



A report on how human rights organisations respond to the use of Human Rights Justifications in Swedish legislative preparatory works

by
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Abstract	The report examines two public legislative inquiries, Ds 2024:30 and SOU 2024:93, to study the ways in which Swedish legislative inquiries invoke human rights, primarily the Convention on the Rights of the Child and the European Convention on Human Rights, as Human Rights Justifications (HRJs), to justify their legislative proposals. The aim is to examine how Civil Society in the shape of human rights organisations



	<p>respond in the consultation processes when the State uses HRJs to justify its decisions. The results show that human rights organisations require resource-intensive legal expertise to respond to the rights arguments which the State uses, which increases the risk that the organisations may not have the legal capacity to respond with the corresponding rights-based arguments used by the legislator and therefore that criticism of these legislative proposals instead falls back on user/interest- and needs-based arguments. This, in turn, risks shifting the democratic dialogue on the legislative proposals (which entail restrictions of rights) from a question of whether the State has legally based obligations and individuals have rights under the law, to whether individuals have interests or needs that the State may choose to address or not.</p>
Keywords	Convention on the Rights of the Child, Sweden, children's rights perspective, needs perspective, interests perspective, intersectionality



SUMMARY	8
KEYWORDS.....	9
INTRODUCTION.....	10
BACKGROUND – THE TIDÖ GOVERNMENT RECEIVED 131 RECOMMENDATIONS.....	10
HUMAN RIGHTS JUSTIFICATIONS.....	13
CHILD RIGHTS PERSPECTIVE	14
<i>These together constitute the Child Rights Perspective.</i>	<i>14</i>
USER PERSPECTIVE	14
NEEDS PERSPECTIVE	14
PURPOSE.....	15
METHODOLOGY	15
SELECTION OF ORGANISATIONS.....	15
SELECTION OF CONSULTATION RESPONSES	16
DEMOCRACY AND HUMAN RIGHTS, CHILDREN, SWEDEN	16
ALL PURPOSES, ASSISTANCE TO INDIVIDUALS, SWEDEN	18
SOCIAL WORK/SOCIAL ACTIVITIES, CHILDREN, YOUNG PEOPLE, ALL REGIONS.....	18
CONSTRUCTING GROUNDED THEORY.....	19
DS 2024:30 – AN ACT ON SOCIAL SERVICE INTERVENTIONS FOR GUARDIANS, CHILDREN AND YOUNG PEOPLE WHEN CONSENT IS LACKING (LIV): THE LEGISLATIVE INQUIRY’S USE OF HUMAN RIGHTS JUSTIFICATIONS	21
HUMAN RIGHTS JUSTIFICATIONS FOR A NEW SYSTEM.....	22
OPEN FORMS OF INTERVENTION AND SPECIAL PROVISIONS FOR GUARDIANS.....	25
OPEN FORMS OF INTERVENTION AND SPECIAL PROVISIONS FOR CHILDREN AND YOUNG PEOPLE.....	28
FOLLOW-UP AND MONITORING OF THE SOCIAL SERVICES COMMITTEE’S DECISIONS.....	30
CONSEQUENCES OF NON-COMPLIANCE WITH THE SOCIAL SERVICES COMMITTEE’S DECISION.....	32
PROVISIONS ON THE HANDLING AND PROCEDURE FOR DECISIONS UNDER THE LIV.....	33
SERIOUS DISCUSSIONS WHEN CHILDREN AND YOUNG PEOPLE ARE SUSPECTED OF CRIMES.....	33
THE INQUIRY’S USE OF A RIGHTS AND PERMISSIBLE LIMITATION TEST.....	34
<i>Open forms of intervention and special provisions for guardians.....</i>	<i>34</i>
<i>Open forms of intervention and special provisions for children and young people.....</i>	<i>34</i>
FOLLOW-UP AND MONITORING OF THE SOCIAL SERVICES COMMITTEE’S DECISIONS.....	35
PROVISIONS ON THE HANDLING AND PROCEDURE FOR DECISIONS UNDER THE LIV.....	36
LIV, DS 2024:30: HOW AND TO WHAT EXTENT DO HUMAN RIGHTS ORGANISATIONS RESPOND TO THE LEGISLATIVE INQUIRY’S HUMAN RIGHTS JUSTIFICATIONS FROM A RIGHTS PERSPECTIVE?	36
HUMAN RIGHTS ORGANISATIONS’ RESPONSES TO THE LEGISLATIVE INQUIRIES’ USE OF THE RIGHTS PERSPECTIVE – NEW SYSTEM... ..	36
PROPOSAL FOR OPEN FORMS OF INTERVENTION AND SPECIAL PROVISIONS FOR GUARDIANS	39
THE PROPOSAL FOR OPEN FORMS OF INTERVENTION AND SPECIAL PROVISIONS FOR CHILDREN AND YOUNG PEOPLE.....	39
FOLLOW-UP AND MONITORING OF THE SOCIAL SERVICES COMMITTEE’S DECISION	40
CONSEQUENCES OF NON-COMPLIANCE WITH THE SOCIAL SERVICES COMMITTEE’S DECISION.....	40
SERIOUS DISCUSSIONS WHEN CHILDREN AND YOUNG PEOPLE ARE SUSPECTED OF CRIMES.....	41
HUMAN RIGHTS ORGANISATIONS’ RESPONSE TO PROPORTIONALITY	41



<i>Follow-up and monitoring of social services committee decisions</i>	41
<i>Provisions on the handling and procedure for decisions under LIV</i>	42
DS 2024:30: HOW DO HUMAN RIGHTS ORGANISATIONS RESPOND TO THE INQUIRY'S HUMAN RIGHTS JUSTIFICATIONS FROM OTHER PERSPECTIVES?	42
RISKS UNDERMINING TRUST	43
LACK OF RESEARCH SUPPORT AND EVIDENCE.....	45
<i>The principle of freedom of consent</i>	46
COERCION IS NOT THE SOLUTION.....	48
<i>The problem requires sustainable solutions</i>	50
PERCEIVES THE NEW SYSTEM AS MEANING THAT PARENTS CAN, BUT DO NOT WANT TO	51
THE REPORT LACKS AN ANALYSIS OF WHY GUARDIANS REFUSE ASSISTANCE	52
THE PROPOSAL FOR OPEN FORMS OF INTERVENTION AND SPECIAL PROVISIONS FOR GUARDIANS	54
LACK OF SCIENTIFIC/RESEARCH EVIDENCE AND SUPPORT	55
COERCION CANNOT LEAD TO INCREASED CONSENT	56
EFFECTIVE COOPERATION AND MUTUAL TRUST.....	56
<i>Relational work as the basis of social services</i>	57
<i>Conflict of loyalty</i>	58
<i>Consequences of coercive measures</i>	58
<i>Parental involvement</i>	60
<i>Language and cultural clashes</i>	61
PROPOSAL FOR OPEN FORMS OF INTERVENTION AND SPECIAL PROVISIONS FOR CHILDREN AND YOUNG PEOPLE	62
FOCUS ON FREEDOM OF CONSENT, TRUST AND THE CHILD'S MOTIVATION.....	63
COMMON CRITICISM OF COERCIVE MEASURES	65
LACK OF RESEARCH AND PROVEN EXPERIENCE	66
DISCRETIONARY ASSESSMENTS AND DISCRIMINATION	67
ECONOMIC INEQUALITY.....	67
INDIVIDUALLY TAILORED AFTERCARE	68
THE INTERESTS OF CHILDREN	69
PERCEIVED AS PUNISHMENT	69
ANALYSING THE UNDERLYING AND COMPLEX CAUSES OF THE PROBLEM	70
AUTHORITARIAN HELP.....	70
FOLLOW-UP AND MONITORING OF THE SOCIAL SERVICES COMMITTEE'S DECISIONS.....	71
<i>Criminal law elements influencing social law</i>	72
<i>Trust and cooperation difficulties</i>	73
<i>The role of the social services committee</i>	73
<i>Stigmatisation and labelling</i>	73
<i>Discrimination</i>	74
<i>Electronic monitoring does not address the root problem</i>	75



<i>Increases vulnerability</i>	75
<i>Denmark's decision to abolish electronic tagging for children</i>	76
<i>Different methods</i>	76
<i>Psychological counselling, therapy or CBT</i>	77
<i>Increased administrative work</i>	77
CONSEQUENCES OF NON-COMPLIANCE WITH THE SOCIAL SERVICES COMMITTEE'S DECISION	77
COUNTERACTS THE OBJECTIVES OF THE NEW SOCIAL SERVICES ACT	78
ECONOMIC VULNERABILITY AND SOCIO-ECONOMIC GROUPS	78
RISK OF GUARDIANS AVOIDING SEEKING HELP	79
FINANCIAL PENALTIES ARE NOT EFFECTIVE	80
FINANCIAL STRESS AND RISK OF NEGATIVE CONSEQUENCES FOR THE CHILD	80
LACK OF IMPACT ASSESSMENT AND RISK OF DISCRIMINATION	81
INCREASED ADMINISTRATIVE BURDEN	81
GUARDIANS MUST TAKE RESPONSIBILITY	82
LEGAL UNCERTAINTY	82
PROVISIONS ON THE HANDLING AND PROCEDURE FOR DECISIONS UNDER LIV	83
OPPOSITE EFFECT	83
SERIOUS DISCUSSIONS WHEN CHILDREN AND YOUNG PEOPLE ARE SUSPECTED OF CRIMES	84
CONTACT WITH SOCIAL WORKERS WHO HAVE AN ESTABLISHED RELATIONSHIP WITH THE FAMILY/CHILD	84
RISK OF DISPLACEMENT EFFECTS	85
THE PROFESSIONALISM OF SOCIAL SERVICES	85
<i>Lack of a child impact analysis</i>	86
SOU 2024:93 - MORE EFFECTIVE TOOLS FOR COMBATING CRIME BY YOUNG OFFENDERS	86
SOU 2024:93 – THE INQUIRY'S USE OF THE RIGHTS PERSPECTIVE	87
COERCIVE MEASURES OTHER THAN SECRET ONES AGAINST CHILDREN UNDER 15	87
THE POLICE'S ABILITY TO DETAIN CHILDREN SUSPECTED OF CRIMES	89
BIOMETRIC INFORMATION FROM CHILDREN	90
COVERT COERCIVE MEASURES AGAINST CHILDREN UNDER THE AGE OF 15 IN CRIMINAL LEGISLATIVE INQUIRIES	92
THE INQUIRY'S USE OF THE RIGHTS AND PROPORTIONALITY PERSPECTIVE	92
COERCIVE MEASURES OTHER THAN SECRET ONES AGAINST CHILDREN UNDER 15	94
THE POLICE'S ABILITY TO DETAIN CHILDREN SUSPECTED OF CRIMES	97
BIOMETRIC INFORMATION FROM CHILDREN	98
COVERT COERCIVE MEASURES AGAINST CHILDREN UNDER 15 YEARS OF AGE IN CRIMINAL LEGISLATIVE INQUIRIES	100
SOU 2024:93: HOW DO HUMAN RIGHTS ORGANISATIONS RESPOND TO THE LEGISLATIVE INQUIRY'S HUMAN RIGHTS JUSTIFICATIONS?	101
HUMAN RIGHTS ORGANISATIONS' RESPONSES TO THE LEGISLATIVE INQUIRIES' USE OF THE RIGHTS PERSPECTIVE – NEW SYSTEM	102
CERTAIN FUNDAMENTAL FREEDOMS AND RIGHTS	103
CONSEQUENCES FOR CHILDREN	104



ARREST AND DETENTION OF CHILDREN 105

OTHER COERCIVE MEASURES AGAINST CHILDREN UNDER 15 106

THE POLICE'S ABILITY TO DETAIN CHILDREN SUSPECTED OF CRIMES..... 107

 BIOMETRIC INFORMATION FROM CHILDREN..... 108

 COVERT COERCIVE MEASURES AGAINST CHILDREN UNDER THE AGE OF 15 IN CRIMINAL LEGISLATIVE INQUIRIES 108

 HUMAN RIGHTS ORGANISATIONS' RESPONSES TO THE LEGISLATIVE INQUIRIES' USE OF THE RIGHTS AND PROPORTIONALITY
 PERSPECTIVE 108

Arrest and detention of children..... 109

**SOU 2024:93: HOW ELSE DO HUMAN RIGHTS ORGANISATIONS RESPOND TO THE HUMAN RIGHTS
JUSTIFICATIONS IN THE INQUIRY? 109**

DIFFICULT TO PREDICT THE EFFECTS..... 109

FOCUS SHOULD BE ON EARLIER INTERVENTIONS 110

 BETTER TOOLS ARE NEEDED TO PROTECT CHILDREN FROM HARMFUL ENVIRONMENTS 110

 IMPORTANT TO EVALUATE THIS LEGISLATION 111

 SOCIAL EXCLUSION AND STIGMATISATION 111

 EVIDENCE-BASED METHODS..... 112

 IMPRISONED RELATIVES..... 112

ARREST AND DETENTION OF CHILDREN 113

 DETENTION PERIOD..... 113

 OTHER COERCIVE MEASURES AGAINST CHILDREN UNDER 15 114

 SPECIFICALLY REGARDING BODY SEARCHES 114

 ENFORCEMENT OF PHYSICAL EXAMINATION..... 115

THE POLICE'S ABILITY TO DETAIN CHILDREN SUSPECTED OF CRIMES..... 115

 PLACEMENT IN POLICE CUSTODY 115

 BIOMETRIC INFORMATION FROM CHILDREN..... 116

CONCLUSIONS 116

10 BIBLIOGRAPHY 121



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Summary

This report examines how Civil Society in the form of human rights organisations responds to Human Rights Justifications (HRJs) through the consultation process for two recently presented legislative inquiry reports: Ds 2024:30 and SOU 2024:93. HRJs are when the State uses human rights to justify its own decisions and actions. The purpose of human rights is not for the state to use them as a tool to justify its actions and decisions, but rather to protect individuals from a state that abuses its power over the individuals living in the country. When the state uses HRJs, there is a risk that the function of human rights will change: from individuals being regarded as rights holders and states being regarded as potential violators, to states using human rights as an instrument of governance,

The results of our research show that when the state uses human rights to justify its decisions, an effective response addressing rights-focused issues requires resource-intensive legal expertise. Some organisations have relevant experience, but not all organisations have the relevant capacity not surprisingly given that their key activities are to deliver activities aimed at helping children rather than legal matters. As a result, there is a risk that organisations will tend to focus instead on user/interest- and needs-based arguments, where they do have significant expertise, rather than on rights-based arguments. This means that the democratic dialogue between the legislator and Civil Society is shifted from a child rights perspective (emphasising that the state has obligations and the individual child has rights that the state must comply with by law), to whether children have interests or needs that the state can choose whether or not to address. The cost and availability of legal expertise can therefore be a barrier



to Civil Society's participation in the democratic process and risks Civil Society being less able to voice effective criticism and hold the state to account, including challenging the normalisation of using human rights arguments to restrict human rights themselves.

Keywords

Convention on the Rights of the Child, Sweden, child rights perspective, needs perspective, interests' perspective, intersectionality



Introduction

This report examines two legislative inquiries, Ds 2024:30 and SOU 2024:93, with the aim of exploring how the State uses human rights, primarily the Convention on the Rights of the Child and the European Convention on Human Rights, as Human Rights Justifications (HRJs) to justify its legislative proposals, and to analyse how human rights organisations respond to the rights arguments in their consultation responses. The results show that when legislators use HRJs to justify their decisions, an effective response requires commentators to address the specific human rights aspects of the State's argument. This places new and significant demands on Civil Society's legal expertise, which risks weakening its ability to critique legislative proposals than would be the case if such legal expertise was readily available. So, instead of criticism being based on a child rights perspective and addressing the specific arguments being put forward by the State, it tends to fall back on arguments based on users' interests and needs as these lie more within the expertise of many Civil Society bodies. This, in turn, means that the democratic dialogue between legislators and Civil Society shifts from a child rights perspective (where the argument focuses on the fact that the State has obligations and individuals have rights that the State must comply with by law), to whether individuals have interests or needs that the State can choose whether to address or not.

Background – The Tidö government received 131 recommendations

Human rights organisations ("**Civil Society**") argue that their analyses shows that the legal situation in Sweden regarding human rights is moving in a negative direction.^{1 2} The Swedish

¹ UNICEF; Save the Children; SOS Children's Villages; Unga Örnar; Asylum Rights Centre; Children's Rights Agency; BRIS; BUFFF; National Union of Students; Erikshjälpen; Friends; FUB; The Salvation Army; Association for Young People with Disabilities; Knas Hemma; Maskrosbarn; Network for the Convention on the Rights of the Child; RFSL Youth; Save the Children Youth Association; SDUF; Solrosen; Swedish Red Cross; Swedish Association of the Visually Impaired; Unizon; Youth 2030

² Children are also human beings and have rights just like adults – Civil Society Review (2025), p. 3



Government received 131 recommendations from the UN Committee on the Rights of the Child in 2023.³ Civil Society is sounding the alarm about the Tidö Government's⁴ failure to comply with the Convention on the Rights of the Child, that since receiving the recommendations none has been fully implemented; and that the Riksdag⁵ has presented legislative proposals that conflict with 14 of the recommendations.⁶

The Swedish Government is seeking to address concerns about criminal gangs and how children and young people can be drawn into involvement with criminality. Among other things, the Government has presented several legal reforms that would allow authorities to use stricter and more repressive measures against children.⁷ The current Government has also presented a proposal to extend the maximum period of detention for children from three months to five months.⁸ Civil Society is particularly concerned that it is in the area of migration and regarding children with immigrant backgrounds that rights and the rule of law are being jeopardised, as it is within the framework of these legislative instruments that the recommendations are being disregarded.⁹

Civil Society is concerned that the Government is using rhetoric that conflates criminal and migration policy agendas in order to justify stricter and more repressive measures, and that this

³ The UN Committee on the Rights of the Child, Concluding Observation on the combined sixth and seventh periodic reports of Sweden, CRC/C/SWE/CO/6-7 (7 March 2023).

⁴ The Swedish Government is called the Tidö Government, and is a coalition between the Moderate Party, the Christian Democrats and the Liberals, who are in government, with the support of the Sweden Democrats.

⁵ The Riksdag is the parliament and supreme decision-making body of Sweden

⁶ UNICEF Sweden et al., Children are also human beings and have rights just like adults (2025), https://assets.ctfassets.net/g18rzq2xcs2o/2JerVzerYmfO3DNxRKyg2H/bea7a64ccb41cfb0b9aa2b0d2a91b531/18_UNICEF_BarnsRattigheter_Rapport_low.pdf (Children are also human beings and have rights just like adults), p. 59 [hereinafter UNICEF Sweden et al]

⁷ *Id.* p. 46

⁸ *Id.*

⁹ *Id.* p. 44



could lead to increased racism, division and stigmatisation. This could particularly affect people living in socio-economically disadvantaged areas.¹⁰

Children themselves who come from socio-economically disadvantaged areas are warning that they will be particularly negatively affected by the proposals presented by the Tidö Government.¹¹ This report contributes as supporting material for the production of the film made as part of the HRJust research project, an EU-funded Horizon project. The purpose of the film is to give children a voice as experts on their own life situation and neighbourhood when they are affected by the repressive legislation that is being proposed and adopted in the fight against gang crime. This includes the Ministry Series 2024:30 ("**Ds 2024:30**") – A law on social services interventions for guardians, children and young people when consent is lacking, and the Government's Official Reports 2024:93 ("**SOU 2024:93**") – More effective tools to combat crime by young offenders.

Civil Society is also warning that never before has a Swedish government produced so many legislative proposals for Civil Society to respond to in such a short period of time, and that the volume and speed of the legislative reform work risks making it impossible to systematically assess the consequences of these laws for children. However, it is clear that the measures presented entail a restriction of children's rights.¹² Not only do legislative proposals restrict people's fundamental freedoms and rights, but they also create scapegoats by singling out children with migrant backgrounds who live in socio-economically disadvantaged areas as a threat to society, and that therefore need to be counteracted. Civil Rights Defenders (CRD)¹³

¹⁰ *Id.* p. 27

¹¹ *Id.* p. 41

¹² *Id.* p. 46

¹³ Founded as Swedish Helsinki Committee for Human Rights in 1982 with the purpose of monitoring compliance with the human rights provisions of the Helsinki Final Act. Renamed Civil Rights Defenders in 2009, and the mission became to support local human rights defenders in the world's most repressive regions and to be Sweden's local civil rights watchdog group.



believe that this package of legislative proposals risks turning Sweden into an authoritarian state,¹⁴ arguing:

"When rights that previous generations have fought for are taken away from us, they are difficult to get back."¹⁵

CRD warns that the Government's legislative proposals risk blurring the distinction between convicted and non-convicted individuals, since these law reforms are part of a general fight against criminal gangs not by using criminal law but through an expansion of the social services' mandate, which CRD believes threatens the democratic rule of law. In particular, CRD draws attention to the proposed measures that would give the Police Authority and other law enforcement agencies the power to monitor individuals who have not committed a crime or are not even suspected of a crime.¹⁶

Human Rights Justifications

This study examines the phenomenon of Human Rights Justifications (HRJs), which refers to the situation that arises when states use human rights to justify their own decisions and actions. By studying this phenomenon, it is possible to explore and analyse the possible consequences for Civil Society of states using HRJs. The purpose of human rights is not for the state to use them as a tool to justify its actions and decisions, but rather to protect individuals from a state that abuses its power over the individuals living in the country. When the state uses HRJs, there is a risk that the function of human rights will change: from individuals being regarded as rights holders and states being regarded as potential violators, to states using human rights as an instrument of governance, and as a means to avoid scrutiny from a human rights perspective.¹⁷

¹⁴ Civil Rights Defenders, It is the whole picture that is worrying – one year with the Tido Agreement (2023) <https://crd.org/wp-content/uploads/2023/12/Civil-Rights-Defenders-granskning-Ett-ar-med-Tido.pdf>, p. 4

¹⁵ *Id.* p. 5

¹⁶ *Id.* p. 11

¹⁷ University of Gothenburg, *Human Rights Justification – HRJust*, <https://www.gu.se/en/school-business-%20economics-law/law/human-rights-justifications-hr-just>, (Visited 2025-11-11)



Child Rights Perspective

The Child Rights Perspective stems from the UN Convention on the Rights of the Child, which has been incorporated into Swedish law since January 2020. Sweden ratified the Convention back in 1990 and is legally bound by it. It means that each child has their own rights, with obligations placed on the Swedish state and the public sector. The Convention covers every person under the age of 18, and its key principles are:

Right to not be discriminated against, Article 2

Best interests of the child must be a primary consideration in all actions concerning the child, Article 3

Right of the child to be heard in decisions concerning themselves, Article 12

These together constitute the Child Rights Perspective.

User perspective

The “user perspective” is a sociological perspective based on what users themselves perceive and express. The user perspective is a perspective used by social services, among others, by looking at the user's needs, experience and skills.¹⁸

The perspective is also based on what is best for the user, based on their starting point.¹⁹ It is important to note that this perspective plays an essential role in rehabilitation efforts.²⁰

Needs perspective

The needs perspective is based on the idea that social services and interventions should be adjusted to the individual's needs. The perspective is about seeing what different needs the

¹⁸ See Government Reports, *Evidence-based practice in social services, for the benefit of the user 2008:18* (SOU 2008:18), 2008 p. 19

¹⁹ Jakob Ronsten, *User Perspective – What Is It?* vol. 79, no. 4, 2002 p. 320

²⁰ *Id.* p. 321



individual has for help and interventions.²¹ The support offered to people who need continuous support should focus on the availability and quality of the intervention so that it meets the individuals' needs.²²

Purpose

The report focuses on Ds 2024:30 and SOU 2024:93 with the aim of studying how Civil Society responds to Swedish legislative inquiries that use HRJs, primarily the Convention on the Rights of the Child and the European Convention, to justify their legislative proposals and specifically to examine how human rights organisations respond to the legislative inquiries' rights arguments through their consultation responses.

The research question is how human rights organisations respond when the State is using Human Rights Justifications in legislative inquiries.

Methodology

To limit the study to relevant material, we have chosen to focus on non-profit organisations with a 90 account. A 90 account serves as a seal of quality and is only granted to non-profit organisations that are sincere, independent and which operate under the auspices of the Swedish Fundraising Control Authority.²³ The database of 90-account organisations has therefore been used as the basis for our selection. From this database, we have identified organisations whose core issues are human rights, primarily the UN Convention on the Rights of the Child. The study only covers organisations that have submitted responses to the legislative inquiries Ds 2024:30 and SOU 2024:93.

Selection of organisations

To identify relevant organisations, we used the filter function in the database of organisations with 90 accounts. Using this tool, we made selections based on purpose, area of activity and

²¹ Anja Lentz-Becker, Barbara Bräutigam and Mathias Müller, Needs-based family support – Perception, structures and challenges in practical implementation. Vol. 9, no. 1, p. 2

²² *Id.* p. 2

²³ For further information, see their website: <https://www.insamlingskontroll.se/90-konto-organisationer/>



region. The search terms used are described in detail below. After each filter combination, we reviewed the organisations' websites to assess whether their core activities are based on the Convention on the Rights of the Child. In addition, we investigated whether the organisations had submitted consultation responses.

Therefore, organisations whose activities are based on the Convention on the Rights of the Child, but which have not submitted consultation responses to Ds 2024:30 and SOU 2024:93 are not included in the final selection since there is no available material for analysis. Similarly, organisations that have submitted consultation responses to Ds 2024:30 and SOU 2024:93, but whose core activities are not based on the Convention on the Rights of the Child, have been excluded as they fall outside the scope and limitations of the study (how these laws affect children with immigrant backgrounds in socio-economically disadvantaged areas). Further, organisations that have submitted consultation responses but do not have the Convention on the Rights of the Child as the basis for their core activities have not been included because they too fall outside the scope of the study.

Selection of consultation responses

Three different searches were conducted, first on democracy and human rights; children; Sweden, based on the categories available in the 90-account database.

Democracy and human rights, children, Sweden

A search using the function, where the purpose was democracy and human rights in combination with the area of activity children and Sweden as a region, resulted in 77 organisations.²⁴ Of these, 73 were excluded because further investigation showed that the core activities of some of these organisations are not based on the Convention on the Rights of the Child, partly because some of them do not operate in Sweden,²⁵ and partly because they did not submit comments on Ds 2024:30 or SOU 2024:93.²⁶

²⁴ Last visited on 7 July 2025

²⁵ Among others, the organisations Riksförbundet FUB and Brottsofferjouren have submitted responses to relevant investigations, but do not take the Convention on the Rights of the Child as their starting point.

²⁶ Example: The Children's Ombudsman in Uppsala County.



The following organisations are included in the study according to the selection method:

UNICEF Sweden (hereafter “UNICEF”), whose mission includes raising funds, influencing Swedish decision-makers and providing information and education on children's rights, and which submitted responses to both inquiries.²⁷

Save the Children Sweden (hereafter “Save the Children”), founded in 1919, and which describes itself as the world's largest independent children's rights organisation, in Sweden and internationally. It submitted responses to both inquiries.²⁸

Barnrättsbyrån (“Children’s Rights Agency”) is an organisation that works to ensure that children and young people receive the right help from society. On behalf of the children and young people they meet, they offer advice, support and practical help in matters relating to children's rights.²⁹ Barnrättsbyrån has submitted a consultation response to Ds 2024:30, but not to SOU 2024:93.

Bufff is a children's rights organisation that is politically and religiously independent. Its activities are based on the Convention on the Rights of the Child and the principle that the best interests of the child should always be the guiding principle. The organisation's purpose is to provide support to children and young people whose parent, family member or other relative is or has been deprived of their liberty.³⁰ Bufff has submitted a consultation response to SOU 2024:93, but not to Ds 2024:30.

²⁷ For further information, see their website: <https://unicef.se/om-unicef-sverige>

²⁸ For further information, see their website: https://www.raddabarnen.se/om-oss/?_gl=1*1aa3gh8*_up*MQ..*_gs*MQ..&gclid=CjwKCAjw7fzDBhA7EiwAOqJkh0O3G8JAU3qfzdFDv8L60n6k9yaFNfWiaf-8LpcjHeDYS5-SJ5O3jBoCWZ8QAvD_BwE&gbraid=0AAAAADkJcJXqU3QfgVZ-x4kaLk1RIf4w1

²⁹ For further information, please visit their website: <https://barnrattsbyran.se/om-barnrattsbyran/>

³⁰ For further information, see their website: <https://bufff.se/om-oss-bufff/>



All purposes, assistance to individuals, Sweden

A search using the function, all purposes in combination with the area of activity assistance to individuals and Sweden as a region, resulted in 88 organisations.³¹ Of these, 86 organisations were excluded if their core activities are not based on the Convention on the Rights of the Child, and/or they do not operate in Sweden³² and/or because they did not submit consultation responses.³³

The following organisations are included in the study according to the selection method:

BRIS, Children's Rights in Society, is a children's rights organisation that works for a society where all children know their rights and have the opportunity to exercise them. It has submitted a consultation response to Ds 2024:30 but not to SOU 2024:93.³⁴

Maskrosbarn is a politically and religiously independent organisation that works to give children the opportunity to talk about their difficult home circumstances.³⁵ Maskrosbarn has submitted a consultation response to Ds 2024:30, but not to SOU 2024:93.

Social work/social activities, children, young people, all regions

A search using the filter function, combining the purpose social work/social activities with the areas of activity children and young people, and all regions, resulted in 103 accounts. Of these, 101 accounts were excluded³⁶ because their core activities are not based on the Convention on

³¹ Last visited on 7 July 2025

³² Among others, the Centre for Justice, which is based on the freedoms and rights of individuals by safeguarding their rights against incorrect exercise of authority. For further information, see their website: <https://centrumforrattvisa.se/om-oss/>

³³ Among others, the fundraising foundation Tappra Barn Sverige. For further information, see their website: <https://www.tapprabarn.se/om-tapprabarn>

³⁴ For further information, see their website: <https://www.bris.se/for-barn-och-unga/om-bris/>

³⁵ For further information, see their website: <https://maskrosbarn.org/>

³⁶ Last visited on 7 July 2025



the Rights of the Child, and/or because they do not operate in Sweden³⁷ and/or because they did not submit consultation responses to the two Inquiries.³⁸

The following organisations are included in the study according to the selection method:

SOS Children's Villages: operates in Sweden with a focus on strengthening children's right to a safe upbringing and equal living conditions. Their work is aimed at children and young people and their families, and includes support measures before, during and after placement in social care.³⁹ It submitted a consultation response to Ds 2024:30, but not to SOU 2024:93. That response comprised two parts, one setting out the organisation's overall position and one with specific comments from their Youth Council.

The national organisation Attention (its mission is to advocate for children with neuropsychiatric functional disorders) bases parts of its activities on the Convention on the Rights of the Child and works, among other things, to ensure that children with neuropsychiatric functional disorders are treated with respect and receive the support they need in society.⁴⁰ The organisation submitted a consultation response to Ds 2024:30, but not to SOU 2024:93.

Constructing Grounded Theory

The method we have chosen to use is Charmaz's Constructing Grounded Theory, which involves collecting and analysing material in order to establish theories that arise from the material itself.⁴¹ The purpose of Grounded Theory is to create a theoretical framework for understanding what emerges from the material we have studied.⁴² Grounded Theory is an

³⁷ These include the Association for the Best Interests of the Child, which works in Mozambique and Vietnam. For further information, see their website: <https://www.ffbb.se/>; and the Red Cross, which works more globally to protect vulnerable people in crises, wars and natural disasters. For further information, see their website: <https://www.rodakorset.se/om-oss/>

³⁸ For further information, see their website: <https://majblomman.se/>

³⁹ For further information, see their website: <https://sos-barnbyar.se/vart-arbete-i-sverige/>

⁴⁰ For further information, see their website: https://attention.se/wp-content/uploads/2023/05/attentions_intressepolitiska_program_2021_digsid.pdf See also <https://attention.se/om-oss/>

⁴¹ Kathy Charmaz., *Constructing Grounded Theory* 343 (2d ed). 2014 [hereinafter *Grounded Theory*]

⁴² *Id.* p. 8



appropriate method to use in the report because it allows us to critically review the material, ensure the research process is robust and that we can draw conclusions from it.⁴³

Another reason why we chose Charmaz's theory is that we did not want to start with existing thesis-driven theories to analyse the material but instead wanted to examine what the material itself reveals and what conclusions can be drawn from it.⁴⁴ By using this method, we have been able to adopt an unbiased starting point for developing our analysis.⁴⁵

The research process was as follows: we began by collecting material, which is the first step in constructing a theory according to Charmaz.⁴⁶ The material consists of two reports, SOU 2024:93 – More effective tools for combating crime by young offenders, and Ds 2024:30 – A law on social services interventions for guardians, children and young people when consent is lacking, and consultation responses from various human rights organisations – we found a total of seven consultation responses to Ds 2024:30 and three consultation responses to SOU 2024:93 from organisations that fell within the scope of the study.⁴⁷

The second step was to begin the initial coding to examine the material in depth.⁴⁸ We began by conducting a close reading of the material in order to map connections and patterns between the legislative inquiries and the consultation responses in order to categorise the material.

The third step was focused coding, which involves analysing the connections and patterns we found through the initial coding.⁴⁹ The purpose was to be able to study the legislative inquiries and consultation responses in depth. We compared various consultation responses with each other to analyse whether we could find connections or patterns, with the aim of constructing

⁴³ *Id.* p. 5

⁴⁴ *Id.* p. 343

⁴⁵ *Id.* p. 3

⁴⁶ *Id.* p. 22

⁴⁷ See the methodology for how we went about finding all children's rights organisations and consultation responses.

⁴⁸ Grounded Theory, *supra* note 41, p. 111

⁴⁹ *Id.* p. 343



the theory.⁵⁰ Focused coding was carried out three times in relevant parts of the legislative inquiries and four times in the consultation responses.⁵¹

After applying the above steps, we finally found patterns and connections between the legislative inquiries but also patterns and connections between the consultation responses. This resulted in us reaching theoretical saturation, which means that we could not find anything else and that saturation had been achieved.⁵² According to Constructing Grounded Theory, this means that the results are scientifically verified.⁵³

For each Inquiry, we considered how the inquiry used HRJs, how human rights bodies responded from a human rights perspective, and how they responded in other ways (needs/user perspectives).

Ds 2024:30 – An act on social service interventions for guardians, children and young people when consent is lacking (LIV): The legislative inquiry’s use of human rights justifications

Using Constructing Grounded Theory as a methodological approach, a contextual understanding has emerged of how the inquiry views social issues and its starting points.⁵⁴ The results show how the inquiry largely argues from a rights perspective – with the help of Human Rights Justifications – in order to justify the legislative proposals presented in Ds 2024:30. The inquiry uses various conventions, primarily the Convention on the Rights of the Child, to justify the legislative proposals. What we find is that the legislative inquiries combine Human Rights Justifications with proportionality testing. This is clearly evident when the inquiry presents abstract interests and weighs them against each other to analyse which interest carries the most weight, using, for example, the European Convention as a basis.

⁵⁰ *Id.* pp. 140-141.

⁵¹ There is a memo on file with author Haidar Al-Amirtaha.

⁵² See the analysis and conclusion for the patterns and connections we found.

⁵³ Grounded Theory, *supra* note 41, p. 192

⁵⁴ Department Series 2024:30, *A law on social services interventions for guardians, children and young people when consent is lacking* (hereinafter Ds 2024:30), 2024, has been coded three times.



Human Rights Justifications for a new system

The Swedish inquiry has been tasked with proposing a new system that aims to identify and provide support and protection to children and young people at an early stage before they become criminals or become involved in criminal activities. The purpose of the new system is to meet the needs of children when consent under the Social Services Act is lacking but the criteria for compulsory care are not met. This is a deviation from normal Social Services law, which is based on free will and voluntary participation by both children and parents/guardians. In contrast, the new system is based on the social services committee being given increased powers to take measures when there is no consent from the child or guardian, with the aim of preventing the problems from becoming more serious and avoiding compulsory care.⁵⁵ The proposal uses the term "intermediate coercion" because it does not meet the requirements of current legislation for the social service's coercive measures (to taking a child into the custody of the State).

To justify the new approach and system, the inquiry has referenced various human rights from different conventions. In the justification for the possibility of deciding on measures and special regulations for guardians, children and young people, there are arguments that appear to be based on several rights, but which are stated in very general terms. The inquiry does not significantly unpack the meaning or application of the rights in cases covered by the legislation but merely refers to the rights as rights. As such, the inquiry does not engage with the substantive meaning of the rights and their implications for the proposed legislation but merely refers to their existence as: "justification."

For instance, the Departmental inquiry states that the new system is needed to:

"maintain and strengthen several of the rights and freedoms that children and young people have. This includes the right of children and young people to life, survival and development, the protection of children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, but also the right to respect for private and family life (Articles 2 and 8 of the European Convention, Article 7 of the EU Charter of Rights and Articles 6, 16, 19, 24, 34 and 36 of the Convention on the Rights of the Child)."⁵⁶

⁵⁵ *Id.* p. 25 f.

⁵⁶ *Id.* p. 679



The legislative inquiries agree that the new system restricts the right of guardians, children and young people to private and family life under Article 8 of the European Convention. To justify the new system, the legislative inquiries conclude – using the child's right to health as an HRJ in combination with a permissible limitations test – that the restriction may only be imposed if it is prescribed by law, has a legitimate purpose and is proportionate. To meet the criteria, the inquiry argues, with support from case law, that it is a legitimate interest to limit the rights of guardians regarding the child's health. The legislative inquiries add that the “new” arrangement is necessary in order to ensure that the child's situation does not worsen and to be able to break a negative trend. Another argument used to legitimise the invasion of privacy of those involved is that the invasion will be relatively limited, where “relatively limited” means that decisions on measures and special regulations will be designed so as not to unnecessarily restrict other rights of individuals. The legislative inquiries also add that legal certainty will be ensured by allowing those involved to appeal the decision, and therefore it is in line with Article 8.2 of the European Convention, which, according to the legislative inquiries’ interpretation, means that the state may restrict rights provided that the appropriate criteria are met.⁵⁷ Further justifications includes that more guardians will have access to the support they need to fulfil their responsibilities for the upbringing of their children and that Sweden will live up to its obligations, and therefore they argue that it is in line with Article 18.2 of the Convention on the Rights of the Child.⁵⁸

Another argument where Human Rights Justification is used is when the inquiry emphasises that decisions on measures and special provisions for guardians, children and young people can lead to care under the Act (1990:52) with special provisions on the care of young people (“LVU”) being avoided. The report bases its argument on the fact that it strengthens the right to private and family life under Article 8 of the European Convention and Articles 9 and 16 of the Convention on the Rights of the Child, and argues that the new system counteracts the negative development by preventing the situation from becoming more serious, e.g. where

⁵⁷ *Id.* 680-681

⁵⁸ *Id.* p. 680



children are at risk of being taken into care, thereby contributing to strengthening children's right not to be separated from their parents. The legislative inquiries add that these measures may go against the wishes of the individual, but in return create lasting and sustainable positive changes.⁵⁹

Another argument where the inquiry uses HRJ is that they believe the new system is in line with Article 4 of the Convention on the Rights of the Child, which states that the state has a responsibility to recognise children as rights holders. The report interprets the provision as meaning that children have similar rights to adults, with the right to have a say in their own lives. They add that children need support from adults in order to be able to exercise their rights, including protection from being drawn into crime, as they lack the maturity, experience and knowledge that adults have. The report also notes that the proposed arrangement is in line with the Committee on the Rights of the Child's statement that State Parties are not fulfilling their obligations regarding young children as rights holders and that State Parties should take the necessary measures to ensure that parents assume primary responsibility for their children. The report also states that it is in line with the Committee's statement that State Parties should aim to minimise the number of children in institutional care.⁶⁰

In addition to some of the justifications being presented in very general terms (i.e. that they refer to rights but without demonstrating how they are being applied), it is also apparent that the Swedish report makes extensive use of rights-based arguments to justify the new system. For instance, the inquiry uses rights as a tool to justify the proposed new system. This risk shifting the focus from the state protecting children's freedom from restriction to the state controlling their freedom. Another scenario that is also important to consider is the discussion that the needs of guardians will be met through the new system. Using individual freedoms and rights to justify the state having positive obligations risks undermining the concept of rights from being a protection of the individual against the state to justifying the state's restrictions on individual rights.

⁵⁹ *Id.* p. 257, 679

⁶⁰ *Id.* 679-680



Open forms of intervention and special provisions for guardians

At present, the social services committee can only use coercion when children are to be taken into state custody. However, the preparatory work proposes that in order to prevent a child's situation from worsening and to enable the state to meet the child's needs for help and protection, the social services committee should be able to use coercion in a much wider range of measures (“open forms”) where the child remains in the custody of the guardians, and that such measures should be available at an early stage, even if there is no consent from either the child or the guardians.⁶¹ It should be up to the respective social welfare committee in each municipality in Sweden to decide what open measures are to be taken.⁶² The inquiry emphasises that a decision should be made if there is a risk that the child may be exposed to, among other things, undue exploitation or physical or psychological abuse.⁶³

The inquiry also proposes that the social services committee should be able to decide on special regulations concerning issues relating to the guardian's obligations towards the child, such as the guardian's participation in parent-teacher meetings or ensuring that the child follows certain routines in everyday life.⁶⁴ The report emphasises that there are children who are in need of support but who cannot receive it because their guardians do not consent to the measures.

Here, the legislative inquiries refer back to an earlier legislative inquiry in connection with the incorporation of the Convention on the Rights of the Child: The Convention on the Rights of the Child and Swedish law SOU 2020:63 Vol. 2, in which the legislative inquiry questions whether it is in accordance with the Convention on the Rights of the Child that guardians should be able to refuse social interventions.⁶⁵ Based on the reasoning in SOU 2020:63, the current legislative inquiry finds that interventions without consent are compatible with Article 18 of the Convention on the Rights of the Child and the principles of the best interests of the child

⁶¹ *Id.* pp. 27–28

⁶² *Id.* p. 322

⁶³ *Id.* pp. 27–28

⁶⁴ *Id.* p. 28

⁶⁵ The Convention on the Rights of the Child and Swedish law, SOU 2020:63 pp. 769–770.



under Article 3.1 of the Convention on the Rights of the Child, where it may be necessary to restrict Article 9 of the Convention on the Rights of the Child and the right to private and family life under Article 16 of the Convention on the Rights of the Child.⁶⁶ The legislative inquiries emphasise that the child's health and development are promoted by strengthening the parental capacity of guardians. The legislative inquiry adds that supportive parenting prevents children from getting into serious problems. They also believe that guardians should not be excluded and that the law should also cover those guardians who have challenges, such as mental or intellectual disabilities, and that the measures should be adapted to their individual circumstances and abilities in order for the decision to be proportionate. Therefore, the report argues that it is in line with the requirements of Article 18.2 of the Convention on the Rights of the Child to introduce what is known as intermediate coercion. This supplementary position is based on the use of Human Rights Justifications in combination with a permissible limitation test.⁶⁷ The inquiry justifies the proposal for open forms of intervention and special provisions for guardians by stating that it safeguards the rights of the child under Articles 19 and 33–36 of the Convention on the Rights of the Child.⁶⁸

The inquiry adds yet another Human Rights Justification by recognising that the proposals constitute a restriction of the guardian's right to private and family life under Article 8 of the European Convention but that this right may be restricted provided that it is generally available and specified. The legislative inquiries choose to seek guidance from Sections 2–3 of the Care of Young Persons Act (LVU) in order to avoid interpretation problems, adding that social welfare committees and courts are accustomed to assessing the conditions under the aforementioned provisions, which will facilitate their work.⁶⁹

Another HRJ is that the legislative inquiries agree that the proposed legislation to some extent restricts the guardian's right to decide on matters concerning the child but seeks to legitimise the restriction by arguing that guardians have the right to participate in the design and

⁶⁶ Ds 2024:30, *supra* note 51, pp. 314–315

⁶⁷ *Id.* p. 750

⁶⁸ *Id.* p. 316

⁶⁹ *Id.* pp. 326–327



implementation of the measures even though consent is not required under the proposed law (LIV). The legislative inquiries therefore consider the restriction to be compatible with Article 8 of the European Convention.⁷⁰

The inquiry also justifies the proposal by emphasising that a decision may be in line with the best interests of the child under Article 3 of the Convention on the Rights of the Child, in that decisions made under the proposed law contribute to ensuring the rights of the child under the Convention. This is because the inquiry considers that measures and special provisions for guardians can contribute to the child's schooling, give the child the opportunity to participate in activities, protect the child from threats and violence, and avoid the need to escalate to more coercive measures under the Care of Young Persons Act.⁷¹

The preparatory material contains further HRJ arguments. One is that the proposals strengthen the parental capacity of guardians and better meet the needs of the child and thus prevents family breakdown. Therefore, the legislative inquiry is justified as being a part of fulfilling the requirements of Article 9.1 of the Convention on the Rights of the Child.⁷² Another HRJ is when the inquiry justifies this proposal by stating that the child's rights are central and emphasises the guardian's responsibility, and therefore the proposed law is justified as being a requirement by the principle of the best interests of the child, according to Article 3, the child's right to family life according to Articles 9 and 16 of the Convention on the Rights of the Child.⁷³

Using HRJs risks lowering the threshold for when a state can intervene against individuals. The inquiry uses various human rights, mainly from the Convention on the Rights of the Child and refers to the need for coercive measures against guardians in order to promote the child's development in the long term. Such a justification risks normalising restrictions on several rights, including the right to private and family life. Another justification worthy of discussion

⁷⁰ *Id.* p. 752

⁷¹ *Id.* p. 354

⁷² *Id.* p. 748-749

⁷³ *Id.*



is the argument that coercive measures can strengthen children's rights, meaning that the rights of guardians and children are being restricted now in order to strengthen them in the future.

Open forms of intervention and special provisions for children and young people

The inquiry concludes that it is necessary to ensure that children and young people receive the necessary support at an early stage, before their problems and situation become more serious. In order for open forms of intervention to be selected, there must be a risk that the child or young person will, among other things, develop an addiction to addictive substances, become involved in or engage in criminal activity, or exhibit socially destructive behaviour.⁷⁴ The inquiry has concluded that it is up to each social welfare committee in each municipality in Sweden to decide what measures should be taken.⁷⁵

The inquiry also proposes that the social services committee should be able to decide on special regulations relating to the lifestyle of children or young people that are normally considered protective or to manage risk factors. These include, among other things, that the child must participate in work experience or other skills-enhancing activities, or be obliged to stay at home or another designated place that can be considered a home during certain times.⁷⁶ The main purpose of the latter provision is to ensure that children or young people's needs for supervision, structure, routines and rest are met by protecting them from being in inappropriate places, or places at inappropriate times.⁷⁷ The legislative inquiries argue that the purpose of these special provisions is to motivate the child to change their non-normative behaviour⁷⁸ and justify the proposal by stating that it is needed to support and protect children and young people whose needs are not being met. They add that these proposals are intended to prevent and stop children and young people from being harmed while living at home. Further, they argue that the social services committee may decide on necessary measures and special provisions, even without

⁷⁴ *Id.* p. 29

⁷⁵ *Id.* p. 365 f.

⁷⁶ *Id.* p. 29

⁷⁷ *Id.* p. 31

⁷⁸ *Id.* p. 29



consent, in order to tackle identified problems and prevent them from worsening, and that serious problems can be prevented with measures less drastic than institutional care, such as separating them from their family under the Care of Young Persons Act (LVU). In addition to using HRJs in their own right, the inquiry combines HRJs with a societal perspective, noting that the proposed measures could lead to positive effects, including economic savings, by giving children and young people better access to positive conditions for growing up and promoting positive future prospects. They also justify the proposals by adding that the social welfare committee needs to decide on measures to prevent children from becoming involved in crime or being exposed to crime. Therefore, the legislative inquiry considers that the proposals are in line with Articles 9.1 and 16 of the Convention on the Rights of the Child.⁷⁹

The inquiry also considers that the legislative proposals have taken into account the provisions of Article 23 of the Convention on the Rights of the Child and have been drafted in such a way that the individual needs and circumstances of the child or young person with regard to any disabilities are taken into account.⁸⁰

The preparatory work uses rhetoric that recognises that the legislative proposals constitute, to a certain extent, a restriction of the freedoms and rights of children and young people, particularly the right to private and family life under Article 16 of the Convention on the Rights of the Child and Article 8 of the European Convention on Human Rights. However, they argue that these restrictions are in line with the requirements set out in Article 8 of the European Convention, and that they are compatible with the requirements of the principle of the best interests of the child under Article 3 of the Convention on the Rights of the Child. Justification includes stating that these proposals will protect children and young people from exploitation, for example by protecting them from becoming involved in criminal activity or from abuse and are therefore in line with Article 36 of the Convention on the Rights of the Child. Such reasoning is classified as a Human Rights Justification, as the inquiry uses various rights to justify its legislative proposals.

⁷⁹ *Id.* pp. 746–748

⁸⁰ *Id.*



In the preparatory work, the inquiry tends to use mainly rights from the Convention on the Rights of the Child and the European Convention on Human Rights. The risk of justifying coercive measures in this way is that it can distort the purpose of the rights. The purpose of individual rights – such as the Convention on the Rights of the Child and the European Convention on Human Rights – is to protect the individual, and a tool to justify restrictions in order to promote the public good. The justifications also reveal some degree of utilitarian reasoning in combination with HRJs. Such reasoning risks undermining the rule of law, as it involves coercive measures against children and young people who have not committed a crime or who are not in danger; rather, these are coercive measures against children who may be at risk of ending up in such a situation. The risk of stating that coercive measures can lead to savings for society is that children's rights become a tool for justifying the state's social planning.

Follow-up and monitoring of the social services committee's decisions

The legislative inquiry proposes that in order to ensure that the child or young person complies with the implementation of measures or special regulations, the social services committee shall maintain regular contact with the child or young person and their guardians. The social services committee also has the authority to contact representatives of the child's or young person's school. The inquiry also proposes that if the child or young person does not comply with the special provision that they must remain in their home or similar accommodation at certain times, the social services committee should be able to request assistance from the police to enforce compliance.

The inquiry further proposes that the social services committee should be able to monitor the special provision that the child or young person must remain in their home or similar accommodation at certain times with the aid of electronic monitoring (ankle tags).⁸¹

The inquiry argues that several of its arguments regarding the proposal to monitor the special provision that the child or young person must remain in their home or similar location at certain

⁸¹ *Id.* p. 29



times using electronic monitoring are justified from a rights perspective, but without specific references to articles from various conventions. The inquiry acknowledges that electronic monitoring constitutes an invasion of the child's privacy but justifies the proposal by stating that it is not fundamentally about further restricting the freedom of movement of children or young people who have been subject to a special provision requiring them to remain in their home or another designated place. Instead, the report emphasises that it is a matter of enabling the social services committee to check that they are complying with the special order. It also justifies the proposal by stating that this is done so that the child or young person does not risk developing negatively or becoming involved in criminal activity.⁸²

The inquiry considers this legislative proposal to be compatible with the European Convention. Its argument involves the use of HRJs in the form of a systematic regime, as the inquiry considers it to be compatible with various conventions, including the European Convention, and thus a legitimate restriction of fundamental freedoms. A proportionality assessment is used, arguing that electronic monitoring may only be imposed for a maximum of one month at a time and may never last for more than six months during a period of twelve months. Another argument that stands out is that the inquiry emphasises that the proposal is in line with the rule of law and that it safeguards rights, as the decision to use electronic monitoring tags can be appealed and those subject to it have the right to legal representation.⁸³

Another similar argument based on HRJs is when the inquiry argues that decisions about electronic monitoring tags are compatible with the articles of the Convention on the Rights of the Child, as the social services committee must take into account the child's age, maturity and other risks that may be posed to the child or young person when deciding on electronic monitoring. Thus, the method of the Convention on the Rights of the Child is used to legitimise the proposals.⁸⁴

⁸² *Id.* p. 681

⁸³ *Id.* p. 682

⁸⁴ *Id.*



The risk with such justifications as described above is that the state will be able to make a habit of legitimising the use of control measures against children and young people by referring to a human rights system and method developed for a completely different situation and for a different purpose, namely to limit and scrutinise the state rather than to build a case for the legitimacy of restrictions on rights. This represents a shift from protecting children from interference with their rights to using their rights to justify state control and order, or in other words, using the child rights argument to justify the state's criminal policy, which in itself entails serious restrictions on the rights of individual children.

Consequences of non-compliance with the social services committee's decision

In order to ensure that guardians comply with decisions on measures, the social services committee should be given the opportunity to combine this with a fine. To ensure that the fine is not considered unreasonable, the amount of the fine should be adjusted to the guardian's individual financial circumstances.⁸⁵

In its justification for open forms of intervention and special provisions for guardians, the inquiry states that this is to draw attention to the guardians' parenting skills and emphasises the best interests of the child and their right to family life. By arguing through HRJs and referring to Articles 3, 9 and 16 of the Convention on the Rights of the Child, the inquiry justifies the proposal for a fine by pointing out that the proposal contributes to making it more likely that guardians will take greater responsibility for ensuring that the social services committee's decisions are carried out.⁸⁶

Again, the risk with the inquiry justifying the proposal in this way is that it constitutes a legal shift – rights go from being a protection for the individual (i.e. for the purpose of ensuring that the state does not disregard individuals' freedoms and rights) to the state being able to use them as a tool of control.

⁸⁵ *Id.* pp. 32–33

⁸⁶ *Id.* p. 749



Provisions on the handling and procedure for decisions under the LIV

The proposals emphasise the importance of legislation being based on a child rights approach, which includes knowledge and clear guidance in relation to the Convention on the Rights of the Child. The legislative inquiries add that the rights of the child under the Convention must be taken into account in order to guarantee the rights of the child in measures and decisions that affect them. They also argue that LIV should be based on the principle that children have rights and should be treated with dignity and respect like all other people, and that the best interests of the child, as defined in Article 3 of the Convention on the Rights of the Child, should be taken into account first and foremost in measures that affect them.⁸⁷

Another argument that can be considered to some extent as a HRJ is when the inquiry justifies the handling and procedure in the proposed law by referring to Article 12 of the Convention on the Rights of the Child. They add that children should receive information that concerns them and that they should be allowed to participate, and that this should be adapted to their age, maturity and individual circumstances. At the same time, the legislative inquiries add in their reasoning that Article 12 of the Convention on the Rights of the Child is not absolute, that children do not have an absolute right to information, for example, information that is inappropriate for a child to access.⁸⁸ So the real appeal to the Article is to legitimise the limitation of access to information.

Serious discussions when children and young people are suspected of crimes

The inquiry proposes that social services committees should be obliged to summon the child or young person and their guardian to a meeting, known as a serious discussion, when the child is suspected of a crime for the first time where imprisonment may be imposed. Such a summons must be issued within 24 hours of the police authority notifying the social services committee

⁸⁷ *Id.* pp. 563–563

⁸⁸ *Id.* p. 567



of the suspected crime. The report states that the purpose of this proposal is for guardians to support the child and prevent future criminality on the part of the child or young person.⁸⁹

The legislative inquiry's justification for introducing this legislative change can be considered a HRJ, as it emphasises that the family is seen as the fundamental unit of society that promotes the child's development and welfare and proposals regarding serious discussions reflect the legislative inquiry's view of Article 18.1 of the Convention on the Rights of the Child. They argue that the main purpose of the proposal is to get guardians to participate in supporting the child and to highlight the guardian's role in the child's situation.⁹⁰

The inquiry's use of a rights and permissible limitation test

The inquiry justifies the proposal by stating that care under the Care of Young Persons Act can be avoided through these measures and special provisions, and in other words, uphold the right to family life.

Open forms of intervention and special provisions for guardians

The inquiry argues that the proposal is in line with Article 19 of the Convention on the Rights of the Child and fulfils an important function in social services' work to strengthen and protect children's rights. To justify this restriction of the guardian's fundamental freedoms and rights, the inquiry uses the example of a weighing scale. One side of the scales represents the child's right to receive support and protection at an early stage, and the other side represents the guardian's protection against interference with their right to private and family life. The report justifies this balance by stating that the child's needs must be prioritised over the parents' needs.⁹¹

Open forms of intervention and special provisions for children and young people

The legislative inquiries combine Human Rights Justifications with a permissible limitations test in their justification, arguing that the special provisions of the Act on the Protection of

⁸⁹ *Id.* pp. 34–35

⁹⁰ *Id.* pp. 749–752

⁹¹ *Id.* p. 316



Children and Young People mean that a child must remain in their home during certain times, in order to protect them from harmful environments, including in the evening and at night. The legislative inquiries acknowledge that this constitutes a restriction on the freedom of movement of children and young people, but justify it by noting that the restriction is considered acceptable according to their interpretation of the article in the fourth additional protocol to the European Convention.⁹² They also argue that the purpose of these special regulations is to meet children's and young people's need for supervision, structure, routines and daily rest by protecting them from being in inappropriate places and places at inappropriate times. They therefore argue that such a restriction of freedom of movement is proportionate in relation to their interpretation of Article 2 of the Fourth Additional Protocol to the European Convention.⁹³

Follow-up and monitoring of the Social Services Committee's decisions

The legislative inquiries argue that electronic monitoring is already possible for young people under the age of 18 who have been sentenced to youth supervision. Their reasoning incorporates both rights and proportionality perspectives. They emphasise that the proposal constitutes a restriction on the young person's freedom of movement, but that the restriction must be appropriate in view of the personal circumstances and that it must be effective.⁹⁴

In addition to using the rights perspective, the inquiry also uses the proportionality perspective arguing that electronic monitoring is proportionate to the interests that the proposal is intended to protect and that it has a purpose that is acceptable in a democratic society. In support of its argument on proportionality, the inquiry mentions that electronic monitoring is only an option for children who have reached the age of 15 and that the social services committee must apply high standards in making their decision to use this approach, which means that the committee must be able to conclude that the child or young person will not otherwise comply with the special provision and that the action will prevent the child or young person from engaging in criminal activity. The report argues that this intrusion is proportionate as the electronic

⁹² *Id.* p. 391

⁹³ *Id.* pp. 391–392

⁹⁴ *Id.* p. 470



monitoring may only take place for a limited period of time each day and must be carried out in the child's or young person's home.⁹⁵

Provisions on the handling and procedure for decisions under the LIV

The legislative inquiries acknowledge that decisions under the LIV entail restrictions on rights and that the proposed legislation should not extend beyond what is necessary in order to safeguard legal certainty.⁹⁶ They also add that legal certainty is guaranteed by the fact that the best interests of the child and young person shall be decisive in all decisions when applying LIV, and that children and young people shall have the right to information and the right to express their opinions. Although there is no direct link to a specific right, there are elements of a rights perspective in combination with the proportionality perspective.⁹⁷

LIV, Ds 2024:30: How and to what extent do human rights organisations respond to the legislative inquiry's Human Rights Justifications from a rights perspective?

In studying this issue, it has been challenging to use Constructing Grounded Theory because the consultation responses reveal that human rights organisations respond using a rights perspective to a relatively limited extent.⁹⁸ Some human rights organisations reason and develop their responses from a child rights perspective, while others simply note the rights perspective in order to develop their further reasoning through interest and needs perspectives (see Section 5). We noted that human rights organisations rarely combine the rights perspective with a permissible limitation test in the manner used in the inquiry.

Human rights organisations' responses to the legislative inquiries' use of the rights perspective – New system

Civil Society's responses to the inquiry's use of Human Rights Justifications vary from organisation to organisation. UNICEF emphasises that the proposed new system is not in line with the principle of the best interests of the child under Article 3 of the Convention on the

⁹⁵ *Id.* p. 682

⁹⁶ *Id.* p. 587

⁹⁷ *Id.* p. 750

⁹⁸ The consultation responses have been coded a total of four times.



Rights of the Child and notes that the proposals do not include child impact analyses in light of the new social services legislation.⁹⁹ The Children's Rights Agency argues similarly, stating that efforts to strengthen the child rights perspective will be undermined because the new system risks conflicting with the purpose of the new Social Services Act.¹⁰⁰

BRIS, in turn, emphasises that the new system will restrict children's fundamental rights and that these restrictions will prevent more children from receiving help and support. The organisation notes that the proposals based on coercion lack a clear child rights perspective and risk creating legal uncertainty. In its response to the inquiry's use of Human Rights Justifications, it adds that the legislative inquiries are going against their own principles, such as that the work of social services should include the view that children are rights holders in their own right and that social services' activities should be based on guardian and children's voluntary participation. BRIS also argues that the legislative inquiries have interpreted the articles of the Convention on the Rights of the Child selectively, for example, by using Article 18 of the Convention to justify coercive measures against guardians but have not taken into account that the rights of the Convention should be viewed as a whole. BRIS emphasises that the articles are interlinked and provide an overall picture and therefore believes that the legislative inquiries must consider how child rights – according to the Convention on the Rights of the Child – are met in LIV.

BRIS uses a rights-based approach by stating that these measures will restrict rights such as the right to life and development, freedom from discrimination, the right to privacy, social security

⁹⁹ UNICEF Sweden, A law on social services for guardians, children and young people when consent is lacking (Ds 2024:30) (2025) (Ref. No. S2024/02012), [hereinafter UNICEF Sweden Ds 2024:30], <https://assets.ctfassets.net/gl8rzq2xcs2o/515Gv8VQ7HqjyVPTzAE8FD/ad3344bb5cd7315ad49f0558d2c3a491/UNICEFSverige.pdf> p. 2

¹⁰⁰ Children's Rights Agency, A law on social services interventions for guardians, children and young people when consent is lacking (Ds 2024:30) (2025), (Ref. No. S2024/02012), [hereinafter Children's Rights Agency Ds 2024:30], <https://barnrattsbyran.se/app/uploads/2025/03/Barnrattsbyrans-remissyttrande-Ds-2024-30-En-lag-om-insatser-inom-socialtjansten-till-varnadsnavare-barn-och-unga-nar-samtycke-saknas-.pdf>, p. 2



and freedom from violence. They conclude that the definition of child rights does not support the legislative inquiries' interpretation of rights.¹⁰¹

One response that stands out is the SOS Children's Villages Youth Council's argument that there are guardians who do not take responsibility or who are unwilling to accept measures that strengthen children's rights. SOS Children's Villages itself agrees with the Youth Council but also adds in its reasoning that the new system risks conflicting with the central principles of the Convention on the Rights of the Child. It emphasises the importance of the Convention on the Rights of the Child in Swedish legislation, which aims to strengthen children's rights and ensure that the best interests of the child are always the focus and believes that Sweden must be based on the fundamental values of a democratic society, which includes the idea that all people are equal, that those in power have a duty to act, and that all citizens should have their human rights fulfilled, regardless of the complex challenges facing society.¹⁰²

Maskrosbarn nuances the above reasoning and notes that the Government should not proceed with the new system due to the consequences that the legislative inquiry itself highlights. The organisation also believes that the new system should not be introduced because there is no child impact analysis from a child rights perspective. Similar to BRIS's comment on the legislative inquiries' interpretation, Maskrosbarn emphasises that the legislative inquiries have drawn incorrect conclusions in their justification of the principle of the best interests of the child.¹⁰³

¹⁰¹ BRIS, A law on social services interventions for guardians, children and young people when consent is lacking (Ds 2024:30) (2025) (Ref. No. S2024/02012), [hereinafter BRIS Ds 2024:30], <https://www.regeringen.se/contentassets/b6523801a8ee4f179bc282945139a2e8/barnens-ratt-i-samhallet.pdf> p. 3

¹⁰² SOS Children's Villages, A law on social services for guardians, children and young people when consent is lacking (Ds 2024:30) (2025) (Ref. No. S2024/02012) [hereinafter SOS Children's Villages Ds 2024:30], <https://www.regeringen.se/contentassets/b6523801a8ee4f179bc282945139a2e8/sos-barnbyar.pdf>, pp. 2, 4, 10

¹⁰³ Maskrosbarn, A law on social services interventions for guardians, children and young people when consent is lacking (Ds 2024:30) (2025) (Ref. No. S2024/02012), [hereinafter Maskrosbarn Ds 2024:30], <https://www.regeringen.se/contentassets/b6523801a8ee4f179bc282945139a2e8/maskrosbarn.pdf>, pp. 1-2



Proposal for open forms of intervention and special provisions for guardians

Although the inquiry has consistently used HRJs as the motivation for this legislative proposal, only Save the Children has responded to the legislative inquiry's reasoning in this regard. Save the Children does so by stating that the proposals conflict with fundamental freedoms and rights because they violate the guardian's and the child's right to private and family life, and that the assessment must also take into account the best interests of the child when determining whether there is sufficient justification to override their rights. It is worth noting that Save the Children reminds the legislative inquiries that Sweden has a responsibility under Article 18 of the Convention on the Rights of the Child to support parents in their parenting in order to do their best as parents to protect the best interests of the child.¹⁰⁴

The proposal for open forms of intervention and special provisions for children and young people

Only the Children's Rights Agency responds to the legislative inquiries' Human Rights Justifications regarding this part of the legislative proposals. It argues that the proposal for special provisions on leisure activities violates the child's right to free participation in leisure, play and rest under Article 31 of the Convention on the Rights of the Child. Further, it emphasises that there is a risk that the measures will result in economic discrimination against children and young people, linking this to Article 2 of the Convention on the Rights of the Child and adding that children must not be subjected to discrimination on the basis of circumstances relating to the child or their parents.¹⁰⁵ The Agency interprets Article 31 of the Convention on the Rights of the Child in the same way as the inquiry, namely that the state has a responsibility to create conditions for children's right to leisure and play (a positive obligation), but argues that coercion is not the solution for implementing these conditions.¹⁰⁶

¹⁰⁴ Save the Children, A law on social services interventions for guardians, children and young people when consent is lacking (Ds 2024:30) (2025) (Ref. No. S2024/02012), [hereinafter Save the Children, Ds 2024:30], <https://www.regeringen.se/contentassets/b6523801a8ee4f179bc282945139a2e8/radda-barnen.pdf>, p. 4

¹⁰⁵ Children's Rights Agency, Ds 2024:30, *supra* note 98, @ p3

¹⁰⁶ *Id.*



Follow-up and monitoring of the Social Services Committee's decision

The proposal for electronic monitoring is the proposal that has met with the most criticism from the majority of human rights organisations, largely presenting their arguments from a rights perspective. This is despite the fact that the legislative inquiries themselves have not used Human Rights Justifications to the same extent for this proposal as for the other proposals. Save the Children points out that Denmark has decided to abolish electronic monitoring (and as the legislative inquiries have noted) because it constituted a major intrusion into the individual's personal privacy.¹⁰⁷

UNICEF argues primarily from a rights perspective, arguing that electronic monitoring is not in line with Article 3 of the Convention on the Rights of the Child and that this measure constitutes a major intrusion into the privacy, freedom of movement and rights of the child. UNICEF argues that it is highly problematic for children aged 15 and over to be required to wear electronic ankle tags. The legislative inquiries point out that Article 1 of the Convention on the Rights of the Child states that a person is a child until the age of 18.¹⁰⁸

SOS Children's Villages further develops the above reasoning and expresses concern about the proposal for electronic monitoring, as well as questioning the upholding of children's rights in relation to their legal security and protection against arbitrary interference. SOS Children's Villages alone of the commentators notes that there is no impact assessment regarding the effects on children's rights, namely that these measures could be used against children who have not committed any crimes, and therefore this raises concerns about the upholding of children's rights.¹⁰⁹

Consequences of non-compliance with the social services committee's decision

In the proposal on fines, the inquiry states that the proposal has been made with the aim of ensuring the best interests of the child and their right to family life in accordance with Articles

¹⁰⁷ Save the Children, Ds 2024:30, *supra* note 102, @ p7

¹⁰⁸ UNICEF Sweden, Ds 2024:30, *supra* note 96, @ p. 6

¹⁰⁹ SOS Children's Villages, Ds 2024:30, *supra* note 100, @ p. 7



3, 9 and 16 of the Convention on the Rights of the Child. Instead of responding to this argument, the Children's Rights Agency¹¹⁰ notes that the legislative inquiries have not taken the child rights perspective into account and how such decisions may affect children. SOS Children's Villages is on the same track, adding that there is a lack of in-depth analysis of how the proposal could potentially lead to discrimination and affect siblings in the family, and concludes that the proposal for a fine is abnormal and unfair.¹¹¹

Serious discussions when children and young people are suspected of crimes

UNICEF responds to the inquiry's reasoning that the proposal for serious discussions is in line with Articles 12 and 18.1 of the Convention on the Rights of the Child by stating that the proposal is contrary to Article 3 of the Convention on the Rights of the Child, as there is a risk that these measures will deprioritise other cases that are of greater need.¹¹²

Human rights organisations' response to proportionality

BRIS argues from a rights and proportionality perspective in response to the inquiry's justification for introducing a new system. They emphasise that these proposals risk restricting the right to privacy and that the principle of proportionality must be taken into account.¹¹³

Follow-up and monitoring of social services committee decisions

The Children's Rights Agency, like UNICEF, argues that electronic ankle tags will restrict children's freedom of movement and that the measure is disproportionate in relation to the restriction of children's freedom of movement and personal integrity that the proposal entails.¹¹⁴

BRIS also argues from a rights and proportionality perspective, stating that the proposal constitutes a significant restriction on freedom of movement and requires an assessment of necessity and proportionality before such a measure can be implemented. BRIS concludes that

¹¹⁰ Children's Rights Agency, Ds 2024:30, *supra* note 98, @ pp. 6-7

¹¹¹ SOS Children's Villages, Ds 2024:30, *supra* note 99, @ p. 8

¹¹² UNICEF Sweden, Ds 2024:30, *supra* note 96, p. 7

¹¹³ BRIS, Ds 2024:30, *supra* note 98, p. 2

¹¹⁴ Children's Rights Agency, Ds 2024:30, *supra* note 97, pp. 5-6, UNICEF Sweden, *supra* note 96 p. 6



the proposal for electronic monitoring is not necessary, proportionate or compatible with children's rights.¹¹⁵

Maskrosbarn argues from the same perspective and considers that the proposed measures constitute a disproportionate restriction of the child's right to private and family life, freedom of movement and protection against forced physical interventions. Maskrosbarn adds that the proposal risks undermining the legal rights of these children and young people and their guardians, and points to the risk of discrimination in the application of the law.¹¹⁶

Provisions on the handling and procedure for decisions under LIV

Save the Children believes that these proposals are disproportionate in relation to the intervention, both in terms of the freedoms and rights of children and adults.¹¹⁷ BRIS argues similarly, stating that these proposals are neither necessary nor proportionate and that they restrict the rights of the individual.¹¹⁸

Ds 2024:30: How do human rights organisations respond to the inquiry's Human Rights Justifications from other perspectives?

The inquiry contains many arguments about how the proposed system is compatible with, among other things, the Convention on the Rights of the Child and the European Convention, but there is not as much discussion about how it will be in line with the new social services legislation. However, all organisations that have responded to Ds 2024:30 have stated that the new system risks disregarding the new Social Services Act.

Rather than arguing from a rights perspective, the organisations emphasise the importance of trust, accessibility and confidence, and that proposals should be based on science and proven experience. The organisations focus on the fact that this proposed system – which is based on coercion, control and repression – will contravene the new social services legislation, which is

¹¹⁵ BRIS, Ds 2024:30, *supra* note 98, p. 5

¹¹⁶ Maskrosbarn, Ds 2025:30, *supra* note 101 @ pp. 7–8

¹¹⁷ Save the Children, Ds 2025:30, *supra* note 102, @ p. 8

¹¹⁸ BRIS, Ds 2025:30, *supra* note 98, p. 7



an argument from a needs perspective. Some organisations continue the reasoning from a needs perspective by stating that a thorough analysis and evaluation of the new social services legislation is needed before proceeding with the proposed new system. A noteworthy point in relation to this argument is that Save the Children, believes that an evaluation of these aspects is necessary to identify any shortcomings before LIV can be adopted.¹¹⁹ BRIS, on the other hand, believes that an evaluation is needed to ensure that the intentions of the law are not disregarded before more far-reaching changes are introduced.¹²⁰

UNICEF and Maskrosbarn are on the same track, albeit from a user perspective, as they argue that the new system risks being counterproductive in relation to the new Social Services Act.¹²¹

BRIS also rejects the legislative inquiry's reasoning (something that other organisations do not do) from a user perspective, stating that coercive measures can strengthen trust in social services and that access will increase.¹²² Maskrosbarn adds an argument from both a needs and a user perspective, stating that the new system risks fragmenting social work and hindering the coordination and anchoring that the new Social Services Act strives for.¹²³

Risks undermining trust

Many human rights organisations that responded to the inquiry emphasised that the existing social services system has a strong foundation on the free will and consent of both guardians and children to the services they receive from social services, with very few areas of coercion, whereas the new system replaced this with coercion. They consider that this was likely to lead to reduced willingness to comply with measures voluntarily and, in the long term, risks undermining trust in social services.

¹¹⁹ Save the Children, *supra* note 101, pp. 2–3

¹²⁰ BRIS, *supra* note 98, pp. 1–2

¹²¹ UNICEF Sweden, *supra* note 96, p. 2, Maskrosbarn, *supra* note 100, pp. 1–2

¹²² BRIS, *supra* note 98, pp. 1–2

¹²³ Maskrosbarn, *supra* note 100, pp. 1–2



The Children's Rights Agency argues from a user perspective, stating that intermediate coercion – as implied by the new system – will instead create an imbalance between the individual child and social services, and in the long term will undermine individuals' trust in social services.¹²⁴

BRIS also takes a user perspective and notes that today's society is characterised by weakened trust in social services. They therefore find it remarkable that the legislative inquiries are focusing on a system that risks further eroding this mistrust. This is a concrete user perspective, as BRIS emphasises that the new system will further weaken trust, which means that individuals will be less inclined to seek support, which risks leading to children and families not receiving the support they need.¹²⁵

SOS Children's Villages also emphasises, from a similar perspective, that it is concerned that the proposed new system risks having negative consequences for trust in social services.¹²⁶

Attention also argues from a user perspective, reasoning that coercive measures against the individual will risk jeopardising the possibility of establishing a trusting relationship between the child, their family and social services.¹²⁷

Maskrosbarn reasons from both a needs and user perspective and argues, on the one hand, from a needs perspective, pointing out that the new system will undermine the social services' mission, and, on the other hand, from a user perspective, noting that the proposal risks damaging trust in them.¹²⁸

SOS Children's Villages presents a different argument from other consultation responses regarding the risk of undermining trust, but also reasons from a needs and user perspective. The

¹²⁴ Children's Rights Agency, *supra* note 97, p. 2

¹²⁵ BRIS, [SOU 2024:39] *supra* note 98, pp. 1–2

¹²⁶ SOS Children's Villages, SOU 2024:39 *supra* note 99, pp. 4-5

¹²⁷ National Association Attention, A law on social services interventions for guardians, children and young people when consent is lacking (Ds 2024:30) (2025), (Ref. No. S2024/02012), (hereinafter National Association Attention), <https://www.regeringen.se/contentassets/b6523801a8ee4f179bc282945139a2e8/riksforbundet-attention.pdf>, p. 2

¹²⁸ Maskrosbarn, *supra* note 100, pp. 1-2



reason for considering these perspectives is that the organisation urges the government to invest in legislation and initiatives that prioritise and promote children's development and independence, and that provide the support children need. Following this, they reason from a user perspective, adding that there is also a need for a society that believes in children's potential, an inclusive society permeated by support and trust, where every child has access to security and equality.¹²⁹

Maskrosbarn, which stands out from the other responses on the issue of trust, also notes that coercive measures against guardians may increase the risk of the child being exposed to violence.¹³⁰

Lack of research support and evidence

The organisations also argue that there is a lack of research and evidence regarding the effects of the proposals – they emphasise that the new system does not have the research support and evidence needed to conclude that the proposal would be effective. Maskrosbarn argues from a needs perspective, emphasising that there are no scientific facts to support these proposals, and therefore there is a risk that they will conflict with the requirements of the new Social Services Act, which stipulates that it must be based on science and proven experience.¹³¹

The Children's Rights Agency argues from a user perspective, emphasising the importance of continuing trust-based work.¹³² SOS Children's Villages puts forward arguments from both a needs and a user perspective, but with more emphasis on the user perspective. The reason for this combination of perspectives is that the organisation emphasises the importance of comprehensive and long-term preventive work and the allocation of resources to invest in

¹²⁹ SOS Children's Villages, SOU 2024:39 *supra* note 99, pp. 4-5

¹³⁰ Maskrosbarn, SOU 2024:39 *supra* note 100, pp. 1-2

¹³¹ *Id.*

¹³² Children's Rights Agency, SOU 2024:39 *supra* note 97, p. 2



motivation and relationship-building initiatives instead of investing in increased use of coercive measures.¹³³ Maskrosbarn also presents similar arguments.¹³⁴

SOS Children's Villages also presents an argument from both a needs and a user perspective, noting that the legislative inquiries place too much focus on older teenagers who are involved in crime or at risk of ending up there, when the majority of children and young people who need support from society are not engaged in criminal activities.¹³⁵

The principle of freedom of consent

Discussions on the principle of freedom of consent are primarily conducted from a user perspective. Several organisations emphasise that social services should be based on consent, respect for self-determination and integrity. Save the Children notes – from a user perspective – that this principle is essential and that the new system is not in line with the fundamental principles of social services regarding freedom of consent. What is considered a fundamental view of people and freedom of consent is not clear, but what can be understood is the argument that the work of social services should be based on consent by its users.¹³⁶

BRIS develops the argument from a user perspective by adding that the efforts must be voluntary and not compulsory, as Maskrosbarn also notes.¹³⁷ Maskrosbarn further develops the argument from the aforementioned perspective, emphasising that it is important for social work interactions to be characterised by self-determination.¹³⁸

¹³³ SOS Children's Villages, *supra* note 99, pp. 4-5

¹³⁴ Maskrosbarn, *supra* note 100, pp. 1-2

¹³⁵ SOS Children's Villages, *supra* note 99, pp. 4-5

¹³⁶ Save the Children, *supra* note 101, pp. 2-3

¹³⁷ BRIS, *supra* note 98, pp. 1-2, Maskrosbarn, *supra* note 100, pp. 1-2

¹³⁸ Maskrosbarn, *supra* note 100, pp. 1-2



Maskrosbarn further develops its argument from a user perspective, emphasising the importance of freedom of consent in order to achieve positive effects, otherwise there is a risk that it will have a negative impact on the individual's motivation and will have no effect.¹³⁹

The Youth Council at SOS Children's Villages presents arguments from a user perspective on volunteering that stand out from other consultation responses. In their arguments, they emphasise that young people have a responsibility of their own, while at the same time society needs to support them, and that the goal of this should be for young people to understand their actions and become better people without being labelled or isolated. They also put forward a different argument from a needs perspective when they state that social services should work more preventively, although without going into any detail about what concrete measures should be taken or how social services should work preventively. SOS Children's Villages also mentions that social services should work preventively to promote long-term change, but again, it does not specify how social services should do this.¹⁴⁰

SOS Children's Villages presents an argument from a user perspective by claiming that using social services as an extension of criminal policy through controlling and repressive measures goes against the work of social services to protect and support children and young people and that there is a risk that people will view social services as a law enforcement agency, which in turn may lead to less motivation among people to seek support from them. This reasoning suggests that there is a risk that people's view of social services will shift from an organisation that promotes voluntary efforts to one that is focused on law enforcement efforts.¹⁴¹

BRIS points out something that other organisations have not referred to, to the same extent. The organisation emphasises – from a user and needs perspective – that it is important for voluntary efforts to be adapted to the individual's needs and circumstances.¹⁴²

¹³⁹ *Id.*

¹⁴⁰ SOS Children's Villages, *supra* note 99, pp. 1-3, 7

¹⁴¹ *Id.* p. 5

¹⁴² BRIS, *supra* note 98, p. 2



Similarly, Attention emphasises the importance of a user perspective, arguing that when the recipient is willing and receptive to efforts, this in turn will lead to successful and desired results. It is therefore important that the effort is made with the individual's consent rather than through coercion.¹⁴³

BRIS goes further in its reasoning and combines a user and needs perspective with resource issues. The organisation adds that the measures should be implemented in collaboration with, among others, healthcare, schools and Civil Society, but that this requires resources and time for municipalities to get used to the new Social Services Act.¹⁴⁴

In its consultation response, the Youth Council at SOS Children's Villages urges politicians to listen to children and support families in order to find solutions that create a secure future. They note that children are all different and therefore need support that is tailored to their individual needs. This argument is strongly associated with a user perspective.¹⁴⁵

Coercion is not the solution

The organisations therefore argue less from a rights perspective, and instead primarily from a user perspective, when criticising the new system that allows for coercive measures in social services work. Above all, Save the Children emphasises – from a user perspective – that coercive measures cannot be justified simply because the individual has practical obstacles. They believe that there is a risk that this will become a dangerous shortcut in social services' work and that the child will not receive protection.¹⁴⁶

UNICEF argues from a clearer needs perspective when it states that coercive measures will negatively affect trust in the work of social services and that the new system is not proportionate in relation to the Care of Young Persons Act (LVU) and the new social services legislation.¹⁴⁷

¹⁴³ Attention, *supra* note 125, p. 2

¹⁴⁴ BRIS, *supra* note 98, p. 7

¹⁴⁵ SOS Children's Villages, *supra* note 99, p. 1

¹⁴⁶ Save the Children, *supra* note 101, pp. 2–3

¹⁴⁷ UNICEF Sweden, *supra* note 96, p. 2



BRIS agrees with the criticism, but also adds, from a user perspective, that coercive measures risk driving families away.¹⁴⁸ Attention notes, rather from a needs perspective, that the legislative inquiries focus too much on coercion, control and consequences for the young person and their guardians.¹⁴⁹

SOS Children's Villages also puts forward an argument – from both a needs and user perspective – that coercive measures raise questions regarding legal certainty, trust and other effects on children, young people and their parents. The organisation also believes that coercive measures with unclear conditions can lead to arbitrary assessments.¹⁵⁰

Both Save the Children and SOS Children's Villages argue along similar lines. Save the Children emphasises that coercion does not solve the problems and that there is already existing legislation, through the LVU, which covers gaps when other measures are not sufficient. The latter organisation further argues that, under the aforementioned legislation, taking children into care is already the ultimate protection for children and young people who have ended up in a bad situation.¹⁵¹

BRIS draws attention to something that stands out from the other consultation responses. BRIS believes that it is questionable how the inquiry has justified the need for coercion, especially when the legislative inquiries have not clarified what other measures guardians need and what else can be offered on a voluntary basis. This indicates that the organisation questions the legislative inquiries' reasoning from a needs perspective and calls for more consideration of the user perspective.¹⁵²

Another argument that also differs from the other consultation responses is that SOS Children's Villages agrees with its Youth Council's argument that coercion may be the best solution for

¹⁴⁸ BRIS, *supra* note 98, pp. 1-2

¹⁴⁹ National Association Attention, *supra* note 125, p. 2

¹⁵⁰ SOS Children's Villages, *supra* note 99, pp. 4-5

¹⁵¹ Save the Children, *supra* note 101, pp. 2–3, SOS Children's Villages, *supra* note 99, pp. 4–5

¹⁵² BRIS, *supra* note 98, pp. 1–2



children when there is no support from adults. This argument is put forward from a needs perspective, but at the same time SOS Children's Villages rejects the proposal on the grounds that there are considerable risks that coercion will replace the social services' trust-building work, which it argues is the most fundamental and sustainable way of meeting the needs of children and young people, showing that they emphasise the importance of a user perspective.¹⁵³

Attention presents an intersectional argument based on a needs perspective, stating that social services should work preventively and provide urgent assistance in order to counteract the risk of potentially destructive behaviour. They highlight that the legislative inquiry lacks a disability perspective, despite the fact that some in this group of young people are at risk of becoming involved in crime.¹⁵⁴

The problem requires sustainable solutions

Several organisations argue from a needs perspective that children and young people at risk of becoming involved in crime have a great need for support and early intervention to counteract negative developments.

Save the Children emphasises that the problem is that children do not receive help when their parents do not accept support measures.¹⁵⁵ The SOS Children's Villages Youth Council presents a different view from the other consultation responses, stating that in addition to looking at young people involved in crime, it is also necessary to investigate the children's life experiences, backgrounds and other factors such as insecurity and abuse. The Youth Council continues the discussion from a needs perspective when they note that these factors can lead to children and young people feeling bad or, in the worst case, behaving badly. Another argument based on a similar perspective is when they mention that all children should receive help, regardless of whether they are criminals or at risk of becoming so. The Youth Council also mentions

¹⁵³ SOS Children's Villages, *supra* note 99, pp. 4-5

¹⁵⁴ National Association Attention, *supra* note 125, p. 2

¹⁵⁵ Save the Children, *supra* note 101, pp. 2-3



something that stands out, namely that individuals should receive help even after they turn 18, as there is a risk that crime will increase when society stops supporting them.¹⁵⁶

Attention argues from a user and needs perspective when they mention that they agree with the inquiry's objective of developing approaches and tools through early intervention, with the aim of preventing children from becoming involved in crime or destructive environments. However, the organisation believes that the new system proposed is not the solution for supporting and protecting them.¹⁵⁷

Maskrosbarn agrees, noting that there is concern about the negative social development where children are involved in crime. However, the organisation reasons from a user perspective when it argues for lowering the thresholds for seeking help or accepting help, and that the new system is counterproductive and risks being harmful. The organisation also argues from a needs perspective when it states that long-term security-building measures are needed, involving more information and improved accessibility in order to contribute to positive results.¹⁵⁸

SOS Children's Villages also argues from the latter perspective and mentions that the inquiry has not addressed the support needs of younger children and how the new system will affect children and young people who need care due to limitations on their guardian's capacity to look after them, which may be due to a range of reasons.¹⁵⁹

Perceives the new system as meaning that parents can, but do not want to

Several of the organisations also note that there is a lack of trust and knowledge about the work of social services among potential users. UNICEF argues from a user and needs perspective, referring to the fact that social services need resources and conditions in order to enable long-term change work around motivation and to make it easier for people to accept support and

¹⁵⁶ SOS Children's Villages, *supra* note 99, p. 3

¹⁵⁷ National Association Attention, *supra* note 125, p. 2

¹⁵⁸ Maskrosbarn, *supra* note 100, pp. 1–2

¹⁵⁹ SOS Children's Villages, *supra* note 99, pp. 4–5



help. Otherwise, there is a risk that coercive measures will take priority over the other work of social services.¹⁶⁰

SOS Children's Villages presents arguments based on a needs perspective and emphasises the importance of the fundamental principle of social services' social work: people want to do the right thing, but cannot because of mental illness, lack of ability or other circumstances. Such factors can make it difficult to comply with any orders issued by social services. Another argument that reinforces their reasoning from a needs perspective is when they emphasise the importance of social services maintaining the view that parents want to do the right thing, rather than viewing them as unwilling. They also reason from a needs perspective when they argue that it is not fair or appropriate for guardians to have all the responsibility, especially when social services do not have sufficient resources to handle so many cases at the same time. Another argument that strengthens the needs perspective is when they argue that the lack of resources can weaken the work of social services, which in turn undermines efforts to combat complex problems.¹⁶¹

Maskrosbarn also argues from a needs perspective, especially when they emphasise that it is important that the work of social services should not be based on translating people's inability to act as equating to an unwillingness to act.¹⁶² Barnrättsbyrån argues from the same perspective, particularly by pointing out that parents sometimes want to act, but cannot, and that they therefore need society's help.¹⁶³

The report lacks an analysis of why guardians refuse assistance

Several of the organisations believe that the legislative inquiries have not analysed why many guardians refuse social services' interventions, considering that it is a significant shortcoming,

¹⁶⁰ UNICEF Sweden, *supra* note 96, p. 2

¹⁶¹ SOS Children's Villages, *supra* note 99, pp. 4-5

¹⁶² Maskrosbarn, *supra* note 100, pp. 1-2

¹⁶³ Children's Rights Agency, *supra* note 97, p. 7



because such an analysis is necessary in order to identify the obstacles and thus adapt the measures to the obstacles.

Save the Children further develops its reasoning stating that fundamental questions need to be investigated, such as why do parents refuse? According to them, this question needs to be answered in order to identify the obstacles.¹⁶⁴

The Children's Rights Agency similarly argues that there is currently a lack of trust in social services and that there are no measures tailored to the needs of families. The organisation also reasons from a combined user and needs perspective, particularly when they illustrate this by mentioning that there are parents who ask for help in the home but instead receive other measures that do not meet that need.¹⁶⁵

Attention believes that it would be beneficial for the National Board of Health and Welfare to be tasked with mapping and investigating whether current measures meet the support and assistance needs of guardians, which is another argument from a user perspective.¹⁶⁶

Human rights organisations, which are knowledgeable about issues relating to social work and children, thus fill the gap with an important sociological perspective that the legislative inquiry has not taken into account. However, when human rights organisations respond to the legislative inquiries' Human Rights Justifications with arguments based on needs and user perspectives, there is a risk that the discourse will shift from legal rights and obligations to a discussion about desires and needs. The discourse then shifts from discussing whether rights have been fulfilled or violated to what society needs in order to function. One risk of responding in this way is that the normative effects of the rights discourse are lost, and there is also a risk of blurring the line between the obligations of the state and the rights of the individual. Objecting from a sociological perspective to an argument characterised by a rights perspective also risks giving the state the impression that it is acceptable to justify legislative proposals on

¹⁶⁴ Save the Children, *supra* note 101, pp. 2–3

¹⁶⁵ Children's Rights Agency, *supra* note 97, p. 2

¹⁶⁶ Attention, *supra* note 125, p. 2



the basis of individual rights in a way that serves the state and restricts individual rights in unacceptable ways.

The proposal for open forms of intervention and special provisions for guardians

Several of the organisations argue – from a user perspective – that cooperation, motivation and voluntary action lead to sustainable and long-term change, rather than measures taken through coercion. UNICEF elaborates on this by questioning whether coercive measures will really improve parenting skills in the absence of motivation.¹⁶⁷

BRIS emphasises the importance of cooperation with guardians in order to achieve long-term change. They also add that if there is already a lack of a positive home environment or adequate care, there is a risk that the problems will persist. Continuity and follow-up will have limited effects if parents do not participate in the work between the child and social services, which is also argued from a user perspective.¹⁶⁸

SOS Children's Villages argues from the same perspective but adds something slightly different. They question how the legislative inquiry uses the concept of prevention in connection with coercive measures. Instead, the organisation emphasises knowledge and proven experience in social work, with the aim of creating good opportunities for sustainable change for both parents and children.¹⁶⁹

Maskrosbarn argues from a needs perspective by questioning whether special regulations are really necessary for parents who have the ability but do not follow the regulations. Instead, the organisation emphasises that a significant legislative inquiry into these parents' actions is needed.¹⁷⁰

¹⁶⁷ UNICEF Sweden, *supra* note 96, p. 3

¹⁶⁸ BRIS, *supra* note 98, pp. 3–4

¹⁶⁹ SOS Children's Villages, *supra* note 99, p. 6

¹⁷⁰ Maskrosbarn, *supra* note 100, p. 3



Lack of scientific/research evidence and support

Save the Children argues from a needs perspective that the legislative inquiry has not presented scientific support for coercive measures having positive effects. The organisation also considers that the knowledge base is inadequate and that there is no scientific basis to support the claim that it can improve parenting skills or the home environment for the child.¹⁷¹

Maskrosbarn also argues from the same perspective, particularly with regard to the proposal that guardians should participate in open forms of intervention. They believe that it is uncertain whether the proposed coercive measures will be effective. Maskrosbarn argues along the same lines as Save the Children and believes that there is no evidence to support the effectiveness or efficiency of coercive measures.¹⁷²

Save the Children and BRIS share the same view that coercive measures are not in line with the new Social Services Act's requirement that social services' work should be based on knowledge and science and proven experience. Save the Children draws attention to the National Board of Health and Welfare's argument that there is a lack of knowledge about coercive measures against guardians. Save the Children also notes the legislative inquiries' emphasis on using working methods and measures that have been scientifically proven to have positive effects.¹⁷³

BRIS further develops this argument by making a rights-based response to the HRJ, as well as arguing against the proposals from a user perspective. BRIS questions the proposed legislation by stating that a law on social services interventions for guardians, children and young people in the absence of consent is neither proportionate nor necessary, and that the measures lack scientific support. Something that stands out in BRIS's consultation response compared to the other consultation responses is that they note that the complex issues raised by the inquiry are not adequately addressed and that this will affect the legitimacy of the proposals.¹⁷⁴

¹⁷¹ Save the Children, *supra* note 101, pp. 3–4

¹⁷² Maskrosbarn, *supra* note 100, p. 3

¹⁷³ BRIS, *supra* note 98, pp. 3–4, Save the Children, *supra* note 101, pp. 3–4

¹⁷⁴ BRIS, *supra* note 98, pp. 3–4



Coercion cannot lead to increased consent

Both BRIS and SOS Children's Villages argue from a user perspective on this issue. The organisations are concerned about the consequences that may ensue and also agree that coercive measures are not compatible with building trust or effective social work.¹⁷⁵

BRIS adds from the same perspective that it is based on an incorrect and risky assumption that coercive measures can lead to increased consent.¹⁷⁶

SOS Children's Villages also argues from a user perspective, that coercive measures may undermine legal certainty as coercive measures may jeopardise the individual's independence and reduce social services' ability to support the individual's motivation to change. Another thing that stands out in SOS Children's Villages' response is that they add that coercive measures can lead to increased exclusion among families, which in turn reduces trust in the work of social services and causes families to be alienated when social services want to help them. This reasoning has the character of a user perspective, but also an "us and them" perspective as the proposals risk leading to guardians not feeling confidence in social services, and already there arises a feeling of "us and them". When guardians, in turn, do not receive the help they need from social services, this risks reinforcing the feeling of "us and them" even more. It would therefore be extremely important for the organisation to emphasise the importance of social services working more on their approach, creating more secure structures and a social attitude based on trust in order to build confidence and counteract the feeling of "us and them."¹⁷⁷

Effective cooperation and mutual trust

BRIS and Maskrosbarn reason from a user perspective, particularly when they emphasise the importance of trust and cooperation between guardians and social services. The organisations

¹⁷⁵ BRIS, *supra* note 98, pp. 3–4, SOS Children's Villages, *supra* note 99, p. 6

¹⁷⁶ BRIS, *supra* note 98, pp. 3–4

¹⁷⁷ SOS Children's Villages, *supra* note 99, p. 6



believe that this is a crucial factor in ensuring that the right support is provided to the child at the right time.¹⁷⁸

BRIS argues from a user perspective that effective cooperation and mutual trust are essential and also points out that research shows that parents who trust social services are more likely to seek help earlier, which in turn can help to prevent serious problems.¹⁷⁹

Maskrosbarn believes – from a user perspective – have concerns about the implications of the proposal that guardians should follow specific regulations and that lack of participation in parental or municipal meetings should be interpreted as parents having low levels of trust in the authorities. Therefore, the relationship and cooperation between families and social services should be strengthened. They also believe that the special regulations should be combined with significant support, advice and guidance for parents and children.¹⁸⁰

Maskrosbarn also argues from a needs perspective, that the proposal for special regulations requiring guardians to take action in cases of unauthorised school absenteeism is ineffective. Instead, it argues that social services and schools need to identify the problems behind school absenteeism, as it may be due to factors such as mental ill health, bullying or other social problems. The organisation therefore emphasises that children and parents need support that is tailored to the problems.¹⁸¹

Relational work as the basis of social services

Several organisations warn that coercive measures risk undermining the work of social services, which is based on trust and relational work. The organisations argue from a clear user perspective when they point out that cooperation, trust and freedom of consent are needed to achieve long-term and lasting change, and that this cannot be achieved through coercion.

¹⁷⁸ BRIS, *supra* note 98, pp. 3–4, Maskrosbarn, *supra* note 100, pp. 3–4

¹⁷⁹ BRIS, *supra* note 98, pp. 3–4

¹⁸⁰ Maskrosbarn, *supra* note 100, pp. 3–4

¹⁸¹ *Id.*



UNICEF adds that changing a guardian's behaviour must be done through generating insight and willingness. They also emphasise that the new Social Services Act, which is to be based on accessibility and self-determination, among other things, must be upheld, but that this requires resources. UNICEF argues that from a user perspective there is a need for consensus and relationship building, and that social services' approaches need to be based on flexibility in order to adapt to the needs of parents.¹⁸²

BRIS also adds, from a user perspective, that a lack of trust risks leading to guardians staying away from social services, which will result in children not receiving the support and help they need.¹⁸³ Similarly, Maskrosbarn believes that the reason for this from a user perspective is that coercive measures will hinder trusting cooperation and, in turn, reduce the motivation of guardians to accept support.¹⁸⁴

Conflict of loyalty

Save the Children argues on this issue from both a needs and a user perspective. They argue that children will end up with a conflict of loyalty when guardians are forced to accept interventions without consent. Something that also stands out from the needs perspective, is that there is a risk of children feeling guilty and not telling what is really going on at home¹⁸⁵. UNICEF agrees that there is a risk that this will limit the child's access to support and interventions.¹⁸⁶

Consequences of coercive measures

Several organisations are concerned - based on a needs perspective combined with a user perspective – that these proposals will, among other things, lead to significant risks for the child instead of protection. They argue that it could worsen the child's situation rather than improve

¹⁸² UNICEF Sweden, *supra* note 96, pp. 3–4

¹⁸³ BRIS, *supra* note 98, pp. 3–4

¹⁸⁴ Maskrosbarn, *supra* note 100, pp. 3–4

¹⁸⁵ Save the Children, *supra* note 101, pp. 3–4

¹⁸⁶ UNICEF Sweden, *supra* note 96, pp. 3–4



it, especially in cases where the relationship between the guardian and social services is already damaged.

Save the Children further develops this argument by stating that children are not protected simply because guardians are forced to accept the measures. Instead, Save the Children proposes, based on a needs perspective, that when the measures lead to positive changes, the measures themselves become protective. The child's opportunity for improvement will be limited when there is a damaged relationship of trust between the guardians and social services. Something that also stands out in the organisation's response compared to the other consultation responses is that there is uncertainty that creates a false sense of security when social services focus on the parents rather than on the child's situation and development.¹⁸⁷

UNICEF also argues that when there is a lack of support from guardians, there are practical obstacles for the child per se. UNICEF also notes, from the same perspective, that it will be a burden for the child to participate in an intervention when there is no support from the guardians. The organisation adds, from a needs perspective, that the child may be subject to sanctions from the guardian(s).¹⁸⁸

One response that stands out from the other consultation responses is that of the young people from the Maskrosbarn children's hearing, who state – from a needs perspective – that they view coercive measures against guardians positively because they believe it can improve the possibility of support, and therefore this is considered an argument from a needs perspective. The reason why this is from a needs perspective for the young people is also mentioned, namely that the consequence of this is that the child may be exposed to violence by their guardians and that a mandatory approach may stop this. Maskrosbarn is of the same opinion, noting that frustration arises for children when parents do not participate in necessary interventions.

¹⁸⁷ Save the Children, *supra* note 101, pp. 3–4

¹⁸⁸ UNICEF Sweden, *supra* note 96, pp. 3–4



However, they mention that there is a risk that the child may be exposed to violence as a result of coercive measures.¹⁸⁹

UNICEF's approach is also based on a needs perspective, but their reasoning is different. They argue that there is a risk that the child will be seen as the problem in the family, and they also emphasise that the work of social services should be based on voluntary participation and that the proposed measures could worsen cooperation with guardians, which could disadvantage the child.¹⁹⁰ This can be problematic, as there is a risk that the child may be subjected to sanctions from their guardians, but also from any siblings. This, in turn, will further complicate the work of social services.

The SOS Children's Villages Youth Council also emphasises the importance of social services working with voluntary measures and, from a user perspective, adds that this should be done without creating fear of reprisals. This is also a user perspective, especially when they argue that there are children who are afraid, but that this is not noticed and the result is that children do not want to participate. They also note that there are children who feel that their parents do not care, and why this is seen as a user perspective is because the young people emphasise that it risks complicating the situation.¹⁹¹

Parental involvement

One response that stands out from the other consultation responses is that the young people from SOS Children's Villages argue – from a needs perspective – that parents must be involved in their children's upbringing, and therefore coercion may be necessary if parents are not involved. However, they note that the demands on parents must be reasonable in relation to their situation.¹⁹²

¹⁸⁹ Maskrosbarn, *supra* note 100, pp. 3–4

¹⁹⁰ UNICEF Sweden, *supra* note 96, pp. 3–4

¹⁹¹ SOS Children's Villages, *supra* note 99, pp. 1-2

¹⁹² *Id.*



The young people's response can be contrasted with Maskrosbarn's response to this aspect of parental involvement. Maskrosbarn also argues from a needs perspective, but in a different way. They emphasise that a lack of parental responsibility is due to a lack of parenting skills, and that what is needed instead is support and advice that can strengthen parenting skills.¹⁹³

Language and cultural clashes

The SOS Children's Villages Youth Council emphasises the importance of the needs perspective, stating that the state needs to support newly arrived parents in adapting to Swedish society. The reason this argument has an element of that perspective is because they emphasise the importance of communication between children and parents, as there are cultural clashes and language barriers that can weaken parenting and create rifts within the family.

They further develop this argument, from the same perspective, by adding that newly arrived parents need education in Swedish For Immigrants (language programme), parenting and social studies because children tend to find it easier to learn than their guardians, and this creates instability in the relationship between children and parents. Another noteworthy point is that the young people note that the instability is not due to a lack of love from the parents but rather has to do with communication difficulties between the parties. This is emphasised from a needs perspective, as the young people point out that it will help parents find different ways of dealing with complex situations, which can lead to a stronger relationship between parents and children.

The Youth Council also adds, from the same perspective, that children need compulsory courses in social studies and parenting, in order to learn about norms and rules related to parenting, to create a better future for both the child and the parents.¹⁹⁴

It is not problematic to argue from a sociological perspective, as it is a perspective that shows what works in a society. What can be problematic is that it does not respond to the inquiry's adoption of Human Rights Justifications to explain and defend its proposed approaches, i.e. taking a rights perspective. While the inquiry discusses whether the Convention on the Rights

¹⁹³ Maskrosbarn, *supra* note 100, pp. 3–4

¹⁹⁴ SOS Children's Villages, *supra* note 99, p. 2



of the Child and the European Convention are applicable, human rights organisations respond by discussing how a law will work in society. Whilst these are very important points which should be taken into account by the inquiry in responding to the consultation responses, there is a risk of normalising the fact that the inquiry can affect individuals' freedoms and rights without Civil Society systematically questioning the justifications. There is also a risk that the state will be able to use rights to justify restrictions on individual rights.

Proposal for open forms of intervention and special provisions for children and young people

Save the Children agrees with the inquiry's reasoning that Section 22 of the Care of Young Persons Act is not applied to any great extent, but both Save the Children and BRIS emphasise, from a user perspective, that repealing the provision is not a viable solution. The reason why this is seen as a user perspective is that the organisations note that Section 22 of the Care of Young Persons Act aims to ensure the protection of the child when there are serious and established risks, compared with the proposal, which covers coercive measures at an earlier stage with the aim of directing the child's behaviour. Save the Children nuances its reasoning from the same perspective by adding that the effect of the proposal will be something other than a protective measure.¹⁹⁵ BRIS also broadens its argument by further stating that the proposal aims at change and treatment work, and they believe that it is seen as a shift from ensuring the protection of the child to having an effect on the child's behaviour¹⁹⁶.

Maskrosbarn, on the other hand, argues from a needs perspective, the reason for which is that the organisation finds that Section 22 of the Care of Young Persons Act is sufficient to protect children and that no measures beyond the provisions of that section are necessary. The organisation also adds another argument – based on a needs perspective – that the provision is rarely applied because it has been concluded that coercive measures do not have the desired effect.¹⁹⁷

¹⁹⁵ Save the Children, *supra* note 101, pp. 4–5

¹⁹⁶ BRIS, *supra* note 98, p. 4

¹⁹⁷ Maskrosbarn, *supra* note 100, pp. 5–6



SOS Children's Villages also argues from a needs perspective, emphasising that a legislative inquiry is needed into why the provision has not been applied, which could lead to improved legislation and practices that do not risk undermining its application.¹⁹⁸ It can be perceived that the organisation emphasises the importance of legally secure legislation that can guarantee the protection of children and ensure improved practice.

Focus on freedom of consent, trust and the child's motivation

Several organisations note, from a user perspective, that the proposal for coercive measures may be counterproductive because it is not based on the child's own motivation, trust and participation and as such may undermine the treatment work of social services.

From the same perspective, Save the Children notes that early and preventive interventions for children are important and that they should be based on trust, motivation and participation, especially when it comes to social change work. The reason for this user perspective is that the organisation adds that if the aforementioned principles are lacking, coercive measures risk damaging the child's trust and commitment.¹⁹⁹ BRIS is also on the same track, adding that coercive measures should only be used for the purpose of protecting the child, and not as a tool for providing support and treatment.²⁰⁰

UNICEF also draws attention to the absence of social services, adding from the aforementioned perspective that there are thousands of children who are not granted support, which creates adverse conditions. UNICEF also notes that social services need resources to strengthen their coexistence and relationships, thereby creating long-term change for the child. The latter argument is based on a needs perspective, and the reason for this is that the organisation emphasises the importance of social services having resources in order to ensure that children's needs are met.²⁰¹

¹⁹⁸ SOS Children's Villages, *supra* note 99, p. 5

¹⁹⁹ Save the Children, *supra* note 101, pp. 4–5

²⁰⁰ BRIS, *supra* note 98, p. 4

²⁰¹ UNICEF Sweden, *supra* note 96, pp. 4–5



Similar arguments, but from a user perspective, are also put forward by SOS Children's Villages. The reason for this being a user perspective is that they emphasise the importance of long-term efforts, but also that these should be combined with the child's self-esteem and empowerment²⁰². If this is not combined with the child's self-esteem and empowerment, it can be problematic because it does not value the child's autonomy.

Maskrosbarn also presents its argument from a user perspective. They emphasise that it is important for efforts to be based on the child's own will and motivation to change their own situation, and that this is necessary to counteract negative developments. Although Maskrosbarn recognises the need to prevent negative developments, they do not share the same view as the inquiry. Instead, they state that special regulations are needed that can engage the child and strengthen their motivation so as not to create obstacles to, and reluctance about, social services' efforts.²⁰³

The same perspective is expressed by Maskrosbarn, particularly with regard to leisure activities. The organisation emphasises the importance of children being able to engage in activities that they are interested in, and that this should be an opportunity rather than a compulsion, as compulsion can undermine the child's experience. This is also seen as a user perspective, as great emphasis is placed on leisure activities being effective and a protective factor in order for them to be meaningful for the child.²⁰⁴

We see a tendency among human rights organisations to emphasise the importance of voluntary efforts combined with a needs and user perspective. Again this is not a problem in itself from a sociological and psychological perspective; however, what is rather problematic is that many of these consultation responses are not based on a rights perspective and therefore are not always effectively challenging the majority of the investigator's reasoning which is based on

²⁰² SOS Children's Villages, *supra* note 99, pp. 6–8

²⁰³ Maskrosbarn, *supra* note 100, pp. 5–6

²⁰⁴ *Id.*



Human Rights Justifications, and there is therefore a risk that their responses will not counteract the normalisation of using human rights arguments to restrict human rights themselves.

Common criticism of coercive measures

Several organisations also express a user perspective on this aspect. The reason for this is that, from a user perspective, the organisations warn that these proposals risk undermining children's motivation, which in turn risks jeopardising cooperation with social services. What is also worth noting from this perspective is that some organisations emphasise that this risks marginalising children's voices in decision-making processes. The user perspective is also emphasised above all when they stress that interventions should be based on freedom of consent and trust, and that there should be supportive relationships where the child is given the opportunity to participate on their own terms.

One of the organisations that emphasises the above is UNICEF. They note that there is a major problem, especially as more and more children are involved in the issue. However, from a needs perspective, they believe that this will not address the underlying problem.²⁰⁵

The Youth Council at SOS Children's Villages notes from a user perspective that coercive measures risk harming the child and others around the child. They emphasise the importance of giving children a second chance and opportunities to develop, as the environment can be a factor in feeling better.²⁰⁶

A young person from Maskrosbarn notes, based on the latter perspective, that coercion to participate can create negative reactions. Conversely, another argument – based on the same perspective – put forward by the young person is that it is important to build a relationship between the child and social services in order for the child to be open to change.²⁰⁷

²⁰⁵ UNICEF Sweden, *supra* note 96, pp. 4–5

²⁰⁶ SOS Children's Villages, *supra* note 99, p. 2

²⁰⁷ Maskrosbarn, *supra* note 100, pp. 5–6



Lack of research and proven experience

Maskrosbarn states, from a needs perspective, that there is neither research nor proven experience to show that the proposed coercive measures will have positive effects.²⁰⁸ Both Maskrosbarn and UNICEF point out, from a user perspective, that coercive measures risk worsening the child's home circumstances. Another issue that the organisation highlights from the same perspective is that the inquiry has not taken sufficient account of safety in the home.²⁰⁹

Similar to the reasoning regarding interventions for guardians, UNICEF notes that the child can be seen as the problem bearer in the family, from the same perspective. Another reason for this user perspective is that they also add that there is a risk that the child will end up with a conflict of loyalty with their guardians, and that the child may also find it difficult to accept interventions if they do not receive support from home.²¹⁰

Maskrosbarn specifically draws attention to the problem surrounding the special provision that children must remain at home during specified times. The reasoning is based on a needs perspective, particularly when the organisation notes that there is a risk that the child will be forced to remain in a home that is unsafe due to violent parents. Another aspect that is also noteworthy is that Maskrosbarn is calling for a legislative inquiry into the child's home circumstances, otherwise there is a risk that others in the family – apart from the individual child – will also be exposed to other risks. The reason for this request, from a needs perspective, is that some children do not disclose their actual home circumstances, making it difficult for social services to determine what the home circumstances are in reality. Maskrosbarn warns that the risk of an incorrect assessment of this aspect could lead to negative consequences, as highlighted in the legislative inquiry itself.²¹¹

²⁰⁸ *Id.*

²⁰⁹ Maskrosbarn, *supra* note 100, pp. 5–6, UNICEF Sweden, *supra* note 96, pp. 4–5

²¹⁰ UNICEF Sweden, *supra* note 96, pp. 4–5

²¹¹ Maskrosbarn, *supra* note 100, pp. 5–6



Discretionary assessments and discrimination

Maskrosbarn argues from a user perspective that there is a risk of inconsistency and unfairness because of the large level of discretionary power in carrying out assessments. The reason for the concern is that there are adults who have interpretations that should not be taken into account in a risk assessment. They elaborate on this, from the same perspective, that risk assessments may vary depending on the child's socio-economic background. On this issue too, the organisation notes that there is a risk of undermining trust between families and social services if families feel discriminated against, which in turn risks jeopardising the work of social services in offering support and assistance to children in need.²¹²

This reasoning means that there is a risk of discrimination, which is problematic because families and children should not be subjected to discrimination, especially in relation to the work of social services. Another aspect to highlight from a child rights perspective is that the organisation does not address this issue on the basis of Article 2 of the Convention on the Rights of the Child, which states that children should not be discriminated against, but instead remains focused on the user perspective.

Economic inequality

The Children's Rights Agency discusses economic inequality from a needs perspective. This is a needs perspective because the organisation questions the inquiry's assumption that it is easy for families to apply for financial assistance so that their children can participate in leisure activities. The Children's Rights Agency adds something different compared to other organisations, emphasising that many families find it difficult to obtain financial assistance due to current legislation. This is also a needs perspective because the organisation warns that the Government has gone ahead with introducing a subsidy cap, which risks leading to a sharp reduction in income support for children and their households.²¹³

²¹² *Id.*

²¹³ Children's Rights Agency, *supra* note 97, pp. 3–4



Another argument – based on the same perspective – that the Children's Rights Agency highlights in relation to economic inequality is that the inquiry has not taken economic inequality into account in its proposal on leisure activities. They note that this risks hindering children's access to leisure activities. The organisation also highlights arguments from the same perspective when it claims that social services placements are linked to socio-economic factors. This is a concrete needs perspective, as they also note that children with financial difficulties are at greater risk of being placed in care, and the reason behind this is that social services do not have sufficient resources to provide support in other ways.²¹⁴

Maskrosbarn shares the same view on economic inequality expressed by a young person from the inquiry's children's hearing. This argument is also presented from a needs perspective, as they emphasise that leisure activities should be an opportunity and not a compulsion. The organisation emphasises that opportunities for leisure activities should be available because there are children who do not have the financial means to participate in activities. Otherwise, there is a risk that children will end up in destructive environments, which in turn can result in them committing petty crimes.²¹⁵

Individually tailored aftercare

SOS Children's Villages takes a user perspective when it states that coercive measures risk resulting in exclusion for the child and a lack of motivation among children to participate in the measures. This reasoning also takes a user perspective when it emphasises that social services' work should be characterised by relationships, trust, participation and motivation in order to create incentives for the child to participate.²¹⁶

The Children's Rights Agency concludes its reasoning on this aspect from the aforementioned perspective when it emphasises the importance of taking into account the child's wishes and motivation, adding that children do the right thing if they can, not if they want to. It also

²¹⁴ *Id.*

²¹⁵ Maskrosbarn, *supra* note 100, p. 5

²¹⁶ SOS Children's Villages, *supra* note 99, pp. 6–7



emphasises the importance of adults counteracting what prevents children from doing the right thing, and that the solution is not through coercive measures.²¹⁷

The interests of children

Young people from SOS Children's Villages emphasise that proposals for compulsory measures are bad from a user perspective. Another reason for this perspective is that they note that social services must listen more to children in order to understand what they are interested in, as there are municipalities that do not have knowledge about children's needs.²¹⁸

Maskrosbarn notes, from the same perspective, that more support measures that are attractive to children are needed, and that these measures will be considered more attractive if they meet their wishes and needs. This will lead to a greater incentive to participate in the measures. Another reason why this is considered a user perspective is that the organisation emphasises that support measures will mean that coercive measures will not need to be introduced. They also note that in order to reduce coercive measures, more developmental measures are needed

Perceived as punishment

In the proposal on open measures and special provisions for children and young people, Maskrosbarn discusses whether coercive measures can be seen as punishment. In this regard, they reason from a user perspective, noting that compulsory measures risk being perceived as punishment for children, even though the intention is not to punish them. This risks children avoiding important support measures that they need.²¹⁹

²¹⁷ Children's Rights Agency, *supra* note 97, pp. 3-4

²¹⁸ SOS Children's Villages, *supra* note 99, p. 2

²¹⁹ *Id.* p. 6



Analysing the underlying and complex causes of the problem

SOS Children's Villages Youth Council and Maskrosbarn share the view, from a needs perspective, that it is important to identify the underlying causes of today's problems in order to be able to adapt measures to the individual needs of the child.²²⁰

The Youth Council emphasises something else, which has not been noted by other organisations in their consultation responses, based on both the needs and user perspectives. What is different is that they emphasise that coercion may be necessary if the child rejects support and no change occur, and the situation deteriorates. They also add that it may be necessary to counteract drug abuse and negative social interactions. The reason for this combined perspective is that they emphasise that it is still important to understand the cause of the problem, above all to focus on the decisive factors such as schooling in order to promote the child's future, and to respect the family's culture.²²¹

Maskrosbarn emphasises, from a needs perspective, that it is important to analyse why children end up in a problem situation. In this way, it is possible to analyse the children's needs and provide them with support measures that are tailored to them. At the same time, they add another argument based on a needs perspective, stating that coercive measures are not appropriate – they risk being ineffective.²²²

Maskrosbarn also argues from a user perspective, stating that it is necessary to analyse why children refuse support measures, and that the responses received should be adapted to the new social services legislation, which will include more developmental types of measures.²²³

Authoritarian help

The Youth Council at SOS Children's Villages argues from a needs perspective when it points out that it can be good for children to have clear times to relate to, especially if their parents do

²²⁰ Maskrosbarn, *supra* note 100, p. 6, SOS Children's Villages, *supra* note 99, p. 2

²²¹ SOS Children's Villages, *supra* note 99, p. 2

²²² Maskrosbarn, *supra* note 100, pp. 5–6

²²³ *Id.*



not set boundaries. It is a needs perspective when the Youth Council adds that it is good for social services or other adults to set the rules. Another argument based on a needs perspective by the young people is that they emphasise the importance of keeping track of where children are and what they are doing in order to counteract the risk of them becoming criminals. The reason they think they should be monitored is because they believe that young people are greatly influenced by their peers and can be affected by those close to them. Another argument that falls under a needs perspective is when they state that it is good for young people to be given a curfew to protect them from negative environments.²²⁴

Human rights organisations' responses to the inquiry's use of Human Rights Justifications do not always question how human rights are used to restrict individual rights. There is a risk of normalising this type of reasoning, which could become institutionalised without being properly scrutinised. It is important to note that some young people from SOS Children's Villages support the measures, while children's rights organisations are generally critical of the proposals.

Follow-up and monitoring of the social services committee's decisions

Save the Children presents an argument from a user perspective, stating that the social services' work to provide support and protection will be jeopardised if they simultaneously engage in control measures.²²⁵

BRIS also adds a similar argument from a user perspective but argues more that social services' work will shift from supporting and treating, to monitoring and ensuring compliance with the measures decided upon.²²⁶ Maskrosbarn argues from the same perspective, emphasising that this will primarily undermine trust between the individual and social services. This is a user perspective because they also note that children will not be motivated to accept support and

²²⁴ SOS Children's Villages, *supra* note 99, p. 3

²²⁵ Save the Children, *supra* note 101, pp. 6–7

²²⁶ BRIS, *supra* note 98, p. 5



interventions. Another interesting point is that they add that social services will be regarded as a law enforcement agency.²²⁷

SOS Children's Villages argues more from a needs perspective, noting that it is problematic that electronic monitoring is referred to as a control tool and not a punitive measure. This is also a needs perspective because the legislative inquiries legitimise the use of punitive measures against children, and it is also problematic that these punitive measures are to be included in the social services' preventive work.²²⁸

The Youth Council of SOS Children's Villages shares the same view but argues from a user perspective. They emphasise that electronic ankle tags are perceived as control rather than preventive support. The reason why this is a concrete user perspective is that they note that it is of the utmost importance that there is a system characterised by trust, support and inclusion and not by fear and punishment.²²⁹

Criminal law elements influencing social law

Save the Children argues from a user perspective in this section. They believe that monitoring and control will override the central principles of social services, including the principles of freedom of consent and self-determination. The reason why this is also a user perspective is because criminal law measures are to be declared by social services.²³⁰

The Children's Rights Agency also has a similar view and argues from a needs perspective. The reason for this user perspective is that they first and foremost state that crime prevention measures do not belong in social law. The second argument is that it is extremely important to distinguish between the person and their actions, and that the measures proposed are intended to protect society rather than the best interests of the child.²³¹

²²⁷ Maskrosbarn, *supra* note 100, pp. 7–8

²²⁸ SOS Children's Villages, *supra* note 99, p. 7

²²⁹ *Id.* p. 3

²³⁰ Save the Children, *supra* note 101, p. 6

²³¹ Children's Rights Agency, *supra* note 97, pp. 5–6



Trust and cooperation difficulties

From a user perspective, UNICEF notes that follow-up and control will undermine cooperation, but also jeopardise the trust between the child and social services.²³²

The role of the social services committee

UNICEF points out that it is a problem from a user perspective that the proposals give the police a greater role and responsibility than social services in the care of children. Their second argument also falls within the user perspective, as they note that it will jeopardise the work of social services, especially in situations where they are not informed when a child has been taken into care. Another reason for this perspective is that they note that it will have negative consequences, including stigmatisation and reduced trust in both the police and social services.²³³

The Children's Rights Agency also argues from the same perspective but believes that it is more important to trust that the child will comply with the special provision, as trust in the child is crucial for the child to feel trust in social services. Another reason why this is a user perspective is because they emphasise that the social services committee should be able to notify decisions on electronic ankle tags.²³⁴

Stigmatisation and labelling

Save the Children argues from a user perspective, as it places great emphasis on the children's own feelings and experiences. In particular, it mentions that electronic monitoring may lead to stigmatisation, exclusion and a reinforcement of the child's criminal identity, as well as constituting a major intrusion into the child's privacy.²³⁵ The Children's Rights Agency also emphasises that it can lead to actual criminal behaviour from a user perspective.²³⁶ BRIS is on

²³² UNICEF Sweden, *supra* note 96, p. 6

²³³ *Id.*

²³⁴ Children's Rights Agency, *supra* note 97, pp. 5-6

²³⁵ Save the Children, *supra* note 101, p. 6

²³⁶ Children's Rights Agency, *supra* note 97, pp. 5-6



the same track and adds that the measure will affect how children view themselves, their future and their opportunities, from the same perspective.²³⁷ The SOS Children's Villages Youth Council also expresses its views from a user perspective. Among other things, they mention that it could lead to isolation and stigmatisation, but also that other children will stay away from the child because they are labelled as criminal, dangerous or a snitch. The Youth Council believes that these factors will make it more difficult to break out of the destructive environment. They conclude their argument by emphasising that if society treats children as criminals, the child will identify as a criminal and continue on a negative path.²³⁸

SOS Children's Villages argues from a user perspective that electronic monitoring will have negative consequences, especially when the child is already in a vulnerable situation and constantly struggling to counteract exclusion and a negative self-image, and that electronic monitoring will reinforce the child's perception that society and the authorities do not trust them, which in turn will isolate the child even more. The organisation also argues from a labelling theory perspective, stating that if children are treated as criminals, this will lead to the child confirming their self-image as a criminal, which in turn will reinforce destructive behaviour. Finally, they argue that electronic tagging will not be preventive but rather have the opposite effect.²³⁹ Maskrosbarn also notes that it will reinforce the child's criminal identity and not protect the child from engaging in crime.²⁴⁰ UNICEF emphasises that electronic tagging will not replace constant adult supervision and care.²⁴¹

Discrimination

SOS Children's Villages argues from a user perspective when it states that this proposal risks leading to discrimination, and that the risk assessment carried out will be characterised by

²³⁷ BRIS, *supra* note 98, p. 5

²³⁸ SOS Children's Villages, *supra* note 99, p. 3

²³⁹ *Id.* p. 7

²⁴⁰ Maskrosbarn, *supra* note 100, pp. 7–8

²⁴¹ UNICEF Sweden, *supra* note 96, p. 6



subjective perceptions, as prejudices will be reinforced against children living in particularly vulnerable areas.²⁴²

Electronic monitoring does not address the root problem

Save the Children argues from a needs perspective on this issue, emphasising that electronic monitoring does not address the fundamental problem – preventing crime. The organisation believes that children who are aware of and concerned about their situation will seek help, which is why voluntary measures are more appropriate.²⁴³ The Children's Rights Agency also states, from a needs perspective, that it cannot see how electronic monitoring will prevent children from having bad relationships in the long term.²⁴⁴

Increases vulnerability

Save the Children argues from a needs perspective that children and young people who are often involved in crime are themselves exposed to violence in the home, but that this is not taken into account by investigators. The organisation argues from a needs perspective by stating that children will be forced to remain in the home, where violence occurs, which will lead to negative consequences rather than protection for the child.²⁴⁵ BRIS also states that children who are criminals, or at risk of becoming so, are often exposed to violence in the home. They also emphasise that there are other factors, such as exposure to crime, lack of schooling and socio-economic barriers. The organisation believes that a focus on control measures risks leading to social services overlooking the comprehensive work needed to prevent children from becoming criminals or those at risk of becoming so. They also emphasise the importance of long-term work to generate sustainable change, rather than focusing on control measures that risk counteracting this.²⁴⁶

²⁴² SOS Children's Villages, *supra* note 99, p. 7

²⁴³ Save the Children, *supra* note 101, p. 6

²⁴⁴ Children's Rights Agency, *supra* note 97, pp. 5-6

²⁴⁵ Save the Children, *supra* note 101, p. 6

²⁴⁶ BRIS, *supra* note 98, p. 5



The Youth Council of SOS Children's Villages also argues from a needs perspective rather than other aspects. One aspect that is highlighted is that there are young people who are struggling, but that does not mean that they are criminals. In relation to this argument, it is also noted that just because a child is a criminal does not mean that they are less worthy than other people. The Youth Council also notes, from a needs perspective, that the legislative inquiries propose coercive measures as simple solutions to complex problems. Instead, they emphasise the importance of identifying why young people become criminals, rather than giving them electronic ankle tags.²⁴⁷

Denmark's decision to abolish electronic tagging for children

Save the Children and UNICEF agree with Denmark's reasoning for abolishing electronic tagging for children, stating that it is not the correct way to combat criminal and antisocial behaviour, which is a needs-based perspective. They add another argument based on a needs perspective, which is that electronic ankle tags cannot replace consistent care from adults.²⁴⁸ SOS Children's Villages also argues from a needs perspective when it points out that there is no in-depth analysis of why electronic monitoring is necessary. Another reason for taking a needs perspective is that they agree with Denmark's argument that it risked increasing stigmatisation and privacy violations and that there were other more suitable alternatives.

Different methods

The Youth Council of SOS Children's Villages takes a needs-based perspective when it emphasises that electronic monitoring can be used for those who have committed serious crimes, but not generally for all young people. They stress the importance of giving all children a second chance and that different methods should be tried before coercive measures are taken, with the aim of helping children understand how to become better people.²⁴⁹

²⁴⁷ SOS Children's Villages, *supra* note 99, p. 3

²⁴⁸ Save the Children, *supra* note 101, p. 6, UNICEF Sweden, *supra* note 96, pp. 5–6

²⁴⁹ SOS Children's Villages, *supra* note 99, p. 7



Psychological counselling, therapy or CBT

The SOS Children's Villages Youth Council proposes that the legislative inquiry prioritise psychological counselling, therapy or CBT – and this reasoning is considered a needs perspective. Another argument put forward by the Youth Council in the same regard is that there should be more cooperation with parents, social services and local actors in the area in order to keep track of the area and support young people. According to them, this is a more reasonable solution than using electronic ankle tags as a standard solution.²⁵⁰

Increased administrative work

Maskrosbarn is concerned that the proposals will mean increased administrative work for social services, from a needs perspective. The reason for this needs perspective is that the organisation adds that assessment, follow-up, coordination and documentation risk taking time away from support for children and families.²⁵¹

Consequences of non-compliance with the social services committee's decision

Save the Children notes – from a user perspective – that the proposal for fines will instead lead to mistrust of social services and undermine early intervention and the creation of trusting relationships.²⁵² UNICEF and BRIS share the same view, arguing that efforts to strengthen trust between families and social services will be weakened.²⁵³ Maskrosbarn argues from the same perspective, but notes that the proposal for fines will create a feeling of reluctance and mistrust, and will be a reason for not being able to establish trusting relationships.²⁵⁴ UNICEF further argues, albeit from a needs perspective, that combining fines with social interventions will not address the underlying problem, and that there are other factors why guardians refuse interventions, such as a lack of resources, knowledge or mistrust of social services.²⁵⁵ From the

²⁵⁰ *Id.* p. 3

²⁵¹ Maskrosbarn, *supra* note 100, pp. 7–8

²⁵² Save the Children, *supra* note 101, p. 7

²⁵³ UNICEF Sweden, *supra* note 96, p. 7, BRIS, *supra* note 98, p. 6

²⁵⁴ Maskrosbarn, *supra* note 100, p. 4

²⁵⁵ UNICEF Sweden, *supra* note 96, p. 7



same perspective, BRIS notes that there is no in-depth analysis of the effects of the proposed fines, which is why it is problematic. It is a needs-based perspective when they note that the proposal does not correspond to the reality they encounter in their contact with families.²⁵⁶ Maskrosbarn also emphasises, from a needs perspective, that the proposal for fines is not likely to be effective in counteracting a lack of ability, understanding or trust among some guardians. They therefore believe that the proposal for fines will be seen as punishment rather than support, and that the support measures will thus be ineffective.²⁵⁷

Counteracts the objectives of the new Social Services Act

On this issue, Save the Children argues, from a needs perspective, that the proposal for fines will rather counteract the fundamental objectives of the new social services and their activities.²⁵⁸ BRIS also takes from a needs perspective on this issue, but argues that forcing a desired behaviour means that it will appear as if social services view guardians as unwilling rather than as individuals who want to act but cannot because they lack the means.²⁵⁹

Economic vulnerability and socio-economic groups

Save the Children notes, from a needs perspective, that the threat of fines will particularly affect families who are socioeconomically vulnerable and who are dependent on social services support.²⁶⁰ UNICEF also argues from a needs perspective that the proposal for fines will lead to socioeconomically vulnerable guardians not wanting to seek help, which in turn may affect families in economic vulnerability, leading to an increased workload for social services.²⁶¹ The Children's Rights Agency also emphasises that the proposal for fines will primarily have negative effects on economically vulnerable children, where the placement of children is

²⁵⁶ BRIS, *supra* note 98, p. 5

²⁵⁷ Maskrosbarn, *supra* note 100, p. 4

²⁵⁸ Save the Children, *supra* note 101, p. 7

²⁵⁹ BRIS, *supra* note 98, p. 5

²⁶⁰ Save the Children, *supra* note 101, p. 7

²⁶¹ UNICEF Sweden, *supra* note 96, p. 7



associated with socio-economic factors, and that there is a risk that it will create financial stress for the family and that the child may feel guilty about it.²⁶²

BRIS argues primarily from a needs perspective but combined with a user perspective. The reason for combining these perspectives is that they emphasise that there is no impact assessment showing how penalty payments will affect families with limited resources, and that the increased financial pressure risks affecting trust in social services. Another reason for combining these perspectives is that the organisation notes that there is a risk of reprisals against the child and increased segregation.²⁶³

The Youth Council of SOS Children's Villages argues more specifically from a needs perspective when it emphasises that, even though fines will be adjusted to the family's situation, there is a risk that this will lead to financial difficulties for the family and negative consequences for the child, including feelings of guilt.²⁶⁴ Maskrosbarn shares the same view and continues the argument from the same perspective, adding that there is a risk of increased financial stress.²⁶⁵ SOS Children's Villages' argument on this issue stands out, even though it concerns the same aspect. They point out that the legislative inquiry ignores the fact that families are financially vulnerable and do not have sufficient social conditions.²⁶⁶

Risk of guardians avoiding seeking help

UNICEF takes a user perspective on this issue when it states that the threat of fines may lead guardians to avoid seeking help, which in turn may hamper the work of social services.²⁶⁷ Save the Children also points out that there is a risk that this will create anxiety and mistrust among financially vulnerable families, as there is a link between contact with social services and

²⁶² Children's Rights Agency, *supra* note 97, pp. 6-7

²⁶³ BRIS, *supra* note 98, p. 5

²⁶⁴ SOS Children's Villages, *supra* note 99, p. 4

²⁶⁵ Maskrosbarn, *supra* note 100, p. 4

²⁶⁶ SOS Children's Villages, *supra* note 99, p. 8

²⁶⁷ UNICEF Sweden, *supra* note 96, p. 7



finer.²⁶⁸ The Children's Rights Agency notes that financial sanctions will not lead to motivation.²⁶⁹

Financial penalties are not effective

The Children's Rights Agency, in this matter, reasons from a user perspective when it emphasises that financial sanctions will not create incentives to participate in interventions.²⁷⁰ BRIS also reasons from a user perspective, but by stating that fines will create mistrust and a deterioration in confidence in social services. There is also a risk that it will undermine the social services' ability to work more preventively; BRIS points out from a user perspective.²⁷¹

Financial stress and risk of negative consequences for the child

Maskrosbarn emphasises a needs-based perspective on this issue. The reason for this needs-based perspective is that they emphasise that financial stress risks increasing conflict and violence in the home. It is also a needs-based perspective when they argue that there is a risk that the child will be blamed for the penalty notice. Another argument based on the same perspective that is highlighted is that there are children who say that the financial expenses associated with their needs will be deprioritised because their parents will think that it is the child's fault.²⁷²

The young people at SOS Children's Villages also reason from a needs perspective by first noting that there is a risk that parents will punish the child for doing something wrong, and secondly that there are families who are already suffering from financial difficulties, such as not having enough money for rent or food. Another argument put forward from the same perspective is that there are families at risk of falling into debt, which could affect the child.²⁷³ SOS Children's Villages argues from a needs perspective when it first notes that there are

²⁶⁸ Save the Children, *supra* note 101, p. 7

²⁶⁹ Children's Rights Agency, *supra* note 97, pp. 6-7

²⁷⁰ *Id.*

²⁷¹ BRIS, *supra* note 98, p. 5

²⁷² Maskrosbarn, *supra* note 100, p. 4

²⁷³ SOS Children's Villages, *supra* note 99, p. 4



children who suffer from financial vulnerability but are also expected to play a greater role in contributing to the family's finances than other children in society. Another risk that is also highlighted, from the same perspective, is that they emphasise that there is a risk that the child will be blamed by the family, thereby increasing the risk of increased violence towards the child. When the organisation states that legislative inquiries should take into account that the child has become involved in crime in order to contribute to the family's finances, this indicates a strong needs perspective.²⁷⁴

Lack of impact assessment and risk of discrimination

SOS Children's Villages discusses this issue from a needs perspective. They emphasise that there is no in-depth analysis of whether penalty payments will affect families, possibly if there are siblings, and whether this could lead to discrimination. The organisation perceives the legislative proposals as tone-deaf to the structural causes of the problem.²⁷⁵

BRIS also argues from a needs perspective when they add that there is no impact assessment of how fines will affect economically disadvantaged families in particular.²⁷⁶ On this issue, SOS Children's Villages argues from a user perspective when it states that factors such as exposure to violence, fear, ignorance and financial circumstances may be reasons for not giving consent, and therefore considers these proposals are abnormal and unfair.²⁷⁷

Increased administrative burden

BRIS argues from a needs perspective when it questions how an increased administrative burden in the form of penalty payments is compatible with the aims of the new Social Services Act, such as accessibility and prevention.²⁷⁸ Maskrosbarn is also concerned about the administrative burden that may result from penalty payments, adding from a needs perspective

²⁷⁴ SOS Children's Villages, *supra* note 99, p. 8

²⁷⁵ *Id.*

²⁷⁶ BRIS, *supra* note 98, p. 5

²⁷⁷ SOS Children's Villages, *supra* note 99, p. 8

²⁷⁸ BRIS, *supra* note 98, p. 6



that there is a risk that penalty payments will be made at the expense of the preventive and supportive work of social services.²⁷⁹

Guardians must take responsibility

The SOS Children's Villages Youth Council emphasises, from a user perspective, that everyone deserves a second chance, but that penalty payments are good because they can create clear rules and ensure that guardians take responsibility. Another reason for this user perspective is that they recommend that social services first try dialogue and understanding before resorting to penalty payments and repressive measures.²⁸⁰

Legal uncertainty

SOS Children's Villages argues from a needs perspective that a decision with a penalty payment can be legally uncertain and unclear, because each official can decide whether or not a decision should be accompanied by a penalty, and the guidelines for penalties are vague so there is a risk that officials will not place sufficient emphasis on factors such as exposure to violence, fear, ignorance, mistrust, and practical and financial circumstances that are not apparent from the guidelines and which may be contributing factors to not consenting to the support that is needed.²⁸¹

When Civil Society discusses issues from a needs and user perspective, there is a risk that the issue of restricting rights will shift to a discussion about the consequences of fines. There is also a risk that discussions about rights will be seen as the goal of social work, rather than as a means of protecting individuals. When Civil Society discusses whether this could lead to discrimination, there was an opportunity to highlight Article 2 of the Convention on the Rights of the Child, on equal treatment and that children and young people should not be discriminated against, but instead it is answered from a sociological perspective. The risk with this is that discrimination can be considered a secondary effect. Some young people from SOS Children's

²⁷⁹ Maskrosbarn, *supra* note 100, p. 4

²⁸⁰ SOS Children's Villages, *supra* note 99, p. 4

²⁸¹ *Id.* p. 8



Villages take a different approach to the one that's critical of fines, pointing out that fines are good because they set clear rules for guardians, while most of Civil Society agrees that it's not a good idea to introduce fines, and that there's a risk that the state will use this as a basis for saying that the proposal for fines is balanced. Another noteworthy point is that when Civil Society discusses whether social services will be regarded as a controlling authority, there is a risk that Civil Society's reasoning will be interpreted as indicating that there is purely an organisational problem, rather than also a problem from a rights perspective.

Provisions on the handling and procedure for decisions under LIV

Save the Children argues for proportionality from a needs perspective, noting that it is concerning that the legislative inquiries want to give social services responsibility for assessing proportionality. The reason for the needs perspective is that the organisation believes that it is highly inappropriate to allow social services to do this, and they believe that it should be the legislator who makes the proportionality assessment.²⁸²

BRIS shares the same view and adds, from a needs perspective, that it creates greater legal uncertainty than legal certainty, and that it cannot be up to individual social workers to remedy disproportionate legislation.²⁸³

Opposite effect

BRIS points out from a needs perspective that there is no research showing that coercion can lead to change; instead, they emphasise that it will rather lead to the opposite effect. BRIS puts forward another argument from the same perspective, arguing that this legislation risks further eroding trust between the individual and social services, and that there is also an increased risk of reprisals against the child. Another argument that also falls under a needs perspective is BRIS's argument that the proposed legislation is neither necessary nor proportionate, and that these coercive proposals risk going against the voluntary work of social services.

²⁸² Save the Children, *supra* note 101, p. 8

²⁸³ BRIS, *supra* note 98, p. 7



Serious discussions when children and young people are suspected of crimes

Save the Children presents an argument based on a needs perspective when they point out that social services already have an established process in place, whereby they are obliged to carry out a protection assessment promptly when a report is made. From the same perspective, they also add that social services have a duty to carry out a preliminary assessment of the child's situation, whether the child is in need of intervention and whether an legislative inquiry should be initiated.²⁸⁴ BRIS presents a similar argument to Save the Children, adding that there are currently no problems with how social services handle conversations with children and their guardians.²⁸⁵ SOS Children's Villages also has similar thoughts about the established process of the social services, but argues that the proposal for a requirement for processing within 24 hours risks leads to a rigid approach and risks deprioritising correctly designed and implemented interventions.²⁸⁶

Contact with social workers who have an established relationship with the family/child

On this issue, SOS Children's Villages argues from a user perspective, noting that there are children who find themselves in vulnerable situations and therefore need secure people and environments around them. These factors can in turn lead to a good understanding and the promotion of effective support. Another argument presented from the same perspective is that it is important to call in social workers who have already had previous contact with the family and are familiar with the family's previous circumstances, rather than calling in someone who is unknown to the family.²⁸⁷ Maskrosbarn also shares SOS Children's Villages' view that social workers with whom the child and guardians have had previous contact should be called in, adding from the same perspective that this is because there is already a relationship of trust with that person.²⁸⁸

²⁸⁴ Save the Children, *supra* note 101, p. 8

²⁸⁵ BRIS, *supra* note 98, p. 6

²⁸⁶ SOS Children's Villages, *supra* note 99, p. 7

²⁸⁷ *Id.*

²⁸⁸ Maskrosbarn, *supra* note 100, p. 7



Risk of displacement effects

Save the Children questions, from a needs perspective, how social services should prioritise children suspected of crimes over children who are victims of crime, who suffer from violence or drug abuse, among other things.²⁸⁹ BRIS notes that there is a risk that the proposals will send misleading signals about who social services should prioritise.²⁹⁰

²⁹¹Maskrosbarn argues that the proposals on serious conversations risk not creating a flexible and needs-based prioritisation of cases. There are children who, among other things, have been exposed to violence and are in greater need of intervention, who will be deprioritised as a result of these measures. They also note that many social services' cases do not involve crime. Save the Children adds that social services should protect children and ensure that their needs are met, and that the work of social services should not be dependent on reports.²⁹²

The professionalism of social services

Save the Children argues primarily from a needs perspective, stating that the assessment should be made by social services – otherwise there is a risk of it becoming driven by political interest.²⁹³ BRIS also argues that reports of concern should be handled through social services' professional assessments, taking into account their previous knowledge of the specific child. They raise the concern that the proposals risk conflicting with the purpose of the new social services legislation, which is intended to be framework legislation.²⁹⁴

Maskrosbarn argues from the same perspective, stating that one should trust social services' competence to assess and prioritise cases, including those that require immediate action.

²⁸⁹ Save the Children, *supra* note 101, p. 8

²⁹⁰ BRIS, *supra* note 98, p. 6

²⁹¹ Maskrosbarn, *supra* note 100, p. 7

²⁹² Save the Children, *supra* note 101, p. 8

²⁹³ *Id.*

²⁹⁴ BRIS, *supra* note 98, p. 6



Proposals, including those for serious discussions and deadlines, may prevent necessary flexibility.²⁹⁵

Lack of a child impact analysis

SOS Children's Villages presents an argument that stands out from all the consultation responses to the proposal on serious conversations. They argue from a needs perspective that it is clear from the LUL that guardians should not be notified if there is a risk that the child may be subjected to corporal punishment. The organisation sees the same problem with this proposal, emphasising from a needs perspective that the inquiry has not investigated how unconfirmed suspicions of child abuse should be handled or what consequences this may have for the child. It therefore calls for a child impact assessment to ensure that the child's needs are met.²⁹⁶

SOU 2024:93 - More effective tools for combating crime by young offenders

As with Ds 2024:30, this study shows that the inquiry tends to use Human Rights Justification to a large extent to justify the legislative proposals presented in SOU 2024:93.²⁹⁷ Rights found in the Convention on the Rights of the Child and the European Convention are used to a greater extent than other conventions. We also see the same pattern of tending to combine HRJs with a permissible limitations test, and it is primarily the European Convention that is used in permissible limitation tests.

²⁹⁵ Maskrosbarn, *supra* note 100, p. 7

²⁹⁶ SOS Children's Villages, *supra* note 99, p. 7

²⁹⁷ Government Official Reports 2024:93, More effective tools for combating crime by young offenders (hereinafter SOU 2024:93), 2024, has been coded three times.



SOU 2024:93 – The inquiry's use of the rights perspective

The preparatory material proposes that the requirement for special reasons for arresting and detaining children be removed.²⁹⁸ It also proposes that the period of detention for children before charges are brought be extended from three months to five months.²⁹⁹

Coercive measures other than secret ones against children under 15

The inquiry proposes that law enforcement authorities should be able to use exclusion and other similar measures such as seizure and detention against children under the age of 15. When using exclusion and other similar measures, as well as seizure and detention against children under the age of 15, special reasons must continue to apply.³⁰⁰

It also proposes that the use of house searches and body searches against children under the age of 15 should be extended by removing the requirement for special reasons.³⁰¹ The legislative inquiries also propose that the maximum time for body searches – for criminal legislative inquiry purposes – against children under the age of 15 should be extended from three to six hours.³⁰²

The justification for cornering off and other similar measures is that coercive measures that violate privacy are already used against children under the age of 15, including body searches and house searches, and therefore the proposed measures should also be allowed to be used against children under the age of 15. The rights perspective is deployed here, arguing that such an arrangement would lead to more consistent regulation of coercive measures and that it is compatible with the European Convention and the Convention on the Rights of the Child - claiming to legitimise the proposal on the grounds it does not conflict with human rights commitments.³⁰³ The same argument is put forward to justify the proposals using Chapter 28,

²⁹⁸ The report presents further arguments from a rights and proportionality perspective, see section 4.2.1

²⁹⁹ SOU 2024:93 *supra* note 297, pp. 27–28 [Hereinafter SOU 2024:93]

³⁰⁰ *Id.* p. 28

³⁰¹ *Id.* p. 28

³⁰² *Id.* p. 28

³⁰³ *Id.* p. 235



Section 10 of the Code of Judicial Procedure – in addition to leading to more uniform regulation of coercive measures, the inquiry argues that the authorities need such effective tools to investigate crimes. The inquiry considers that it is compatible with the European Convention and the Convention on the Rights of the Child, and that it should be introduced because there are already other coercive measures used against children under the age of 15. The inquiry does not use a specific individual right as justification but rather uses a human rights system that is designed to ensure that human rights are upheld in national law, even though the proposal undermines the rights that individual children already have under the Convention on the Rights of the Child and the European Convention on Human Rights.³⁰⁴

The legislative inquiries again use the human rights system to justify restrictions on the rights of individual children by stating that the use of house searches against children under the age of 15 reduces the incentive for older children and adults to be used for the storage of property derived from crime, therefore, special reasons should be removed, which the legislative inquiries consider to be in line with the European Convention and the Convention on the Rights of the Child.³⁰⁵ They present the same reasoning that according to Chapter 28, Section 10 of the Code of Judicial Procedure, special reasons should not be required.³⁰⁶

The same method of using the human rights system for purposes other than its original intent of ensuring that children can enjoy their rights within the national legal system is repeated in the reasoning that extending the time for detention during a body search from three to six hours will, in the opinion of the inquiry, avoid enforcement problems. At the same time, the legislative inquiries argue that it should be used in exceptional situations and should not be exploited, arguing that this makes the proposal compatible with the European Convention and the Convention on the Rights of the Child.³⁰⁷

³⁰⁴ *Id.* p. 236

³⁰⁵ *Id.* p. 251

³⁰⁶ *Id.* p. 252

³⁰⁷ *Id.* p. 256



When the inquiry justifies restricting existing rights on the grounds that it does not conflict with the European Convention or the Convention on the Rights of the Child, there is a risk that the conventions will be perceived as a tool for justifying legal measures, rather than as instruments for protecting children and young people. The inquiry argues that such measures have a legitimate purpose, as they will benefit children and prevent them from becoming involved in crime, but without conducting a more detailed permissible limitation test. The risk with sweeping justifications is that rights are seen as social and societal goals rather than as individual rights vis-à-vis the state.

The police's ability to detain children suspected of crimes

The legislative inquiries propose that the police authority should have the power to detain children suspected of committing crimes. The purpose of the proposal is for the police to quickly hand them over to their parents, other guardians, or a social services official. The maximum time that children under the age of 15 suspected of a crime can be held against their will is proposed to be extended to three hours.³⁰⁸

One of the main arguments of the inquiry is that the police's ability to detain children suspected of crimes is a restriction of the child's freedom of movement, but the justification is based on a Human Rights Justification, that the best interests of the child should be paramount, and the argument that the purpose of detention is to support and care for the child in order to counteract an unfavourable development, and therefore it is in line with the Convention on the Rights of the Child.³⁰⁹

In their assessment, the inquiry takes into account that it sends the wrong signals to children if their actions are not taken seriously or do not lead to any consequences. They also justify the proposals by stating that children need to be protected from being drawn into serious crime and consider this to be in line with the Convention on the Rights of the Child.³¹⁰

³⁰⁸ *Id.* p. 29

³⁰⁹ *Id.* p. 273

³¹⁰ *Id.* p. 273 f.



The legislative inquiries use another argument based on a rights perspective – the argument is that there may be a need to place children in police custody in exceptional cases if, for example, the child poses a danger to themselves or others. Therefore, the legislative inquiry considers that it is in line with Article 37 (c) of the Convention on the Rights of the Child. The legislative inquiries note that this proposal will only affect a small number of children.³¹¹ Another argument – for extending the time spent in questioning – is when the legislative inquiries emphasise that it will lead to restrictions on freedom of movement, but that only a small number of children need to be held for the maximum time.³¹² The legislative inquiries acknowledge that the proposals to extend the detention period will restrict the child's freedom of movement, but at the same time, the child will have access to adequate help and support from, among others, social services, and therefore it is considered to be in the best interests of the child.³¹³

The inquiry uses the Convention on the Rights of the Child and the European Convention as a tool for the state to exercise power, rather than to protect children and young people from having their rights fulfilled and not restricted. When the inquiry justifies the measures by stating that the child will be able to receive support from social services and adequate help, a legal shift occurs: from children and young people being able to take part in voluntary measures to them being obliged to meet with social services. This risks erasing the boundary between social work and coercive measures.

Biometric information from children

The legislative inquiries propose that video, voice and handwriting samples may be taken from children under the age of 15 who are reasonably suspected of having committed a crime. In addition to the above, it is also proposed that DNA analysis, fingerprints, photographs, video, voice samples and handwriting samples be taken from children under the age of 15 who are reasonably suspected of having committed a crime. The purpose of the latter proposal is to register the information in the Police Authority's biometric register of suspects. The inquiry also

³¹¹ *Id.* p. 279

³¹² *Id.* p. 281

³¹³ *Id.* pp. 281–282



proposes that it should be permissible to compare the DNA data of children under the age of 15 with that of unknown perpetrators in DNA-based genealogy databases. The latter proposal should only be used if the child is under the age of 15.³¹⁴

The inquiry presents the argument – based on Human Rights Justification and described as a positive obligation – that the regulation is subject to the restrictions that apply to the use of coercive measures against children who have not reached the age of criminal responsibility and that the Convention on the Rights of the Child imposes positive obligations to protect children from violations of their privacy.³¹⁵

Once again, the inquiry uses the human rights system that was created with the aim of ensuring that children and individuals could enjoy their rights by preventing national law from conflicting with international law commitments. In the hands of the inquiry, this method is distorted from providing protection of rights to legitimising its erosion when the inquiry states that DNA analysis taken for registration purposes should only be carried out using saliva samples, otherwise it is not in line with the principle of the best interests of the child. The inquiry also states that it is in line with the European Convention and the Convention on the Rights of the Child to allow the deletion periods for children under the age of criminal responsibility and those over the age of 15 to be the same, at three months.³¹⁶ In order to be in line with the European Convention and the Convention on the Rights of the Child, the inquiry considers that only fingerprints, DNA profiles and facial photographs of children under the age of 15 may be registered in the biometric register of convicted persons.³¹⁷

³¹⁴ *Id.* pp. 29-30

³¹⁵ *Id.* p. 306

³¹⁶ *Id.* pp. 312–313

³¹⁷ *Id.* p. 318



The legislative inquiries believe that the deletion of evidence should have the same time limit of five years after a conviction based on evidence has become final. They consider this to be in line with the European Convention and the Convention on the Rights of the Child.³¹⁸

Covert coercive measures against children under the age of 15 in criminal legislative inquiries

The legislative inquiries propose that secret interception and surveillance of electronic communications, secret camera surveillance, secret room interception and data retrieval should be allowed to be used against children under the age of 15 who are suspected of a serious crime. These measures should only be used in cases where the suspected crime carries a minimum sentence of four years' imprisonment. Secret room bugging and data retrieval may only be used in cases involving crimes with a minimum sentence of five years' imprisonment.³¹⁹ The legislative inquiries agree that the use of secret coercive measures against children under the age of 15 constitutes an invasion of the child's personal integrity. However, the inquiry considers that introducing the possibility of using secret surveillance of electronic communications against children under the age of 15 in criminal legislative inquiries outweighs the invasion of privacy and that higher requirements for use will be imposed than those that apply to use against adults. The legislative inquiries therefore consider that this is compatible with the European Convention and the Convention on the Rights of the Child.³²⁰

The inquiry's use of the rights and proportionality perspective

The legislative inquiry into the requirements for the arrest and detention of children refers to Article 37 of the Convention on the Rights of the Child and adds that the deprivation of liberty of children may only be used as a last resort and for the shortest appropriate period of time. The inquiry interprets the Committee on the Rights of the Child's statement on the article as meaning that children may not be deprived of their liberty unless there is a legitimate concern for public safety or public health. The reason for this is that the inquiry interprets deprivation of liberty as harmful to children and potentially having negative consequences for their reintegration into

³¹⁸ *Id.* p. 320

³¹⁹ *Id.* p. 30

³²⁰ *Id.* p. 409



society. Therefore, the legislative inquiries conclude in their argument that it requires a clear need based on legitimate and very compelling interests, which in turn must outweigh the child's interest in being protected from restrictions on their freedom. This reasoning is a combination of rights and proportionality testing, which they cite in their justification for these measures.³²¹

Another argument that is a combination of a rights and proportionality assessment is that the inquiry emphasises that it is in the serious interest of society that law enforcement authorities have effective tools to investigate serious crimes. In their reasoning, they argue that children deprived of their liberty serve the interest of protecting society, especially potential victims from being exposed to serious crimes committed by children. The inquiry therefore considers that society's need to protect people who commit serious crimes outweighs the need to protect children.³²²

The inquiry adds in its reasoning that this is a significant restriction of the child's privacy – therefore, the deprivation of liberty of children must be subject to careful consideration of the best interests of the child and other legitimate interests that are weighed against each other. Something that supports this argument from a rights and proportionality perspective is that the Convention on the Rights of the Child must be taken into account in the overall assessment of whether or not a child should be detained.³²³

In the same argument that this constitutes a significant restriction of the child's privacy, the inquiry concludes that the requirement for exceptional reasons is a balanced compromise between the law enforcement authorities' need for effective tools in criminal legislative inquiries and the right of children suspected of crimes to freedom and protection against privacy violations, and that it is in line with their interpretation of the Convention on the Rights of the Child that deprivation of liberty should be a last resort. The inquiry also adds the argument that the detention of a child who is being exploited by criminal networks can prevent them from becoming more deeply involved in crime, but the legislative inquiries note that detention should

³²¹ *Id.* p. 187

³²² *Id.* pp. 185–186

³²³ *Id.* p. 197



not be seen as protection or care, but rather as a means for law enforcement authorities to investigate the crime, among other things.³²⁴

The legislative inquiries argue that effective crime prevention outweighs the child's interest in not being deprived of liberty, and that this is also in line with Article 5.1 (c) of the European Convention and Article 37 of the Convention on the Rights of the Child.³²⁵

Once again, the inquiry uses the Convention on the Rights of the Child and the European Convention as instruments to justify its legislative proposals. Conventions that are intended to protect individuals from the state are instead becoming tools that justify its restrictions. The risk of using them as instruments is that the state can use the conventions to restrict the rights of individuals without being held accountable for its actions. Another risk of the inquiry using Human Rights Justifications is that the state will use them as instruments to prioritise its social objectives, and the freedoms and rights of individuals will pay the price. Another risk with Human Rights Justifications is that it establishes a practice for future legislative inquiries to use rights to justify serious restrictions on rights through legislative proposals without scrutiny.

Coercive measures other than secret ones against children under 15

The legislative inquiries put forward arguments that have an element of proportionality assessment and state that it is in the public interest that criminal legislative inquiries can be carried out effectively and strengthen future forfeiture. The argument also has an element of rights perspective, as the legislative inquiries note that the use of coercive measures against children under the age of 15 must take into account the invasion of privacy.³²⁶

In the legislative inquiry's justification for the measures, Article 8 of the European Convention and the principle of the best interests of the child under the Convention on the Rights of the Child are noted, emphasising that special consideration must be given to young children when using coercive measures directed at them. The element of proportionality comes into play when

³²⁴ *Id.* p. 200

³²⁵ *Id.* p. 212

³²⁶ *Id.* pp. 233–234



the legislative inquiries argue that, when weighing up coercive measures, consideration should be given to the need for law enforcement authorities to be able to use them and contrast this with the rights of the child under the Convention on the Rights of the Child and how they may be affected by the coercive measures.³²⁷

In the justification for the proposals on seizure and detention, the legislative inquiries note that it is offensive from a crime victim and societal perspective if property is found in the possession of the suspected child and cannot be seized because the suspect cannot be convicted of the crimes. In their argumentation, which includes elements of proportionality, the legislative inquiries state that it is in the public interest to be able to use seizure and custody, as otherwise the crime victim authority would have to pay compensation to the crime victims.³²⁸ The legislative inquiry adds to its reasoning, which includes elements of rights and proportionality assessments, that the victim's interest in compensation for damages caused by the suspect outweighs the child's need for protection against invasion of personal privacy. The legislative inquiries also argue that the proposals will remove the motivation of older people to use children for the storage of cash, among other things, and therefore the legislative inquiries believe that they are compatible with the European Convention and the Convention on the Rights of the Child.³²⁹

Similar reasoning – that it is in the public interest and that it is compatible with the European Convention and the Convention on the Rights of the Child – is presented in the report on independent forfeiture and forfeiture related to crime.³³⁰ The report emphasises that special requirements – as a general rule – should remain in place through the reasoning (which has a greater element of proportionality than rights perspective) that special requirements should remain in place because the child's right not to be subjected to coercive measures outweighs the interest in preventing children from being exploited to commit crimes and the interest in ensuring that crimes are investigated effectively. Therefore, the legislative inquiries believe that

³²⁷ *Id.*

³²⁸ *Id.* pp. 240-242

³²⁹ *Id.*

³³⁰ *Id.*



it should be more stringent to use these measures against children under the age of 15, which is in line with the Convention on the Rights of the Child. Similar reasoning is presented in the justification for the requirement of special reasons for the use of confinement and similar measures, as well as detention and custody.³³¹

In the part of the report that deals with house searches, the legislative inquiries conclude that these constitute an invasion of the child's privacy and that children are protected against such interference under the European Convention and the Convention on the Rights of the Child. In their reasoning, which includes elements of both proportionality and rights perspectives, the legislative inquiries consider that the Convention on the Rights of the Child, which aims to protect children as a group, must be taken into account. The legislative inquiries also add that it is in the strong interest of the victim to use house searches regardless of whether the perpetrator is of criminal age or not. The inquiry considers that children may have conflicting interests but concludes that the interests of society and victims in solving crimes, and the need to protect children from exploitation by older criminals, outweigh children's right to protection from intrusion into their private lives. The legislative inquiries therefore consider that it is compatible with the European Convention and the Convention on the Rights of the Child to remove special grounds for house searches against suspected criminals under the age of 15. Similar arguments are put forward in the assessment that special reasons should be removed in legislative inquiries under Chapter 28, Section 10 of the Code of Judicial Procedure.³³² This is a direct misinterpretation of the Convention on the Rights of the Child, which applies to individual children and not to a collective of children. When human rights are used as a collective, their function as a means of protecting minorities must always be the starting point. Otherwise, the collective form of a human right merely reinforces the interests of the majority and becomes a tool for populism rather than a protection against it.

In its argument that the requirement for special reasons for body searches should be removed, the inquiry bases its reasoning on both a rights perspective and proportionality. First and

³³¹ *Id.* p. 235

³³² *Id.* p. 252



foremost, it emphasises that body searches reduce the incentive for criminal networks to involve children in their activities. It considers that the interest in solving crimes and the interest in being able to search for stolen goods outweigh the interests of children in not being subjected to the relatively limited and short-term intrusion into their personal integrity that a body search normally entails. It is therefore considered to be compatible with the European Convention and the Convention on the Rights of the Child.³³³

The same argument is put forward in the legislative inquiry of independent forfeiture. Here, the legislative inquiry considers that it is compatible with the European Convention and the Convention on the Rights of the Child to remove specific reasons.³³⁴

The police's ability to detain children suspected of crimes

One of the legislative inquiry's arguments – which has elements of rights and proportionality testing – is that the legislative inquiries conclude that detaining children for six hours is a reasonable maximum time for children suspected of crimes, since the purposes – including being able to hand them over to a suitable person – outweigh the child's right to freedom of movement.³³⁵ In the legislative inquiry into extending detention for questioning to nine hours, the legislative inquiries consider that the interest in investigating the crime effectively where a child under the age of 15 is suspected outweighs the child's right to freedom of movement³³⁶. Another similar argument is that the inquiry considers that the goal of being able to investigate crimes effectively where children under the age of 15 are suspects outweighs the child's protection against restrictions on freedom of movement. Therefore, the inquiry considers that this is compatible with the Convention on the Rights of the Child.³³⁷

³³³ *Id.* pp. 255–256

³³⁴ *Id.*

³³⁵ *Id.* p. 275

³³⁶ *Id.* p. 278

³³⁷ *Id.*



Biometric information from children

The rationale for introducing video, voice and handwriting samples is based partly on human rights justifications and partly on a proportionality assessment. The legislative inquiries begin by stating that the registration of biometric data from children who have not reached the age of criminal responsibility constitutes an invasion of privacy and emphasise the importance of protecting children from this under the European Convention and the Convention on the Rights of the Child. However, after weighing up the issues, the legislative inquiries conclude that the interest in investigating crimes effectively outweighs the limited infringement of the child's personal privacy that the proposal is considered to entail. In the same line of reasoning, it is noted that the societal goal carries significant weight, despite the fact that only a small number of children commit crimes. The legislative inquiries therefore argue that the interests of society and crime victims in solving crimes carry significant weight, and the legislative inquiry therefore considers that there is a need to be able to collect biometric data from children.³³⁸

The inquiry also puts forward another argument based on rights and proportionality, which is that the interest in solving crimes outweighs the child's right to protection from privacy violations. The argument is that it is in line with the principle of proportionality to collect biometric data for registration purposes from children who have not reached the age of criminal responsibility and who are suspected of serious crimes, and that children who commit serious crimes are highly likely to reoffend. The legislative inquiries therefore conclude that these proposals are in line with the European Convention and the Convention on the Rights of the Child. At the same time, the inquiry considers that law enforcement authorities should be able to register biometric data in order to increase the chances of solving crimes, but that they must take into account the principle of proportionality and the requirements of the Convention on the Rights of the Child. This approach ensures that the proposed measures are in line with the European Convention and the Convention on the Rights of the Child.³³⁹

³³⁸ *Id.* p. 218

³³⁹ *Id.* pp. 308–311



When assessing whether biometric data on children should be recorded after a prosecution, the legislative inquiries argue that the law enforcement authorities' need to solve crimes outweighs the child's right to protection against interference with personal privacy. The inquiry considers that the proposal concerns serious crimes and that crimes committed by children can be detected and therefore considers that the proposal is proportionate and in line with the European Convention and the Convention on the Rights of the Child. These perspectives are based on both rights and proportionality perspectives.³⁴⁰ The legislative inquiries conclude that the interest in solving more crimes outweighs the child's protection from intrusion, but that this requires support for collecting biometric data from children under the age of 15 after a trial. The legislative inquiries consider this to be in line with the European Convention and the Convention on the Rights of the Child.³⁴¹ The legislative inquiries agree that DNA research constitutes an invasion of privacy for children and that they should be protected under the Convention on the Rights of the Child. To justify DNA research on children, the legislative inquiry uses an argument that is permeated by a rights and proportionality perspective. They argue that the interest in being able to investigate serious crimes effectively outweighs the child's interest in being protected from violations of personal privacy (). The legislative inquiries believe that this should be used in cases of serious crimes and in exceptional cases and therefore argue that it is in line with the European Convention and the Convention on the Rights of the Child.³⁴²

Once again, the Convention on the Rights of the Child and the European Convention are being used to justify legislative proposals. In this case, the legislative inquiries believe that completing a criminal legislative inquiry outweighs the child's interest in not being subjected to intrusion. At the same time, the legislative inquiries argue, based on fictitious considerations, that this risks disregarding the established principle of proportionality. The reason it can be disregarded

³⁴⁰ *Id.* p. 316

³⁴¹ *Id.*

³⁴² *Id.* p. 341



is that the freedoms and rights of children and young people may be subject to infringement, even though there is no real need for it.

Covert coercive measures against children under 15 years of age in criminal legislative inquiries

The legislative inquiries agree that the use of secret interception of electronic communications against children under the age of 15 constitutes a significant invasion of their privacy. The legislative inquiries consider that there are requirements in the Convention on the Rights of the Child that mean that the best interests of the child must be a primary consideration in all actions concerning children. The legislative inquiry weighs the infringement against the public interest in investigating serious crimes effectively and the perspective of the victim, regardless of whether the infringement concerns a child or an adult. They argue that the latter interest, and in particular the child's right to protection from crime, outweighs the former and is therefore compatible with the European Convention and the Convention on the Rights of the Child.³⁴³

In their justification for allowing covert camera surveillance, the legislative inquiries use an argument based on a combined rights and proportionality perspective. The legislative inquiries argue that the introduction of covert surveillance is an effective measure for investigating crimes suspected of being committed by children and that there is a compelling interest from a societal and victim perspective that outweighs the child's protection from invasion of privacy. In their reasoning, the legislative inquiries also argue that covert camera surveillance may only be used in cases of serious crime and that it is therefore compatible with the European Convention and the Convention on the Rights of the Child.³⁴⁴

Another argument that also consists of a combination of rights and proportionality testing is the justification for covert interception. The inquiry considers that covert interception is a compelling interest for both society and crime victims, especially when law enforcement authorities are given effective tools to investigate serious crimes. The inquiry therefore considers that the interest in investigating crimes effectively outweighs the rights of the child under the European Convention and the Convention on the Rights of the Child. The legislative

³⁴³ *Id.* p. 402

³⁴⁴ *Id.* p. 409



inquiries argue that these proposals are in line with these Conventions, as they will help law enforcement authorities to investigate serious crimes.³⁴⁵

A similar argument is put forward to justify postal surveillance. Here, the inquiry considers that this coercive measure will be of great importance in enabling crimes to be investigated effectively. They consider this measure to be compatible with the European Convention and the Convention on the Rights of the Child, arguing that the interests of society and crime victims in effectively investigating crimes outweigh the invasion of privacy.³⁴⁶ A similar argument, also noteworthy, is the legislative inquiry's justification for secret data interception. They note that the group of children who commit serious crimes is small, but that it constitutes a significant social problem. The legislative inquiries note that it is important to weigh the rights of the child suspected of a crime against the societal interest in investigating and prosecuting serious crimes. The legislative inquiries add that the interest in investigating the crime effectively outweighs the child's interest in not having their rights restricted. In the same line of reasoning, they argue that children should have more comprehensive protection against violations of their personal integrity than adults, but that effective criminal legislative inquiry outweighs this and that the proposal is therefore in line with the European Convention and the Convention on the Rights of the Child.³⁴⁷

SOU 2024:93: How do human rights organisations respond to the legislative inquiry's Human Rights Justifications?

It has been challenging to use Constructing Grounded Theory with regard to the research question³⁴⁸ because there is a limited amount of relevant material. However, there is more evidence that organisations including Save the Children, UNICEF and BUFF which have a greater legal capacity are better able to make rights-based arguments in response to HRJs so some responses do use a rights perspective, albeit to a limited extent and it appears that bodies

³⁴⁵ *Id.* p. 401 f.

³⁴⁶ *Id.* p. 427

³⁴⁷ *Id.* pp. 436-437

³⁴⁸ The consultation responses have been coded a total of four times.



do not respond based on rights and proportionality assessments to the same extent as the previous Inquiry, i.e. there is less challenge from a rights perspective. Their responses to the inquiry provide a range of answers, even though they share very similar perspectives.

Human rights organisations' responses to the legislative inquiries' use of the rights perspective – New system

UNICEF argues from a rights perspective by stressing that the UN Committee on the Rights of the Child is seriously concerned about Sweden's methods of isolating detained children and that measures that violate their integrity are being proposed. They emphasise that children who are involved in criminal environments risk having their rights violated through a series of minor restrictions. UNICEF believes that this will lead to children's rights being eroded over time.³⁴⁹

UNICEF further argues from a rights perspective by adding that the child impact analysis included in the legislative inquiry is insufficient, because the analysis does not take into account the long-term risks based on children's rights. The rights perspective is emphasised when they note that restrictions on rights can have serious consequences for mental health, personal development and trust in law enforcement authorities. Another argument added in this context is that the organisation takes into account the UN Committee on the Rights of the Child's statement that the development of policies and practices related to children involved in crime is moving in a negative direction.³⁵⁰

Save the Children notes that the proposal contains elements that restrict children's rights. Accordingly, it has endorsed certain parts of the proposal that it considers strengthen children's rights from a rights perspective. From the same perspective, it notes that viewing children as rights holders strengthens the child rights perspective in the application of the law. In this context, it can be noted that the organisation points out that the inquiry should contact children

³⁴⁹ UNICEF Sweden, More effective tools for combating crime by young offenders (SOU 2024:93) (2025), (Ref. No. Ju2024/02655), (hereinafter UNICEF), https://assets.ctfassets.net/gl8rzq2xcs2o/WK9EHcpKp8Be47DkyUFVb/d73f349cf554cdbffc0035f230caee8d/UNICEF_Sweden's_response_to_the_consultation_on_more_effective_tools_to_combat_crime_by_young_offenders.pdf pp. 1-2

³⁵⁰ *Id.*



– in accordance with Article 12 of the Convention on the Rights of the Child – in order to hear their views on matters that concern them. Another rights-oriented argument they put forward is that they urge the government to evaluate this legislation – if it is passed – and that the reason for the evaluation should be to ensure that children's rights are not violated and that coercive measures are used as intended. Another argument from the same perspective put forward by Save the Children is that they believe that the legislative proposals concerning children as rights holders will lead to greater trust and confidence in the police and other authorities.³⁵¹

In its argument, BUFFF also emphasises a rights perspective by briefly stating that efforts to combat youth crime must take a child rights perspective into account – and that the child rights perspective should be reflected throughout the legislation and its implementation.³⁵²

Certain fundamental freedoms and rights

Save the Children points out that the legislative inquiries have failed to adequately address human rights and that measures must be taken to remedy this. The organisation notes that the legislative inquiries review the basic principles of the Convention on the Rights of the Child, but that they only delve into certain articles. The organisation considers this to be a shortcoming and asks why the other basic principles have not received the same attention. They argue – again from the same perspective – that these need to be addressed because the legislative proposals affect children.³⁵³

Save the Children states that the legislative inquiries have not correctly interpreted the principle of the best interests of the child. The organisation points out that the legislative inquiries consistently use the phrase "the best interests of the child first and foremost" and considers this to be problematic because the preparatory work for the principle suggests that this interpretation

³⁵¹ Save the Children, More effective tools to combat crime by young offenders (SOU 2024:93) (2025), (Ref. No. Ju2024/02655), (hereinafter Save the Children Sweden), <https://www.regeringen.se/contentassets/437d0580ff72496eb1b5518e58f4f646/radda-barnen.pdf>, pp. 1-2

³⁵² BUFFF, More effective tools for combating crime by young offenders (SOU 2024:93) (2025), (Ref. No. Ju2024/02655), (hereinafter BUFFF), <https://www.regeringen.se/contentassets/437d0580ff72496eb1b5518e58f4f646/bufff.pdf>, p. 1

³⁵³ Save the Children Sweden, *supra* note 350, p. 2



is more extensive than intended, and the use of this interpretation risks causing confusion and misunderstanding among those applying the regulation. Instead, the organisation urges the legislative inquiries to use what it considers to be the correct interpretation of the principle of the best interests of the child. This is the interpretation set out in the 2018 bill, which states that "the best interests of the child shall be taken into account as a primary consideration". The organisation's reasoning emphasises the rights perspective. The reason why the organisation believes that the latter interpretation should be used is because the former interpretation is not in line with the Convention on the Rights of the Child.³⁵⁴

Save the Children also argues from a rights perspective when it points out that it is positive that the inquiry has taken into account the UN Committee on the Rights of the Child's comments on the Convention on the Rights of the Child, but that it is negative that the inquiry has not responded to the criticism and recommendations that Sweden received in its latest review. The rights perspective is further emphasised when they add that the criticism and recommendations need to be taken into account because they are specific and tailored to Sweden.³⁵⁵

Another argument that is also highlighted from a rights perspective is that Save the Children urges the legislative inquiries to clarify that society's need for protection must never come at the expense of human rights, especially children's rights.³⁵⁶

Consequences for children

UNICEF notes that many of the proposals in SOU 2024:93 risk restricting children's rights and that these proposals do not take into account the specific rights of children under the Convention on the Rights of the Child. They then continue in the same vein, stating that the report is not in line with the UN Committee on the Rights of the Child's recommendation that children should

³⁵⁴ *Id.* p. 3

³⁵⁵ *Id.*

³⁵⁶ *Id.*



be involved in the process of creating a more thorough legislative proposal, cf. SOU 2023:40, which shows how reports have been clearly influenced by a child rights perspective.³⁵⁷

Arrest and detention of children

UNICEF and Save the Children have been critical of this proposal. Both have linked their reasoning to the rights perspective. They argue that the proposal to extend the period of detention is not compatible with Article 37(b) of the Convention on the Rights of the Child, nor with the UN Committee on the Rights of the Child's call for Sweden to ensure that the deprivation of liberty of children only takes place as a last resort and for the shortest possible period of time.³⁵⁸ Save the Children adds that the criticism is based, among other things, on the fact that the current three-month time limit is problematic and that it does not appear that the legislative inquiries have taken into account the recommendations that Sweden has received from the Committee. Among other things, the recommendations state that there should be a clear limit on how long a child may be detained.³⁵⁹

Save the Children also notes that the committee's recommendation is that Sweden must end the current practice of isolating children and that review of detention must take place more often than every 14 days, otherwise there is a risk that it will violate the Convention on the Rights of the Child.³⁶⁰

An important aspect of Save the Children's reasoning is that they emphasise that children should not be punished because society does not prioritise resources to ensure their rights.³⁶¹ UNICEF's reasoning – supported by Article 40 of the Convention on the Rights of the Child – emphasises the importance of treating children suspected of crimes in a manner that promotes their dignity and self-respect. Like the Committee on the Rights of the Child, UNICEF urges the Government

³⁵⁷ UNICEF, *supra* note 348, pp. 5-6

³⁵⁸ UNICEF, *supra* note 348, pp. 2–3, Save the Children Sweden, *supra* note 350, p. 4

³⁵⁹ Save the Children Sweden, *supra* note 350, p. 4

³⁶⁰ *Id.*

³⁶¹ *Id.*



to uphold these principles in order to help reduce recidivism among children.³⁶² UNICEF criticises the legislative inquiries' proposal, citing the difficulties faced by the Prison and Probation Service in meeting children's basic rights, such as four hours of isolation-breaking measures per day. The organisation adds an argument – from a rights perspective – that the proposals will further undermine children's rights and that more legislative measures are needed to ensure the rights of children in custody.³⁶³ UNICEF urges the legislative inquiries (if they choose to proceed with the proposals) to analyse whether they safeguard children's rights, such as the right to education, health care, rest and leisure, child-friendly premises and the opportunity to contact relatives and measures to break isolation.³⁶⁴ Save the Children agrees with the proposal that exceptional circumstances should not be changed and notes that this is in line with Article 37 (b) of the Convention on the Rights of the Child, which states that deprivation of liberty should be used as a last resort. Save the Children also notes that children find deprivation of liberty more difficult than adults.³⁶⁵

Other coercive measures against children under 15

Save the Children supports the proposal to remove special reasons regarding the proposal for house searches of children under 15 years of age. However, the organisation questions the committee's reasoning for the proposal when it states that "the younger the child, the more important the child's interests are". From a rights perspective, Save the Children believes that this wording risks justifying restrictions on children's rights, such as the right to integrity and privacy. The organisation believes that the sentence could be interpreted as meaning that children's rights become less important the older the child is. Save the Children believes, on the contrary, that the older the child, the more difficult it is to perceive infringements on integrity and privacy. They also believe that this reasoning cannot be supported by the UN Committee on the Rights of the Child.³⁶⁶ Save the Children notes that the proposal to enforce physical

³⁶² UNICEF, *supra* note 348, pp. 2–3

³⁶³ *Id*

³⁶⁴ *Id*

³⁶⁵ Save the Children Sweden, *supra* note 350, p. 4

³⁶⁶ *Id.* pp. 4–5



examinations contravenes Article 37 (b) of the Convention on the Rights of the Child and is a concrete response to the inquiry's use of human rights.³⁶⁷

UNICEF also responds to the inquiry's use of human rights, arguing that the proposals for expanded use of coercive measures violate Article 16 of the Convention on the Rights of the Child, which states that children have the right to privacy and family life and against arbitrary interference in their homes.³⁶⁸ UNICEF argues that measures such as body searches and house searches already exist, and that the proposed legislation would grant expanded powers for precisely these measures. The risk with this is that it will reinforce the trend towards restricting children's rights. Something that has not been noted previously is that UNICEF believes that this will change the view of children's rights and could lead to a society where such restrictions on rights become normalised.³⁶⁹ UNICEF also points out something that none of the other organisations have taken into account, namely that the legislative inquiries have not carried out a child impact analysis to determine whether the proposals will affect other children, both directly and indirectly. The reason why the organisation has drawn attention to this is so that children's rights and well-being are not overlooked in the process. Similar arguments about the lack of a child impact assessment have been put forward in the proposal on the enforcement of body searches, but this has not been done in relation to the Convention on the Rights of the Child, and this risks constituting a serious infringement of the child's integrity. What is remarkable about UNICEF's reasoning is that they criticise the latter proposal but adds that it should be limited to the most necessary cases for as short a time as possible.³⁷⁰

The police's ability to detain children suspected of crimes

Save the Children argues that the proposed measures contravene Article 37 of the Convention on the Rights of the Child, stating that it interprets the proposal as indicating a lack of resources for the current approach, and that the Government instead needs to provide the necessary

³⁶⁷ *Id.*

³⁶⁸ UNICEF, *supra* note 348, pp. 3-4

³⁶⁹ *Id.*

³⁷⁰ *Id.*



resources to conduct interviews within the framework of the current regulations.³⁷¹ This argument stems from a rights perspective combined with resource issues.

UNICEF responds to the proposal on placement in police custody by stating that it strengthens Sweden's ability to ensure that children deprived of their liberty are treated with respect for their inherent dignity and that their age and needs are taken seriously, and links this to the rights perspective by referring to Article 37 (c) of the Convention on the Rights of the Child.³⁷²

Biometric information from children

This proposal was only responded to by Save the Children from a rights perspective. The organisation considers that the proposal to collect and register biometric data from children under the age of 15 in a register for convicted persons after a trial is not necessarily in line with the European Convention and the Convention on the Rights of the Child.³⁷³

Covert coercive measures against children under the age of 15 in criminal legislative inquiries

The only organisation that responded to this proposal from a rights perspective was UNICEF, but it referred to its response to the proposals on coercive measures other than covert measures against children under the age of 15,³⁷⁴ , and the potential consequences for children's rights.³⁷⁵

Human rights organisations' responses to the legislative inquiries' use of the rights and proportionality perspective

Save the Children points out, from a rights and proportionality perspective, that the legislative proposals aimed at improving the justice system's fight against crime risk restricting children's rights, and that this is not proportionate.

³⁷¹ Save the Children Sweden, *supra* note 350, p. 6

³⁷² UNICEF, *supra* note 348, p. 4

³⁷³ Save the Children Sweden, *supra* note 350, p. 6

³⁷⁴ See section 5.1.3

³⁷⁵ UNICEF, *supra* note 348, p. 5



Arrest and detention of children

UNICEF considers that the proposal to extend the period of detention will have long-term negative consequences for the child's mental health, constituting a disproportionate restriction of the child's rights, as the longer the period of detention, the greater the invasion of privacy.³⁷⁶

SOU 2024:93: HOW ELSE DO HUMAN RIGHTS ORGANISATIONS RESPOND TO THE HUMAN RIGHTS JUSTIFICATIONS IN THE INQUIRY?

Some of the organisations described above have the legal resources necessary to respond to the legislator's use of human rights justifications, but this study also shows that it seems to be easier for many human rights organisations to respond from a sociological perspective, instead of responding to the inquiry's Human Rights Justifications from a rights perspective to any great extent.³⁷⁷ This section considers the other forms of responses given.

Difficult to predict the effects

UNICEF argues, as shown above, that it has the capacity to use both a rights perspective and a sociological perspective as a needs perspective by emphasising that there are many legislative inquiries into children who are in need of social intervention, as the risk of these children committing crimes is high. UNICEF notes that the effects of the legislative proposals are difficult to predict and instead emphasises the importance of a thorough and consistent review of the criminal justice system for children.³⁷⁸

Save the Children also notes, from a needs perspective, that it is difficult to predict the effects of the legislative proposals on children. They further argue from the same perspective by questioning the fact that proposals are being put forward before previous legislative proposals have been implemented and evaluated.³⁷⁹

³⁷⁶ *Id.* p. 2

³⁷⁷ See section 4.1

³⁷⁸ UNICEF, *supra* note 348, p. 1

³⁷⁹ Save the Children Sweden, *supra* note 350, p. 1



BUFFF argues from a needs perspective that it is important for society to have a sustainable criminal policy that must be permeated by preventive work, family support and strong cooperation with Civil Society.³⁸⁰

Focus should be on earlier interventions

BUFFF argues from a needs perspective on this issue. They see it as an advantage to prevent crime among young people, but that investigators, instead of focusing on the measures presented in the proposal, need to focus more on previous, family-strengthening and structurally oriented efforts. Another argument based on a needs perspective is that they emphasise the importance of effective preventive measures. In order to achieve effectiveness in crime prevention and legislative inquiry, it is necessary to identify risk factors combined with measures that strengthen the child's safety net. They further argue from the same perspective when they point out that the family has a crucial role to play and that they and other relatives must be offered support, especially in situations where there are crime and mental illness, among other challenges.³⁸¹

Better tools are needed to protect children from harmful environments

On this issue too, Save the Children argues from a needs perspective that the new, expanded tools for combating crime involving children must be better designed to identify, offer support and protect children from harmful environments in order to be justifiable.³⁸²

From the same perspective, BUFFF emphasises the importance of social strategies that can promote protective factors, including education and early intervention. The reason for this needs-based perspective is that the organisation stresses the importance of strong cooperation between social services, the police and Civil Society, among others, in order to address the actual effects. In another argument, based on the same perspective, the organisation emphasises the importance of a holistic approach characterised by giving equal weight to support for

³⁸⁰ BUFFF, *supra* note 351, p. 3

³⁸¹ *Id.* p. 1

³⁸² Save the Children Sweden, *supra* note 350, p. 1



families and legal measures. Further, there needs to be stronger and increased cooperation between authorities and Civil Society – and that society must address the structural causes of inequality and social vulnerability through long-term initiatives, with the aim of reducing the risk of young people becoming involved in crime.³⁸³

BUFFF argues that tougher penalties and increased coercive measures will only lead to further marginalisation, and this reasoning is also based on a needs perspective. Another argument from the same perspective is that young offenders need measures that are tailored to their needs and relationships, as a child-centred approach is important in order to counteract negative spirals.³⁸⁴

Important to evaluate this legislation

Save the Children also highlights arguments from a user perspective. The argument they present is that if this legislation comes into force, it needs to be evaluated in order to capture children's experiences of being subjected to coercive measures, and whether or not the coercive measures fulfil their purpose. Save the Children believes that this should be done on an ongoing basis in order to capture experiences closely related to the intervention – the purpose of the evaluation is to ensure that children's experiences of coercive measures are taken into account and that it can be used to refine the regulation.³⁸⁵

Social exclusion and stigmatisation

BUFFF also argues from a needs perspective on this issue, emphasising that there are children who are deprived of their liberty and find themselves in vulnerable situations. These children are at risk of social exclusion, stigmatisation and mental ill health, among other things. Another argument that includes the aforementioned perspective is that the organisation points out that there are children who live with a feeling of loneliness, which in turn can affect their well-being and trust in society's support. They further argue – from the same perspective – that these factors

³⁸³ BUFFF, *supra* note 351, p. 1

³⁸⁴ *Id.* p. 1

³⁸⁵ Save the Children Sweden, *supra* note 350, p. 8



risk increasing feelings of alienation, which in turn can lead to an increased risk of contact with destructive environments and reduced faith in the future.³⁸⁶

Another argument put forward by BUFFF from a needs perspective is that they emphasise the importance of prioritising resources for measures that can strengthen protective factors, especially for children in custody and those at risk. The argument is characterised by a needs perspective because they note that social divisions will complicate preventive work. Another argument put forward from a needs perspective is that it points out that there are children in socio-economically disadvantaged areas who have limited access to, among other things, safe school environments and stable adult presence – and these factors are important in combating crime among young people.³⁸⁷

Evidence-based methods

BUFFF discusses this from a needs perspective too, arguing that it is important that efforts to combat youth crime must be based on evidence-based methods. Another reason for including a needs perspective is that they further argue that criminal policy measures must be adapted to the needs of the individual and that legislative inquiries must also consider how the siblings of children in custody will be affected.³⁸⁸

Imprisoned relatives

BUFFF makes an interesting observation from a needs perspective. They note that many young people who commit crimes often have a relative in custody and usually belong to a group that is socially vulnerable and experiences feelings of loneliness and exclusion, among other things. The reason this is a needs perspective is that the organisation adds that these factors lead to an increased risk of mental ill health, which in turn can lead to them being drawn into destructive environments. When BUFFF emphasises the importance of supporting this group through measures such as a national survey of children and siblings of prisoners, this indicates a strong

³⁸⁶ BUFFF, *supra* note 351, p. 1

³⁸⁷ *Id.* p. 2

³⁸⁸ *Id.* p. 1



needs perspective. The needs perspective takes on greater significance when the organisation states that this overlooked group needs to be made visible in order for society to be able to combat crime and strengthen young people's opportunities for a good future.³⁸⁹ The fact that Civil Society may not have the legal resources required to counter the legislator's use of HRJs may weaken the rights debate, if children's rights are allowed to be undermined by the use of the Convention on the Rights of the Child, thereby changing the very meaning of rights within Swedish law. This risks leading to the rights under the Convention on the Rights of the Child and the European Convention being appropriated by the state, as Civil Society risks being unable to join the debate through not always having the resources necessary to respond to the proposals with rights arguments.

Arrest and detention of children

In its proposal on secure supervision, Save the Children states that there is no reason to change the current regulations. The reason for this is that there are no better alternatives. As Save the Children does not elaborate on its reasoning, it is difficult to determine whether it includes a needs or user perspective.³⁹⁰

Detention period

On this issue, UNICEF takes a needs perspective when it states that adolescence is a critical period for the development of self-image and identity, but also that experiences of being deprived of liberty risk reinforcing a negative self-image and links to crime. It is a needs perspective when they argue for focusing on other measures that focus on the child's rehabilitation and reintegration into society, as this benefits both the child and society. Otherwise, UNICEF notes – again from a needs perspective – that the legislative proposals risk having serious and long-lasting effects on the child's mental health.³⁹¹

³⁸⁹ *Id.* p. 2

³⁹⁰ Save the Children Sweden, *supra* note 350, pp. 3–4

³⁹¹ UNICEF, *supra* note 348, pp. 2–3



Other coercive measures against children under 15

Save the Children argues from a needs perspective on this issue. They share the inquiry's view that there is a clear need to be able to use coercive measures against children under 15. The reason for the needs perspective is that the organisation questions how the legislative inquiries have reasoned about the concept of need as such. The organisation believes that the legislative inquiries have presented a general assessment that the increase in serious crime among a small group of children automatically means an increased need for the use of coercive measures. They further reason from this perspective by emphasising that there is a need for an in-depth analysis of how coercive measures are used today and whether they are sufficient to investigate more serious crimes involving children under the age of 15.³⁹²

Specifically regarding body searches

Save the Children argues to some extent from a needs perspective when it states that there are major shortcomings in the police's use of their current powers. From a needs perspective, the organisation is hesitant to introduce expanded opportunities for body searches, especially when the police have not come to terms with their current powers.³⁹³

In another argument, Save the Children emphasises a user perspective, as they note that searches are carried out today, even though there is neither a purpose nor a reason to introduce them. Another argument emphasised from the same perspective is that there are children who experience poor treatment and believe that they are being body searched solely because of their appearance.³⁹⁴

Although Save the Children emphasises the disadvantages of the proposal for body searches, the organisation points out that this proposal may be beneficial from a needs perspective. The reason it includes a needs perspective is because they point out that there are children who are victims of crime, who may have been robbed, and the proposed regulation would allow their

³⁹² Save the Children Sweden, *supra* note 350, pp. 4–5

³⁹³ *Id.*

³⁹⁴ *Id.*



stolen property to be returned. From the same perspective, they also consider the regulation to be beneficial because it can lead to a certain degree of protection for the child from being exploited by criminal networks.³⁹⁵

Enforcement of physical examination

Save the Children states, from a needs perspective, that they perceive the inquiry's proposal as indicating a lack of resources for the current approach and that sufficient resources are required to be able to carry out physical examinations within the framework of existing regulations.³⁹⁶ UNICEF also argues from a needs perspective but puts forward a different line of reasoning. They argue that there is no concrete account of what this proposal will entail and also note that the inquiry has not presented other less intrusive alternatives for dealing with the situation.³⁹⁷

The police's ability to detain children suspected of crimes

Save the Children agrees with the legislative inquiry that an interview can be a stressful experience for the child, and their reasoning stems from a needs perspective. The reason for this needs perspective is that they emphasise the importance of caring for the child afterwards. Their concluding reasoning also includes a needs perspective, as they emphasise that the police and other relevant authorities should work in a way that reduces the time spent in custody as much as possible.³⁹⁸

Placement in police custody

On this issue, UNICEF argues from a needs perspective. The organisation supports the proposal and argues that police custody is a very unsuitable environment for children.³⁹⁹

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ UNICEF, *supra* note 348, pp. 3–4

³⁹⁸ Save the Children Sweden, *supra* note 350, p. 6

³⁹⁹ UNICEF, *supra* note 348, p. 4



Biometric information from children

Save the Children argues from a user perspective when it emphasises that the proposal for biometric information from children could result in the stigmatisation of the child, because the child is seen as having been convicted of a crime even though he or she is not of criminal age.⁴⁰⁰

CONCLUSIONS

In summary, the analysis of Ds 2024:30 shows that the legislative inquiries' regular application of rights, primarily under the Convention on the Rights of the Child and the European Convention, runs the risk of shifting the function of those rights: from protecting individuals from state intervention to becoming an instrument for justifying state control of individual children who are often already socio-economically disadvantaged and at risk of becoming targets of racism. Furthermore, there is a clear gender aspect, as most measures will be directed at boys with immigrant backgrounds in socio-economically disadvantaged areas.

This analysis shows the many and detailed arguments put forward by Civil Society in response to the consultation on proposed legislation and demonstrates these organisations' knowledge of their clients and the potential weaknesses and threats in the draft proposals. However, it also shows that there is relatively little response directly addressing and challenging the way that the proposals are justified, i.e. in human rights terms.

Human rights organisations, which are knowledgeable about issues relating to social work and children, thus fill the gap with a sociological perspective that the legislative inquiry has not taken into account. When these organisations respond to the legislative inquiries' Human Rights Justifications with arguments based on needs and user perspectives, there is a risk that the discourse will shift from legal rights and obligations to a discussion about desires and needs. The discourse then shifts from discussing whether rights have been fulfilled or violated to what society needs in order to function. One risk of responding in this way is that the normative effects of the rights discourse are lost, and there is also a risk of blurring the line between the obligations of the state and the rights of the individual. Objecting from a sociological

⁴⁰⁰ Save the Children Sweden, *supra* note 350, p. 6



perspective to an argument characterised by a rights perspective also risks giving the state the impression that it is acceptable to justify legislative proposals on the basis of individual rights in a way that serves the state and restricts individual rights in unacceptable ways.

The study suggests that the extent to which human rights organisations address the rights perspective when the State uses HRJs in defence of its legislative proposals seems to be dependent on the amount of legal expertise present within or available to each organisation. There is a tendency for organisations to fall back on their core expertise, which is active support for children, and therefore their responses to the proposals are more likely to be from a sociological (needs and interest)-based perspective, rather than legal rights perspective. This therefore means that there are significant costs associated with participating in consultations and the democratic process.

Responding to HRJs requires significant legal input and many Civil Society bodies do not have access to these resources, which is not surprising given that their role is very much about understanding need, providing services and commenting on the many aspects of social and public policy. However, if such organisations do not have the knowledge or expertise that is required to put together a robust response to HRJs, leaving the sole focus on needs and interests-based arguments, this risks diverting the discussion away from discussions about what is permissible in relation to children and young people, to focusing on specific issues such as how electronic monitoring will affect children and young people in practical terms rather than in terms of rights. In the long term, there is a risk that Civil Society and human rights organisations, which act as guardians of rights, will not be able to challenge the state when it uses HRJs, and as there appears to be an increasing trend in the use of HRJs, this is a significant concern: when Civil Society is not able to scrutinise the use of HRJs, there is a risk of further restrictions on the freedoms and rights of children and young people and a blurring of the state's clear legal framework.

The fact that Civil Society responds to the legislator's human rights justifications from a sociological perspective is not in itself problematic, as it is a perspective that shows what works



in a society and how the laws will be applied in reality. What is problematic is that the objections do not respond to the legislative inquiries' human rights justifications, which risks shifting the discussion from what is legally permissible to how the proposals will affect children and young people in practice. Key legal certainty issues, including the right not to be discriminated against and the right to social support for children and parents, instead risk leading to a lack of trust in social services and a shift towards an "us and them" relationship.

The use of HRJs by States, is relatively new and it is only recently that there has begun to be a recognition of this trend and its consequences, hence the HRJust project. It is therefore not surprising that Civil Society has not recognised and therefore responded to the trend of states to use HRJs. Instead, organisations respond to consultations drawing on their existing and extensive skills and knowledge, which are generally focused on arguments about needs and users' interests.

Whilst it may be evident to Civil Society bodies that proposed measures may have negative and unfair impacts on children and young people, they may not be familiar with how these issues are phrased in human rights law, and therefore they are not well placed to make their arguments using the same language and arguments that the State has put together.

Putting together human rights arguments often requires detailed legal experience and analysis, which can be costly as well as time consuming to obtain. This presents major challenge for Civil Society bodies. Some organisations like those whose responses we analysed have made some strong rights-related points, but in some cases organisations require specialist legal advice if they are to frame their responses in human rights terminology, and to challenge the analysis put forward by the government using that language, and that securing such advice is often expensive and time consuming, potentially drawing limited resources away from their primary functions in delivering services, liaising with their client groups and campaigning for change, rather than in developing and maintaining legal expertise.

Our analysis has shown that only a small number of organisations met our criteria for selection, including whether they responded to the consultations or not, and this may partly be a sign that organisations struggle to engage with responding to consultations that are framed around human



rights rather than the more familiar issues about different options and priorities. However, we did note that the organisations we did select were able to sustain the activity needed to respond to consultations when HRJs are being used. This study shows the importance of Civil Society having the legal resources and knowledge to respond to legislators' use of HRJs.

One risk of responding in this way is that the normative effects of the rights discourse are lost, and there is also a risk of blurring the line between the obligations of the state and the rights of the individual.

Unless Civil Society has access to such knowledge and resources to enable it to scrutinise and respond to states' use of HRJs, there is a risk of undermining the meaning of human rights, and that Civil Society will be unable effectively to hold the state accountable for its use of HRJs. The risk is that the line between individual rights and the state's desire to control entire groups of people, in this case boys with immigrant backgrounds in socioeconomically disadvantaged areas, will be blurred.

Overall, the analysis shows that the inquiry's use of the Convention on the Rights of the Child and the European Convention in SOU 2024:93, and its use of human rights justifications, risks shifting the purpose of the conventions: from protecting the individual from state intervention and holding the state accountable for living up to its international law commitments, it instead leads to a legitimisation of the erosion of the rights that exist to protect the individual child against state abuse, but also to give the individual child the right to enjoy their rights. When the Convention on the Rights of the Child and the European Convention are used by legislative inquiries to justify coercive measures, without carefully considering how the proposed legislation is compatible with the aforementioned conventions, they risk being perceived as instruments for achieving societal goals such as criminal policy interests.

The analysis also shows that Human Rights Justifications are used in a way that could enable future restrictions on individual freedoms and rights by establishing a practice where rights are used to prioritise the state's goals over the protection of the individual. This becomes particularly problematic when the legislative inquiry bases its considerations on abstract considerations of interest.



Civil Society's response to SOU 2024:93 also highlights the importance of human rights organisations having the legal resources necessary to actively respond to and review legislation that is legitimised through human rights justifications. If these organisations do not have the resources to counter the inquiry's rights arguments with corresponding legal objections, a vacuum is left that the state can fill by appropriating the rights discourse. In the long run, this risks normalising the use of rights as a means of achieving social and criminal policy goals, rather than serving as protection for the individual.

The intersection of gender (these law's mostly affecting boys), ethnicity (these laws are aimed at the migrant areas), and class (these areas are classified as the most socioeconomically vulnerable areas in Sweden) are apparent and the laws' overinclusive applications to deliberately include children that are innocent and never suspected of any crimes will not only affect the recruitment of children to gangs but will instead make already vulnerable children more vulnerable.



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