



How to measure progress in combating discrimination and promoting equality ?

Leading BPI

Final Draft of Country Report on Sweden

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THE SWEDISH MODEL

The Swedish legal framework has developed a considerable number of explicit bans of discrimination and it can be said that in general it is in conformity with the two European Commission Directives 2000/43/EC and 2000/78/EC, albeit there are some flaws in this sense, the most important one being the null implementation regarding discrimination on the ground of age.

However, the Swedish Government has deterred the complete transposition of the two directives as it is currently in the last phases of a process that started in 2005 with the creation of the Parliamentary Committee on Discrimination, which aims at the harmonization of all the Swedish legislation concerning the promotion of equality and the banning of discrimination. It is expected that this process will also end-up merging all the equality bodies (there are four ombudsmen offices to fight against discrimination) into a single one.

There is no legal disposition, nor even internal ombudsmen offices rules, requiring the elaboration of any systematic and coherent set of rules for the collection, production and uses of equality data. The only ones being that sex and age should appear in the official records and the Equality Gender Plan required by the Equal Opportunities Ombudsman to companies with more than 9 employees. Nonetheless, there is a huge amount of data produced mainly by Statistics Sweden and analyzed in an ad-hoc basis by different bodies and it is possible to find the whole repertoire of types of equality data focusing the Swedish population or parts of them. The problem with all this data is, of course, that the lack of regularity in its collection (also, of course, in the methods and operationalisations being used) and analysis prevent from using the data for monitoring, policy design and policy evaluation purposes. A huge amount of data from different domains can be analyzed by gender, origin and age, but there is a complete absence from official registers of any variable related to sexual orientation, disabilities, religion and spoken language.





LEGAL FRAMEWORK

Protection for the principle of equal treatment can be found both at a constitutional level as well as at the level of national legislation. The constitution lays down the principle of equal treatment, both directly and indirectly. However, the practical implementation of the principle is found in the various specific laws against discrimination in Sweden.

In regard to employment in the public sector covered by the national government there is a constitutional requirement (Regeringsformen 1 kap 9 Å§, [Instrument of Government Chapter 1, Article 9]) that decisions regarding an offer of employment shall be based solely on objective grounds, such as skills and merits, and it is therefore never justifiable to treat any job applicant unfavourably on the basis of irrelevant factors. This is presumed to apply to disability as well. This does not apply to local government employees. However, in practice this applies because of the constitutional rule in Chapter 1, Article 9 of the IG (Regeringsformen 1 kap. 9 Å§) which states that all exercise of public authority shall be grounded on an objective basis. Article 2 of Chapter 1 of the Swedish Constitution (the Instrument of Government - Regeringsformen) states that "public power shall be exercised with respect for the equal worth of all persons and the freedom and dignity of the individual". In addition paragraph 3 of Article 2 was amended recently. It now declares:

"The public institutions shall promote the ideals of democracy as guidelines in all sectors of society and protect the private and family lives of private persons. Public institutions shall work to ensure that all person shall be able to achieve participation and equality in society. The public institutions shall counteract discrimination against persons on the grounds of gender, skin colour, national or ethnic origin, language or religious affiliation, disability, sexual orientation, age or other circumstance that relates to the individual as a person." (Lag 2002:903 [Law 2002:903]) (unofficial translation).

In Swedish law this paragraph is expected to play the role of a guiding principle for public authorities rather than being a statement of law that will be implemented by the courts. Furthermore, it should be noted that laws can be declared unconstitutional by the courts only if the violation is manifest (uppenbart). According to Article 14 of Chapter 11 of the Instrument of Government: "If a court or other public body finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision may not be applied. If the provision has been approved by the Parliament (Riksdag) or by the Government, however, it shall be waived only if the error is manifest." This limitation requiring that the law adopted by the Parliament not only violates, but is a manifest violation of the Constitution, means that, as a practical matter, this constitutionality of laws can rarely be challenged in Swedish courts. It should also be noted that The European Convention on Human Rights has been incorporated into national legislation through Article 23 of Chapter 2 of the Instrument of Government ("No act of





law or other provision may be adopted which contravenes Sweden's undertakings under the European Convention for the Protection of Human Rights and Fundamental Freedoms.”).¹

There is a set of laws that has been produced far before the appearance of the two EU Directives. Swedish legislation bans direct and indirect discrimination, harassment, and instructions to discriminate. *First out was the 1979 Equal Opportunities Act, later on replaced by the 1991:433 Equal Opportunities Act dealing with workplace discrimination on the grounds of sex. Similar acts concerning workplace discrimination on the grounds of ethnicity (and religion and other belief), sexual orientation and disability were adopted and came into effect in 1999 – the 1999 Acts. These acts can be said to have anticipated the Article 13 Directives (Directives 2000/43/EC and 2000/78/EC) and drew heavily on the Burden –of Proof Directive 97/80/EC (In addition, the 1991 Equal Opportunities Act on sex discrimination was amended in 2000 basically to bring it into line with the 1999 anti-discrimination laws.) Later on, in 2003, the 1999 Acts were amended in order to better fulfil the requirements of the Article 13 Directives. Since then, the 1999 Ethnic Discrimination Act expressly addresses also religion and other belief. Furthermore, there is a law from 2001, the 2001 Equal Treatment of Students at Universities Act, that applies to discrimination in higher education on grounds of sex, ethnicity and religion and other belief, disability or sexual orientation. Since 2003 there has also been the Prohibition of Discrimination Act (the 2003 Act), banning discrimination on the grounds of ethnicity, religion and other belief, sexual orientation and disability in other areas of society than working life, such as labour market policy activities, membership of unions and occupational organisations, goods and services (including housing), social security and related benefits systems as well as health and medical care. It was considered unjustifiable to provide a higher level of protection for ethnicity than for the other grounds. Nevertheless, today the greatest amount of protection is given to the grounds of ethnicity and religion and other belief [...]* All these laws provide a special role for the labour social partners (it should be noted that Swedish labour market is characterised by a high degree of organisational density, roughly 85% of employees belong to a labour union) (Nummhauser-Henning 2005b: 2)

Discrimination on grounds of age is not specifically covered by Swedish legislation but the Parliamentary Commission on Discrimination has begun making proposals to the Government and it is prone to legislate and adopt measures immediately in the workplace (Swedish Government 2006: 55). Additionally, there is an ongoing changing process in Sweden due to the work produced by a Parliamentary Committee on Discrimination, presented in the report *Consolidated Discrimination Legislation* [SOU 2006:22] in February 2006. The report contains the Committee's recommendations for consolidated legislation against discrimination and for a new, merged ombudsman encompassing all grounds for discrimination. The report has been referred for consideration and the recommendations are being reviewed by the Government Offices. The aim of the work is for a new legislation to take effect during 2008.²

*Direct discrimination*³

1 Extracted from Nummhauser-Henning (2005: 18-20)

2 See also the Statement of Government Policy presented by the Prime Minister, Mr Fredrik Reinfeldt, to the Swedish Riksdag on Friday, 6 October 2006 (accessed the 7th May 2007: <http://www.sweden.gov.se/content/1/c6/07/02/33/71d8a385.pdf>)

3 The remaining part of this epigraph are all taken from Nummhauser-Henning report (2005a)



As defined for example in the Prohibition of Discrimination Act (2003:307), direct discrimination occurs when an individual is disadvantaged by being treated less favourably than someone else is being, has been or would have been treated in a comparable situation, if such treatment is associated with the person's sex, ethnic origin, religion or other belief, sexual orientation or disability.

Following Numhauser-Henning report (2005a: 25), *direct discrimination is in principle identical in all the relevant national statutes, which are the 1999 Acts, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act. An employer, a higher education institution or a goods and services provider, etc., may not disfavour anyone of the protected groups by treating her or him worse than the employer, etc., treats, has treated or would have treated someone else in a comparable situation, if the disfavour is connected to the protected ground. This situation applies as from July 2003 – when the 2003 Act was introduced and the 1999 Acts as well as the 2001 Students at Universities Act were amended in parallel. As an example I will quote Sec. 3 in the 1999 Act on Sexual Orientation: 'An employer may not disfavour a job applicant or an employee by treating her or him worse than the employer treats, has treated or would have treated someone else in a comparable situation, if the disfavour is connected to sexual orientation'.⁴ This definition is designed in close adherence to Art. 2.2.1. in Directive 2000/43/EC.*

To constitute discrimination the situation must be similar for those who are compared and the disfavourable treatment must have had a connection with the protected ground. It can also be discrimination if the employer, etc. would have given more favourable treatment to a person not pertaining to the protected group. In other words, a fictional comparator can be used. For a job applicant a similar situation means that they have applied for the same job and they basically have the same merits in terms of education, experience and personal suitability. A similar situation for employees means equivalent work tasks, education and experience.⁵

Indirect discrimination

Also the concept of indirect discrimination is harmonised and is thus the same regardless of the non-discrimination act at issue. An example taken from Sec. 4 in the 1999 Act on Sexual Orientation: 'An employer may not disfavour a job applicant or an employee by applying a provision, a criterion or a method of procedure that appears to be neutral but which in practice disfavours persons with a particular sexual orientation. However, this does not apply if the provision, criterion or method of procedure can be justified for a reasonable goal and the means are appropriate and necessary in order to achieve the goal.' This definition is designed in fairly close adherence to Art. 2.2.b. in Directive 2000/43/EC and 2.2.b in Directive 2000/78/EC, respectively.⁶

4 Similar definitions of direct discrimination are to be found in Sec. 8 the 1999 Ethnic Discrimination Act, Sec. 3 the 1999 Disability Discrimination Act, Sec. 7 the Student at Universities Act and Sec. 3 par. 1 the 2003 Prohibition of Discrimination Act.

5 Several cases law of direct discrimination are exposed in Nummhauser-Henning (2005: 9-18)

6 The Equal Opportunities Ombudsman has brought one case concerning indirect discrimination to the Labour Court, the only case of this kind that has been tried by the court. The respondent was the car manufacturer Volvo. In order to get a job as a car constructor in Volvos car manufactory, applicants had to be at least 1 meter and 63 centimetres tall. Volvo had applied



Harassment

All the anti-discrimination acts contain provisions defining harassment as a form of prohibited discrimination. The definitions of harassment are somewhat broader than the one found in the Directive, in that they do not require that the behaviour also creates an intimidating, hostile, degrading, humiliating or offensive environment, but only that it violates the dignity of a person and that it be related to this being that such a criterion is understood to be an integral part of the term 'harassment' in Swedish ('trakasserier'). Furthermore, both the 1999 Sexual Orientation Discrimination Act and the 2001 Equal Treatment of Students at Universities Act contain a form of protection against harassment, not explicitly foreseen in the Directive. Art. 8 of the former and art. 6 of the latter oblige an employer/university, which has knowledge about the fact that an employee/student feels that she has suffered harassment related to sexual orientation, to investigate the matter and, when appropriate, to take action to prevent such harassment from continuing. This obligation applies also to situations where the employer/university cannot in any way be held responsible directly for the harassment itself.

Burden of proof, sources of evidence

A shared burden of proof of discrimination is enforced by all the non-discrimination acts relevant to this report. Since 2003 there is a separate but harmonized burden of proof rule such as the following chosen from Sec. 23 a in the 1999 Sexual Orientation Discrimination Act and applicable to all kinds of discrimination (direct, indirect or in the form of harassment or instructions to discriminate: 'If a person who considers that he or she has been discriminated against or subjected to retaliatory actions shows circumstances that give cause to assume that he or she has been discriminated against or subjected to retaliatory actions, it is the employer that shall prove that discrimination or retaliatory actions have not occurred.' In practice, the same rule was applied also prior to the 2003 amendments. The presumed victim of discrimination must be able to present facts that make it possible to assume that discrimination has occurred (a similar situation and disfavourable treatment). Thereafter the burden of proof is shifted to the employer who must show that the disfavourable treatment did not have a connection with the disability. An employer can be

this criterion for about two years. Two women, measuring 1,60 and 1,61 were rejected when applying for work on grounds of their length. They filed a complaint to the Equal Opportunities Ombudsman. The length criterion appears to be neutral, but in practice it is particularly disadvantageous to women, since it excludes about 30 per cent of the female population but only 1 per cent of the male population from working as a car constructor at Volvo. So far the EEO and Volvo held the same position. In order to meet the exception to the ban on indirect discrimination Volvo had to prove that the length criterion could be justified with objective factors that were not connected to the sex of the persons, and that it was an appropriate and necessary mean to reach this aim. In this part Volvo claimed that the length criterion reduced the risk of work related injuries and that it therefore was justified by a legitimate aim. Furthermore Volvo argued that it was appropriate and necessary to apply the criterion to pursuit this aim. The Equal Opportunities Ombudsman disputed this saying that for instance it could be argued that individual tests of applicant's physical status and reach would constitute a more effective tool to minimize the risk for work related injuries. The Swedish Labour Court (21st September 2005) stated that the criterion of minimum length was neither appropriate nor necessary to reduce work related injuries. The complainant received approximately 5.000 euros in compensation for pain and suffering (Börgstrom 2007: 7-9).



held liable according to the law even if he or she did not have the intent to discriminate (Nummhauser-Henning 2005a: 50).

A person who applies for a job, promotion or training opportunity but is not selected has a right to request and receive written information from the employer regarding the education, work experience and other qualifications of the person who was selected, in order to be able to compare qualification (Makkonen 2006b:29). Official statistics or other data sources have not yet been used as sources of evidence in any case law.

Anti-discrimination bodies

There are at present four equality bodies in Sweden: Equal Opportunities Ombudsman, an Ombudsman Against Ethnic Discrimination, a Disability Ombudsman and an Ombudsman against discrimination due to sexual orientation in the area of non-discrimination, all appointed by the Government. In principle there exists also the Children Ombudsman, which is available to those up to 18 years old, but its competences are much more centered on awareness raising and other information diffusion tasks. As is the case with other Government authorities, the Ombudsmen have an independent status, therefore according to the EU Directives they take their own decisions in individual matters. The separation of powers is a constitutional principle and the Swedish Government according to Chapter 11 Sec. 2 the Instrument of Government may not interfere with a Governmental Agency on how to act in an individual case or how they should apply legislation. They are the key public institutions for the promotion of equal rights in their respective fields, and are yearly state funded through the approval of the Swedish Parliament of Government recommendations.⁷

The four Swedish ombudsmen concerned with discrimination use to cooperate regularly among each other, but there are no established ways to channel this cooperation. Certainly, some of the offices are in the same buildings though in different floors, and workers do know and treat each other frequently (seen during interviewing staying in Stockholm). The Parliamentary Committee on Discrimination created in 2005 (see above) has proposed to the Government the unification of the four ombudsmen offices. This will be effective during 2008.

Other anti-discrimination bodies

Another important actor has been the *Swedish Integration Board*, a governmental organization founded in 1998 to monitor the situation and progress of integration policy objectives within the various sectors of society, promote the integration and prevent and counteract ethnic discrimination, xenophobia and racism; and develop introductory procedures for new refugee

⁷ The interviewed Torbjörn Andersson stated that there is no public official reasoning that justifies the funding amounts received by the different ombudsmen offices, and he complains and do not understand how is it the case that the Disabilities Ombudsmen office receives a half or one third of what another ombudsmen offices receive. These budgetary assignments, he continues, can not be based upon the only «objective» data available by the Government, that is the number of complaints received per year, because the Disabilities Ombudsman office receives at least as much complaints as the other ombudsmen offices. According to my point of view, approved by Mr. Andersson, the production of equality data could also serve this purpose.



arrivals. According to this it has developed studies and research to create indicators to follow up government initiatives and as a result has also discussed how to measure integration (*Integration and Indicators, Summary 2006*) conceiving integration as a five-dimensional concept where discrimination is not directly pursued but what can be considered its consequences in housing, welfare, labour market and civic integration.⁸ The Swedish Integration Board has recently been closed down (Marie Lindberg, interview) by the Swedish Government and its functions as a data producer and analyzer have been passed to Statistics Sweden (*Stativ Database*, which is not yet ready, and therefore since July 1st 2007 the contents of the Swedish Integration Board's database are no longer accessible) and the Migration Board.

The *National Institute for Working Life* is another governmental organization that has been doing some research related to discrimination, but this one was also closed down on July 1st 2007 (as announced in its website <http://www.arbetslivsinstitutet.se/en/>) and no publication or report can be downloaded from its website; it is under a complete dismantling process.

There are some NGOs working to promote equality and fighting against discrimination, maybe the most relevant ones being *Thema* (<http://www.thema.se/> <http://themakommentar.blogspot.com>) and the *Centre Against Racism* (<http://www.centrummotrasism.se/>), an umbrella organization which depends from public funding and currently experiencing problems due to the dramatic reduction of funds promoted by the government (Sophia Sternevald, interview). Thema is a Swedish non-governmental organisation with the main objective to increase the rule of law in the areas of discrimination and human rights. Every year Thema also focuses on specific areas, in order to highlight certain aspects of discrimination and human rights. During 2007 these focus areas are situation testing and strategic litigation. Moreover, Thema also participates in the legal debate and conducts legal research in the area of discrimination and human rights. Thema performs both internal and external research in the area of rule of law, discrimination and human rights. During 2006 Thema participated in a European research project concerning situation testing, and also produced legal reports for the European Monitoring Centre on Racism and Xenophobia.

There is in Sweden a fairly weak role played by NGOs other than trade unions and employer organizations, with the possible exception of a set of different organizations within the movement of the disabled people. To the extent there are NGO's the Ombudsmen have an on-going dialogue (Nummhauser-Henning 2005: 56) with them. According to Paul Lappalainen (interview and Lappalainen 2007) the nule role played by NGOs in Sweden -and generally in Europe-⁹ is one of the main reasons it is so difficult to fight against discrimination; NGOs need to be empowered and therefore public funding should be reasonably stopped to let them play as independent and firstly concerned actors.

⁸ I have had no access to the complete report but it seems it proposes macro measures to discern the extent and depth of integration in the whole Swedish society.

⁹ He stresses the role played by NGOs in Europe compared to the role they play in the USA.





MEASURES TO COMBAT DISCRIMINATION

As commented above, in 2005 a Parliamentary Committee on Discrimination was created to study the Swedish system coherence concerning the fight against discrimination and its accordance with the EC Directives. This committee presented the report *Consolidated Discrimination Legislation* [SOU 2006:22] in February 2006 (its main conclusions are quoted above in an underscored paragraph).

Additionally, two special committees were instructed to study structural discrimination on grounds of ethnicity or religion. The Committee on Structural Discrimination on Grounds of Ethnicity or Religion submitted its final report *The Blue and Yellow Glass House – Structural Discrimination in Sweden* (SOU 2005:56) in June 2005. The Committee on Power, Integration and Structural Discrimination submitted its final report *Integration's Black Book. Agenda for Equality and Social Cohesion* (SOU 2006:79) in August 2006. The reports have been referred for consideration and the recommendations are being reviewed by the Government Offices. Among the recommendations of the *Blue and Yellow Glass House* report (i have not been able to access the other report) there is only one concerning the data production using situation testing (Committee on Structural... 2005: 13), although it proposes a wide range of measures to combat structural discrimination.¹⁰

Equality programmes

The Government presented in the Parliament the National Action Plan for Human Rights 2006-2009, which focuses on the protection against discrimination (Ministry of Justice 2006c: 2). It is said in the plan that a survey about the situation of the human rights in Sweden in 2005 will serve to design a set of measures. No comments about the need or uses of data are made in the document.

Equality Plans

A characteristic feature of the Swedish law on sex discrimination – the Equal Opportunities Act –, since it was introduced in 1992, is the requirement on employers (with 10 or more employees) to have equality plans, what is called the *Gender Equality Plan* (see detailed explanation below). Such a requirement is also present in the 2001 Student at Universities Act regarding all the grounds covered. However, in the 1999 Acts (and the 2003 Act) there are no such specific requirements.

The Swedish Reform Program for Growth and Jobs 2006 to 2008 (Swedish Government 2006) declares the need to combat discrimination urgently. There is an expectant momentum until the measures proposed in the Parliamentary Committee on Discrimination report can begin to be adopted. Moreover, the strategic plan designed by the Ministry of Enterprise, Energy and

¹⁰ It might be of importance to stress that the Head of this Committee was Paul Lappalainen, who stressed during the interview that he feels suspicious about the proposal of a set of indicators to measure and combat discrimination; he fears how bureaucrats would use indicators because he argues that they would reify them and would end-up defining their own job according the evolution of indicators, irrespective of anything else related to anti-discrimination.



Communication (2007) stresses the relevance of equality and discrimination avoidance as a crucial factor of economic development, thus proposing the implementation and adoption of measures to combat discrimination.

Contract clauses

Stockholm and other localities have already adopted the inclusion of clauses in their public contracts. These clauses are used to require the service supplier their liability with anti-discrimination legislation, and include the possibility of canceling public contracts if the suppliers do not respect anti-discrimination legislation. The Stockholm City Council adopted the clause contract on 6 December 2004. The city contracts are worth billions annually, and the clause applies to contracts for goods and services. It puts the supplier on notice that the city retains the right to cancel the contract if the supplier or a sub-contractor violates any of Sweden's laws against discrimination, and applies to the supplier as a legal person and not just to the supplier's contracting unit. (see in appendix 2 the contract clause included in Stockholms' public contracts).

Paul Lappalainen, Marie Lindberg and Torbjörn Andersson stressed during the interviews the need to extend contract clauses everywhere in the Swedish public sector. In this sense, things seem to evolve positively, as declared by the labour strategic plan presented by the Government:

It is important that government agencies set a good example to ensure non-discrimination in public procurement. In July 2006 the previous government decided an ordinance on antidiscrimination in public procurement contracts. According to this ordinance thirty central government agencies are obliged to specify terms in their procurement contracts to discourage discrimination by suppliers (Swedish Government 2006: 60-61).

Despite these words, Paul Lappalainen said that the Commission on Discrimination refused his proposal to extend the contract clauses at every level in Swedish public institutions (Paul Lappalainen, interview).

DATA AND INDICATORS

Here I present a sample of the different kinds of data that have been produced lately in Sweden. From this survey it becomes apparent that equality groups based upon gender, ethnicity, and religion are the three motives that have received a more detailed and continuous attention - although not systematic - from a data production point of view. Generally, little can be said about the quality of indicators because they used to be adopted for every study, and studies are ad-hoc issued. The indicators used in all the reviewed reports that used more or less sophisticated analysis of survey data cannot be honestly evaluated because there is no clear statement at all about how discrimination is operationalised. Nevertheless, and taking the following comment with extreme prudence, it seems that the question on how to measure discrimination has not yet been problematized. It may as a consequence of the lack of comments about data in the legal framework that there is not a systematic way of exploiting and analysing data produced here and there, and thus data is not used to actually follow-up, monitoring and evaluate the policies adopted to promote





equality or to fight against discrimination. And this stands for public institutions as for equality bodies.

-STATISTICAL REGISTERS

The statistical system of the Swedish central government is decentralised. There are 25 government agencies with statistical responsibilities governed by national legislation. In principal, statistics related to a sector is the responsibility of the government agency handling the sector. A central agency answerable to the Ministry of Finance, Statistics Sweden (Statistiska Centralbyrån, SCB) is in charge of production of inter-sectoral statistics, e.g. the national accounts and consumer price index. In addition, Statistics Sweden has the responsibility for coordination, development and general methods and monitoring of all official government statistics production. Against pay, Statistics Sweden also produces sectoral statistics for government agencies and commercial customers. Statistics Sweden is subordinated to the Ministry of Finance, but is not a part of the ministry. It is ruled by a Director-General and a Deputy Director-General who are appointed by the Government for a limited period. There is a general statistics act from 1992 regulating the production of official statistics.¹¹

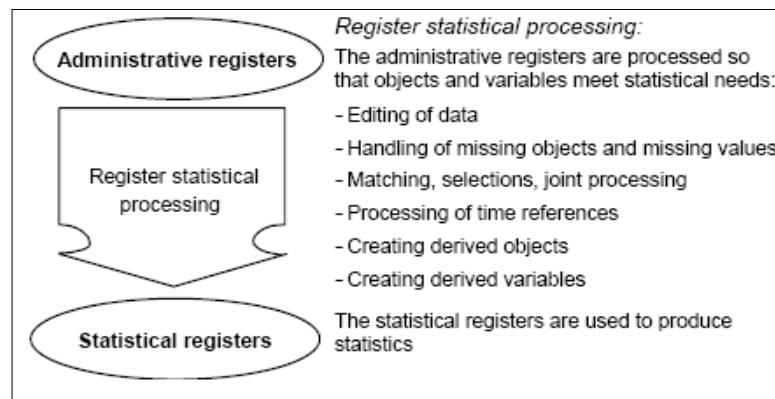
Various provisions specify the obligation of individuals, households and enterprises to furnish particulars for censuses and surveys. The Secrecy Act of 1980 governs the confidentiality of submitted particulars. All micro data pertaining to individuals, households and enterprises are confidential at Statistics Sweden. The Data Act of 1973, containing the first general law on data protection in Europe (Makkonen 2006b: 52) stipulates that computerised personal data files may only be set up and kept by those who have a licence from the Data Inspection Board (DI), although the Swedish legislation allows the processing of sensitive data for statistical and scientific purposes (Makkonen 2006b: 65).

Sweden does not conduct censuses since 1990, but it produces a complex statistical register from administrative and other authorities registers (see Figure 1). The first time Sweden produced a census-like register (population and housing census) without traditional data collection was 2005.

Figure 1. The production process of Swedish Statistical Registers

11 Legal framework for official statistics processing:

- Directives for Sweden's Official Statistics, Swedish Code of Statutes, SFS 1992:1668, amended in SFS 1995:1061; Changed Responsibilities for Government Statistics, The Government Official Reports, SOU 1994:1, Ministry of Finance;
- Directives for Statistics Sweden, Swedish Code Of Statutes, 1988:137, amended in SFS 1994:1136;
- The Official Statistics Act, Swedish Code of Statutes, SFS 1992:889;
- The Secrecy Act, Swedish Code of Statutes, SFS 1980:100, amended in SFS 1994:1915;
- The Data Act, Swedish Code of Statutes, SFS 1973:289, amended in SFS 1994:1485

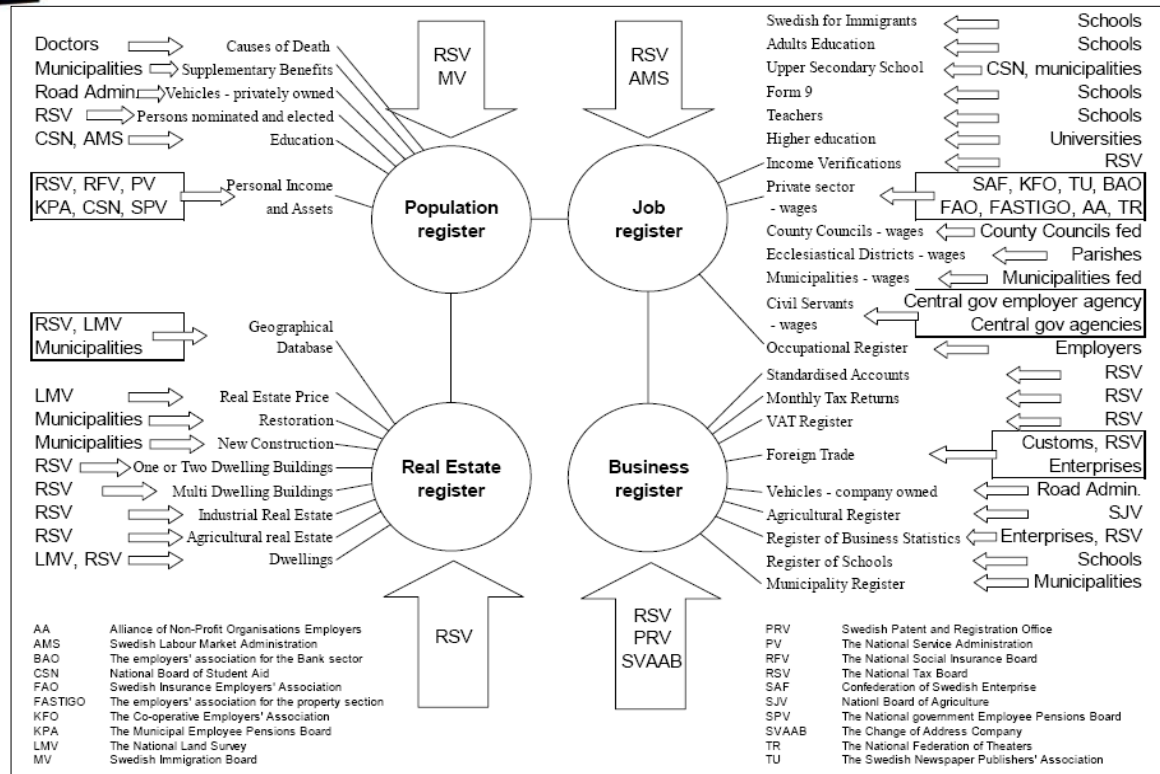


Source: Statistics Sweden (2001: 12)

There are four basic registers (rounded by circles in Figure 2) in the Swedish register system. The information that each basic register contains can be merged with the information of other basic register by means of reference variables, that is, variables that are repeatedly contained in each basic register and allow to establish the links between the basic registers. Once the huge amount of information coming from all the authorities has been processed and has passed a quality control, it is organized to produce a system as the one pictured in Figure 3, where information about employment, income, education, life expectancy, occupation is collected. There is, however, no systematic gathering of characteristics which might serve as grounds for discrimination (except for gender and age, and origin as a proxy of ethnicity).

Figure 2. Authorities and organisations contribution to the Swedish Register system



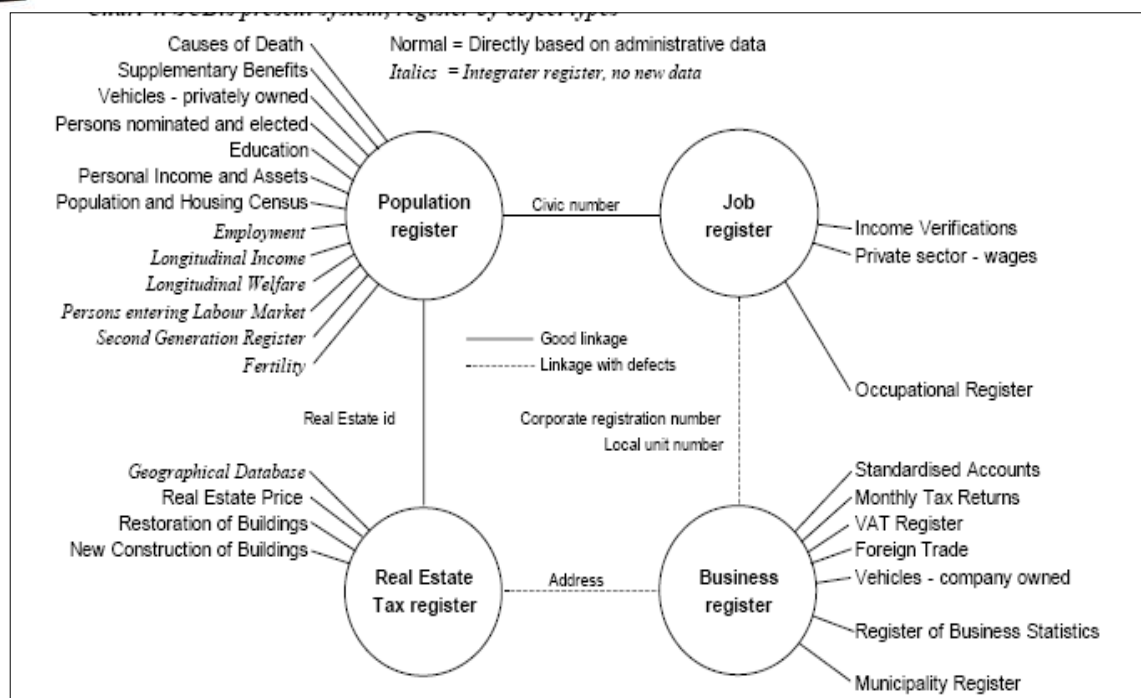


Source: Statistics Sweden (2001: 17)

Statistics Sweden treats data on country of birth, citizenship, country of emigration, the date of immigration, time spent in Sweden, the reason for the stay and the Swedish/foreign background of the person (thanks to country of birth and country of birth of the parents), but even this information does not appear structuring the Statistical reports (see for example Statistics Sweden 2006, 2007). These variables are used within the analysis of labour market and education statistics. Information on ethnic background is equally employed in statistics with regard to social topics, health matters, economic welfare matters and statistics on citizen influence. This complex and relatively updated and reliable organisation of the register system allows the production of equality data and the analysis of equality in society at least from a consequentialist or an «equality of results» perspective (Makkonen 2006a: 14), but this has not been done in Sweden yet.¹² Ad-hoc studies using Statistics Sweden are, for example, the *Economic Survey of Sweden 2007*, which concludes that there is extended housing and labour market exclusion between gender groups and migrants-natives (OECD 2007).

Figure 3. General view of the Swedish Register system

12 The generalization of Makkonen «The use of statistical evidence [in legal proceedings] involves some rather complex issues, such as the construction of comparator groups and the calculation of relative disadvantage that is at the core of indirect discrimination claims. Lack of use of statistical evidence does however not appear to be attributable to these challenges, but seems rather to be a direct result of the lack of data in this area.» (2006b: 6) should then be qualified.



Source: Statistics Sweden (2001: 14)

-COMPLAINTS DATA

Each Ombudsman Office produces a yearly report analyzing the complaints data collected and listing of the actions and measures taken by each office. Generally the analysis consists of a description of the time evolution in: the number complaints; the social environments where complaints were originated (workplace, public spaces, public institutions, etc.), the number of complaints investigated, the number of complaints solved before going to court, and the number of complaints taken to court, and from those the amount being won and lost. These reports are diffused in the ombudsmen websites and are also distributed among selected population groups as labor unions and employers organizations, to help employers or other organizations analyze the performance of their procedures relating to equality, to the few existing NGOs to let them know the situation.

Complaints tend to be increasingly solved before going to the courts. Ombudsmen office have also noticed the last years decreasing in the number of complaints because of, they argue, the growing role the labor unions are taking on the question, as labor unions have become to openly admit discrimination complaints and are developing (interviews, Ombudsman report 2006).

Every ombudsmen office, most of the labor unions and other public institutions have assumed awareness raising actions, although the actions of each institution in this sense are not coordinated. Concerning the efficiency of these actions there is no evaluation either by specifically designed means or by the use of any other available information such as Raxen conducted Eurobarometers.



-POPULATION SURVEYS

There are several surveys that have been used to tackle perceived discrimination or attitudes towards some discriminated groups of people. All those surveys are elaborated by a team from Statistics Sweden, and the data is not readily available. Some of these surveys are the Follow-up Surveys of Pupils, the Labor Force Survey, the National Employer Survey, the Swedish discrimination Survey, and the Integration Barometer. The last two were commissioned by the Swedish Integration Board and, as this institution does not exist any more, it is not clear if they will be issued again.

Discrimination: A Threat to Public Health (v.a. 2006)

This publication is the final report of the joint "Health and Discrimination" (from now on HD) project, which is the result of cooperation from 2004-2006 between the National Institute of Public Health, the Office of the Ombudsman against Ethnic Discrimination, the Office of the Disability Ombudsman and the Office of the Ombudsman against Discrimination on grounds of Sexual Orientation. It contains a meta-analysis of research work that has been done on discrimination in general, specially the one focused on the health system and health effects on persons that have experienced discrimination. This project intends to be a warning-bell for decision-makers at the national, regional and local levels because it sheds light on the strong statistical correlations¹³ between discrimination and ill-health, and indicates that people experience a considerable degree of discrimination. Among the several conclusions presented by this study it should be stressed the need to adopt measures to counter discrimination should be taken in all possible areas of society, and the need to elaborate a method handbook focusing on the measurement of discrimination in order to facilitate investigation of the incidence of discrimination at the central government, county council and municipal levels. The questionnaire used in the HD research project was applied to a 30000 persons sample and was designed to measure self-reported discrimination (HD assigned Statistics Sweden to implement three focus groups and 14 in-depth interviews with 27 people, evenly distributed in terms of gender, age, country of origin, disabilities and sexual orientation, in order to elaborate the question wordings).

This project had no continuity because the new 2006 right-wing government decided to not renew funding (Marie Lindberg, interview).

[Specific surveys conducted by the Swedish Statistics Bureau regularly every 2 years (Disabilities, immigration, gender) *Labour Market Situation for Disabled Persons* is a regular survey issued every two years as scheduled in the Focus-Labour Force Surveys series by the Swedish Bureau of Statistics. It has a designed sample of about 30.000 persons aged 16-64. Also ILO Surveys.]

¹³ I cannot evaluate the strength of these correlations because surprisingly enough they are not shown in the Final Report.



-VICTIMS SURVEYS

The Swedish study *Immigrants on discrimination II*, coordinated by Anders Lange in 1997 served as the only model for the studies conducted on behalf of the EUMC in twelve EU countries (EUMC 2006). The study was based in a survey of immigrants, and discrimination was measured directly from questions about different forms of perceived unfavourable treatment in different life domains.

-SITUATION TESTING EXPERIMENTS

Some of them have been issued by the Centrum mot Rasism and the Swedish Integration Board, but not yet published. The NGO Thema is lobbying to promote the official public use of situation testing as a tool to measure discrimination in several domains of the Swedish society, and currently is conducting a *joint European research project with the aim to clarify the legal situation in regard to situation testing in the Swedish context. This research will result in a publication during 2007. The main objective of the publication is to clarify the legal situation regarding testing as a way of proving discrimination in court proceedings in Sweden, but it will also include practical guidelines for Swedish NGOs on how to use situation testing in a way that will create proof that can be used in court proceedings* (Thema website, see above).

DISCRIMINATION ON GROUNDS OF GENDER

Since the beginning of the 1980s, Statistics Sweden produces a fact book crosstabulating all the different data available by gender. It also contains a brief synthesis of the progress made towards gender equality in the different domains. The data covers the domains of health, education, time use, child care and care of the elder, employment, salaries, income, violence and crime, and influence and power. All the data is presented graphically to ease the reader's interpretation.

The report *Review of Current Knowledge: Sexual Harassment and Gender Related Harassment in Working Life* (Equal Opportunities Ombudsman Office 2007) exposes a complete state of the situation regarding sexual and gender related harassment. It presents a review of the legal developments in relation to sexual harassment and gender-related harassment, the number of complaints registered with the Equal Opportunities Ombudsman, plus a summary of these complaints, a selection of Labor Court rulings on the harassment issue, and a review of the data collected about sexual harassment from different sources, mainly using victims surveys. Despite it is an extensive and complete report, the Equal Opportunities Ombudsman does not extract any conclusion as to how to use this knowledge to design any type of action.

This document comments for example the first survey conducted by the Equal Opportunities Ombudsman in 1987 to map the extent of sexual harassment in working life. A questionnaire was sent to more than 4 000 randomly selected women belonging to a union, preferably at male-dominated workplaces in the blue-collar (LO, Swedish Labor Union) and white-collar (TCO, union of professional employees) sectors. About 2000 questionnaires were returned, and 17% of them declared having suffered sexual harassment by superiors, colleagues and/or patients or customers at some time during their working lives. One third of those who suffered sexual harassment also saw a link between this experience and the changing of their working conditions, while other



reported consequences on their health. Another study was conducted in 1998, when the Swedish Government assigned the Crime Victim Compensation and Support Authority to conduct a special review of male violence against women. 10.000 randomly selected women aged 18-64 were invited to answer questions about their experiences of specific attacks of various kinds, 7.000 responded. 56% declared to have experienced sexual harassment at some point in their lives, while 16% did it the previous year. Unknown men, more than friends or colleagues, were the perpetrators of harassment. The study also reveals that the most risk group is the one formed by young females: about two thirds of female students had been subjected to harassment. The Police Union and the National Police Board commissioned Statistics Sweden in 1998 and 2001 to conduct a survey into sexual harassment among female police officers around the country. The clearly lower incidence of harassment in 2001 respect 1998 was interpreted as evidence of the positive effect of conducting such study in order to reduce the cases of sexual harassment. 20% of the females who suffered harassment did not report it to anyone, and the most common reason given by them was that "I don't believe it would make things better". The positive effect of carrying a repeated study was also evident in the 1999, 2002 and 2005 studies concerning the presence of sexual harassment among women in the Swedish defense. Sexual harassment is also common in higher education, as shown in some other studies, though the reported incidence varies between 7 and 50 per cent, depending on which method is used and which questions are discussed, the size and type of selection used in the study, and what perspective has been adopted in interpreting the responses. About an 8% of female managers and supervisors that are in charge of male-dominated work groups have been subjected to sexual harassment, as shown in a 2002 study conducted by Statistics Sweden among 3000 supervisors. In a different study conducted in 2006 by the Swedish Association for Managerial and Professional Staff, the incidence was 38%.

The only cross-sectional longitudinal study is conducted by the Swedish Work Environment Authority and Statistics Sweden every two years. It is based upon a selection of over 14.000 people aged 16-64 in regular employment. The 2005 study reveals that 18.3% of females and 5.7% of males had been subjected to gender related or sexual harassment during the previous year.

The periods of time reviewed in the studies differ. Some studies ask "Have you been exposed to harassment over the last year", others "... at any time during your working life", and others "... at any time since you turn 15". Usually the focused population under study is constituted only by women, but when men have been included it has become evident that men also have experienced gender related or sexual harassment, though to a lesser degree than women. Concerning the measurement of harassment, it seems that the more general or ambiguous the questions, the lower the incidence of harassment. Additionally, the accuracy in the questions' wording is important in order to find correspondence in the findings of different studies. 20 out of 170 complaints received in the Equal Opportunities Ombudsman during the 2005 were concerned with sexual or gender related harassment. From 1998 to 2005 a total of 124 complaints had to do with such types of harassment.

As the report stresses, *no study has yet been made of sexual harassment or gender-related harassment in the public spheres governed by the Prohibition of Discrimination Act (2003:307), which as of 1 July 2005 also includes sex discrimination as a ground for action. The law regulates things like the ban on sexual harassment and harassment associated with a person's sex in such areas as labour market policy, unemployment insurance, social insurance, business start-ups and*





operations, certification etc required for certain forms of professional practice, membership of labour market organisations, and the supply of goods, services and housing etc. (Review of Current Knowledge...:10)

The Swedish Equal Pay legislation established in 1994 in Sweden states that every company with more than 9 employees must complete a Gender Equality Plan (GEP) on a yearly basis. This document can be required by the Equal Opportunities Ombudsman in the process to get information about a complaint, but it can also be required even without any explicit justification. Companies must by law, and actually they do, provide the GEP once they have been required to. The GEP is a complete and detailed document containing information about the employees such as the number of males and females, the wages that each gender group earns in correspondence to the category they occupy, and the measures that the company has adopted to counteract gender discrimination. The *Grundbok – att arbeta fram en jämställdhetsplan* is an about 200 pages document with detailed instructions that is distributed to the companies to help them elaborate the GEP. Although actually most of the companies do not elaborate the GEP until they are required by the Ombudsman, the companies that do acknowledge its usefulness to monitor their situation and help them adopt measures (Eva Nikell, interviewed). Departing from this situation, the Equal Opportunities Ombudsman has decided to start campaigns requiring the GEP to random samples of about 400 companies. The Equal Opportunities Ombudsman has also monitored and evaluated in-depth the effectiveness of the Equal Pay legislation (Equal Opportunities Ombudsman Office 2003; 2005), concluding it has been an efficient tool to correct for unequal wages.

DISCRIMINATION ON GROUNDS OF AGE

The Children's Ombudsman does not provide reports about its own activity. The *Swedish National Board for Youth Affairs*, an organization devoted to promote the access of young people to power and welfare by means of contacting monitoring youth living conditions (see *Swedish National Board for Youth Affairs 2005*), also campaigns diffusing documents (see for example *Shortcuts to Gender Equality 2003*) for gender equality among young people.

Equality data related to discrimination on grounds of age can be obtained from Statistics Sweden, but there are no reports, as there are for gender, organizing and presenting the information from this perspective.

DISCRIMINATION ON GROUNDS OF ETHNIC ORIGIN (AND RELIGION OR BELIEFS)

As long as discrimination on grounds of religion or beliefs is dealt by the Ombudsman Against Ethnic Discrimination, and as religious differences mostly overlap with immigrant types, and Statistics Sweden does not collect (it cannot do it) in the official registers a variable of peoples' religious confession, we cannot find equality data with religion or beliefs as the central variable.

The amount of data and analysis we can find about discrimination on grounds of ethnic origin is impressive. I will review briefly the most relevant publications and will quote another ones to show the variety of sources of equality data and analysis. There are two important government enquiries on power and integration that have been produced during the last four years, both of them





elaborated in parallel due to political reasons (from now on, I will follow Brekke and Borchgrevink 2007). One of them was conducted by Paul Lappalainen, former member of the Green Party and also worker in the –already closed down- Swedish Integration Board, and the other one by the sociologist Masoud Kamali and historian Paulina de los Reyes. This last research produced about 4000 pages outcome distributed in different individual inquiries, and summarized in the green paper *Integrationens svarta bok – Agenda för jämlikhet och social sammanhållning* (Black Book of Integration – An Agenda for Equality and Social Cohesion).

The aim of both researches was to detect, describe and analyse the immigrants' integration through an analysis of different domains: the courts, the media, health care system, the labour market, and the education institutions. Behind it there was the permanent question: what causes and maintains the unbalanced participation in the Swedish labour market since the 1970s, and more specifically nowadays, and some other inequalities between immigrants and natives?

There is a relevant fact around the Black Book research project that helped in making it a benchmark in the Swedish government approach of discrimination. The research project was first commissioned to the professor Anders Westholm in 2001 and later on, in 2004, after a series of public discussions between some of the researchers involved in the project, the Minister of Integration, Mona Sahlin, appeared to hand the topic of integration over from traditional Swedish academics to a group of social scientists (Kamali and de los Reyes) with an agenda that was more critical of the Swedish majority society. This group departed from the idea that there is not an «ethnified» labor-market but an ethnically divided society. Hence an integration policy confining its efforts to combat discrimination by boosting the «employability» of the persons in question does not help. Since discrimination is not confined to the labor-market, a policy focusing on unemployment only will not succeed. This is why this group identifies structural discrimination in Sweden on the basis of ethnic background or religious affiliation discrimination. The methodology of their work is mostly qualitative.

Apart from reviewing the previous research projects, Brekke and Borchgrevink (2007) also characterize the evolution of the Swedish public discourses about integration as follows:

1. Assimilation policy, - 1975
2. Immigrant policy, 1975 – 1997
3. Integration policy, 1997 – 2006
4. Anti-discrimination policy 2004 – 2006
5. New policy? 2006 –

At the end of the period of integration policy, the focus on discrimination increased. The focus of the original integration policy was to create a new «we» out of the majority and minority populations. In 2004 the emphasis changed to identifying dysfunctions within the native born population and the established institutions.

Much in line with the structural discrimination approach, the report of Bideke et al. (2006) elaborates a complete analysis of discrimination in a wide range of domains (employment, housing, education, health, policing and racial profiling, access to goods and services, and the media). This report remarks the existence of specially vulnerable groups: the Roma, persons of African descent,





Muslims, persons from the Middle-East and non-European women, and claims that *concerning developments in the fight against racism and ethnic and religious discrimination in Sweden during 2006, civil society organisations (NGOs) working in the field were alarmed by a number of issues. NGOs expressed concern that so few cases of ethnic and religious discrimination were brought to court by the Ombudsman against Ethnic Discrimination, that there was widespread ethnic discrimination in housing, that the police used racial profiling, and that Sweden had not ratified the Additional Protocol to the Council of Europe Convention on Cybercrime.*

Beyond the structural discrimination approach we can find The Swedish Integration Board (2005) report, another publication using an impressive amount of data from Statistics Sweden to map the unequal situation of immigrants in the labor market, the self-employment domain, the educational institutions and the housing market. The extensive studies of Burns et al. (2006; 2007) constitute some of the work done around the Masouli project, and therefore also take the structural or institutional discrimination perspective. With an impressive amount of qualitative work (in-depth interviews) analysis the current situation of immigrants in Sweden and suggests a wide range of political measures to reduce discrimination. Other publications do not search for the causes of discrimination but seek to clarify whether inequality is related to the foreign background. Hedberg (2006) for example checks whether the immigrants' subordinate positions in the labor market can be accounted by the type of neighbourhoods (distressed or not distressed) they live in. The data used is provided by Statistics Sweden and contains demographic, economic and geographic information of all individuals in Sweden from 1992 to 2003. The article shows that foreign-born people experienced high levels of mobility although also vulnerability remains. A similar kind of study, again with data from Statistics Sweden, conducts Hammarstedt (2007) to conclude that different earnings can be found between natives and first, second and third generation immigrants.

Finally, to quote an academic work that uses an alternative methodology, we can see Carlsson and Rooth (2006). They employ correspondence testing –instead of the complete situation testing- to prove the extension of discrimination on grounds of ethnicity in the Swedish labour market.

DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION

No equality data on this motive is publicly available (here we should remind that Statistics Sweden cannot collect information related to the sexual orientation of persons). The Ombudsman Against Discrimination on grounds of Sexual Orientation publishes a yearly report with a description of the tasks it has performed (campaigns of awareness raising, education seminars and conferences, collaboration with other institutions, admitting and solving complaints) and a synthesis of the amount of complaints received, classified by different categories such as subject, complainer, region, proven complaints and law cases. See one of the reports in the Ombudsman Against Discrimination on grounds of Sexual Orientation 2007a, and a publication of (theoretical) research in Ombudsman Against... 2007b.

DISCRIMINATION ON GROUNDS OF DISABILITIES

The legislation on discrimination on grounds of disabilities has some special contours that are worth to comment about. According to the Section 2 of the *Act banning discrimination in working life against people with a disability*, disability is defined as every permanent (enduring) physical,



mental or intellectual limitation of a person's functional capacity that is a consequence of an injury or illness existed at birth, arose thereafter, or may be expected to arise. The Act also obliges the employers to promote or training for promotion, or by providing support and adaptation measures to create a situation for a person with a disability that be similar to that for persons without such a disability, and it can reasonably be required that the employer undertake reasonable measures. The reasonableness of requiring measures to be undertaken can vary depending on the employer. This determination must be made from case to case depending on factors as, for example, the company's ability to bear the costs, the ability to undertake a measure, the problems caused for the employer by the measure and the expected length of the employment. An employer's failure to provide reasonable accomodation that enables a job applicant to carry out the essential work tasks is considered direct discrimination. Finally, the last element to remark is that the law allows for positive action measures on behalf of the disabled. While this idea seems reasonable it can cause some additional problems; there seems to be a prevailing attitude among policymakers that the disabled need help (i.e. special measures like wage subsidies and sheltered workplaces), rather than protection against discrimination (Lappalainen 2004).

Research on this ground of discrimination has been done mostly in the working and education environments, but there is no data publicly available. Labor Force Survey is one of the main external tools the Disability Ombudsman use to get information (Torbjorn Anderson, interview).

DISCRIMINATION ON GROUNDS OF LANGUAGE

Statistics Sweden does not collect information related to the language abilities, so it cannot produce equality data with this variable. Nonetheless, it has been required to collect such information by the Council of Europe (2006: 56-58) in order to be able to quantify and monitor the application of the European Charter for Regional or Minority Languages. Moreover, the Swedish Government has been asked to enact a series of measures (promoting broadcasting, to develop university program to teach those languages, etc.) to ensure the existence of such languages.

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APPENDIX 1: INTERVIEWS

07-05-07 and 17-09-07

MARIE LINDBERG

Development Manager

Ombudsman against Sexual Orientation Discrimination Office

08-05-07

EVA NIKELL

Information Manager (Press)

Equal Opportunities Ombudsman Office

09-05-07

TORBJÖRN ANDERSSON





Deputy Head of Legal Affairs
Ombudsman against Disabilities Discrimination Office

09-05-07

PAUL LAPPALAINEN

Analyst of the Swedish Integration Board (former member of Ombudsman against Ethnic Discrimination Office, Ombudsman against Disabilities Discrimination Office, and the Centre Against Racism)

18-09-07

SOPHIA STERNEVALD

Centre Against Racism (NGO)

Head of research and database management

19-09-07

GUNNEL FORSBERG

University of Stockholm

Expert in gender and regional studies

20-09-07

MADELENE SYRÉN

LO, Landsorganisationen i Sverige (Swedish Trade Union Confederation)

Chief of the Department of Economic and Labour Market Policy, Employment Rights and Equal opportunities

21-09-07

ORLANDO MELLA

University of UPPSALA

Expert in measurement, has worked on migration, religion and asylum seekers

APPENDIX 2: STOCKHOLM CLAUSE¹⁴

1. The supplier shall throughout the contract period, in his business activities in Sweden, follow the applicable anti-discrimination laws. The laws currently referred to are Article 141 of the EU Treaty, 16:9 of the Swedish Penal Code, the Swedish Gender Equality Act (1991:433), the Act on measures against ethnic discrimination in working life (1999:130), the Act banning discrimination in working life against persons with a disability (1999:132), the Act banning discrimination in working life due to sexual orientation (1999:133), the Act on equal treatment of university students (2001:1286), and the Act prohibiting discrimination (2003:307).
2. The supplier, during the contract period, has a duty, at the request of the contracting entity, to provide a written report concerning the measures, equality plans, etc., that have been undertaken in accordance with the duties specified in 1. The report shall be submitted to

¹⁴ It is taken from Lappalainen (2007)



the city within one week after a request is made unless some other agreement has been reached in the individual case.

3. In his or her contracts with sub-contractors, the supplier shall apply the same duty to them as is specified in 1. The supplier shall be responsible to the contracting entity for a sub-contractor's violation of the anti-discrimination laws specified in 1. The supplier shall also ensure that the contracting entity can upon request be informed of the sub-contractor's measures, plans, etc. in accordance with 2.
4. As it is of very substantial importance to the contracting entity that its suppliers live up to basic democratic value, a violation of the duties in 1-3 shall constitute a significant breach of the contract. The contracting entity therefore has the right to cancel the contract if the supplier or a sub-contractor violates the conditions in 1-3. However, the contract will not be cancelled if the supplier immediately remedies the situation or undertakes other measures with the purpose of achieving compliance with the laws specified in 1, or if the violation is considered to be insignificant.

