations and requesting feedback and updated information on any steps taken or being planned since the visit to address the issues raised during the final meeting, in particular on certain issues which could be or were due to be addressed in the weeks following the visit. The SPT indicated that responses communicated by the authorities would be considered in the drafting of the visit report.

26. The authorities were also reminded, later in the period after the visit, that any responses received by the SPT before adoption of the draft visit report in plenary session would form part of the SPT's deliberations when considering adoption. These communications form an important part of the ongoing preventive dialogue between the State party and the SPT. The SPT is gratified to report that on each of the visits carried out to date, it has received feedback from authorities concerning the preliminary observations and further information prior to the adoption of each visit report. This is an indication that the States parties initially visited have embraced the ongoing process of dialogue and incremental progress on prevention.

27. The authorities are asked to respond in writing to the recommendations and to the requests for further information in the SPT's report on the visit to that State, as transmitted to them in confidence after adoption by the SPT. Thus far all the responses of the authorities concerned have arrived on time - a clear signal of the goodwill of States parties to cooperate with the SPT.

### C. Publication of the visit reports of the Subcommittee on Prevention of Torture

28. As of 31 March 2009, the SPT visit reports on Sweden and the Maldives, (two out of the five States parties to have received an SPT visit report) and the authorities' responses are in the public domain.[13] The SPT hopes that in due course the authorities of every State party visited will request that the visit report and the authorities' response to it be published.[14] Until such time the visit reports remain confidential.

29. Publication of an SPT visit report and the response from the authorities concerned is a sign of the commitment of the State party to the objectives of the OPCAT. It enables civil society to consider the issues addressed in the report and to work with the authorities on implementation of the

recommendations to improve the protection of people deprived of their liberty. The SPT warmly welcomes the decision to publish taken by the authorities of Sweden and the Maldives. The SPT hopes that other States parties will follow this excellent example.

**D. Issues arising from the visits**

30. The OPCAT provides that SPT members may be accompanied on visits by experts of demonstrated professional experience and knowledge to be selected from a roster prepared on the basis of proposals made by the States parties, the OHCHR and the United Nations Centre for International Crime Prevention.[15] To date 22 States parties have provided names and details of experts for the roster. In 2008 the United Nations set up a panel to select names to be placed on the roster in addition to the experts proposed by States parties. External experts can contribute to the work of the SPT by providing a diversity of perspectives and professional expertise to complement those of SPT members. The SPT hopes that experts from all regions of the world will be included in the roster. The SPT still awaits the roster of experts and, in its absence, continues to select experts from the list of names proposed by States parties and from among experts widely recognized as having the required relevant expertise. During the period covered by the present report, the SPT was accompanied on one visit by only one expert, owing to budgetary constraints.

31. The SPT has concerns about the possibility of reprisals after its visits. People deprived of their liberty with whom the SPT delegation has spoken may be threatened if they do not reveal the content of these contacts or punished for having spoken with the delegation. In addition, the SPT has been made aware that some people deprived of their liberty may have been warned in advance not to say anything to the SPT delegation. It should be self-evident that conduct of this kind on the part of any official or person acting for the State would be a breach of the obligation to cooperate with the SPT as provided in the OPCAT. Moreover, article 15 of the OPCAT lays a positive obligation upon the State to take action to ensure that there are no reprisals as a consequence of an SPT visit.

32. The SPT expects the authorities of each State visited to verify whether reprisals for cooperating with the SPT have occurred and to take urgent action to protect all persons concerned.

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12/ For details of the places visited, see annex III.

13/ See http://www.ohchr.org/english/bodies/cat/opcat/index.htm.

14/ In accordance with article 16, paragraph 2 of OPCAT.

15/ Article 13, paragraph 3.

**OPCAT, CAT/C/44/2 (2010)**

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## III. Visiting places of deprivation of liberty

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### C. Publication of the visit reports of the Subcommittee on Prevention of Torture

30. At the time of writing, of the seven visit reports issued to date, only those on Honduras, the Maldives and Sweden, along with the authorities' responses in the case of Sweden, were in the public domain. The Subcommittee hopes that in due course the authorities of every State party visited will request that the visit report and the authorities' response to it should be published. Until such time the visit reports remain confidential.

31. Even though the majority of the Subcommittee's reports are still confidential, the following recommendations from those that have been published are summarized below as they may be useful for other States in the area of prevention of torture:

- National preventive mechanisms: Guidelines on their establishment, the involvement of civil society, and their mandate, powers and membership. The Subcommittee has strongly emphasized the need for legislation establishing national preventive mechanisms to contain an independent procedure for selecting members.

- Legal and institutional framework: On the legal framework, the recommendations include alignment of criminal law with international standards on preventing and combating torture, which generally entails defining torture as an offence in accordance with article 1 of the Convention against Torture, and the establishment of legal safeguards against torture, such as access to a lawyer and a doctor and the exclusion of evidence obtained by torture. On the institutional framework, the recommendations are aimed at strengthening institutions involved in prevention of torture. Specifically, the Subcommittee has recommended an increase in the resources allocated to the public defender system and the judiciary, and has highlighted the important role these institutions play in preventing torture.

- Places of deprivation of liberty: With regard to the police, generally speaking the Subcommittee recommends observance and implementation of existing legal safeguards, training in prevention for police personnel and improvement of the material conditions of detention. The Subcommittee has noted with concern that acts of torture and other forms of ill-treatment often take place during the first few hours of detention in police stations, and has therefore emphasized the need for detailed records - giving, for example, the identity of all persons detained, the time of detention and on what grounds - to be kept at police headquarters and for police officials to be trained in their use. With regard to prisons, the recommendations usually refer to the separation of the various categories of prisoners (pretrial/convicted,

male/female, minors/adults, in accordance with the relevant international standards), the material conditions in prisons (adequate living space, food and drinking water of adequate quality and in sufficient quantity, etc.) and methods of discipline and punishment, with particular attention to conditions of isolation. Reference is also made to each country's particular circumstances, for example as regards risk groups such as women, minors, persons with disabilities, indigenous people and Afro-descendants.

32. The Subcommittee will develop these comments in future annual reports.

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**Annex VII**

**Information on country visit reports and follow-up as of 26 February 2010**

| Country visited | Dates of the visit | Report sent | Report status | Response received | Response status |
|---|---|---|---|---|---|
| Mauritius | 8–18 October 2007 | Yes | Confidential | Yes | Confidential |
| Maldives | 10–17 December 2007 | Yes | Public | No | - |
| Sweden | 10–14 March 2008 | Yes | Public | Yes | Public |
| Benin | 17–26 May 2008 | Yes | Confidential | No | - |
| Mexico | 27 August–<br>12 September 2008 | Yes | Confidential | No | - |
| Paraguay | 10–16 March 2009 | Yes | Confidential | No | - |
| Honduras | 13–22 September 2009 | Yes | Public | No | - |
| Cambodia | 2–11 December 2009 | No | - | - | - |

## D. Follow-up activities, including publication of the Subcommittee's reports by States parties

18. Five Subcommittee visit reports have been made public following a request from the State party (Honduras, Maldives, Mexico, Paraguay and Sweden), as provided for under article 16, paragraph 2, of the Optional Protocol, including two in the reporting period: Mexico and Paraguay (in May 2010). Two follow-up replies (Sweden and Paraguay) have also been made public at the request of the State party, including Paraguay during the reporting period (in June 2010). Also during the reporting period, three visit reports and one follow-up submission have been published, adding considerably to the momentum behind the practice of authorizing the publication of reports, which the Subcommittee considers to be a positive development.

19. In conformity with past practice, the Subcommittee established a follow-up procedure to its visit reports. State parties are requested to provide within a six-month deadline a response giving a full account of actions taken to implement the recommendations contained in the visit report. At the time of the submission of the present report, 3 out of 11 States parties visited by the Subcommittee had provided follow-up replies: Mauritius in December 2008; Sweden in January 2009; and Paraguay in March 2010. Replies from Mauritius remain confidential, while the follow-up submissions from Sweden and Paraguay have been made public at the request of those States parties. The Subcommittee has provided its own follow-up observations and recommendations to the submissions of Mauritius and Sweden, while a follow-up visit was undertaken to Paraguay, with a follow-up visit report transmitted to the State party. Reminders were also sent to States parties that have not yet provided follow-up replies to the Subcommittee visit reports. It should be noted that the six-month deadline for submission of follow-up replies had not expired for Lebanon, Bolivia and Liberia during the reporting period. The substantive aspects of the follow-up process are governed by the rule of confidentiality, excepting that the State party may authorize the publication of its follow-up reply.

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## Annex IV

## Information on country visit reports, publication status and follow-up as of 31 December 2010

| *Country visited* | *Dates of the visit* | *Report sent* | *Report status* | *Response received* | *Response status* |
|---|---|---|---|---|---|
| Mauritius | 8–18 October 2007 | Yes | Confidential | Yes | Confidential |
| Maldives | 10–17 December 2007 | Yes | Public | No | - |
| Sweden | 10–14 March 2008 | Yes | Public | Yes | Public |

| | | | | | |
|---|---|---|---|---|---|
| Benin | 17–26 May 2008 | Yes | Confidential | No | - |
| Mexico | 27 August–12 September 2008 | Yes | Public | No | - |
| Paraguay | 10–16 March 2009 | Yes | Public | Yes | Public |
| Honduras | 13–22 September 2009 | Yes | Public | No | - |
| Cambodia | 2–11 December 2009 | Yes | Confidential | No | - |
| Lebanon | 24 May–2 June 2010 | Yes | Confidential | - | - |
| Bolivia (Plurinational State of) | 30 August–8 September 2010 | Not yet | - | - | - |
| Paraguay | Follow-up visit: 13–15 September 2010 | Yes | Confidential | - | - |
| Liberia | 6–13 December 2010 | Not yet | - | - | - |

**b) Responses by States Parties**

**CAT/OP/SWE/1/Add.1 (2009)**

**Replies from Sweden to the Recommendations and questions of the Subcommittee on Prevention of Torture in its report on the first periodic visit to Sweden**

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

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

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

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

**II. RECOMMENDATIONS INCLUDED IN SECTION B - POLICE**

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

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

6. It is laid down in Chapter 23, Section 18 of the Code of Judicial Procedure that when a preliminary investigation has advanced so far that a person is reasonably suspected of having committed the offence, he or she shall, when questioned, be notified of this suspicion. Chapter 24, Section 9 of the Code of Judicial Procedure provides that when a person is apprehended or arrested he or she shall be informed of the offence for which he is suspected and the grounds for the deprivation of his liberty. Moreover, it follows from Section 12 of the Decree on Preliminary Investigations (*förundersökningskungörelsen* 1947:948) that when a person is reasonably suspected of having committed an offence he or she shall be notified of his right to a defence counsel during the preliminary investigation and the conditions under which a public defence counsel may be appointed.

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

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

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

10. In a report (*Justitieombudsmännens ämbetsberättelse 1964*, p. 106 ff.), the Parliamentary Ombudsman (*Justitieombudsmannen*) has stated that notification of suspicion fulfils an important legal function. This notification provides the suspect with several legal safeguards. Omission to

notify a person who, by an objective assessment, should be considered to be under reasonable suspicion must be regarded as improper (see *Underrättsförfarandet enligt nya rättegångsbalken*, published by the Board on Procedural Issues [*Processnämnden*] 1947, p. 255, and Ekelöf, *Rättegång V*, 6th ed, p. 109).

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

12. Sweden asserts that the framework contains sufficient safeguards to ensure that a person receives information about the conditions under which a public defence counsel may be appointed as soon as he or she is considered to be under reasonable suspicion. From this point the suspect can request that a public defence counsel be appointed. It is normally at this point that the suspect has reason to fear that his or her interests may be encroached on. It should, however, be emphasised that even before this point - as a result of the amendments that entered into force on 1 April 2008 - everyone has a right to have counsel present when being questioned by the police (Chapter 23, Section 10 of the Code of Judicial Procedure). In light of the above, Sweden maintains that the framework ensures that suspects enjoy a right to public defence counsel at as early a stage as is reasonable.

***Access to Interpretation***

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

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

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

## III. RECOMMENDATIONS INCLUDED IN SECTION C - REMAND PRISONS

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

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

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

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

20. During 2008 the Swedish Prison and Probation Service has taken many and extensive measures to improve suicide prevention and to deal with acute illnesses seen in prison inmates. Several million Swedish kronor have been allocated to suicide prevention efforts. For example, over 3 800 employees have participated in an extra, one-day training programme covering issues related to suicide and acute physical illnesses.

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

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

### *Restrictions*

23. With regard to the committee's observations concerning restrictions, it is important to point out that, from an international point of view, relatively few people are detained while awaiting trial in

Sweden. A number of those detained with restrictions would not be detained at all if there was no ground for restrictions. Sweden also has relatively short detention periods.

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

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

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

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

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

decision.

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

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

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

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

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

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

34. As a result of the Government's focus on measures to combat alcohol and substance abuse, the Prison and Probation Service has established addiction care teams at almost all remand prisons. The

teams use the remand period to try to motivate prisoners to get to grips with their addiction, help them be placed in a prison that focuses on treatment, or in a contract treatment programme that can help the client become free from the addiction.

35. In order to strengthen the prisoners' possibilities to maintain close contact with their families while serving a prison sentence the Prison and Probation Service has taken action in several areas[1] - these efforts have been carried out in close cooperation with, and are officially approved by, the Children's Ombudsman.

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

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

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

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

**ANNEX**

**Information for those suspected of a crime and subsequently detained**

Public Prosecutor's Office National Police Board

You have the right to

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

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

**What is going to happen?**

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

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

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