**Ref:** Letter dated 5 Feb 2019 from the Office of the High Commissioner for UN Human Rights addressed to All Permanent Missions to the United Nations Office in Geneva

**Regarding:** “Call for input: Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity”

Dear colleagues,

Please find attached input from Sweden on the issue of data and sexual orientation and gender identity.

Some questions touch on areas of European Union legislation (notably the Data Protection Directive). Additional input in these areas is best given by the responsible EU institutions, as these rules apply similarly across the 28 EU member states.

Sincerely yours,

Andreas Magnusson

Desk Officer

**Efforts to increase knowledge of the LGBT population**

1. Measuring the extent of discrimination is difficult due to a number of reasons. In Sweden, the Equality Ombudsman (DO) collects and analyses complaints made to the Ombudsman regarding discrimination on grounds of sexual orientation, gender identity and gender expression. However, according to the Equality Ombudsman the number of complaints does not reflect the prevalence of discrimination since the majority of people who have experienced discrimination do not file a complaint.
2. The Public Health Agency of Sweden collects statistics on experiences of degrading treatment based on sexual orientation and gender identity. The survey also gathers information on LGBT-persons experiences of trust in state institutions, violence, health status etc. The results of the national health survey is compiled in “Health on Equal Terms”. The survey is conducted on a yearly basis but data on LGBT-persons cannot always be reported annually for methodological reasons. The latest reports on LGBT persons were published in 2014 and 2015.

**Data collection and crime prevention**

1. The Swedish National Council for Crime Prevention (Brå) collects and presents annual statistics based on police reports including where a homophobic or transphobic motive has been identified. Details on homophobic hate crime such as type of offence committed, method used, location of the crime, relationship between victim and offender and number of solved crimes are included in the report from the Council. Self-reported exposure to homophobic or transphobic hate crimes and harassment through the Swedish crime survey is also presented in the statistics.
2. Brå collects two types of data which includes hate crime towards the LGBT community. Since 2006 the hate crime statistics has been produced by Brå, before that the Swedish Security Service (SÄPO) provided for the statistics. Homophobic motive was included from the very beginning but it was not until 2008 that also biphobic and heterophobic motive was included. Since then the category has been named “hate crime based on sexual orientation”, which in most cases involves a homophobic motive. The same year hate crime based on transphobic motive was included and has been presented separately since then.
3. The statistics has been presented in a report with additional information about type of offense, place of victimization and the victim’s relationship to the offender for each motive. The report will be published every two years, but until 2017 the report was published annually. The change in periodicity was to make room for additional reports of hate crime to complement the information that was provided through the statistics based on police reports.
4. The second data resource that Brå provides for regarding hate crime towards sexual orientation, and hate crime in general, is the Swedish National Crime Survey (NTU). NTU is Sweden’s largest survey study with questions regarding victimization of crime, fear of crime and public confidence in the justice system. Those who report victimization of crime receive a follow-up question regarding hate crime motive (xenophobic, antireligious, sexual orientation and transgender). Because of the changed periodicity of the annually published hate crime statistics, a report regarding victimization of hate crime from the NTU (2006-2017) were published in 2018. Though, transgender hate crime was not included since the motive was not included in the survey until 2017. There are no other governmental administrative records about sexual orientation.
5. The hate crime statistics can be used to understand characteristics of violence regarding place of victimization and type of relationship between offender and victim. The Swedish National Survey (NTU) can be used to understand the extent of violence, since survey studies provides a better estimation for victimization in the population compared to statistics based on police reports.
6. Unlawful discrimination is a crime in Swedish law and therefore included in the hate crime statistics. Discrimination regarding civil right is handled through the Equality Ombudsman.
7. An obvious risk in all handling of sensitive data that can be related to an identified natural person is at risk of intrusion or accidental spread (leaking). Apart from the violation of integrity which then affects the individuals, there is also the risk of hate crimes and similar attacks with regard to these groups. Therefore, it is important to handle, as far as possible, anonymized, pseudonymized or data that cannot be related to a specific individual at all. Moreover, it is of great importance to have strong legal and actual protection for the data.
8. If one is to collect individual-based data for statistical or scientific purposes directly from individuals regarding behaviors that are illegal, it is important that there are legal and actual conditions to ensure that the data cannot be submitted to the authorities. There must therefore be legislation that ensures that the data cannot be submitted to authorities that with the power to prosecute crimes or authorities that otherwise have influence over the individuals' conditions and opportunities. You also have to have a very high standard cf security, IT security and physical security.

**Safeguards**

1. The general data protection regulation (GDPR) regulates the collection and provision of personal data within the EU. Sensitive information, such as information regarding sexual orientation, is granted a stronger protection. On a national level, there are also data protection legislation setting out the specific conditions for processing of personal data within a certain public authority. The principle of public access to information guarantees transparency in the public administration and means that the public and the mass media are entitled to receive information about state and municipal activities. However, the Public Access to Information and Secrecy Act contains provisions regarding secrecy that restricts the principle of public access to information. Such secrecy provisions, for example within the field of health and medical services or the social welfare services, entail both document secrecy and a duty of confidentiality and also apply between authorities. All in all, these regulations provide for a solid protection of the privacy of individuals and a transparent and accessible public administration.

**Role of civil society**

1. Civil society and civil society organizations have a key role in work to promote and protect human rights. Many civil society organizations actively monitor respect for human rights within public service activities. They also document and criticize violations of these rights, and act as representatives for individuals, groups and interests, both nationally and internationally in cases of such violations. Civil society and civil society organizations are also important for informing about human rights and raising awareness of human rights.
2. A well-functioning and open consultation between the Government and civil society organizations is key for the work of both parties in promoting and protecting human rights. For the Government, it is important to be able to make use of civil society’s skills and perspectives in a qualitative and efficient way. For the organizations, regular open consultation affords a way to obtain information about and to influence the Government’s efforts.
3. For these reasons, the Government Offices of Sweden has developed a model aimed at achieving deeper and more structured open consultation with civil society organizations.
4. This model, which is termed focused discussion (sakråd), is based on the six principles for civil society policy and the Council of Europe’s Code of Good Practice for Civil Participation in the Decision-Making Process. The motivation for inviting an organization to participate in focused discussion must be based on the organization’s factual knowledge and perspective. The selection of organizations is to be suited to the purpose of the focused discussion, and relevant actors may therefore vary for different parts of a focused discussion.
5. The focused discussion model aims to:
	1. improve the quality of the Government’s evidence base by deepening and broadening the Government’s knowledge and perspective on particular issues;
	2. facilitate and enhance the efficiency of acquiring knowledge and other communications on matters between the Government and civil society organizations; and
	3. better coordinate the Government ministries’ contacts with civil society organizations for greater consistency within the Government Offices of Sweden.