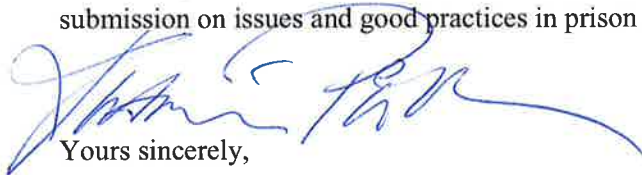


Special Rapporteur on Torture

Dear Madame,

Thank you for the opportunity to present the Parliamentary Ombudsmen's view on issues within the Swedish Prison and Probation Service.

Enclosed, please find the response to the Special Rapporteur on Torture's call for submission on issues and good practices in prison management.



Yours sincerely,  
Katarina Pahlsson

## Response to the Special Rapporteur on Torture: Input on Current Issues and Best Practices in Prison Management

### 1. Opening words

In Sweden the Parliamentary Ombudsmen (JO) discharge the duties as National Preventive Mechanism (NPM). There are four ombudsmen with individual responsibility for a certain supervisory area comprising a number of public authorities and each ombudsman carries out supervision where people are deprived of their liberty. In order to complete this task, the Parliamentary Ombudsmen is assisted by a specific unit, the OPCAT unit.

In 2020, the Parliamentary Ombudsmen released a thematic report addressing the isolation of inmates in remand prisons. Given that isolation is a significant concern within the Swedish Prison and Probation Service, and due to time constraints, the Parliamentary Ombudsmen's response to the Special Rapporteur will be exclusively focused on isolation of inmates in remand prisons. However, the Parliamentary Ombudsmen have recently provided input to the Association for the Prevention of Torture (APT) regarding women in prison. Since the Special Rapporteur also requests information about women as a particular group, the response provided to APT is attached.

### 2. International criticism regarding isolation of inmates in remand prison

For almost 30 years, Sweden has repeatedly received international criticism for the long periods individuals may be held on remand and the widespread use of restrictions, as restrictions poses a risk of inmates being isolated. This criticism comes from, inter alia, the UN Committee Against Torture (CAT) and Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT).

#### 2.1. *Criticism from the UN*

In 2008, the SPT visited Sweden and conducted visits to, inter alia, Kronoberg and Uppsala Remand Prisons. After the visit the SPT emphasised that restrictions must not be used routinely. Furthermore, the SPT recommended that Sweden review its legislation regarding the use of restrictions. This includes, inter alia, that the grounds for imposing each individual restriction should be clearly described in law and that a court should be obliged to examine the necessity for each specific restriction. The SPT noted that the lack of a systematic collection of data on the use of restrictions makes it impossible to conduct proper oversight of the use of restrictions.

The SPT additionally recommended that Sweden must take measures to prevent the negative effects which can occur from prolonged isolation. In the opinion of SPT, all staff working with inmates in remand prisons must be trained to be able to recognise the stress symptoms due to isolation. Furthermore, inmates must be provided with greater opportunities for work, exercise and other activities. Finally, the SPT recommended Sweden takes measures to increase the opportunities for inmates to receive visits from voluntary groups.

In CATs report to Sweden in 2014, the CAT expressed concern regarding the high percentage of inmates subject to restrictions in Swedish remand prisons. The CAT also expressed concern regarding the widespread and – in some cases – prolonged use of solitary confinement of inmates. For this reason, Sweden was urged to use restrictions only as an exceptional measure and only when strictly necessary for investigative reasons. Furthermore, Sweden was urged to abolish the solitary confinement of minors.

Other UN committees have also made statements regarding the conditions for inmates and the risks with isolation. In 2015, the UN Committee on the Rights of the Child called on Sweden to ensure that all children are removed from solitary confinement and to review its legislation in order to end solitary confinement of minors. The UN Human Rights Committee – which monitors the UN Convention on Civil and Political Rights (ICCPR) – called on Sweden in 2016 to ensure that all restrictions on inmates held on remand are timebound, necessary and proportionate. The Committee also called on Sweden to take appropriate measures to mitigate isolation, in particular for young inmates.

## 2.2. *Criticism from the Council of Europe*

The CPT visited Sweden in 2009 with inspections of the remand prisons Gävle, Göteborg and Kronoberg. During the visit, the Committee noted that there were shortcomings in the work performed with the use of isolation-breaking measures. Following the visit, the Committee stated, inter alia, the following:

*The CPT calls upon the Swedish authorities to redouble their efforts in developing activities for remand prisoners with a view to ensuring that all prisoners, including those under restrictions, are able to spend reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature. The target of association time should be reviewed accordingly. The Committee would like to stress that a lack of physical activity and intellectual stimulation can be especially harmful for young prisoners. The CPT recommends that the Swedish authorities develop programmes of activities designed specifically to meet the needs of young prisoners.*

In May 2015, the CPT visited, inter alia, the remand prisons Falun, Kronoberg, Malmö, Saltvik, Sollentuna and Växjö. In the report following the visit, the Committee stated that, since its first visit to Sweden in 1991, it had criticised Sweden for the widespread use of restrictions. Despite this, the Committee noted that the number of inmates held with restrictions imposed has only decreased by two percent over a five-year period. The Committee then stated the following:

*The fact that this practice [the use of restrictions] continues almost unabated after 24 years of ongoing dialogue between the CPT and the Swedish authorities and that there are no real signs of progress is most regrettable for the Committee. Moreover, the newly adopted Instructions and Guidelines [RÅR 2015: 1] do not seem to be able to bring about the desirable change since they limit themselves to providing clarification necessary to ensure consistency in the application of the existing legislation.*

During the 2015 visit, inmates whom the Committee spoke with disclosed that being held on remand for long periods had a serious impact on their mental health. The CPT noted that these problems were exacerbated by the high level of security in the three high-security remand prisons visited by the Committee (Kronoberg, Malmö and Sollentuna). The Committee then stated that there must be a fundamental change to the Swedish approach on the use of restrictions. According to the CPT's standard, all inmates in prisons and remand prisons should, as a rule, be able to spend at least eight hours a day outside their cells. In connection with this, inmates must be given the opportunity to engage in constructive activities of a varied nature (work, education, vocational training, sports, etc.). The CPT again recommended that the Swedish authorities:

*[T]ake swift and decisive action, including if necessary legislative changes, to ensure that restrictions on remand prisoners are only imposed in exceptional*

*circumstances which are strictly limited to the actual requirements of the case and last no longer than is absolutely necessary. Furthermore, the Committee calls upon the Swedish authorities to radically improve the offer of activities for remand prisoners. The aim should be to ensure that all such prisoners are able to spend at least 8 hours per day outside their cells, engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport, recreation / association [...]. This may require changes to the physical infrastructure of prisons.*

Following the submission of the CPT's report of its 2015 visit, high-level talks between the CPT and the Government of Sweden took place. The most important purpose of the discussions was the implementation of the long-standing recommendation from the CPT that Sweden must sharply reduce both the time during which it is possible to hold individuals on remand with restrictions and the extent of such restrictions. This issue was followed up within the framework of the Parliamentary Ombudsmen's Opcat operations in 2017 (see section 3 below).

### 2.3. Measures taken following international criticism

During the 1990s, Sweden took measures to try to address the problems that have attracted international attention. One change was that prosecutors now require a court's permission to impose restrictions upon an individual held on remand. Furthermore, a provision was introduced requiring prosecutors to give reasons for why a certain restriction should be allowed. Concurrently, the possibility was also introduced for individuals on remand to request that a court assess whether a prosecutor's arguments for the use of restrictions are well-founded or not. With the introduction of the current Remand Prisons Act, the possibility to appeal a court's decision on the use of restrictions was also introduced.

It should be noted that the primary rule in the Remand Prison act states that an inmate has the right to associate with other inmates during the day. In this context, the Parliamentary Ombudsmen has clarified that the term 'association' should mean spending time with more than one inmate. This right can be limited by restrictions, imposed by a prosecutor after a court decision giving permission to such limiting arrangements, or a remand prison decision of seclusion (or both). The Prison and Probation service must ensure that an inmate who is at risk of being isolated receives isolation-breaking measures.

Following the CPT's visit in May 2015, on 23 July of the same year the government decided to commission a special investigator tasked with submitting proposals aimed at reducing the use of both remand prison and restrictions. The inquiry took the name the Remand Prison and Restrictions Government Inquiry and it submitted its report Fewer in remand prison and reduced isolation (SOU2016:52) in August 2016. The proposals in SOU 2016:52 resulted, inter alia, in a provision in the Remand Prison Act stating that an inmate under the age of 18 is entitled to spend at least four hours every day with personnel or someone else.

### 3. Observations by the Parliamentary Ombudsmen

Through inspections, the Parliamentary Ombudsmen has repeatedly noted and raised awareness of the situation for inmates in the care of the Prison and Probation Service. In 2017 a series of inspections were performed to investigate how the Prison and Probation Service works with issues such as reducing isolation for inmates held in the Swedish remand prisons. After the inspections the Parliamentary Ombudsmen stated that the Prison and Probation Service should ensure the amount of time inmates spend in isolation is reported and documented in a standardized manner. The reason is that it should be possible to follow the conditions for inmates over time. Furthermore, the use of isolation-breaking measures should be reported and documented for inmates who, for various

reasons, do not associate with other inmates. The documentation should state the category – held with restrictions, held without restrictions or migration detainees– to which an inmate belongs. Finally, the Parliamentary Ombudsmen requested that the Prison and Probation Service report back on how the agency monitors the time that inmates spend in association and the use of isolation-breaking measures.

Based on the information received in the Prison and Probation Service's reporting back the Parliamentary Ombudsmen decided to continue the review in the form of an own initiative inquiry, this resulted in the decision JO 2020/21 p. 164, case no O 7-2018. In the decision the Parliamentary Ombudsmen inter alia stated that isolation risks affecting not only inmates with restrictions, but also inmates held in remand prisons who have a legal right to associate with other inmates during the day. Based on the Prison and Probation Service's own surveys for 2018, 83 percent of those held on remand with restrictions and 33 percent of those detained who had the right to associate were held in conditions amounting to solitary confinement.

The Parliamentary Ombudsmen also stated

- that the Prison and Probation Service's remand prisons lack sufficient facilities for the purposes of association as well as sufficient staff to be able to satisfy inmates' statutory rights of association with other inmates, and that the agency deserves very serious criticism for its continued shortcomings in this regard
- that the Ombudsmen is very critical of the fact that the Prison and Probation Service has not progressed further in its work with the use of isolation-breaking measures
- that it is very important that the Prison and Probation Service introduces a support system to enable continuous following up of the work with breaking the isolation of inmates.

Additionally, the Parliamentary Ombudsmen also raised the question of the need for a review of, inter alia, the Remand Prisons Act (2010:611) in order to clarify inmates' rights and counteract isolation and its negative effects.

At the beginning of 2020, an inspection of the remand prison in Sollentuna was conducted.<sup>1</sup> Following the inspection, the Parliamentary Ombudsmen stated that it was evident that the remand prison failed to meet the inmates right to associate with other inmates. It was also evident that numerous inmates in Sollentuna remand prison were enduring isolation. These individuals were confined in solitude, lacking meaningful human interaction for more than 22 hours a day. This grim reality extended even to young detainees.

Moreover, the Parliamentary Ombudsmen identified shortcomings in the remand prison's assessment of isolation-reducing measures, but also differing interpretations of what such measures entail. Considering this context, the Parliamentary Ombudsmen emphasized the urgent need for Sollentuna remand prison to strengthen and prioritize its efforts to meaningfully mitigating the isolation experienced by inmates. There were also inmates labeled as 'isolated upon their own request.' Regarding these individuals, the Parliamentary Ombudsmen pointed out that there is no legal basis for isolating an inmate in remand prison on such grounds. The Ombudsmen further emphasized the prison's substantial responsibility to prevent inmates from voluntarily seeking solitude.

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<sup>1</sup> The Parliamentary Ombudsmen's report, case no O 5-2020.

In September 2021, an inspection was conducted at Uppsala remand prison.<sup>2</sup> Regarding isolation-reducing measures, the Parliamentary Ombudsmen stated that the issue of implementing a support system to enable continuous monitoring of efforts to reduce the isolation of inmates has been under discussion within the Swedish Prison and Probation Service for several years, and underlined that it is remarkable that such a system is still lacking.

However, the Parliamentary Ombudsmen noted that Uppsala remand prison has attempted to address the situation by implementing its own procedure to measure the time inmates are provided with isolation-reducing measures. According to the Ombudsmen, this could enhance awareness and focus among the staff on the importance of such efforts. The initiative was considered highly positive, with the prison management perceived as genuinely committed to the issue, noting that the remand prison is working systematically to attempt to reduce the isolation experienced by inmates.

In 2022, Sollentuna remand prison was once again subject to an inspection.<sup>3</sup> This time the inspection was focused on the situation of young inmates and children. The inspection revealed that the staffing resources allocated by the remand prison to meet children's right to four hours of isolation-breaking measures, such as being in the company of staff or others, are not sufficient when there are more than a few children accommodated in the remand prison. At the time seven children were accommodated at Sollentuna remand prison. During the weekends, the resources are only sufficient for one or two children and the same resources are supposed to be enough for young people in the remand prison.

The Parliamentary Ombudsmen stated that the capacity and organization in Sollentuna remand prison are evidently inadequate to provide isolation-breaking measures to the number of children which the Swedish Prison and Probation Service has specified as a benchmark for remand prisons in the Stockholm region. According to the ombudsmen, this is completely unacceptable, and expectations are that the Swedish Prison and Probation Service to take the necessary measures to ensure that all children in the remand prison have their legal rights fulfilled.

During the inspection it also emerged that the opportunities for young individuals aged 18 to 24 to receive isolation-breaking measures were negatively affected when there were children in the facilities. The Parliamentary Ombudsmen concluded that young people are at risk of being isolated when children's right to stay with someone else in the remand prison is fulfilled. Emphasis was placed on the remand prison's responsibility in this regard, even during a situation of high occupancy.

Some young individuals who neither had restrictions nor were segregated were not allowed to spend time in association. The Parliamentary Ombudsmen view it seriously that the remand prison still fails to ensure the inmates the fundamental right to association with other individuals. This, too, can result in young inmates becoming isolated.

#### 4. Concluding reflections

Despite significant international criticism spanning decades and recurrent statements by the Parliamentary Ombudsmen, the Swedish Prison and Probation Service continues to grapple with concerns regarding isolation and related matters, lacking the capacity to ensure inmates their statutory rights. The Prison and Probation Service must, of course, have an operation that is able to both satisfy inmates' rights of association with other inmates and prevent inmates from being isolated in order to counteract risk of ill-treatment.

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<sup>2</sup> The Parliamentary Ombudsmen's decision, case no 6684-2021.

<sup>3</sup> The Parliamentary Ombudsmen's report, case no O 3-2022.

Efforts initiated in response to the international criticism, such as the proposals in SOU 2016:52, have led to some improvements such as the mentioned provision ensuring a minimum of four hours of time with personnel, mainly, or isolation-reducing measures for inmates under the age of 18. Unfortunately, recent inspections of remand prisons reveal ongoing deficiencies in the realization of such measures. Given the risks even short-term isolation can entail for inmates, this is a matter of grave concern.

Although there are glimpses of good practices, as demonstrated in the remand prison of Uppsala, the current situation with overcrowding within the remand prisons and prisons hasn't improved the situation for the inmates. The Swedish Prison and Probation Service has a challenging task ahead to address the current issues regarding the right to association, restrictions and isolation. The Parliamentary Ombudsmen intends to continue to follow up on these matters.

## The Parliamentary Ombudsmen's response to the Association for the Prevention on Torture

### 1) PART 1 - General information

#### a) Data about women in prison

The following numbers are compiled by the Swedish Prison and Probation Service in its report "KOS 2022 – Criminal justice and statistics" (KOS 2022). KOS 2022 contains the final criminal justice statistics from the previous year; thus, the statistics presented below are derived from 2022.<sup>1</sup>

#### i) Number of women in prison, both pre-trial and sentenced

In 2022, a total of 10,298 persons were admitted to prison, out of which 764 were women.<sup>2</sup> There were slightly over 170 women registered in remand prison out of which 86 percent were remanded pending trial.<sup>3</sup>

#### ii) Percentage of women in prison as compared to the overall prison population

The percentage of women in prison as compared to the overall prison population was seven percent.<sup>4</sup>

#### iii) Number of prisons for women. If available, please specify number of women-only prisons and women's units in larger prisons.

The Swedish Prison and Probation Service operates separate prisons for women and men. There are six women-only prisons in Sweden; Färingsö, Hinseberg, Ljustadalen, Ringsjön, Sagsjön and Ystad.<sup>5</sup>

The Prison and Probation Service's prisons are divided into three security levels (1–3), with 1 being the highest and 3 the lowest security level. The division into security levels is based on an overall assessment of the conditions an institution has for supervision and control. There is, however, no security level 1 prison for female inmates. In this context it can be noted that the Parliamentary ombudsmen has stated that the Prison and Probation Service should carry out a review of the security levels for the prisons that accept women in order to secure differentiation.

#### iv) Disaggregated information about women in prison, if available (e.g. pregnant women, women with children in prison; women foreigners; women with disabilities, etc.)

Out of the women who commenced serving sentences in the Swedish Prison and Probation Service in 2022, eleven percent were not Swedish citizens.<sup>6</sup> Otherwise Sweden lacks the requested statistics.

#### v) Percentage of women prisons staff, if available

<sup>1</sup> Swedish Prison and Probation Service. "KOS 2022 - Kriminalvård och Statistik", p. 3.

<sup>2</sup> KOS 2022, p. 126.

<sup>3</sup> KOS 2022, p. 36.

<sup>4</sup> KOS 2022, p. 126.

<sup>5</sup> <https://www.kriminalvarden.se/fangelse-frivard-och-hakte/fangelse/>

<sup>6</sup> KOS p. 126.



As of October 1, 2023, female prison officers accounted for 65.7 percent of the staff in women's prisons.<sup>7</sup>

b) Information about your institution

i) Name of the institution

The OPCAT unit.

ii) Type of institution

In Sweden the Parliamentary Ombudsmen (JO) discharge the duties as National Preventive Mechanism (NPM). There are four ombudsmen with individual responsibility for a certain supervisory area comprising a number of public authorities and each ombudsman carries out supervision where people are deprived of their liberty. In order to complete this task, the Parliamentary Ombudsmen is assisted by a specific unit, the OPCAT unit.

iii) Legal basis

The work as an NPM is based on the Optional Protocol of the United Nations Convention against Torture of 2002 (OPCAT) but the duties is also stated in The Act with Instructions for the Parliamentary Ombudsmen.<sup>8</sup>

iv) Date of establishment

1 of July 2011.

v) Total number of members and staff, and number of women

Currently the OPCAT unit consist of one head of unit and three legal experts, all of whom are women. In addition, the OPCAT unit engages one expert in psychology and one expert in medicine. Both experts are men. As of 1 January 2024, the unit will expand with the intention to further strengthen its capacity.

vi) Website and link to specific report(s) or other specific document(s) you have produced on the issue

**Decisions regarding body searches:**

JO 2016/17 p. 273: <https://www.jo.se/besluten/kritik-mot-kriminalvarden-haket-goteborg-for-att-en-manlig-vardare-kroppsvisiterat-en-kvinnlig-intagen-utan-lagstod/>

JO 2016/17 p. 277: <https://www.jo.se/besluten/anmalan-mot-kriminalvarden-anstalten-skanninge-om-att-en-besokare-blivit-foremal-for-ytliga-kroppsbesiktningar-stickprovsvi/>

JO 2021/22 p. 305: <https://www.jo.se/besluten/allvarlig-kritik-mot-kriminalvarden-anstalten-ystad-for-att-anstalten-rutinmassigt-genomfort-kroppsbesiktningar-i-samband-med-befordran-av-myndighetspost-till-intagna-m-m/>

JO 2021/22 p. 321: <https://www.jo.se/besluten/kritik-mot-ansvariga-vid-kriminalvarden-anstalten-hinseberg-for-agerandet-i-samband-med-kroppsbesiktningar-av-en-intagen-m-m/>

**Decisions regarding means of restraint:**

<sup>7</sup> Email correspondence from the HR Department, Swedish Prison and Probation Service, Subject: Statistik anställda kvinnor på kvinnoanstalt, October 10, 2023.

<sup>8</sup> Lag (2023:499) med instruktion för Riksdagens ombudsmän (JO), Section 18.

JO 2017/18 p. 131: <https://www.jo.se/besluten/initiativ-angaende-kriminalvardens-individuella-bedomningar-av-sakerhet-och-risker-i-samband-med-intagnas-transporter-till-och-vistelser-vid-sjukvardsinrattningar/>

JO 2020/21 p. 198: <https://www.jo.se/besluten/kritik-mot-kriminalvardens-haktet-uppsala-for-flera-brister-i-hanteringen-av-en-intagens-vistelse-vid-en-sjukvardsinrattning/>

JO:2021/22 p. 330: <https://www.jo.se/besluten/allvarlig-kritik-mot-kriminalvardens-haktet-kronoberg-for-att-en-kvinnlig-intagen-som-genomgick-en-sen-abort-pa-sjukhus-underkastades-alltfor-langtgaende-sakerhetsarrangemang-och-inte-visades-tillrac/>

**Protocols regarding means of restraint:**

Ref. no. 2527-2015: <https://www.jo.se/app/uploads/2023/02/NPM-protokoll-2527-2015.pdf>

**Reports regarding means of restraint:**

NPM, Report from the OPCAT unit for 2015-2017: <https://www.jo.se/app/uploads/2023/03/opcat-report-2015-2017-webb.pdf>

## 2) PART 2 – Thematic information about women in prison

### a) 3 to 5 main SMART recommendations

1. Violating the integrity of, and displaying lack of respect and compassion, for pregnant inmates as a result of not using updated and individual assessments of the need for use of restraints and the use of male prison officers in conjunction with visits to hospitals must be reduced. The Swedish Prison and Probation Services should promptly monitor and make sure that the agency's staff adheres to the established procedures within the Prison and Probation Services in order to ensure that:
  - a. pregnant inmates not routinely and unnecessary are being restrained when visiting and undergoing medical care,
  - b. that only female prison officers are present during medical examination and treatment of pregnant inmates,
  - c. documentation of hospital visits by pregnant inmates are made and kept in order to facilitate evaluation of the use of shackles and gender of officers.
  
2. The use of routinely conducting body searches (frisk searches) in order to prevent inmates carrying sensitive documents back to their cells must end.
  - a. The Swedish Prison and Probation Services should promptly ensure that body searches are carried out in accordance with the framework of current law and internal protocols, i.e. not routinely.

### b) Risks of ill-treatment and specific needs of women in prison

The Swedish NPM has chosen to focus on two of the issues highlighted by the APT, namely body searches and means of restraint. The reason for this is that the Parliamentary Ombudsmen has made the most observations within these two areas.

- i) **Body searches of women deprived of liberty, but also women visitors if relevant**
  - (1) **Are there indications that body searches of women are conducted systematically, without an individual assessment?**

There are examples demonstrating that body searches have been carried out systematically, without individual assessment. In the decision JO 2021/22 p. 305, the Parliamentary Ombudsmen directed severe criticism towards the Prison and Probation Service (Ystad Prison) for routinely conducting strip searches after delivery of official correspondence. The stated purpose behind these searches, according to Ystad Prison, was to prevent inmates from carrying sensitive documents back to their cells.

During the investigation conducted by the Parliamentary Ombudsmen, the prison adjusted its procedures. Instead of the regular strip searches, they initiated frisk searches of inmates, deeming the previous searches disproportionate. In its decision, the Parliamentary Ombudsmen emphasized that there is no legal basis for conducting strip searches on all inmates either, as a standard control measure following the receipt of official correspondence. Strip searches are highly invasive, constituting a significant breach of privacy. Furthermore, the principle of proportionality must always be considered before implementing any form of control measure. Concerning the new procedure, it was observed that even frisk searches require legal justification, which was lacking in this case.

Regarding body searches of female visitors, it's worth noting that in 2015, the Parliamentary Ombudsmen received a complaint from an inmate. He expressed concerns that his wife, during her visits to him in Skänninge Prison, was consistently subjected to strip searches without individual assessment. On each occasion, prison officers claimed these searches were random checks, conducted according to the institution's procedures. However, Skänninge Prison denied implementing such a routine and also stated that there was no record of visitors undergoing this type of inspection. Thus, it was a case of conflicting statements. In its decision, JO 2016/17 p. 277, the Parliamentary Ombudsmen emphasized that the Prison and Probation Service should implement a central procedure, for all facilities, to document these types of control measures.

(2) Do detention procedures define the circumstances and modalities of body searches of women?

At a central level, there is guidance regarding body searches outlined in the Swedish Prison and Probation Service's regulations and general guidelines for prisons (FARK prison) and remand prisons (FARK remand prison).<sup>9</sup> These regulations are general and do not specifically address women. However, as mentioned in the summary of JO 2021/22 p. 305, local procedures for body searches exist in women's facilities. The extent to which these local procedures are implemented, however, is unknown.

(3) Do detention authorities keep detailed records of body searches?

JO 2016/17 p. 277 addresses a case where strip searches of visitors were not documented. As mentioned, the Parliamentary Ombudsmen urged the Swedish Prison and Probation Service to establish a central procedure for documenting such control measures.

In this context it's worth noting that according to the guidelines for prisons (FARK prison), in cases where a visitor undergoes a strip search, it should be documented. According to FARK prison, it is advisable that the documentation include details about who authorized the measure, the reason for implementation, the outcome, the person conducting the measure and any witness present.<sup>10</sup>

(4) Are women detainees and visitors searched only by women staff and out of sight of men staff

In its decision JO 2016/17 p. 273, the Parliamentary Ombudsmen criticized the Swedish Prison and Probation Service after an incident where a male prison officer conducted a frisk search on a female inmate during her entry into a remand prison. According to the remand prison, this action was taken under a provision in the Swedish Detention Act, allowing a male officer to search a female inmate in exceptional cases. The provision referred to was meant for rapidly arising situations where there are no female officers available, and where security concerns make it unreasonable to delay the search. The Parliamentary Ombudsmen noted that the remand prison handles a significant volume of daily inmate entries and is required to conduct frisk searches on all these individuals. It involves a routine operation that the remand prison can plan for. Thus, the remand prison has the ability to anticipate the need for female officers to search female inmates.

(5) Are invasive body searches strictly forbidden or carried out only in exceptional circumstances, by trained and authorised medical professional?

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<sup>9</sup> *Kriminalvårdens föreskrifter och allmänna råd för fängelse* (KVFS 2011:1) and *Kriminalvårdens föreskrifter och allmänna råd om häkte* (KVFS 2011:2).

<sup>10</sup> Chapter 7, section 9b §, FARK prison.

JO 2021/22 p. 321 addresses a case where a female inmate was placed in isolation to undergo a body search because it was suspected that she had swallowed narcotics. The prison used a customs rest room (pacto toilet) to perform the body search. When narcotics was not detected in the excrement, the inmate was asked if she would agree to an additional body search at a hospital, in the form of a vaginal and rectal examination. According to the Parliamentary Ombudsmen, the documentation indicates that the facility used a perceived consent as the basis for the decision to perform an invasive body search. The Parliamentary Ombudsmen stated that the space for allowing a consent to be enough to execute a forced action which would otherwise require a legal basis is highly limited and that it is the decision of the Prison and Probation Service that is the deciding factor of whether an inmate should undergo an involuntary action such an invasive body search. From the inmate's perspective, it must have appeared as though the alternative was continued isolation. The Parliamentary Ombudsmen stated that the voluntariness in such a situation must be regarded as illusory. The staff responsible received criticism for how they handled the matter and for certain shortcomings in their documentation.

In FARK prison and FARK remand prison it is stated that body searches in the form of rectal or vaginal examinations should be conducted in hospitals. Body searches involving an examination of an inmate's oral cavity, other than an ocular inspection, should be performed by a physician or nurse following instructions provided by a physician.<sup>11</sup>

c) Use of means of restraint

(1) Do detention procedures regulate the use of means of restraint, physical (e.g. handcuffs, restraint beds) or medical (medical sedation)?

Initially, it should be noted that there are deficiencies in Swedish legislation regarding use of means of restraints. For instance, both the Prison Act and the Detention Act lack a clear definition of shackles. On several occasions the Parliamentary Ombudsmen have observed that the regulation of the use of physical restraints is, to some extent, regulated further down in the hierarchy of norms inter alia in regulations and handbooks issued by authorities. This creates legal uncertainty for individual inmates who become subject to such measures.<sup>12</sup>

The Swedish Prison and Probation Service has developed a central handbook which provides its staff with instructions and guidance on matters related to security; the Safety Handbook. The Safety handbook includes a section that outlines the conditions under which handcuffs and shackles can be used. Furthermore, the referral response in JO 2020/21 p. 198 shows that the Prison and Probation Service has outlined a manual concerning the treatment of accompanying children and pregnant clients in prisons and detention centers (2018:5), providing detailed guidance on detention procedures.<sup>13</sup> At a local level, there are specific guidelines and instructions regarding inter alia use of belt restraint and security assessments in connection to transport.<sup>14</sup>

(2) Are means of restraint prohibited – and not used in practice – for pregnant women, for women during labour, giving birth and after birth?

<sup>11</sup> Chapter 8, Section 1a, FARK prison and Chapter 4, Section 1, FARK remand prison.

<sup>12</sup> See, for example, JO 2021/22 s. 241.

<sup>13</sup> JO 2020/21 p. 198, p. 5.

<sup>14</sup> The Parliamentary Ombudsmen has, for example, encountered the Swedish Prison and Probation Service's guidelines for belt restraints (2021:1), which are applicable within the operational area of Kronoberg's remand prison. During the inspection of Hinseberg, the Parliamentary Ombudsmen observed instructions related to security assessments, transport planning, and transport activities.

It's not prohibited. The Security handbook includes a section addressing pregnant clients and clients with accompanying children. Concerning pregnant clients, the handbook specifies that the decision of handcuffs and shackles should be evaluated on a case-by-case basis, considering the security assessment and the client's current condition. If means of restraint is deemed necessary, waist shackles should not be employed. Moreover, a client in labor should not be incarcerated.

According to the Swedish Prison and Probation Service's manual on accompanying children and pregnant women (2018:5), an individual risk assessment should always be conducted. However, the use of handcuffs and shackles should generally be approached with restraint. During the advanced stages of pregnancy, means of restraint should only be considered in exceptional cases.<sup>15</sup>

The report below shows that means of restraint has been applied to pregnant individuals in practice, including during transportation to childbirth and during labour.

(3) Are there indications that means of restraint are used against women or certain categories of women in a disproportionate or discriminatory way?

In 2015 the Swedish NPM selected women deprived of their liberty as a special theme. Inspections were conducted at all prisons that accommodate women. During the inspection of the Hinseberg prison the following information was gathered regarding the use of means of restraint during transports to healthcare facilities.

A security assessment is conducted for all inmates at the prison. When planning transports, a risk analysis is performed based only on the existing security assessment. Almost all inmates had a security assessment of the standard level, which means that inmates in this group should be restrained with waist shackles during transports and outings.

Several inmates reported various issues they faced when being restrained during visits to healthcare facilities. One inmate had to sit in a public waiting room wearing waist restraints. Another inmate described that she was sedated for a surgical abortion while still wearing waist shackles and that she woke up from anesthesia still restrained. An inmate with a child in the facility mentioned that she was handcuffed and restrained during all prenatal care visits before the child was born, and also during the transport to the hospital when she was in labor. After giving birth, a new security assessment was conducted, and she was no longer required to wear restraints. Several inmates described challenges with restroom visits at healthcare facilities, where staff had to lower their underwear due to the handcuffs and waist restraints. Furthermore, it was noted that inmates were restrained with waist shackles or handcuffs even during X-ray examinations.<sup>16</sup>

Based on the details that emerged during the inspection of Hinseberg, the Parliamentary Ombudsmen decided to conduct a further investigation into the Prison and Probation Service's security assessments. In its decision JO 2017/18 s. 131, the Parliamentary Ombudsmen states that the Hinseberg prison's decision on control measures, appeared to be based on standardised assessments regarding the inmate's security level. During the assessment, consideration for the inmate's current state and integrity was neglected. In the opinion of the Parliamentary Ombudsmen a correct scrutiny would probably not have led to the assessment that it would be proportionate to use handcuffs and waist shackles on a woman with ongoing labour pains being transferred to a maternity ward to give birth. Additionally, the Parliamentary Ombudsmen states that the Prison and Probation Service need to focus efforts to ensure that a satisfactory level of control and security is

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<sup>15</sup> JO 2021/22 p. 330, p. 6.

<sup>16</sup> Ref. no. 2527-2015.

achieved, in each individual case, without the inmate being subject to measures perceived as degrading and not proportionate on the basis of the individual's condition during, for example, medical care and treatment, when being moved to health care facilities or during toilet visits. In order to follow up on security arrangements and results in adjustments to security assessment, such as the use of shackles, this must be put on record.

At the time of the inspections there was no specific manual regarding pregnant women. However in August 2018 the previously mentioned manual on accompanying children and pregnant women came in to force(2018:5).<sup>17</sup> The Security handbook also includes a section addressing pregnant individuals. Nevertheless, the Parliamentary ombudsmen have noted that the problems related to static security assessments and the disproportionate use of control measures within the Prison and Probation Service have persisted even after the NPM's thematic inspections in 2015.

In a decision dated 2019 (JO 2020/21 p. 198), it was revealed that a female inmate undergoing a medical abortion was compelled to wear ankle restraints for a substantial duration of her hospital stay. Staff from the Swedish Prison and Probation Service, including a male officer, were present in the treatment room. The Parliamentary Ombudsmen observed that according to the Swedish Prison and Probation Service's own manual the use of restraints should be applied restrictively when it comes to pregnant clients. In light of this context, the ombudsmen concluded it appears doubtful whether the Prison and Probation Service's risk assessment adequately took into account individual and current factors, including the inmate's integrity and dignity.

Further severe criticism was expressed in a decision from 2021 (JO 2021/22 p. 330), where a female inmate undergoing a late abortion was subjected to waist shackles and/or ankle shackles during a substantial portion of her two-day hospital stay and protracted labouring.

(4) [Is the use of restraint recorded, including detainees' personal files, registers and CCTV recordings?](#)

The Parliamentary Ombudsmen have repeatedly observed deficiencies in documentation regarding the use of restraints. The previously mentioned decisions, JO 2017/18 p. 131 and JO 2021/22 p 330, serves as examples of the lack of documentation.

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<sup>17</sup> JO 2020/21 p. 198, p. 7.