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SWEDEN

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on Sweden’s failure to respect the right of parents to ensure the education of their children in conformity with their own convictions, in particular on the prohibition of homeschooling and on the planned ban of faith-based private schools.

(a) Right to Education

Homeschooling and parental rights

3. The Instrument of Government - a general fundamental law and part of the Swedish Constitution - states that public institutions shall, *inter alia*, secure the right to education and promote that the rights of the child be safeguarded.¹ According to the Education Act, which further elaborates on the right to education in Sweden, schooling is, as a main rule, compulsory for all children who are resident in the country.²
4. Chapter 7, Section 4 of the Education Act states that compulsory education must be completed in school or in an alternative way in accordance with the provisions of the Act. Under Chapter 24, Section 23, children may be permitted to complete compulsory schooling in an alternative way to those stated in the Education Act, if:
 - (a) the activity is considered an adequate alternative to the education that would otherwise have been offered to the child under the provision of this Act;
 - (b) the need for supervision of activities can be met; and
 - (c) there are exceptional reasons.
5. Under the Education Act, parents wishing to homeschool must apply for an exemption from compulsory education at school. Requirements for an exemption are strict, and such alternative education is often permitted on a temporary basis only. Permission is largely circumstance-based; and the parents’ religious convictions are not considered to constitute ‘exceptional reasons’.
6. Due to the exceptional nature of homeschooling in Sweden, many parents are either prohibited from doing so or forced to leave the country. Parents who continue to educate their children at home are threatened by interference from social authorities

¹ Instrument of Government, Chapter 1, Article 2, last accessed on 4 July 2019, available at: <https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-instrument-of-government-2015.pdf>

² Education Act, Chapter 7, Section 2, Skollagen 2010:800, last accessed on 4 July 2019, available at: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/skollag-2010800_sfs-2010-800

and fines of up to 20 thousand euros per child and year.³ Many Swedish home educators flee Sweden to other nearby countries where home education is permitted.⁴

7. In 2014, the Petersens, a married couple holding dual citizenship with the US and Sweden, applied to educate their daughter at home in conformity with their own philosophical convictions. The couple's daughter was advancing at a much faster pace than her classmates, which resulted in her transfer to a higher grade, where she was forced to study with older children. The Petersens wanted the education of their daughter to be age-appropriate and allowing her to immerse herself in the languages, academics and cultures of both of her native lands. State education did not allow them to successfully pursue these objectives.
8. The permission was refused with the brief explanation that the circumstances did not qualify for 'exceptional reasons'. The refusal was supported by subsequent court decisions. The Petersens argued in their appeals that homeschooling constituted their philosophical beliefs, and that it is their right, vastly supported by the international law, to be the primary educators of their daughter.
9. When no further appeals were available, it became apparent that it would be in the child's best interest to leave the country. In 2015, in exceptionally difficult circumstances, the Petersen family were forced to sell nearly all their belongings and to leave Sweden. The family relocated to the US, where they were given the freedom to assume their responsibilities as primary educators of their daughter and home educate her in conformity with their convictions. Although living abroad, the couple continues to pursue their right to home educate in Sweden through the proceedings with the United Nations Human Rights Committee (HRC), which are ongoing.
10. To name another example, Rabbi Alexander and Leah Namdar, Chabad emissaries residing in Gothenburg, Sweden, since 1991, were mandated by the Swedish Supreme Court on June 13 2019 to pay a fine of 67 thousand dollars for homeschooling their two youngest children, as well as 30 thousand dollars in court costs.⁵ Safety played an important role in the family's decision to educate their children at home, as Jewish residents have been victims of numerous attacks in the country.⁶
11. According to Rabbi Namdar, the Court's decision is absurd, because their 'excellent education' and the 'maximum effort' they put into their children are well-known.⁷ The couple have been homeschooling their children for decades, Leah Namdar is a certified teacher.⁸ Nine of their eleven children are young adults, who have received a quality education, *inter alia*, by attending the International Sluchim Online School for Chabad emissaries and studying with private tutors.⁹ However, as a result of the

³ Sweden: Country Information, last accessed on 4 July 2019, available at:

<https://hslida.org/content/hs/international/Sweden/default.asp>

⁴ According to Rohus, the Swedish Association for Home Education, last accessed on 4 July 2019, available at: <http://www.rohus.org/>

⁵ Chabad couple in Sweden fined \$67,000 for homeschooling, last accessed on 3 July 2019, available at: <http://www.israelnationalnews.com/News/News.aspx/264587>

⁶ The Uncomfortable Truth About Swedish Anti-Semitism, last accessed on 4 July 2019, available at: <https://www.nytimes.com/2017/12/14/opinion/sweden-antisemitism-jews.html>

⁷ Chabad couple in Sweden fined \$67,000 for homeschooling, last accessed on 3 July 2019, available at: <http://www.israelnationalnews.com/News/News.aspx/264587>

⁸ Chabad leader accuses Sweden of 'persecuting' couple who home-school their kids, last accessed on 4 July 2019, available at: <https://www.jta.org/2018/10/19/global/chabad-leader-accuses-sweden-persecuting-couple-home-school-kids>

⁹ Jewish News: Gothenburg Menorah Shines Light on Religious Intolerance in Sweden, last accessed on 3 July 2019, available at:

decision of the Swedish authorities, the parents are prohibited by the State to raise their children 'in the spirit of Judaism' and in a secure environment.

12. These cases constitute clear violations of international human rights law. Article 26(3) of the Universal Declaration of Human Rights states, "Parents have a prior right to choose the kind of education that shall be given to their children."¹⁰

13. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights (CESCR)¹¹ is equally explicit in guaranteeing the right to alternative forms of education. It reads:

The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

14. Article 18(4) of the ICCPR provides that States must "undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions."

15. Article 18(1) of the Convention on the Rights of the Child states, "Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child." Article 14(2) requires States to "respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child." According to the Convention, while parents have the primary responsibility for the upbringing and development of the child, "State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities,"¹² and not simply usurp those responsibilities.

16. The United Nations Programme of Action of the International Conference on Population and Development 1994 emphasizes the fundamental role of parents in their children's education: "The best interests of the child shall be the guiding principle of those responsible for his or her education and guidance; that *responsibility lies in the first place with the parents*."¹³

17. Writing on the issue of home education, former UN Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos, has affirmed that: "Distance learning methods and *home schooling represent valid options* which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children ... The promotion and development of a system of

https://www.chabad.org/news/article_cdo/aid/3880468/jewish/Gothenburg-Menorah-Shines-Light-on-Religious-Intolerance-in-Sweden.htm

¹⁰ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), last accessed on 4 July 2019, available at: <https://www.refworld.org/docid/3ae6b3712c.html>

¹¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, last accessed on 4 July 2019, available at: <https://www.refworld.org/docid/3ae6b36c0.html>

¹² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, article 18, last accessed on 4 July 2019, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

¹³ UN Population Fund (UNFPA), *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994*, 1995, A/CONF.171/13/Rev.1, Principle 10, last accessed on 4 July 2019, available at: <https://www.refworld.org/docid/4a54bc080.html>

public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school.”¹⁴

18. It follows, from the provisions cited above, that it is for the parents to decide whether to send their child to a public school or not. The Swedish Education Act and its requirements for homeschooling must therefore be revised and amended in order for the domestic provisions to be compatible with international human rights law and standards.

Proposed ban on faith-based private schools

19. After 1992, private schools (friskola) started to receive public funding, and thus became a competitive alternative to municipal schools. Now, both municipal and private schools in Sweden are tuition-free and receive Government funding.¹⁵ Private schools must follow Government guidelines on the curriculum but operate independently.¹⁶
20. Chapter 1, Section 6 of the Education Act states that education at a public school must be non-confessional. Section 7 affirms that education at independent schools and pre-schools must be non-confessional as well. It is permitted to have a confessional orientation at independent schools, however participation in confessional elements must be voluntary. There are 71 primary and upper secondary religious schools, which make up five per cent of all free schools in Sweden. One is Jewish, 59 are Christian, and 11 are Muslim.¹⁷
21. In comparison with other European countries, Sweden has extremely few religious schools. Less than 1 % of Swedish students attend religious schools. That can be compared to Belgium (56,8 %), the Netherlands (76,3 %), Great Britain (37,2 %) and France (20 %).¹⁸
22. Even though religious education in Sweden is already limited in many ways, it was reported, that the Swedish Government intends to ban private religious schools. A special investigator has been tasked with submitting “proposals for a total stop to the establishment of new primary and secondary schools which have a religious undertone.”¹⁹ The report is due 19 December 2019.
23. As opposed to the total ban of faith-based schools, there are less severe measures in place, which negatively affect their functioning. Some private religious schools lease

¹⁴ UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany (13-21 February 2006)*, 9 March 2007, A/HRC/4/29/Add.3, last accessed on 4 July 2019 available at:

<https://www.refworld.org/docid/4623826d2.html>

¹⁵ Education in Sweden, last accessed on 4 July 2019, available at:

<https://sweden.se/society/education-in-sweden/>

¹⁶ Sweden's Social Democrats propose ban on religious independent schools, last accessed on 5 July 2019, available at: <https://www.thelocal.se/20180313/swedens-social-democrats-propose-ban-on-religious-independent-schools>

¹⁷ Sweden vows to ban ALL religious schools in an effort to tackle segregation after taking in a record number of asylum seekers, last accessed on 4 July 2019, available at:

<https://www.dailymail.co.uk/news/article-5495915/Sweden-vows-ban-religious-schools-tackle-segregation.html>

¹⁸ Konfessionella friskolor – samhällsproblem eller mänsklig rättighet? Last accessed on 5 July 2019, available at: <https://timbro.se/integration/konfessionella-friskolor-samhallsproblem-eller-mansklig-rattighet/>

¹⁹ Swedish Gov't Intends to Ban Religious Schools, Except Jewish, available at:

<https://sputniknews.com/europe/201906051075642611-sweden-religious-schools-ban/>

property from cities. In March 2018 it was announced that religious schools will not be allowed to rent buildings from the city of Stockholm in the future.²⁰ This initiative was supported by the Swedish Minister for Public Administration.²¹

24. These measures are positioned as measures designed to fight segregation in society.²² However, this is not supported by facts. In 2018 the think-tank Timbro published a summary of the research on religious schools in Sweden. The conclusion is that “the existing research does not support the thesis that religious schools create parallel societies. On the contrary, the research shows that the majority of these schools have a diversity of nationalities and religions.”²³ The research summary also points out the risk that the debate is more characterized by preconceptions about religion and religious people than by actual facts about the religious schools.
25. As stated above, the right to educational freedom is protected by Article 13 CDESCR. According to the UN Committee’s on CDESCR General Comment No. 13 on the right to education,²⁴ the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions, relates to the freedom to teach a religion or belief as stated in article 18 (1) ICCPR.²⁵ The Committee notes that the fundamental character of article 18 ICCPR is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of that Covenant.
26. Further, the provision on the liberty of parents and guardians to choose other than public schools for their children, has to be read with the complementary provision, article 13 (4), which affirms “the liberty of individuals and bodies to establish and direct educational institutions”.²⁶ Furthermore, States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any *de facto* discrimination.²⁷
27. Considering the above, facts do not support the thesis that religious schools in Sweden endanger integration. A ban on religious schools would impede the rights of parents to choose the education of their children and it would violate the liberty to establish and direct educational institutions. It is a clear violation of freedom of religion, protected by Article 18 ICCPR. Other measures, directed against faith-based schools in Sweden, have discriminatory character.

²⁰ Nü stänger vi dörren för religiösa friskolor, last accessed on 5 July 2019, available at:

<https://www.expressen.se/debatt/nu-stanger-vi-dorren-for-religiosa-friskolor/>

²¹ Shekarabi stöttar hyresstopp till friskolor, last accessed on 5 July 2019, available at:

<https://www.svd.se/shekarabi-stottar-hyresstopp-till-friskolor>

²² Socialdemokraterna vill förbjuda religiösa friskolor, last accessed on 5 July 2019, available at:

<https://www.svt.se/nyheter/inrikes/socialdemokraterna-haller-presskonferens-1>

²³ Konfessionella friskolor – samhällsproblem eller mänsklig rättighet? Last accessed on 5 Julz 2019, available at: <https://timbro.se/integration/konfessionella-friskolor-samhallsproblem-eller-mansklig-rattighet/>

²⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, last accessed on 5 July 2019, available at: <https://www.refworld.org/docid/4538838c22.html>

²⁵ UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, last accessed on 5 July 2019, available at: <https://www.refworld.org/docid/453883fb22.html>

²⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, last accessed on 5 July 2019, available at: <https://www.refworld.org/docid/4538838c22.html>

²⁷ *Ibid.*

(b) Recommendations

28. In light of the aforementioned, ADF International suggests that the following recommendations be made to Sweden:

- a. Ensure that the right to freedom of religion is duly recognized and respected;
- b. Review and amend the requirements set out for parents intending to homeschool their children;
- c. Review the Education Act and amend it in accordance with international law;
- d. Review the proposed legislative ban on faith-based private schools;
- e. Respect the right guaranteed under international law of parents to raise and educate their children in accordance with their moral and religious convictions;
- f. Recognize that the State has no legitimate authority under international law to mandatorily prescribe conventional education for all children, that individuals have the right to seek alternative forms of education, and that the prohibition and criminalisation of home education is a violation of international human rights law.



VIENNA

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