THE PRINCIPLE OF NON-DISCRIMINATION AND UNDOCUMENTED MIGRANTS’ RIGHT TO HEALTH CARE IN SWEDEN
- LEGAL AND POLITICAL CHALLENGES

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ABSTRACT
The principle of non-discrimination is recognised as vital to the human rights field. In May 2013 the Swedish parliament passed a law that provides undocumented migrants the same limited health care as asylum seekers. In relation, the Swedish Red Cross in a partnership with Malmö University created and distributed a questionnaire amongst Swedish politicians, that in part pertains to this law and also the situation of undocumented migrants’ right to health care.

In applying the perspective of non-discrimination, legal challenges to undocumented migrants’ access to health care in Sweden, and the political attitudes surrounding this issue are duly examined. This produces the observation that the non-discrimination principle’s application is of relevant use. In concluding that the legislation examined fails to meet international standards regarding the principle of non-discrimination and the right to health care for undocumented migrants, it provides examples to illustrate that this conclusion is not necessarily representative of the views held by the selected group of politicians included in the twofold questionnaire study.
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<td>CESCR</td>
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CHAPTER 1

1.1. Introduction

The right to health care is considered a fundamental right, recognised and protected in various international and national regulations. Of equal importance in the field of human rights, the non-discrimination principle serves to protect and support the equal enjoyment rights under it\(^1\). In Sweden’s ratification of several relevant international treaties, an obligation has been made to implement, without discrimination, the right to health care\(^2\). Whereas this right may be realised progressively, this progressive realisation cannot be implemented in a discriminatory manner as the non-discrimination principle is absolute and thus, ought to be immediately put into practice\(^3\).

In January 2006 the former United Nations (hereinafter UN) Special Rapporteur for the right to the highest attainable standard of health, Paul Hunt, visited Sweden to investigate the Swedish standards. In a communication to the Swedish Government following his visit, whilst recognising the overall standards of the Swedish health care as high, Hunt regarded the laws and accessibility to health care available for undocumented migrants inconsistent with international human rights law\(^4\). Hunt’s critique fuelled an already existing critical debate in Sweden, and after his visit the establishment of the Right to Health Care-Initiative of 2008\(^5\), a group consisting of various civil rights organisations, medical unions and others, aiming to raise the awareness of undocumented migrants’ right to health care, was established.

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\(^2\) As per example, Article 12 of the International Covenant on Economic, Social and Cultural Rights and Article 11 of the European Social Charter.


In relation, the Swedish parliament adopted a law in 2013, which effectively stands to provide undocumented migrants in Sweden the same rights to healthcare as asylum-seeking persons. On the one hand this law may improve the right to healthcare for undocumented migrants, since prior to the law, unless in emergencies, this group had no legal right to health care. However, on the other hand, an inherent tension between the state’s obligation to fulfil the right to health care and the prerequisite of the recipients residence permit, or lack thereof, appears prevalent.

The attitudes of Swedish politicians towards undocumented migrants access to health care to some extent reflect the political commitment to human rights on all levels of governance in Sweden. Due to the aforementioned tension, it is important to understand the political aspect in order to fully grasp the problem of undocumented migrants’ access to health care. In November 2011 the Swedish Red Cross, in a partnership with Södertörns University, conducted a questionnaire study amongst politicians, as part of the European Union (hereinafter EU) funded project European Initiative for Democracy and Human Rights (hereinafter EIDHR). The questions addressed migration; torture; healthcare for undocumented migrants and other related topics.

In October 2013, the Swedish Red Cross in a partnership with Malmö University created a similar questionnaire with the purpose of viewing any changes in knowledge and attitudes among politicians in relation to a questions previously issued. Since, at first glance it appears that the findings from the latter questionnaire suggests a positive stance among the politicians in regards to the new law, a deeper analysis of the knowledges and attitudes among Swedish politicians in relation to undocumented migrants’ access to health care and the new law, in conjunction with the principle of non-discrimination, is therefore encouraged.

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6 The term questionnaire is more suitable than survey when working with studies such as the one presented, see Trost, J. (2012) Enkätboken, Studentlitteratur: Lund, p9.

7 The EIDHR was a EU funded financial instrument for the promotion of democratisation, conflict prevention and human rights and democracy working together in partnership with NGO’s and international organisations. The EIDHR was replaced in 2007 by the Financial Instrument for the Promotion of Democracy and Human Rights Worldwide. Available at; <http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/r10110_en.htm>, accessed on 17 December 2013.
1.2 Research Problem and Aim
The overall purpose to gain an understanding of the legal, and some of the political challenges to the issue of discrimination and undocumented migrants’ access to health care in Sweden is one of great complexity. In relation, there are different ways of interpreting and retrieving definitions of the complex concept of non-discrimination. However, for the purpose of the research questions presented below, the definition primarily examined and consequently applied, relates to that of undocumented migrants’ right to health care. In order to achieve this presented purpose, a threefold approach is adopted. After an initial overview of the principle of non-discrimination, an assessment of the new law is made, followed by an examination of the political knowledges and attitudes concerning undocumented migrants’ right to health care and their perception of the principle of non-discrimination in the context of healthcare. Due to the politicians’ roles as decision makers, and at times legislators, an understanding of the political attitudes will be examined in order to understand the complete problematisation. The secondary aim is to juxtaposition the legislation in Sweden with international human rights standards, with special weight placed on non-discrimination for the effective implementation of rights to health care. This latter line of discussion will be examined in relation to recommendations made in relation to human rights standards; undocumented migrants’ rights to healthcare and non-discrimination.

1.3. Research Questions
1. How does the new legislation in Sweden stand in relation to the principle of non-discrimination and international standards in fulfilling the right to healthcare for undocumented migrants?
2. Drawing upon specific questionnaire responses to local, regional and national politicians in Sweden; what are some of the attitudes concerning the principle of non-discrimination and equal access to health care, and the new legislation and undocumented migrants right to health care?

1.4. Theory, Method and Material
Initially, interpretations and qualifications pertaining to the principle of non-discrimination is described through guidelines and discussions as presented in General Comments adopted by the
Human Rights Committee (hereinafter HRC) and the Committee on Economic, Social and Cultural Rights (hereinafter CESCR). Further, to accurately define the principle, and in that have the means to apply it sufficiently to undocumented migrants’ right to healthcare in Sweden, the aforementioned General Comments will be complemented with a discussions based on the “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”\(^8\), and *Mänskliga rättigheter - Juridiska perspektiv* (Human Rights - Legal Perspectives, authors’ translation), using the latter’s chapters on equality and non-discrimination\(^9\) and right to health care for undocumented migrants in Sweden\(^10\). After defining the principle of non-discrimination in relation to undocumented migrants right to health care as a theory, this is applied in an evaluation of new law. Relevant legal material to be examined in this process is the Committee Directive 2010:7\(^{11}\), SOU 2011:48\(^{12}\), the Ministry of Health and Social Services Report DS 2012:36\(^{13}\), the Bill Proposal\(^{14}\), the Swedish Government Proposition 2012/13/109\(^{15}\) and the final legislation SFS 2013:407\(^{16}\). In order to determine the compliance of the Swedish legislation, contra that of international standards concerning the non-discriminatory principle and the right to health, the findings from the legal analysis will be discussed in Chapter 5.

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\(^8\) Hunt, P. (2007) *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*


\(^16\) Law SFS 2013:407 - *Om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd.*
Subsequently, the assessment of the legislation will also be contrasted with the political attitudes concerning the new law. To gain an understanding of the political climate regarding undocumented migrants’ access to healthcare, the questionnaire directed to Swedish politicians, conducted by the Swedish Red Cross and Malmö University in 2013, is used as a source of material. The questionnaire consists of 22 questions in total, concerning migration, torture rehabilitation and healthcare for undocumented migrants. In order to make a sound analysis of the findings from the study, sociology professor Jan Trost’s Enkätboken (The Questionnaire Book, authors’ translation)\textsuperscript{17}, is utilised as guidance. In addition, the participants who gave their consent and submitted their contact details were approached by the authors in December 2013 with three follow-up questions concerning the new legislation and the principle of non-discrimination. In enquiring around whether the participants believe that the new legislation is in conformity with the principle of non-discrimination, additional concerns in regards to providing undocumented migrants with health care are duly presented. This in turn serves to provide a deeper understanding of the political climate in Sweden in regards to the issue. In conclusion, the analysis applied is conducted through an empirical study, with a primary focus on analysing the questionnaire responses in relation to the non-discrimination principle and the examined Swedish law.

1.5 Delimitations

In relation to international standards of non-discrimination and undocumented migrants access to health care, as presented through General Comments; the UN Report of the Special Rapporteur, Mänskliga Rättigheter – Juridiska Perspektiv (‘‘Human Rights - Legal Perspectives”’, authors’ translation)\textsuperscript{18} and select peer reviewed articles on the specific topic, more generalising sources addressing non-discrimination outside of its related application onto health care and/or undocumented migrant’s rights are not included to an equal extent in this study. This would be too broad an application, and serve no direct purpose for examining the theory of non-discrimination in relation to legal and political challenges of undocumented migrants access to health care in Sweden. Hence, the main focus will primarily rely on interpretations under General Comments and

\textsuperscript{17} Trost, Jan. (2012) Enkätboken.

whilst recognising the need for inclusion of discussions on the topic, only the aforementioned select sources serve as a basis for such an exploration.

In regards to the legal material, as there is no existing case law stemming from the new legislation in Sweden, no evaluation of the law in practice will be made. Of due consideration, the final legal amendment provides extended accessibility to dental care for undocumented migrants, and whilst recognising that dental care is a part of a person’s overall well-being, this analysis will focus solely on the amendments related to the Health and Medical Services Act. In light of the fact that both the aforementioned amendments to the law concern an increased accessibility to healthcare in general, the latter amendment should suffice as basis for a representative discussion. The legislation of asylum seekers’ access to health care has been amended in the same process as for undocumented migrants. However, as the focus is primarily on undocumented migrants’ situation as a particularly vulnerable group, no analysis of the aforementioned amendment is conducted.

One of the limitations present, pertaining to the practical application of answers derived from the questionnaire study, is the low respondent rate. The reasons behind why the politicians may have chosen not to answer some fairly short questions, covering current political issues, is however not within the scope of this analysis. In light of that 81% of those contacted abstained from participation, the remaining 19% respondent rate is arguably weak. Regardless of the reason, a low respondent rate greatly limits the practical use of the study and does not suffice to warrant a valid national generalisation on the topics addressed. Moreover, as there was only 26 respondents that submitted their email addresses for further contact, limitations to a wider generalisation are also present. In regards to the respondent rate to the follow-up questions, the same considerations as above are taken into account.

In recognising the proposed application of the follow-up question as a means to gain a deeper understanding of the politicians attitudes and knowledge, and that a qualitative study, for instance

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that of an interview method, could be more favourable in achieving this objective\textsuperscript{21}, such a method is however not pursued. Whereas if instead the intention held is to gain a deeper understanding of the politicians opinions, the analytical scope inevitably has to involve party politics, and in conducting a then more qualitative study all eight parliamentary parties have to be equally represented\textsuperscript{22}. Furthermore, in accounting for variables to party politics one has to study their political manifest and compare their politics to the prevailing societal processes, likely resulting in an analysis of political science as opposed to one in the field of human rights.

1.6 Chapters Outline

In order to reconcile and present a clear and applicable explanation of the terms referred to in this thesis, section 1.7 will firstly provide summarised definitions of both undocumented migrants and discrimination. Subsequently, Chapter 2 proceeds to clarify the theory of non-discrimination and international standards relating to undocumented migrants’ access to health care, through guidelines of its application and discussions surrounding it. By applying the principle of non-discrimination, the development of the new Swedish law will be accounted for in Chapter 3, along with a brief analysis of its standards in relation to relevant international commitments. The newly passed legislation in Sweden is followed by an assessment of the political climate in Chapter 4. The Questionnaire Study and follow-up questions is presented and analysed in four sections, wherein the first introduces the study, the second its’ findings, thirdly the follow-up questions, and finally a concluding analysis. A juxtaposition of the legal and political findings against the principle of non-discrimination and international standards will be discussed in Chapter 5, with a summary and final conclusions to be found in Chapter 6.


1.7 Definition of Terms and Concepts

Undocumented Migrant - An undocumented migrant is a person without a residence permit authorising them to regularly stay in the country of destination 23.

Discrimination in relation to the non-discrimination principle 24 - Discriminatory practices are defined as any type of consideration made as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” 25 that serves the purpose of reducing opportunity for the person/s involved 26.

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24 For a more extensive definition of the principle of non-discrimination see Chapter 2 in its entirety.

25 General Comment No. 18, Non-Discrimination, HRC, para. 7.

26 General Comment No. 18, Non-Discrimination, HRC, para. 7.
CHAPTER 2 - THE THEORY OF NON-DISCRIMINATION

If the aim of this chapter was to present the reader with an overall picture of the application of the non-discrimination principle in all situations, it would likely fail in its entirety. This suggested “failure” can be broken down in the following two points where: Firstly, addressed discussions pertaining to its use are limited to ones supporting its application, and secondly; the validity of its application is not argued against nor viewed in a particularly critical light. If instead the main purpose behind its application is to provide a summarised guideline of its definition and interpretation as presented in General Comments, making use of other interpretations drawing a similar conclusion simply provides indications as how one might apply it. In light of this, the practiced approach is sufficiently justified, as it serves as merely one of many aspects to take into consideration when viewing the new law SFS 2013:407, and the questionnaire and follow-up questions conducted by the Swedish Red Cross in collaboration with Malmö University.

2.1 The Principle of Non-Discrimination

The field of human rights is largely guided by two underlying principles in how to approach it, the first being that there are fundamental rights, i.e. rights that should always be implemented and/or respected on a societal level, and the second that these rights ought to be granted to all people without discrimination\(^\text{27}\). The latter falls under what is from hereinafter referred to as the non-discrimination principle. To accurately provide a concise, yet complete, image of what it entails, its definition under various documents of public international law will be duly presented and compared to approaches and discussions surrounding its use. For instance, according to article 26 of the International Convention on Civil and Political Rights (hereinafter ICCPR), a state’s laws must “guarantee to all persons equal and effective protection against discrimination”\(^\text{28}\) on grounds such as that of other status\(^\text{29}\). It further holds that all persons, without discrimination, should be


\(^{28}\) Article 26, ICCPR.

\(^{29}\) Note that the direct applicability of this categorisation onto undocumented migrants will be further discussed and validated within this chapter.
granted corresponding protection under the law\textsuperscript{30}. These and other similar definitions are compared to discussions presented, through a brief research overview of literature on the subject\textsuperscript{31} and a report set forth by the UN, addressing it specifically in relation to the right to health-care for undocumented migrants in Sweden.

2.2 The General Comments
As presented in the following General Comments adopted by the HRC and the CESCR, there needs to be an innately inclusive interpretation of the non-discrimination principle in this use, an interpretation that also holds it as a supporting prerequisite for the application of the right to health care\textsuperscript{32}. In their recommendations on what may be considered under the term \textit{discrimination}, the HRC implies that any differentiating between persons due to their race, colour et cetera\textsuperscript{33} should undoubtedly be considered discriminatory. In light of this definition and suggested usage, the following section will further examine relevant General comments, as set forth by both the HRC, and the CESCR, to present an accurate interpretation of what constitutes discrimination under the Covenants, and furthermore what should be included categorisations under the non-discrimination principle. Furthermore, the application of non-discrimination in relation to health care and residential/citizenship status will be examined throughout as well.

2.2.1 The Human Rights Committee
In General Comment No.15 by the HRC, offering interpretative guidelines to articles under the ICCPR, non-discrimination is examined in direct relation to residential and citizenship status. It states that all rights under the Covenant should be realised “without discrimination between

\begin{footnotes}
\item[32] General Comment No.14, \textit{The Right to the Highest Attainable Standard of Health (art.12)}, CESCR, para. 12(b), 18, 30 & 34.
\item[33] General Comment No. 15, \textit{The Position of Aliens Under the Covenant}, HRC, para. 7.
\end{footnotes}
citizens and aliens”\textsuperscript{34}. In addition, likely pre-existing interpretations of Covenant articles specifically qualifying only citizens (Article 25) or aliens (Article 13), are not to be used as measures for application of the remaining articles of the Covenant. This in turn serves to partially disqualify jurisprudence pertaining to these articles, thereby applying the principle of non-discrimination broadly as to include all people, regardless of other judgements made under the Covenant pertaining to residential/citizenship status\textsuperscript{35}.

Furthermore, General Comment No. 18 commences its definition of non-discrimination as a “basic and general principle” ascribed to safeguard and protect human rights\textsuperscript{36}. In noting an absence of a specific definition of the term \textit{discrimination} under the Covenant, the HRC further elaborates on how to accurately include different aspects of its definition by including that of, amongst others, the definition found under Article 1 in the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ICERD). This thereby includes “distinction, exclusion, restriction or preference based on...descent, or national or ethnic origin...nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights”\textsuperscript{37}. In light of these aspects, it prescribes that derogations, whilst permitted under Article 4 paragraph 1, never apply to the principle of non-discrimination, which is considered and duly ought to be applied, without exception\textsuperscript{38}. The HRC then proceeds to address the “basic and general character”\textsuperscript{39} of the principle in relation to the explicit use of it under various articles of the Covenant, noting and exemplifying its applicability as a basic prerequisite for various aspects of human rights. Within the General Comment No. 18 a direct link between the application of non-discrimination and residential status can thus be established\textsuperscript{40}.

\textsuperscript{34} General Comment No.15, \textit{The Position of Aliens Under the Covenant}, HRC, para. 2.

\textsuperscript{35} General Comment No.15, \textit{The Position of Aliens Under the Covenant}, HRC, para. 2.

\textsuperscript{36} General Comment No.18, \textit{Non-Discrimination}, HRC, para. 1.


\textsuperscript{38} General Comment No. 18, \textit{Non-Discrimination}, HRC, para.2.

\textsuperscript{39} General Comment No. 18, \textit{Non-Discrimination}, HRC, para. 3.

\textsuperscript{40} General Comment No. 18, \textit{Non-Discrimination}, HRC, para. 3.
2.2.2 The Committee on Economic, Social and Cultural Rights

In arguing for a broader approach to non-discrimination in the practical application of rights under public international law, and through that, inclusion of qualifications under it, the General Comment No. 14 by the CESCR establishes a link between non-discrimination and the application of healthcare rights onto undocumented migrants, arguing for their respective necessity, each in conjunction with the other. Regardless of residential or political status, all people are thereby addressed through an inclusive aspect of the non-discrimination principle that serves to promote equal access to healthcare, which in turn ought to respect the rights to healthcare for all persons including undocumented migrants. An active stance supporting non-discrimination as a prerequisite in the effective application of other relevant articles in Public International Law, can also be found in General Comment No. 14, where special emphasis is placed on equal access to healthcare, especially for the “most vulnerable or marginalised sections of the population”, arguably directly applicable to the situation of accessibility for undocumented migrants as they can be considered an especially vulnerable or marginalised group of society. Furthermore, paragraph 18 of this Comment specifically stresses the importance of non-discrimination in view of articles 2.3 and 3 of the Covenant, regarding due access to healthcare, arguing that regardless of what resources are available and what complications may arise in the practical implementation of healthcare rights, States have the obligation to provide equal access without discrimination, again including that of “other status”.

The final argument used for an interpretation of the non-discrimination principle in application onto undocumented migrants’ right to health care, is that whereas legal obligations, as suggested in General Comment No. 3 by the CESCR may allow for progressive realisation of certain rights, non-discrimination in relation to health care is stated of poignant immediate concern. Therefore

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41 General Comment No.14, *The Right to the Highest Attainable Standard of Health (art.12)*, CESCR, para. 18 & 34.
42 General Comment No.14, *The Right to the Highest Attainable Standard of Health*, CESCR, para. 12(b) & 18.
possible progressive realisation of health care serving to discriminate between its right-holders, is not merely considered an unaccepted practice, it is actively discouraged offering further support for an inclusive approach to the practical usage of the non-discrimination principle\textsuperscript{45}.

\textbf{2.3 Surrounding Discussions}

An interpretation of specific relation to the non-discrimination principle, one that supports the claims as put forth through the analysis of the General Comments, is how the basis for legal and moral arguments for its implementation can be categorised. Simply put, they either qualify under the category where persons\textsuperscript{46} should be treated equally, in situations that are primarily similar, as overall people are deserving of equal treatment; or under the category where situations inherently different therefore need approaches allowing for an innate lack of similarities, as people can in times have different needs to effectively achieve the same level of standards. Serving as an example of the former of the two, the right to health should in its realisation without discrimination, be equally accessible by all. This approach clearly reflects the similarities between both situations and persons, in that all people require the same access to health care, in the purpose of their equal enjoyment of it as a right\textsuperscript{47}.

Adding additional weight to warrant use of the non-discrimination principle to the right to health care, the report specifically pertaining to healthcare rights in Sweden by Paul Hunt\textsuperscript{48} notes that Sweden in fact and practice, failed to oblige to international standards in relation to healthcare for undocumented migrants due to its discriminatory practices. This critique is supported by comparative studies presented of several European states, which conclude that there is a large discrepancy between Swedish and international standards in regards to non-discrimination and


\footnotesize{\textsuperscript{46} in relation to the non-discrimination principle.}


\footnotesize{\textsuperscript{48} in the acting role of “Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” when regarding this issue in Sweden.}
undocumented migrants’ right to health care⁴⁹. This discrepancy does not only concern international legal standards, but further also the comparison of Swedish standards against the other states included in the studies⁵⁰. In addition, the studies hold that the new legislation is not in accordance with the principle of non-discrimination⁵¹. In light of this failure, health care is thusly examined in direct relation to discrimination, where the argument is made that as healthcare is considered a fundamental right, consequently it should be approached through means that are not discriminatory. It holds that a non-discriminatory practice specifically relating to that of undocumented migrant status, ought to be applied in this instance. Serving as the basis for this claim it notes that rights applicable to undocumented migrants are of great value and require an application of non-discrimination in conjunction with their implementation, as it regards a particularly vulnerable group of society⁵². The status of undocumented migrants as a ‘vulnerable group’ thereby strengthens the argument for an application of the non-discrimination principle⁵³.

2.4 Concluding Reflections

General Comments regard the non-discrimination principle a basic prerequisite in implementing human rights, especially of the the more vulnerable groups in society under their protection, this is further strengthened by the provided discussions around its use. The principle itself serves to warrant similar situations, in this case that all people are equal before the right to health care, providing equal enjoyment to a right. Definitions of it adopted by the HRC and CESCR clearly indicates the inclusion of undocumented migrants under its application.


⁵² see aforementioned comments on or further classification of undocumented migrants status as vulnerable.

CHAPTER 3 - A LEGAL REVIEW

As stipulated in the introductory chapter, in order to achieve the proposed aim of evaluating newly adopted legislation that extends undocumented migrants’ access to health care, an overview of the development of the new law is to be obtained. Before said overview is provided, a short background of the prevailing legislation is duly presented. The Health and Medical Services Act is one of the primary regulations of health care in Sweden, with the act of Health and Medical Services for Asylum Seekers as a complementing law. In the latter act, an undocumented migrant under 18 years enjoy similar health care as that of a resident minor, subject to that an asylum application have been lodged previously. If they do not meet this prerequisite they only have access to unsubsidised emergency healthcare, which is what an adult undocumented migrant only ever enjoys, regardless of previous asylum application.

3.1.1 The Committee Directive 2010:07

In January 2010, the Ministry of Health and Social Services issued a Committee Directive commissioning an investigation into how the legislation concerning health care readily available to asylum seekers and undocumented migrants could be improved, and further, on what terms and conditions this would be best achieved. The directive also stated that the investigation should take Sweden’s international obligations into consideration when formulating how Sweden could extend its obligations in providing healthcare for the groups considered.

3.1.2 The Inquiry - SOU 2011:48

As a response to the remit launching the investigation of improvements to the issue of undocumented migrants’ access to healthcare in Sweden, an Inquiry was assembled. During a year,
experts compiled and analysed relevant material in a report with the aim to provide the politicians with an extensive overview of the prevailing situation and suitable recommendations on how to improve it. Amongst several, where three fundamental principles that guided the Inquiry’s investigation and proposals; the importance of Sweden’s compliance with international human rights commitments; the offering of the highest attainable standard of the health care to undocumented migrants and clearer directives governing the latter\textsuperscript{60}. These principles assisted the Inquiry in identifying the disjunction between Sweden’s non-compliance of international obligations and the government’s explicitly declared ambitions to increase the human rights standards. In regards to the principle of non-discrimination, the Inquiry noted several General Comments issued by governing treaty bodies.\textsuperscript{61} In recognising the HRC’s comment, that limitation of rights does not necessarily result in discriminatory practice\textsuperscript{62}, the Inquiry identified three variables in whether a practice is or is not discriminatory. It held that there should be an assessment of, if the persons experience a comparable situation, if any differences are due to a reasonable and objective criteria and whether any distinction is proportional in each individual case\textsuperscript{63}. In assessing if the absence of a resident permit is a reasonable and objective ground for discrimination, the Inquiry referred to General Comment No. 14 of the CESCR, in which the committee argues that undocumented migrants ought to enjoy the same right to the best possible health care as ordinary citizens\textsuperscript{64}. Hence, the Inquiry concluded that the lack of a resident permit is not a reasonable and objective ground for Sweden’s discriminatory practice, of not providing the aforementioned group with access to healthcare, and Sweden does therefore not live up to it’s international obligations\textsuperscript{65}. The Inquiry further stated that the legislation in Sweden does not reconcile with the principle of non-discrimination\textsuperscript{66}.

\textsuperscript{60} SOU 2011:48, p39.

\textsuperscript{61} General Comment No. 20, \textit{Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)} and General Comment No. 14, \textit{The Right to the Highest Attainable Standard of Health (art.12)} per example.

\textsuperscript{62} General Comment No. 18, \textit{Non-Discrimination}, HRC.

\textsuperscript{63} SOU 2011:48, p300.

\textsuperscript{64} General Comment No. 14, \textit{The Right to the Highest Attainable Standard of Health (art.12)}, CESCR, para. 34.

\textsuperscript{65} SOU 2011:48, p301.

\textsuperscript{66} SOU 2011:48, p308.
As set forth by the Committee Directive, the Inquiry proposed several amendments to the act of Health and Medical Services for Asylum Seekers, as some of the measures on how to improve the existing legislation. The final recommendation of the Inquiry was to offer subsidised healthcare, to all undocumented migrants, regardless of age, to the same extent and by the same conditions as of ordinary residents\textsuperscript{67}, through adding a final paragraph to the act.

\textbf{3.1.3 The Memorandum - DS 2012:36}

Following the Inquiry’s recommendations, the Ministry of Health and Social Services composed a memorandum\textsuperscript{68}, containing the political agreement made by the Government of Sweden and the Green opposition party, on how to implement the recommendations proposed by the Inquiry. In regards to the principle of non-discrimination, contrary to the recommendations made by the Inquiry, the memorandum stated that the prevailing legislation did not constitute a discriminatory practice, without explaining why\textsuperscript{69}. Further, without providing an explanation, the agreement ignored the Inquiry’s recommendation of adding a final paragraph to the Health Care and Services Act for Asylum Seekers, and proposed an entirely new law instead, specifically designed for undocumented migrants. The agreement also ignored the Inquiry’s recommendation of providing all undocumented migrants with health care, regardless of age, to the same extent and by the same conditions as of ordinary residents. Instead the new law contained limitations on the type of health care undocumented migrants are to enjoy. According to the proposal, an undocumented migrant aged 18 years or older, is only to access health care that cannot be postponed, health check-ups if needed, maternal health care, abortion and contraception advice services\textsuperscript{70}. Only undocumented migrants under 18 years are to access health care to the same extent as regular citizens\textsuperscript{71}.

\textsuperscript{67} SOU 2011:48, p324.

\textsuperscript{68} DS 2012:36.

\textsuperscript{69} DS 2012:36, p67.

\textsuperscript{70} DS 2012:36, p12, §7.

\textsuperscript{71} DS 2012:36, p12, §6.
3.1.4 The Bill Proposal and Referral

Based on the Memorandum, the Government formulated a Bill Proposal and referred this to The Council of Legislation for feedback on legal validity of the proposal. In this process the Government acknowledged the principle of non-discrimination, in their referral to the General Comment No. 20 and 14’s interpretation of non-discrimination in regards health care\(^\text{72}\), and the variables of when discrimination is sanctioned formulated by the General Comment No. 18 and the Inquiry. In retort to these, they stated that the prevailing legislation in Sweden\(^\text{73}\) is founded on objective and reasonable grounds, without explaining what these grounds entails, and therefore these grounds ought to be applicable to the new legislation as well\(^\text{74}\). Also in the referral process, the Equality Ombudsman among others, critiqued the limitations of undocumented migrants access to health care, and so did the Office of the Chancellor of Justice who was concerned with the compatibility of the new law with Sweden’s international obligations\(^\text{75}\). The Government still merely proclaimed that it ought to be acceptable to make a difference between citizens and people who reside in Sweden without a permit, in regards to the scope of their access to health care. They further hold that this distinguishment does not inflect on Swedish constitutional law and Sweden’s international obligations\(^\text{76}\). The Agency for Public Management considered the aspect of age discrimination in relation to the Swedish Discrimination Act\(^\text{77}\) in relation to both the prevailing legislation\(^\text{78}\), and the new Bill Proposal, since undocumented migrant minors are offered equal health care as a citizen, whilst undocumented migrant adults are only offered restricted health. In reply, the Government again refers to the prevailing law, SFS 2008:344, and assesses that the new

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\(^{72}\) The Bill Proposal, p30.

\(^{73}\) SFS 2008:344.

\(^{74}\) The Bill Proposal, p39.

\(^{75}\) The Bill Proposal, p36.

\(^{76}\) The Bill Proposal, p39.


\(^{78}\) SFS 2008:344
law is in harmony with the prevailing legislation\textsuperscript{79}. Several medical organisations\textsuperscript{80} aimed critique against the usage of the concept of health care that cannot be postponed, and urged for clarification\textsuperscript{81}. However, The National Board of Health and Welfare challenges whether a more specific definition is desirable, since this could impose on the unique medical needs of an individual, and by allowing medical staff a margin of appreciation these needs should be better seen to\textsuperscript{82}. In the Bill Proposal the Government justifies the application of the concept of health care that cannot be postponed, as a mean of improving the prevailing legislation, in which undocumented migrants only had access to emergency health care\textsuperscript{83}. Further, some judicial institutions raised concerns of the eradication of a new law, as opposed to amend these prevailing regulations. In response as to why the Health and Medical Services Act\textsuperscript{84} cannot be amended, the Government argued that the scope of the act concerns citizens and their right to health care, and since undocumented migrants’ are treated differently, it is not apt to include them in the act\textsuperscript{85}. The Bill Proposal was later adopted as Proposition 2012/13:109, and accepted in parliament on the 22 May 2013.

3.2 An Assessment of the Law SFS 2013:407

As features above, there are several issues with the new legislation, with the limitations of the Inquiry’s initial proposal of what scope of health care is to be available to undocumented migrants (see 3.1.3) as a primary flaw, and the justification of these limitations, as improving a previously substandard legislation, as an insufficient argument. Another critical aspect is the concept of health care that cannot be postponed. The Inquiry was tasked with formulating clearer directives, and the result appears to add further uncertainty on how to interpret the new legislation. Uncertainty

\textsuperscript{79} The Bill Proposal, pp40-41.

\textsuperscript{80} The Swedish Society of Medicine, The Swedish Medical Association, The Swedish Association of Health Professionals, The Swedish Confederation of Professional Employees and others..

\textsuperscript{81} The Bill Proposal, p42.

\textsuperscript{82} The Bill Proposal, p42.

\textsuperscript{83} The Bill Proposal, p18.

\textsuperscript{84} SFS 1982:763, The Health and Medical Services Act.

\textsuperscript{85} The Bill Proposal, pp44-45.
clearly interferes with the legal certainty and therefore allows for further discrimination when implementing the law\textsuperscript{86}. In light of these flaws and the Inquiry’s findings, it can therefore be assessed that the new legislation continues to preserve the discriminatory practice in Sweden.

\textsuperscript{86} SOU 2011:48 p310-311.
CHAPTER 4 - THE POLITICAL ASPECTS

An assessment of politicians’ perception of the new law\textsuperscript{87}, as well as their knowledge and attitudes within the field, are highly relevant to fully understand the challenges of the issues of both discrimination and undocumented migrants’ right to health care. The study below is conducted through a twofold approach: the first is a questionnaire issued by the Swedish Red Cross in a partnership with Malmö University; and the second consists of the subsequent follow-up questions issued by the authors. As some of the participating politicians in the study below are legislators, i.e., members of the Swedish Parliament, they consequently played a, albeit perhaps small, part in the creation of this new legislation. The remaining participants are either regional or local politicians, serving as County Councillors or Municipal Officials, who carry out decisions in compliance with the new law\textsuperscript{88}.

4.1.1 The Questionnaire Study

As described in Chapter 1, a questionnaire was created and distributed by the Swedish Red Cross in partnership with Malmö University as part of the EU funded project EIDHR, with topics such as health of migrants; torture; healthcare for undocumented migrants being addressed. It was conducted as a quantitative study\textsuperscript{89}, with the purpose to measure knowledge and attitudes among select Swedish politicians, with the questions being formulated as what the politicians know and think in relation to the aforementioned subjects. The respective answers are stated in either a numeric fashion, or with fixed answers to specific questions\textsuperscript{90}. The participants are not asked to explain how they feel about undocumented migrants, their right to health care or living conditions in general, nor how they experience discussions or problems relating to the subjects, which would instead signify it being conducted as a qualitative study\textsuperscript{91}. The questionnaire consists of 22

\begin{footnotesize}
\textsuperscript{87} Law SFS 2013:407, in this chapter hereinafter referred to as “the new law” or “the new legislation”

\textsuperscript{88} Information relating to Swedish regions and municipalities may be retrieved at The Swedish Association of Local Authorities and Region’s website, available at; <http://www.skl.se/kommuner_och_landsting/sa_styrs_landsting_region>, accessed 8 January 2014.


\textsuperscript{90} Not at all, to a certain degree, etc. Elaborated upon in Trost J, Enkäteboken, p18.

\end{footnotesize}
questions, of which five are relevant to this analysis as they concern the issue of undocumented migrants’ right to health care.

4.1.2 Purpose, Sample and Respondent Rate
The questions were sent out to approximately 1000 politicians in October 2013 to the permanent members of the boards listed below, and an approximate number of subsidiaries, allocated as follows: 349 representatives of the Parliament, 21 representatives of the board of the Swedish Association of Local Authorities and Regions\(^92\), 317 members of the boards of all the separate counties, 65 of the members of the bigger municipalities\(^93\), and approximately 250 of the subsidiary members of the different organs\(^94\). The questionnaire received 190 responses via the Quicksearch survey platform, leaving the respondent rate at approximately 19%. For a quantitative study to be considered valid, recommendations are that it has a minimum respondent rate of 50-75\(^{95}\). Consequently, in light of a respondent ratio of circa 19%, the result may not be applied as a generalisation (see Delimitations, Chapter 1.6). However, since the purpose of its subsequent application and analysis to let it serve as an indicator of the attitudes and knowledge present (see 1.1), whereas not necessarily claiming them nationally applicable.

4.1.3 Findings
The selected questions are directly linked to undocumented migrants’ right to health care and as such provide indications to present attitudes on this subject. In one question the respondents are asked to select one out of four fixed response options\(^96\) which they feel is most in line with their views on a recently adopted law in Sweden. The compilation of answers amounted to 38.9% of the participants regarded the new law to be “in accordance with Swedish obligations to international conventions”, while 5.8% considered it to be “an incomplete reform” and 5.3% deemed it “too

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\(^{92}\) Sveriges Kommuner och Landsting.

\(^{93}\) Stockholm, Göteborg, Malmö, Södertälje, Umeå.

\(^{94}\) Information through email correspondence with Lotta Hedström, former Public Relations Officer and responsible for the questionnaire, at the Swedish Red Cross.


\(^{96}\) Question 17, see appendices 1 and 2 for the Swedish and the English questionnaire respectively.
generous”. The majority of the respondents, 51.1.%, regarded the new legislation as “a step in the right direction to full right to health care”. The latter option may either be interpreted as expressing a positive inclination towards the legislation, or as containing an element of dissatisfaction. Consequently, if in lieu of a positive inclination an interpretation with a more negative attitude is applied, this could instead present the view that despite possible flaws in the new legislation, the current scenario is still preferable to the previous. In relation to this interpretation, response option “an incomplete reform” ought to cover the negatively inclined argument. However, the formulation of this option could be considered too harsh, which may deter the respondents from choosing it.

When approached to determine to what extent they regard themselves as knowledgeable in the field of human rights, and thus able to make well-informed and well-founded decisions on the subjects in the questionnaire, the majority regarded themselves knowledgeable “to a certain degree” in the field of human rights. Almost a quarter of the respondents regarded themselves knowledgeable “to a small degree”, whereas 10.5% deemed themselves as possessing “a high degree” of knowledge. The remaining 5.8% conceded to not having any knowledge in the field at all. The subsequent question, formulated in an almost identical manner, asks the respondents about their knowledge in regards to undocumented migrants’ living conditions. The answers are to a large extent similar to those of the previous question, with 55.3% appreciating that their knowledge amounts to “a certain degree”, 24.2% to “a small degree”, 10.5% to “a high degree” and 7.9% “not at all”.

The response options available to the above questions measuring the politicians knowledge also present limitations, when in light of arguments for exhaustive response options to cover the whole

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97 Question 19, see appendices 1 and 2.
98 58.9%.
99 23.2%.
100 Question 20, see appendices 1 and 2.
dimension of the question\textsuperscript{101} as the numeric, and rather vague, nature of the response options are non-exhaustive in their nature. Further, the response option “to a certain degree” is especially hard to interpret, as the exact meaning of the phrase is difficult to determine. Due to the option being positioned as number three out of four response options, with the first as having no knowledge at all, it could arguably be interpreted as having good knowledge. This could also pose a problem, in that the respondent may on one hand not regard her/himself as a person of great knowledge, or on the other consider response option “to a small degree” as a bit modest and/or, perhaps, unfitting to answer in the role of politician/legislator. Therefore, the validity to possible interpretations from the responses is questionable, which is important to take into consideration when assessing the findings from the study in whole.

The last question addressed\textsuperscript{102} asks the respondents to rate which values are central to them when faced with the questions presented in the questionnaire. The option receiving the highest response-rate was “the protection of human rights” which was chosen by 82.6% of the respondents, closely followed by “humanism” (75.8%) and “international solidarity” (69.5%). The remaining options were: “professional ethics of health care workers” (36.3%), “public health” (34.7%), “disease prevention” (15.3%), “Sweden’s economic climate” (8.9%), “controlled migration” (7.9%), “national security” (3.7%), and, “national sovereignty” (1.6%). The final option, to freely elaborate in their reply, received 4.7%, but what this constituted was not enclosed with the soft copy of the finalised results. Note: the provided uneven percentage rate of responses to this line of query is due to the fact that the participants were allowed to pick more than one option to their answer.

4.2 The Follow-up Questions
4.2.1 Purpose, sample and respondent rate
Due to the wording of the questionnaire questions and their duly presented answer options, in that they were relatively open for interpretation, this resulted in some difficulties in the conducting of

\textsuperscript{101} Trost, J. (2012) Enkätboken, p75.

\textsuperscript{102} Question 21, see appendices 1 and 2.
an analysis. The subsequent follow-up questions thusly served to provide the opportunity to gain a deeper understanding of the politicians’ views on the specific matter of undocumented migrants access to health care, by letting the respondents elaborate freely on their views. Two out of the three follow-up questions were of semi-structured nature with set answers, with an added option to elaborate, and one question was of a completely open-ended character. The follow-up questions were sent out to the 26 participating politicians in the study that had given their consent for further contact by submitting their email-addresses. Out of the 26 who received the questions, 15 people responded, leaving the respondent rate at an approximate 58%.

4.2.2 Findings

The first question103 addressed the possible obstacles to providing health care to undocumented migrants. The politicians were presented and according to their views asked to rank, a fixed set of answer options, with the added possibility to elaborate in the end if their views did not correspond to any of the answer options provided. The first response option stated that there are “no obstacles” in providing undocumented migrants with health care, followed by the second which held “societal costs” as an obstacle. The third option provided the option “patient safety”, the fourth “the legislation as discriminatory” and the fifth found it “unfair to make use of national health care when not paying income tax”. The final option, as mentioned above, presented the opportunity to elaborate freely.

In summary, the majority of participants answered in a multi-faceted and exhaustive manner, making the answers difficult to relate back to the provided fixed options. Disregarding the request to rank, rather than supply single responses to the question, many also chose to pick more than one option. Which in turn serves to explain the consequent uneven response rates, as they include both responses where the option is stated as the sole option to, as well as part of, the obstacles innate to providing health care to undocumented migrants. The results provided that approximately 40% of the participants found the new legislation discriminatory. There are also further weaknesses present in the formulation of this option, as it is not clearly stated to whom the legislation is

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103 Question 1, see appendices 3 and 4 for the Swedish and English follow-up questions respectively.
discriminatory against. As the initial rationale behind the option, for it to address discrimination specifically against undocumented migrants, is not immediately made clear in its formulation, this needs to be duly accounted for in its interpretation. Patient safety concerns were regarded by 33% as one of the obstacles to providing health care to undocumented migrants, whereas 27% found there ought to be no obstacles at all. The societal costs or it being unfair to utilise the health care system when not paying income tax were listed by a respective 13% of the respondents. Finally, the majority, 53%, at some point elaborated upon additional obstacles to providing health care for undocumented migrants, as per example the new law’s wording and its interpretation, argued by 13%. The remaining elaborations are, however, of too dispersed a nature to make any applicable generalisations at this time.

In the second question the participants were asked whether they think the new law conforms to the human rights’ principle of non-discrimination, and to shortly present arguments to this effect. This time 53% regarded the new legislation as discriminatory against undocumented migrants, arguing for the necessity of free and full enjoyment of health care for all. Only 13% of the participants argued that the new legislation could be perceived as non-discriminatory, and 20% argued that the new law is a step in the right direction, whilst simultaneously recognising the right for everyone to enjoy free and full health care. The final 13% abstained from commenting, as they considered themselves lacking in knowledge on this issue.

In the third and final follow-up question the politicians were asked to explain the ambiguously formulated concept of “health care that may not be postponed” as stipulated in the new law. They were provided fixed response options, and also the final option to elaborate freely in their responses. Where 73% agree it is applicable to “life threatening diseases or injuries”, only 13% believes this to be the sole meaning of the term. Further, an approximate 60% of the respondents believe “diseases with a possible lethal outcome” ought to be covered; 33% argue for the term to also cover “chronic diseases”; 13% believe it falls under “the responsibility of a medically trained

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104 Question 2, see appendices 3 and 4
105 Question 3, see appendices 3 and 4.
professional to assess the concept”; and 13% went against this line of reasoning overall, arguing it unreasonable that medical staff would have to interpret the term themselves. Instead there should be a valid national interpretation to readily apply as required.

4.3 Analysis

In light of the above findings the complexity of the new law becomes evident. On the one hand the responses present a positive attitude towards the new legislation, as the majority regarded it as a step in the right direction. This was closely followed by the belief that it is also in conformity with international obligations, as stated by almost 40% of the respondents. At the same time, and somewhat contradictory, in the findings of the follow-up questions the majority of the respondents regard the legislation as discriminatory. This in turn, when applied together with reservations against the hard-to-interpret formulation of the some of the questionnaire questions and answer options, present a more unsatisfactory attitude towards the new legislation.

The results also provide indications to the central value of humanitarian beliefs in regards to questions of, inter alia, undocumented migrants’ right to health care. Furthermore, it demonstrates that the majority of respondents regard themselves as fairly knowledgeable of what the new law entails. These results are strengthened by the subsequent replies to the follow-up questions, where only a small percentage perceived themselves lacking in knowledge pertaining to the new law. Of great importance is also that an average of 23.7% regarded themselves as possessing only a small degree of knowledge in the field of human rights. The findings from the follow-up questions also reiterate the complexity of the term “health care that may not be postponed”, as there is a lack of agreement to the meaning of it found in the responses provided. Moreover, the follow-up questions illustrate vastly differing opinions as to what kind of obstacles there are to providing health care to undocumented migrants.

In conclusion, the findings from the questionnaire study and the follow-up questions indicate that there are political challenges present when regarding the new law and the principle of non-discrimination, which consequently, is thoroughly addressed in Chapter 5.
CHAPTER 5

5.1 Discussion

The first research question, whether the new Swedish legislation is reconcilable with international standards; is sufficiently answered in this discussion through the application of the principle of non-discrimination, as described in Chapter 2, onto the findings of the legal analysis performed in Chapter 3. The second research question; what are some of the political attitudes in Sweden in relation to discrimination, the new legislation and undocumented migrants’ access to health care, is answered in Chapter 4 through the analysis of the findings from the twofold questionnaire study. This analysis is also summarised below, in order to contrast the findings and discussions surrounding the first research question.

In examining several General Comments in Chapter 2 it becomes evident that they regard the principle of non-discrimination as a basic prerequisite to the implementation of human rights, and that no discrimination should be made between citizens and aliens, with General Comment No. 14 emphasising equal access to healthcare, especially for the most vulnerable or marginalised groups of society, such as undocumented migrants. The protection of all members of society, especially those considered most vulnerable is arguably considered a primary purpose of human rights.

In analysing the development of the Swedish law in Chapter 3 it becomes evident that the intention of the law is to improve the right to health care for undocumented migrants, all the while keeping Sweden’s international obligations in mind in the investigation of how to do this. Interestingly, the subsequent Bill Proposal suggests a legislation with a weaker protection of the aforementioned group’s right to health care, than the previous recommended amendment offering this group the same access to health care as citizens, put forth by the Inquiry among others. The Bill Proposal does not justify these weakened amendments sufficiently, it merely states that it is an improvement of the prevailing law.

Furthermore, in the referral process of the Bill Proposal, concerns about the new legislation’s compatibility with Sweden’s international obligations, in regards to the principle of non-
discrimination and undocumented migrant’s right to health care, are dismissed by the Government, who simply state that it is reasonable to treat non-citizens differently. They further refer back to that the prevailing legislation makes a distinction between citizens and non-citizens, and therefore, it ought to be reasonable this legislation can do the same. However, by merely referring to a substandard law, and in light of that this law was considered in need of review by the initial Committee Directive, and further that it arguably infringes on undocumented migrants to health care to a large extent, it appears that the Government fails to refute the critique adequately.

Another important aspect of the new legislation is the lack of clarity present in applying the concept of health care that cannot be postponed. Clarification of the legislation was especially requested by the both the Inquiry and various medical organisations in the bill referral process, since an unclear law allows for different interpretations and enforcements, risking discrimination in the treatment of people.

With the above findings at hand, the answer to the first research question is that the new Swedish legislation, as recognised by the Inquiry, does not meet international standards in regards to the principle of non-discrimination and the right to health care. In light of the international critique directed against Sweden prior to the amendments of the law, as voiced by Paul Hunt among others, in conjunction with the findings made by the Inquiry when investigating undocumented migrants’ access to health care in Sweden, a question arises: How come the Swedish parliament accepted a law, knowing that it did not meet Sweden’s international obligations? Since the aforementioned weakened Bill Proposal is a result of political negotiations, perhaps the answer can be found in the findings from the questionnaire study conducted amongst politicians.

Due to the new legislation’s infringement upon undocumented migrants’ human right to health care and thus its failure to meet international standards, it is interesting that the majority of the politicians that participated in the study regard themselves as fairly knowledgeable in the field of human rights, with an overwhelming majority considering the protection of human rights as their most central value, whilst also presenting the belief that the law is in line with Sweden’s international obligations. A tendency pointing to a discrepancy between the values held by the
participants, and their knowledge of how the new legislation in fact violates international standards, is presented when analysing the questionnaire responses. Whereas this trend is not equally represented in the answers to the follow-up questions, its presence in the first instance is still worthy of consideration. Why is it that values, such as those of human rights, are considered of great importance; and the respondents considered themselves capable of making decisions on matters pertaining to human rights; and still they appear unqualified to see the ways in which the new law fails to meet criteria specifically relating to this issue?

As pointed out, examined and applied, the non-discrimination principle is applicable in this instance, and the law examined goes directly against a non-discriminatory purpose in that it openly and clearly discriminates against a seemingly vulnerable group of society. So whereas the follow-up questions in the second part of the study present trends of participating politicians taking a more critical stance towards the new legislation, this is not considered the overall view presented by use of the questionnaire study. However, the summary presented through the second part of the study, assessing the new law both discriminatory and unclear, in that it applies the hard-to-interpret concept of ‘health care that cannot be postponed’, is further indicative of an uncertainty in how to successfully approach the issue. Recognising the limitations in applying the findings from both the first and second part of the study upon all politicians in Sweden, it appears difficult to answer how the law could pass. However, without generalising, the study does indicate dispersed political attitudes, with some politicians being less critical of the new legislation than others.

Despite not being able to answer why such law was passed, the findings presented still should contribute, and encourage, a critical discussion around undocumented migrants’ situation in Sweden and their right to health care.
CHAPTER 6

6.1 Summary and Conclusions

Undocumented migrants’ right to health care is an issue of complexity and importance. The non-discrimination principle is regarded, alongside fundamental rights, as what constitutes the basic provisions for human rights. It serves the purpose to effectively include all persons under its classification, including those of undocumented migrant status, within a state’s jurisdiction. By examining the principle of non-discrimination, and accurately describing it, the international standards are retrieved. The new Swedish legislation, providing undocumented migrants with access to some health care, is later measured against these standards in order to assess their compatibility. In order to conduct such comparison, an evaluation of the new legislation is performed. By providing an overview of the development of the legislation an assessment is made. The finding from this study is that the non-discrimination principle, as well as the right to health care, are regarded firmly established in international standards. The legislation, however, does not meet these standards.

Since the politicians in Sweden are ultimately responsible for passing new laws, their attitudes concerning new legislation, discrimination and undocumented migrants access to health care, are examined in order to gain an understanding as to why such an inadequate reform was accepted. In order to measure these political attitudes, a twofold quantitative study is conducted. Firstly, the result from analysing the responses from the first questionnaire does not correspond with the findings from the legal assessment. Many of the politicians participating in the study are of an opposite understanding, holding that the new law is in fact in compliance with Sweden’s international obligations. Secondly, in the follow-up questions, these findings are somewhat disputed, with a larger number of the participating politicians holding a negative stance towards the new legislation. In trying to understand why the legislation was passed, the low respondent rate from the study limits such generalisation. However, the new legislation is still in force, and continues to discriminate against and prevent undocumented migrants’ from enjoying their fundamental right to health care. Therefore, it is important that the situation is continuously critically studied, evaluated and discussed.
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**International Recommendations and Reports**

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**United Nations General Comments**


**Other**


Röda korset uppföljning 2013

Sida 1 av 1

Antal besvarade enkäter: 190

1 Ange ditt kön

Grundinformation

Svarsalternativ Antal svar Fördelning %
1 Kvinna 95 50.0

Medelvärde

2 Man 94 49.5 3 Inget av ovan 0 0.0

Medelvärde Std.avvikelse Median Undre kvartil Övre kvartil 1.50 0.50 1.00 1.00 2.00

2 Ange din partitillhörighet
3 Har du hälso- och sjukvårdsprofessionell utbildning?

Grundinformation

Svarsalternativ Antal svar Fördelning %
1 Ja 44 23.2

2 Fp 18 9.5

3 Kd 12 6.3 4 M 36 18.9 5 Mp 22 11.6 6 S 61 32.1 7SD 21.1 8 V 23 12.1 9 Ej partibunden 3 1.6

Medelvärde Std. avvikelse Median Undre kvartil Övre kvartil 4.94 2.00 5.00 4.00 6.00
**4 Var är du född?**

Grundinformation

Medelvärde Std.avvikelse Median Undre kvartil Övre kvartil 1.78 0.45 2.00 2.00 2.00

2 Nej 143 75.3 3 Specificera gärna profession här: 3 1.6
5 Vilken är din ålder?

Grundinformation

Svarsalternativ Antal svar Fördelning %
1<25år 10.5

Medelvärde

2 26-45 år 35 18.4
3 46 år eller mer 152 80.0

Medelvärde Std. avvikelse Median Undre kvartil Övre kvartil 2.8 0.41 3.00 3.00 3.00

6 Från vilka tre länder kommer flest asylsökande till Sverige för närvarande?
7 Hur många människor i världen var på flykt från sina hem under 2012 enligt UNHCR?
2 ca 7 miljoner 48 25.3 3 ca 17 miljoner 84 44.2 4 ca 77 miljoner 52 27.4

Medelvärde

Medelvärde Std. avvikelse Median Undre kvartil Övre kvartil 3.00 0.76 3.00 2.00 4.00

8 Ungefär hur många offer för tortyr räknar man med att det finns per år bland de asylsökande som kommer till Sverige?

Grundinformation
9 Vilket av följande symptom räknas inte in i PTSD (posttraumatiskt stresssyndrom)?

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**Medelvärde**

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10 Hur många Röda Kors Center för behandling av krigs- och tortyrskadade (RKC) finns det i Sverige?

Grundinformation
11 Vilka av dessa behandlingar/terapier används av Röda Korsets Center (RKC) för att behandla tortyrskadade?

Grundinformation
Svarsalternativ Antal svar Fördelning %
1 Psykodynamisk terapi 82 43.2 2 Kognitiv beteendeterapi (KBT) 133 70.0 3 Yoga 16 8.4 4 Eye Movement Desensibilization and Reprocessing 32 16.8

Medelvärde

Medelvärde Std.avvikelse Median Undre kvartil Övre kvartil 1.99 0.93 2.00 1.00 2.00

12 Hur många som får traumabehandling vid RKC, blir så pass bra att de kan fungera tillfredsställande i vardagen igen?

Grundinformation
13 Hur angeläget är det enligt din mening att Sverige ger statlig finansiering till tortyrskadebehandling för migranter?

Grundinformation
14 Anser du att det är rimligt att alla stater som skrivit under FN:s tortyrkonvention också definierar in tortyr som ett separat brott i respektive nationell lagstiftning?

Grundinformation
15 Har Sverige en lag som förbjuder tortyr?

Grundinformation
16 Anser du att brottsrubriceringar som misshandel/grov misshandel, våldtäkt/grov våldtäkt, frihetsberövande etc. är tillräckliga när det gäller brott med inslag av tortyrliknande metoder?

Grundinformation
17 Sverige har nyligen infört en lag som ger papperslösa samma rätt till subventionerad vård som asylsökande har, dvs."vård som inte kan anstå". Anser du detta vara:

Grundinformation
<table>
<thead>
<tr>
<th>Svarsalternativ</th>
<th>Antal svar</th>
<th>Fördelning %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I enlighet med Sveriges åtaganden i internationella konventioner</td>
<td>74</td>
</tr>
<tr>
<td>2</td>
<td>Allför generöst</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>En ofullgången reform</td>
<td>11</td>
</tr>
<tr>
<td>4</td>
<td>Ett brasteg på väg mot fullrätt till vård</td>
<td>97</td>
</tr>
</tbody>
</table>

**Medelvärde**

Medelvärde Std. avvikelse Median Undre kvartil Övre kvartil 2.68 1.42 4.00 1.00 4.00

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18 Hur mycket beräknades samhällets totala vårdkostnader öka för den offentliga vården genom denna lagändring?

Grundinformation
19 Upplever du att du har tillräckliga kunskaper om mänskliga rättigheter för att kunna fatta välinformerade och välavvägda beslut i frågor som aktualiseras i denna enkät?

Grundinformation
20 Upplever du att du har tillräckliga kunskaper om papperslösa levnadsvillkor för att kunna fatta välinformerade och välavvägda beslut i frågor som rör papperslösa personer?

Grundinformation
21 Vilka värden är centrala för dig när du ställs inför de frågor som aktualiseras i denna enkät?

Grundinformation

<table>
<thead>
<tr>
<th>Svarsalternativ</th>
<th>Antal svar</th>
<th>Fördelning %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Sveriges ekonomi</td>
<td>17</td>
<td>8.9</td>
</tr>
<tr>
<td>2 Nationell säkerhet</td>
<td>7</td>
<td>3.7</td>
</tr>
<tr>
<td>3 Nationell suveränitet</td>
<td>3</td>
<td>1.6</td>
</tr>
<tr>
<td>4 Kontrollerad migration</td>
<td>15</td>
<td>7.9</td>
</tr>
<tr>
<td>5 Smittskydd</td>
<td>29</td>
<td>15.3</td>
</tr>
<tr>
<td>6 Folkhälsa</td>
<td>66</td>
<td>34.7</td>
</tr>
<tr>
<td>7 Humanism</td>
<td>144</td>
<td>75.8</td>
</tr>
<tr>
<td>8 Vård- eller professionsetik</td>
<td>69</td>
<td>36.3</td>
</tr>
<tr>
<td>9 Internationell solidaritet</td>
<td>132</td>
<td>69.5</td>
</tr>
<tr>
<td>10 Skydd av mänskliga rättigheter</td>
<td>157</td>
<td>82.6</td>
</tr>
<tr>
<td>11 Annat, specificera</td>
<td>9</td>
<td>4.7</td>
</tr>
</tbody>
</table>

Medelvärde Std.avvikelse Median Undre kvartil Övre kvartil
7.81 2.11 8.00 7.00 10.00

22 Vilka värden bedömer du är centrala för dina kollegor/partikamrater när de ställs inför de frågor som aktualiseras i denna enkät?

Grundinformation

<table>
<thead>
<tr>
<th>Svarsalternativ</th>
<th>Antal svar</th>
<th>Fördelning %</th>
</tr>
</thead>
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<tr>
<td>1 Svensk ekonomi</td>
<td>33</td>
<td>17.4</td>
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<tr>
<td>3 Nationell suveränitet</td>
<td>6</td>
<td>3.2</td>
</tr>
<tr>
<td>4 Kontrollerad migration</td>
<td>24</td>
<td>12.6</td>
</tr>
<tr>
<td>5 Smittskydd</td>
<td>22</td>
<td>11.6</td>
</tr>
<tr>
<td>6 Folkhälsa</td>
<td>60</td>
<td>31.6</td>
</tr>
<tr>
<td>7 Humanism</td>
<td>137</td>
<td>72.1</td>
</tr>
<tr>
<td>---------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>8 Vård- eller professionsetik</td>
<td>60</td>
<td>31.6</td>
</tr>
<tr>
<td>9 Internationell solidaritet</td>
<td>124</td>
<td>65.3</td>
</tr>
<tr>
<td>10 Skydd av mänskliga rättigheter</td>
<td>142</td>
<td>74.7</td>
</tr>
<tr>
<td>11 Annat, specificera</td>
<td>8</td>
<td>4.2</td>
</tr>
</tbody>
</table>

Medelvärde Std.avvikelse Median Undre kvartil Övre kvartil

7.52 2.42 8.00 7.00 9.00
Appendix 2 - The Questionnaire (English version)

1. State your sex
   1. Woman 50.0%
   2. Man 49.5%
   3. None of the above 0.0%

2. State your political party affinity
   1. Centre Party 5.8%
   2. Liberal Peoples Party 9.5%
   3. Christian Democrats 6.3%
   4. Moderates 18.9%
   5. Swedish Green Party 11.6%
   6. Social Democrats 32.1%
   7. Sweden Democrats 1.1%
   8. Left Party 12.1%
   9. Not part of party 1.6%

3. Do you carry professional education within the field of health care?
   1. Yes 23.2%
   2. No 75.3%
   3. Please specify profession: 1.6%

4. Where were you born?
   1. Within Europe 15.8%
   2. Outside of Europe 3.7%
   3. In Sweden 81.6%

5. What is your age?

61
1. < 25 years 0.5%
2. 26-45 years 18.4%
3. 46 years or older 80.0%

6. From which three countries does Sweden receive most asylum seekers from at present?
1. Syria, Burma, Afghanistan 13.7%
2. Burma, Iraq, Afghanistan 1.6%
3. Afghanistan, Somalia, Iraq 13.2%
4. Somalia, Eritrea, Syria 73.2%

7. How many people were displaced from their homes in 2012 according to UNHCR?
1. Approximately 700 000 1.1%
2. Approximately 7 million 25.3%
3. Approximately 17 million 44.2%
4. Approximately 77 million 27.4%

8. Approximately, per year, how many of the arriving asylum seekers in Sweden are victims of torture?
1. Approximately 10 persons 0.0%
2. Approximately 100 persons 11.6%
3. Approximately 1000 persons 62.1%
4. Approximately 10000 persons 22.6%

9. Which of the following symptoms is not included in PTSD (post-traumatic stress syndrome)?
1. Headache 17.4%
2. Itching 69.5%
3. Concentration difficulties 8.4%
4. Sleep disturbances 11.1%
10. How many ‘Red Cross Centres for the treatment of war- and torture wounded’ are there in Sweden?
1. 3 36.8%
2. 5 42.6%
3. 12 11.1%
4. 23 3.7%

11. Which of the following treatments/therapies are used by the Red Cross Center (RKC) to treat victims of torture.
1. Psycho-dynamic therapy (43.2%)
2. Cognitive behavioural therapy (70.0%)
3. Yoga (8.4%)
4. Eye Movement Desensibilization and Reprocessing (16.8)

12. At to what rate do trauma-treatment recipients respond so well to this treatment that they can in effect function to a satisfactory level in day-to-day life?
1. Approximately 0.3 percent (1.1%)
2. Approximately 7 percent (7.9%)
3. Approximately 30 percent (31.6%)
4. Approximately 70 percent (53.7%)

13. According to your opinion on the matter, how pressing is it that Sweden provides state-funding for treatment of migrant torture victims?
1. Very urgent (77.9%)
2. Quite urgent (20.5%)
3. Not urgent (1.1%)
4. Improper (0.0%)
14. Do you find it reasonable that all states that have signed the Convention against Torture, also define torture as a separate crime within their respective national legislations?
   1. Yes (82.1%)
   2. Yes, but only if the societal situation would bring it up to date. (7.4%)
   3. No, it is not politically reasonable (3.7%)
   4. No, the number of refugees would increase (0.5%)

15. Does Sweden have a law that declares torture illegal?
   1. Yes (41.1%)
   2. No (23.7%)
   3. Essentially (22.6%)
   4. Do not know (13.7%)

16. Do you believe that crime classifications like assault/aggravated assault, rape/aggravated rape, deprivation of freedom etc, are sufficient enough to cover crimes that comprise elements of torture?
   1. Yes, these classifications are covered within the scope (20.0%)
   2. Yes, the legal and criminal proceedings work to a satisfactory extent (6.8%)
   3. No, as they lack precision regarding motive (51.6%)
   4. Do not know (19.5%)

17. Sweden has recently passed a new law providing undocumented migrants equal right to subsidised care as asylum seekers, i.e., “care that may not be postponed”. Do you find this:
   1. In accordance with Sweden’s obligations to international conventions (38.9%)
   2. Too generous (5.3%)
   3. An incomplete reform (5.8%)
   4. A step in the right direction to full right to health care (51.1%)
18. What is the estimated incurred cost to the ‘total health care cost of society’ due to this change in legislation?
1. Approximately 0.4 percent (85.3%)
2. Approximately 4 percent (9.5%)
3. Approximately 40 percent (1.1%)
4. Approximately 87 percent (0.0%)

19. Would you regard yourself as having enough knowledge of the field of human rights to make well-informed and well-founded decisions in issues brought to light in this survey:
1. Not at all (5.8%)
2. To a small degree (23.2%)
3. To a certain degree (58.9%)
4. To a high degree (10.5%)

20. Would you regard yourself as having enough knowledge of the situation for undocumented migrants to be able to make well-informed and well-founded decisions concerning questions pertaining to this issue?
1. Not at all (7.9%)
2. To a small degree (24.2%)
3. To a certain degree (55.3%)
4. To a high degree (10.5%)

21. Which values are central to you when faced with the questions presented in this questionnaire.

1. Sweden’s economic climate (8.9%)
2. National security (3.7%)
3. National sovereignty (1.6%)
4. Controlled migration (7.9%)
5. Disease prevention (15.3%)
6. Public health (34.7%)
7. Humanism (75.8%)
8. Professional ethics of health care workers (36.3%)
9. International solidarity (69.5%)
10. Protection of human rights (82.6%)
11. Other, specify: (4.7%)

22. Which values would you assess central to your colleagues/party comrades when faced with the questions presented in this questionnaire?
   1. The economy of Sweden (17.4%)
   2. National security (4.7%)
   3. National sovereignty (3.2%)
   4. Controlled migration (12.6%)
   5. Protection of diseases (11.6%)
   6. Public health (31.6%)
   7. Humanity (72.1%)
   8. Ethics of health care and profession (31.6%)
   9. International solidarity (65.3%)
   10. Protection of human rights (74.7%)
   11. Other, specify: (4.2%)

23. Is there anything you would like to add?

24. Please state your email address if you are willing to be contacted for an interview, which would be greatly appreciated.
Appendix 3 - The Follow-up Questions (Swedish version)

Hej!

För en tid sedan svarade du i rollen som beslutsfattare på en enkät från Röda Korset med tema migranthälsa, vård för papperslösa, tortyrskador m.m. I undersökningens avslutande del gav du ditt samtycke till att bli kontaktad för ytterligare frågor, detta är anledningen till detta mail. Under hösten arbetar undertecknad, verksam vid institutionen Globala Politiska Studier vid Malmö Högskola i samarbete med studenterna Hedvig Obenius, Evelina Svensson och Emma Wedin Lindgren med en djupare analys av svaren från enkäten, detta för att få en djupare förståelse av politikers kunskap om papperslösa i Sverige och deras mänskliga rättigheter. Mot denna bakgrund önskar vi nu några minuter av din tid för att svara på följande frågor. Dina svar kommer behandlas med absolut konfidentialitet och vi kommer även att skicka dig slutresultatet av vårt arbete.

Vi ber dig svara på frågorna nedan direkt i e-posten, det tar cirka fem minuter.

Vi är tacksamma för din medverkan!
Anna Lundberg

Docent i mänskliga rättigheter
Hedvig Obenius

BA Human Rights student
Evelina Svensson

BA Human Rights student
Emma W. Lindgren

BA Human Rights student

A. Finns inga svårigheter.
B. Kostnaderna för samhället.
C. Patientsäkerheten.
D. Diskriminerande lagstiftning.
E. Betalar man inte inkomstskatt är det orättvist att nytta sjukvården.
F. Inget av ovanstående. Vänligen specificera:

2. Anser du att den nya lagen om vård till papperslösa överrenstämmer med den mänskliga rättigheten om lika värde/ icke-diskrimineringsprincipen? Vänligen skriv kortfattat om varför, varför inte?

3. Den nya lagen ger papperslösa samma rätt till sjukvård som asylsökande, bland annat till “vård som inte kan anstå”. Hur tolkar du innebörden av detta begrepp?

A. Vård vid livshotande skador/sjukdom.
B. Vård vid samtliga sjukdomar som kan leda till dödligt utfall.
C. Vård för samtliga kroniska sjukdomar.
D. Det är upp till en sjukvårdsutbildad att bedöma.
E. Inget av ovanstående. Vänligen specifika:
Appendix 4 - The Follow-up Questions (English translation)

1. Which of the following statements applies to your perception of the difficulties with providing health care for undocumented migrants? Please rank your choices.
   A. There are no obstacles
   B. Societal costs
   C. Patient safety
   D. Discriminatory legislation
   E. Unfair to use the health care when not paying income tax.
   F. None of the above, please specify:

2. Do you believe the new law conforms to the human rights’ principle of non-discrimination? Please shortly explain why or why not.

3. The new law provides undocumented migrants with the same right to health care as asylum seekers, inter alia to “health care that may not be postponed”. How do you interpret the meaning of this term?
   A. Health care received at instances of life threatening diseases or injuries.
   B. Health care received at instances of diseases with a possible lethal outcome.
   C. Health care received at instances of chronic diseases
   D. The responsibility of a medically trained professional to assess the concept
   E. None of the above. Please specify: