

## Universal Periodic Review of Sweden – Third Cycle: School debate threatens freedom of education

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### **Previous Universal Periodic Review remarks:**

In the last UPR of Sweden<sup>1</sup>, the topic of the right to education was not the major topic of the discussion. Nevertheless, some mentions were made.

In this regard, some Permanent Missions such as Gabon or India<sup>2</sup> commended the initiative to sensitize young people against xenophobia and other forms of intolerance in the field of education. Moreover, other Permanent Missions such as Sudan, Finland or Armenia<sup>3</sup> encouraged Sweden to continue its efforts to raise public awareness and to include human rights education in the school curricula.

In addition, there were many Permanent Missions that showed concerns about the current situation of the right to education of minorities and foreign children in Sweden. In this line, the permanent mission of Bahrein<sup>4</sup> asked about the plan to improve access to education by migrant families and the Permanent Mission of China<sup>5</sup> cited concern over efforts to enhance anti-discrimination education and protect minority rights. The Permanent Mission of India<sup>6</sup> encouraged Sweden to address the discrepancies in access to employment, housing, health care and education between native Swedes and foreign-born persons. Finally, the Permanent Mission of Canada<sup>7</sup> suggested to take steps to prevent and respond to incidents of violence and intimidation against members of minority religious groups, including through education and awareness campaigns and effective interventions by law enforcement officials.

### **Current context:**

The Right to Education has been recognized as a human right in article 26 of the Universal Declaration of Human Rights. As stated in article 26.3 of the Universal Declaration of Human Rights, this right includes the obligation for the state to enable parents the liberty to choose an institution for their child other than the one provided by public authorities. Moreover, article 13 of International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to education and notes “*that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms*”. This idea is also contained in article 5 of the Convention Against Discrimination in Education.

Currently, in Sweden there is a freedom to establish schools and all schools that get permission are also guaranteed 100 % public funding, as stated in the Education Act (Skollagen) SFS nr: 2010:800. In relation to the funding of independent schools, this law establishes that the amount “*should be determined after the same principles that the municipality uses for allocation of resources for its own schools*”. Also, all schools have to follow the national curriculum and all other regulations and schools are not allowed to take any fees at all from the families. It is clear that Sweden shows a real interest on

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<sup>1</sup> A/HRC/29/13. Second Cycle, 13 April 2015.

<sup>2</sup> Paragraphs 107; 114

<sup>3</sup> Recommendations 145.19; 145.20; 145.126.

<sup>4</sup> Paragraph 84

<sup>5</sup> Paragraph 95

<sup>6</sup> Paragraph 114

<sup>7</sup> Recommendation 145.89

providing a quality educational system. However, serious concerns remain regarding the current situation of the right and freedom of education in Sweden.

One of the main differences between public and independent schools in Sweden is that the latter are allowed to have “confessional elements” but these should be voluntary and carried outside the teaching. This is particularly important in a context where public school cannot reach all the religious particularities of the country. In comparison with other European countries, Sweden has extremely few faith-based 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 %).<sup>8</sup>

### **Education as a cultural right under threat:**

The last years, following a wave of immigration, the political language towards religious schools have become more hostile and in June, the government gave additional directives<sup>9</sup> to a commissioner who is already examining “confessional elements in the educational system”. The commissioner will report to the government before 19 Dec 2019. These additional directives are:

- To give such legislative proposals that are necessary to implement a stop to establishments of independent schools with a confessional profile, and
- to analyse and report what eventual consequences these legislative changes might have, among other things with regard to the Swedish constitution, the EU regulatory framework and Sweden’s international obligations, and for the existing independent schools with a confessional profile

This is potentially damaging for families with a religious belief in Sweden. It will rule out the possibility for many parents to choose the kind of Education that should be given to their children and it will violate the liberty to establish and direct educational institutions as stated in article 13.4 of International Covenant on Economic, Social and Cultural Rights.

In addition to this framework, in March 2018, the Social Democrats, who were in the government together with the Green Party, announced an election promise to ban all religious schools<sup>10</sup>. The Ministers imply that students at religious schools are not allowed to make their own decisions about what to believe, but are oppressed by the schools, and that these schools are not able to provide a science-based Education. This might be true in some schools but it is generalising and misleading to apply it to all these schools.

As we have pointed, this proposal could imply some threats to the right to education and does not respect article 26.3 and article 13 of International Covenant on Economic, Social and Cultural Rights. It’s worth to remember that article 18 of Universal Declaration of Human Rights guarantees freedom of religion, which includes the freedom to manifest the religion or belief, individually and collectively, both in public and in private, by

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<sup>8</sup> <https://timbro.se/integration/konfessionella-friskolor-samhallsproblem-eller-mansklig-rattighet/>

<sup>9</sup> The Commission’s Directives:

- 2018:15: <http://www.regeringen.se/493c3e/contentassets/d14001b6b4e24e65ae4b94d1046f5258/kommittedirektiv-konfessionella-inslag-i-skolvasendet-pdf.pdf>
- 2019:25: [https://www.riksdagen.se/sv/dokument-lagar/dokument/kommittedirektiv/tillaggsdirektiv-till-utredningen-om\\_H7B125](https://www.riksdagen.se/sv/dokument-lagar/dokument/kommittedirektiv/tillaggsdirektiv-till-utredningen-om_H7B125)

<sup>10</sup> <https://www.socialdemokraterna.se/aktuellt/2018/forbud-mot-religiosa-friskolor/>

teaching. To ban faith-based schools goes against the statement of the Human Rights Committee that ensures in the General Comment no.22 that religious freedom is related to the guarantee of teaching a religion (CESCR, 1993, par.6<sup>11</sup>). This statement embodies the right to education as a cultural right, recognized in article 15 of International Covenant on Economic, Social and Cultural Rights. Moreover, education as a cultural right implies the protection of religious freedom and freedom to choose and set up educational establishments (CESCR, 2009, par.55.c). Indeed, as we have observed before Egypt already suggested in the previous UPR exam that Sweden had some room to improve education as a cultural right.

In this regard, forbidding the presence of religious schools would be a step back as it limits the right of parents to choose the kind of education they want for their children and the cultural rights of children. This issue is specially problematic in states with minority groups, such as Catholics in Sweden who do not represent even 4% of the population or the Jewish (0.1%) as well other Christian denominations.

In this sense, it should not be forgotten that state has the obligation not only to respect the different values and beliefs present in the society but also the duty to ensure its protection. The Human Rights Committee recalls this obligation in General Comment no.21: *“The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. (...) the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant”*<sup>12</sup>.

The state is a neutral and pluralistic institution. Indeed, as stated in article 2 of Regeringsformen SFS nr: 1974:152, *“The public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual [...]”*<sup>13</sup>. In this order, public authorities, in its attempt to form good citizens, have to make efforts to include the different values of minorities. We should keep in mind the role of “democratic citizenship education” as a way to preserve a plural society.

It is obvious that two legitimate elements of the democratic system face each other: on one hand, the right of parents to choose their children’s education (art. 26.3) and on the other hand, the interest of the state in ensuring human rights education: *“Human rights education is primarily a State responsibility”*<sup>14</sup> (33th session of HRC, A/HRC/30/20). It is

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<sup>11</sup> General Comment No. 22: The right to freedom of thought, conscience and religion ( Art. 18) : 30/07/93. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. Available at: <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2022.pdf>

<sup>12</sup> General comment No. 21 : Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights). E/C.12/GC/21. available at: <https://www.refworld.org/docid/4ed35bae2.html>

<sup>13</sup> the 1974 Instrument of Government, which contains the central provisions and corresponds most closely to the constitution of other countries

<sup>14</sup>The Role of Prevention in the Promotion and Protection of Human Rights. Report of the Office of the United Nations High Commissioner for Human Rights

incontestable that both bottoms must coexist in a state policies are based on a human rights approach. The solution should not lead to ban religious schools but to a scenario of cooperation between those faith-based schools and the state, making both compatible.

Not allowing religious schools can lead these groups to isolation and out of control by the state. By doing so we help reasonable religious people reform their religions by, for example, having their own schools that make their values compatible with democratic values.

Actually, the benefits of non-governmental schools, including confessional schools, are supported by many researches that suggest that religious schools do not create parallel societies. On the contrary, the research shows that the majority of these schools have a diversity of nationalities and religions. 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. For instance, Gunnel Mohme shows that<sup>15</sup> parents with Somali backgrounds place their children in Muslim schools as a reaction to the lack of respect and understanding they experience while attending the local municipal school, often because of religious and ethnic narrow-mindedness.

Many other studies on this topic, as the one carried by Jenny Berglund<sup>16</sup>, professor in Religious Education or Charles L. Glenn about Muslim Educators in American Communities lead to similar conclusions and encourage the need of non-governmental schools in order to preserve cultural diversity.

Recently, during 41<sup>st</sup> session of Human Rights Council, the report on the Right to Education and in particular, the role of private actors in the field of education has been discussed. During the Interactive Dialogue, the Special Rapporteur on the Right to Education, Ms. Bolly Barry clarified some points of her report. Ms. Bolly Barry emphasized the duty of the state to respect the freedom of the parents to choose other different school than the ones provided by the state, also concerning confessional schools. In this regard, she encouraged states to cooperate with non-governmental actors in the field of education, including faith-based actors, in order to offer a better educational system and to ensure protection of religious, philosophical and pedagogical beliefs of parents and communities. The obligation to provide an inclusive education implies the state's duty to collaborate with private schools that can offer an education based on different values and beliefs of certain minorities.

In this way, Ms. Bolly Barry acknowledged the goodness of private institutions as religious schools. In particular, she praised some practices that have been launched in different countries, such as France where public-private partnerships between Catholic schools and the state have been very useful in order to guarantee a quality educational system. The so-called “*école sous contrat*” implies the possibility for private schools to

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See “The Right to Human Rights Education”, a web resource which compiles relevant commitments made by States in international and regional intergovernmental forums, available from: <http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/Listofcontents.aspx>.

<sup>15</sup>Mohme, Gunnel. Somali-Swedish Girls – The Construction of Childhood within Local and Transnational Spaces. Stockholm University, 2016 <https://www.skolporten.se/forskning/avhandling/somali-swedish-girls-construction-childhood-within-local-transnational-spaces/>

<sup>16</sup> Jenny Berglund (2019) State-Funded Faith-Based Schooling for Muslims in the North, Religion & Education,46:2, 210-233, DOI: [10.1080/15507394.2019.1590943](https://doi.org/10.1080/15507394.2019.1590943)

benefit from an association contract with the state after five years of activity. This entails a commitment for the private school to follow the school curricula of the National Education and for the state to fund the salaries of teachers. In this particular case, both actors (state and catholic schools) have the same goal which is to offer a better education. This cooperation also allows to implement the obligation of the state to offer inclusive education and to preserve and protect the values of different groups of the society.

Important conclusions can be made from these researches. The first one is that facts do not support the thesis that religious schools in Sweden endanger integration. On the contrary, most of the religious schools have a diversity of nationalities and students and are successful in integrating students with foreign background. On the other hand, there are municipal schools that are extremely homogenous.

Moreover, there is a growing secular norm at Swedish schools as the 2010 School Act (2010:800), which is hostile towards religion and alienates students with a religious faith. Discrimination and abuse against religious people have been normalized to a degree where it is widely accepted. Several recent studies indicate that discrimination is growingly present in the classrooms. Karin Kittelmann Flensner<sup>17</sup> shows in her research that in many classrooms, there is a permissive climate for dropping negative comments about religion and religious people. For instance, in March 2012, her field research revealed that in a school "religiosity was associated with mental illness and insanity".

A ban on religious schools would impede the rights of parents to choose the kind of Education that should be given to their children (especially since home-schooling is not allowed) and it would violate the liberty to establish and direct educational institutions. This would involve a violation of the international law pointed above as article 26.3 Universal Declaration of Human Rights, articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights and article 5 of the Convention Against Discrimination in Education.

### **Recommendation:**

We recommend Sweden to reconsider the law on education to ban religious schools in Sweden in order to realize the right to education from an holistic perspective including the cultural dimension of the right to education.

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<sup>17</sup> Religious Education in Contemporary Pluralistic Sweden, University of Gothenburg, 2015  
[https://gupea.ub.gu.se/bitstream/2077/41110/1/gupea\\_2077\\_41110\\_1.pdf](https://gupea.ub.gu.se/bitstream/2077/41110/1/gupea_2077_41110_1.pdf)