**Annex 1. Temporary legislation**

The Swedish covid-19 strategy has to a vast extent relied on recommendations rather than on binding decisions or even restrictions by law. People living in Sweden have not experienced lock-downs or the introduction of martial laws that limit or fully prohibit free movement of the public to combat the new virus. The fact that Sweden has remained a relatively open society throughout the current pandemic as yet, has been met with scepticism by many states, not least neighbouring countries that have closed their borders for Swedes.

Even though it may be too early to judge which strategy has worked the best, the fact that the pandemic has harvested so many lives,[[1]](#footnote-1) is a matter of great concern. According to statistics age has been an important factor but allegedly also social, geographic and economic background. There is a need to evaluate if the loss of lives in reality also is a violation of the right to life and if the Swedish strategy has neglected or failed to protect the right to life and the right to the health for some effected individuals or groups of individuals; in particular the elderly and the socially and economically disadvantaged. But also if structural discrimination in society has directly or indirectly effected everyone’s right to the enjoyment of the highest attainable standard of physical and mental health.

As the Swedish strategy is based primarily on recommendations of social distancing and on avoiding general transportation and working from home, there are of course many groups in society that are unable to protect themselves from contagion through these pieces of advice. This is in particular true for a growing group of homeless people – including poor EU-migrants, undocumented immigrants and or asylum seekers whose applications have been rejected. NGO:s involved in social voluntary work have seen an increased need of support for people most vulnerable to the virus.[[2]](#footnote-2)

Some decisions of a more determinate character has been taken by the government, such as restrictions on gatherings (at the moment not more than 50 people are allowed to meet). This government decree was decided through the use of the Public Order Act, which allows the government to rule by decree e.g to prevent diseases to spread.

The Public Order Act does not apply to e.g restaurants and cafés, but can be used to restrict crowds and public at football games, theatres, cinemas for the purpose of protecting individuals from the virus.

Restaurateurs have instead been ordered to uphold recommendations on social distancing including scattering tables, placing fewer chairs at the tables and at a certain distance. Regulations are issued by The Public Health Agency, supported by the Communicable Diseases Act.

When the pandemic started it was considered that were very limited possibilities for the Government to, through the use of the Communicable Diseases Act, enact forceful decrees to urgently stop the virus from spreading. In early April the Government thus presented a bill to the Parliament that would give the Government expanded possibilities to unilaterally decide on measures to prevent the spreading of covid-19. The proposal would increase the powers of the government in an unprecedented manner and thus circumvent the parliament’s power as legislators. As the situation was considered to be of urgency, the bill passed the Parliament in only a matter of days. A draft bill was referred to the Council on Legislation[[3]](#footnote-3) on April 6, and a view by the Council was delivered the same day. The draft bill was sent to members of Parliament late on Friday night April 3. On Tuesday April 7 the Bill with some amendments according to the comments made by the Council was put forward to the parliament for liberation. The parliament decided to restrict the time-limit for follow-up suggestions/amendments on the bill from the parliamentary parties to one day. 24 hours was also the time limit for comments from e.g. the Chancellor of Justice and the Parliamentary Ombudsman. Indeed the draft bill was only referred to a very small and restricted group, excluding both directly and indirectly comments from civil society.

The bill was then referred to the committee on social affairs that decided to get the opinion of the Standing committee on the constitution before deciding on the matter. The standing committee presented its views on April 9. On April 16 the new bill was passed. It is a temporary piece of legislation, only valid for three months and only in relation to the fight against the covid-19 virus.

The first draft of the bill was amended according to most of the views by the Council on Legislation and the Standing Committee on the Constitution. In particular were the circumstances when the government can decide on restrictions, more precisely defined. It now makes it possible for the government to decide on temporary limitations for gatherings and crowds, closing of shopping malls, of social and cultural meeting places such as bars, night clubs, restaurants, cafés, sport centres and gyms, libraries, museums and public meeting halls. Also the closing or limitations of the use of public transports, harbours and ports, airports, bus- and railway stations. The law also makes it possible for the government to reallocate medicine and protective materiel and medical equipment from private care takers or other private actors and between local and regional authorities. The list ends with a possibility to decide on “other temporary measures of similar character”. In the preparatory work it is however clear that the powers of the government cannot be used to decide on e.g. curfews or to isolate cities or villages.

As the measures taken can limit the rights and freedoms of the individual the powers of the government is restricted to measures that, according to the constitution, are possible to restrict merely by decree. Measures should also take fundamental principles as necessity, proportionality and purpose into account. The bill was further also amended to ensure that Parliament immediately is informed of any measures taken – a first draft suggested “as soon as possible”. Before the powers are used, the government should always consider if the measure indeed could not be enacted by law by the Parliament. . The bill and its preparatory work lack however references to other human rights conventions and fundamental principles such as non-discrimination or that measures should take particular consideration to and protect, those who already are in vulnerable positions.

The new law was enacted in order for the government to save lives and introduce necessary measures quickly. A need for such extended powers for the government during a pandemic and in peace time has however previously been discussed but not been acted upon. The issue was raised particularly some 10 years ago when the Constitution was amended[[4]](#footnote-4). A regular legislative process when a lethal virus is not threatening society and with a possibility for the public to get informed and participate, for civil society to comment and for the members of parliament to discuss extended powers of the government more in depth, had been the better choice. The current piece of legislation is said to be temporary, but there is always a risk that this kind of legislation will be more or less automatically prolonged, thwarting further public discussions. It is also worrying that legislative powers so quickly can be transferred to the government. It opens a loophole that may be used as a precedent for future governments and parliaments but for other purposes. It should be added that the constitution does not require that laws transferring powers to the government are passed through a qualified majority vote, a simple majority suffice.

Shrinking space

Many civil society organizations find it more and more difficult to endure the economic and social consequences of the pandemic. Some are unable to perform humanitarian and hands-on human rights work due to the restrictions and recommendations. The government has introduced a number of financial measures in order to help also NGO:s to survive, however these only reach part of civil society. 50% of the members of the umbrella organization “National Forum for Voluntary Organizations” believe that they will go bankrupt or otherwise have to close down their work in a near future.[[5]](#footnote-5) At the same time the need for humanitarian and human rights work has already proven to be even more demanded. In one of its early reports on the effects of the pandemic on civil society the Forum makes seven suggestions on how to avoid the present situation to become even worse, e.g: Secure emergency support for civil society organisations that do voluntary work, remember that civil society organizations also are employers, allow NGO:s to keep its funding even though projects are amended or not possible to go through with, increase support to groups that are suffering the most during the pandemic.

The success of human rights and democracy are dependent upon a vibrant civil society, it will not develop progressively or survive with only a few strong NGO:s left. Surviving the covid-19 may be so overwhelming for many NGO:s that there is no strength left for ordinary human rights work, or to bring attention to or participate in discussions in coming and complicated human rights’ challenges. With less or tired watch dogs, many important decisions risk go under the radar, such as the new, but much more restricted, asylum-polices, criminalization of racist organizations, amendments of the constitution to prohibit participation in terrorist organizations etc.

1. Statistik per den etc (som ni väl redan har?) [↑](#footnote-ref-1)
2. www.socialforum.se/wp-content/uploads/2020/04/Rapport-om-coronavirusets-konsekvenser-f%C3%B6r-civilsamh%C3%A4llet\_Forum\_200408.pdf [↑](#footnote-ref-2)
3. The Council on Legislation (Swedish: Lagrådet) scrutinizes draft bills which the Government intends to submit to Parliament. One important feature of the Council’s work is to consider whether the draft bill is compatible with the constitution and general legal principles. The Council on Legislation’s views are of an advisory nature, and are not binding on the Government or Parliament. [www.lagradet.se](http://www.lagradet.se) [↑](#footnote-ref-3)
4. SOU 2008:125 [↑](#footnote-ref-4)
5. <https://www.socialforum.se/wp-content/uploads/2020/04/Rapport-om-coronavirusets-konsekvenser-f%C3%B6r-civilsamh%C3%A4llet_Forum_200408.pdf> [↑](#footnote-ref-5)