

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

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# 1 Civic space developments in 2021

<b>1.1 Threats and hate directed at civil society organisations</b>	
Area	Safe space & protection
Topic	Verbal attacks and harassment
Impact	Major

During 2021, new reports of threats and hate directed at civil society organisations (CSOs) have emerged, leading to renewed attention on the issue. A short report published by the Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) shows that 10% of non-profit associations have faced threats and hate connected to their work within the past year, the majority of which have been subjected to it more than once. CSOs involved in advocacy are most affected, in particular political associations, labour unions, and associations working with for instance the LGBTQI+ community, migrants, and women. Among the affected CSOs, 26% responded that they had refrained from expressing certain opinions or from specific activities due to the fear of harassment. To which extent the results have been affected by the pandemic is unclear. The findings are in line with and complement earlier studies on the harassment faced by politicians, youth organisations, human rights activists, and volunteers. The harassment faced by CSOs and their representatives is concerning as it may lead to lower engagement in CSOs and harm their important work of civil society in upholding the rule of law.<sup>1</sup> Recognizing the issue, the government tasked MUCF with conducting an analysis of the extent and consequences of the harassment, threats and violence faced by CSOs during a one-year period, to be finalized in March 2022.<sup>2</sup> CSOs have also reported negative impacts of the ongoing pandemic, in particular on their ability to carry out their activities and advocacy, their finances and the number of members, and on their contacts with decision-makers. Despite the challenges brought on by the pandemic, the number of organisations considering closing down has not increased.<sup>3</sup> The negative effects may however deepen over time.

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<sup>1</sup> Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor*) (2021), [Hot och hat bland ideella föreningar](#), short report, 2 July 2021.

<sup>2</sup> Sweden, Ministry of Culture (*Kulturdepartementet*), [Uppdrag till MUCF att kartlägga omfattning och konsekvenser av hot och hat mot det civila samhället](#), press release, 8 June 2021.

<sup>3</sup> Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor*) (2021), [Ett år av utmaningar](#), report, 21 May 2021, p. 6.

<b>1.2 Democracy conditions for civil society funding</b>	
Area	Financing framework
Topic	Accounting and auditing
Impact	Major

Sweden has continued its societal debate and the preparation and adoption of measures to introduce and reassess conditions related to democratic values and governance for civil society funding.<sup>4</sup> New developments include the publication of an inquiry report suggesting the introduction of democracy conditions for funding from the Swedish Inheritance Fund (*Allmänna arvsfonden*),<sup>5</sup> which is an important source of funding for organisations working with children, young people, persons with disabilities, and since 2021 older persons. The amendments would prohibit the provision of support to actors which use violence or threats; violate the rights of others; discriminate against individuals or groups; support, defend, or call for such acts; or who work against the democratic system.<sup>6</sup>

CSOs have generally been positive to the inclusion of a democracy condition for support from the Swedish Inheritance Fund but have reiterated their concerns in relation to the wider project. These include for instance the risk of excluding individuals from civil society engagement due to the lack of clarity on who would be considered as a representative of a civil society organisation, thereby triggering the responsibility of the CSO, and the need to ensure that the requirements do not negatively impact organisations' ability to engage in civil disobedience, demonstrations, or the maintenance of separatist civil fora, such as women's groups.<sup>7</sup> 2021 also saw the publication of the inquiry report on ensuring data privacy and integrity in connection with the assessment of such requirements.<sup>8</sup>

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<sup>4</sup> Sweden, Ministry of Cultural Affairs (*Kulturdepartementet*) (2019), [Demokrativillkor för stöd till civilsamhället](#), web page, 17 June 2019.

<sup>5</sup> Sweden, Ministry of Social Affairs (*Socialdepartementet*) (2021), [Demokrativillkor för stöd ur allmänna arvsfonden](#), S2021/07063, inquiry report.

<sup>6</sup> Sweden, Ministry of Social Affairs (*Socialdepartementet*) (2021), [Demokrativillkor för stöd ur allmänna arvsfonden](#), S2021/07063, inquiry report, p. 4.

<sup>7</sup> Forum, Famna, Fremia, Giva Sverige (2021), [Remissvar på promemoria "Demokrativillkor för stöd ur Allmänna arvsfonden"](#), consultation brief, 20 December 2021.

<sup>8</sup> Sweden, The inquiry into support for civil society (Utredningen om granskning av stöd till civilsamhället), [Rätt mottagare: Demokrativillkor och integritet](#), SOU 2021:66, inquiry report.

<b>1.3 Criminalisation of participation in and support of racist organisations</b>	
Area	Freedom of association
Topic	Other, please specify: Criminalization
Impact	Major

The concern about anti-democratic organisations is also illustrated by a legislative report suggesting the introduction of a law to criminalise membership in racist organisations. The report highlights the increase in criminality motivated by racial persecution and suggests the criminalisation of participation in and the provision of support to organised racism. Organised racism is under the proposal defined in accordance with the constitutional delimitation of the freedom of association. This means limiting organised racism to refer to groups which through criminal activity persecute a group on the basis of ethnicity, skin colour, or race.<sup>9</sup>

Human rights organisations have criticised the proposal. For instance, Amnesty International Sweden considered the criminalisation to be unnecessary and ineffective, as existing laws already criminalise racist crimes and the narrow definition of organised racist groups risks excluding most groups from the scope of the provision. They also considered that the narrow definition could legitimise racism and persecution falling outside it, such as racism directed at religious minorities or wider groups, such as 'migrants'.<sup>10</sup> The freedom of association is also being reconsidered in the context of counter-terrorism and the government has proposed a constitutional change to exempt associations engaged in or supporting terrorism from the scope of the right.<sup>11</sup> Human rights and humanitarian organisations have raised concerns about the potential for over-extension of the delimitation in practice.<sup>12</sup>

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<sup>9</sup> Sweden, the Committee on a prohibition of racist organisations (*Kommittéen om förbud mot rasistiska organisationer*) (2021), [Ett förbud mot rasistiska organisationer](#), SOU 2021:27, inquiry report.

<sup>10</sup> Amnesty International Sweden (2021), [Synpunkter på betänkandet Ett förbud mot rasistiska organisationer \(SOU 2021:27\)](#), consultation brief, 6 September 2021.

<sup>11</sup> Sweden, Government of Sweden (*Sveriges regering*), (2021) [Föreningsfrihet och terroristorganisationer](#), Prop. 2021/22:42, legislative proposal, 28 October 2021.

<sup>12</sup> Swedish Red Cross (*Svenska Röda Korset*), (2021) [Svenska Röda Korsets yttrande över delbetänkandet Föreningsfriheten och terroristorganisationer, SOU 2021:15, med medskick från Internationella rödakorskommittén](#), Ju2021/01200, consultation brief, 16 June 2021.

## 2 Examples of civil society contributions to the rule of law

<b>2.1 Decision to establish National Human Rights Institution following civil society advocacy</b>	
Topic	Feeding into and supporting the work of independent authorities and bodies (e.g., judiciary, NHRI, Ombudsperson)

In 2021 the Swedish government and parliament decided to establish a National Human Rights Institution (NHRI) (*Institutet för mänskliga rättigheter*) to begin operations 1 January 2022 in Lund.<sup>13</sup> The decision is the result of a long process of advocacy by CSOs and international human rights actors and the culmination of repeated promises from decision-makers to establish such an institution in Sweden. The matter has been under inquiry for over 15 years.<sup>14</sup> For instance the Network for a Swedish Human Rights Institution (*Nätverket för en svensk människorätts-organisation*), consisting of human rights organisations working in Sweden has since 2015 been actively engaged in the question.<sup>15</sup> The operations of the NHRI, established as an independent agency, are regulated by law. Its tasks are to promote the fulfilment of human rights under domestic and international law. It shall in particular monitor, research and report on the respect and fulfilment of human rights; make proposals to the government on measures to secure human rights; participate in international cooperation; and promote education, research, capacity building, information, and awareness on human rights. The NHRI may also make proposals to the government to extend Sweden's international human rights obligations but may not deal with individual human rights complaints. The work of the NHRI shall be supported by an advisory council, which shall have a wide representation and provide the NHRI with knowledge and experiences from the human rights work of CSOs and other relevant actors.<sup>16</sup>

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<sup>13</sup> Sweden, Ministry of Labour (*Arbetsmarknadsdepartementet*) (2021), '[Nytt institut för mänskliga rättigheter placeras i Lund](#)', press release, 1 April 2021.

<sup>14</sup> Altinget (2021), '[Gör inte partipolitik av mänskliga rättigheter](#)', 19 March 2021.

<sup>15</sup> Lika Unika, '[Nätverk för en oberoende MR-organisation](#)', web page; Nätverket för en svensk Människorättsinstitution, *Med anledning av promemorian "Förslag till en nationell institution för mänskliga rättigheter i Sverige" Ds 2019:4*, Ku2018/02102/DISK, consultation brief.

<sup>16</sup> Sweden, [Lag \(2021:642\) om Institutet för mänskliga rättigheter](#), entered into force 1 January 2021, § 1-2, 10.

## 2.2 Civil Society Declaration of Intent for a strong democracy

Topic	Fostering a rule of law culture (including through advocacy towards public authorities, awareness-raising activities and civic education)
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In April 2021, almost 30 CSO representatives gathered for a democracy lab to conduct workshops on the Declaration for a strong democracy (*Deklaration för en stark demokrati*), which was launched in 2020 as a part of Sweden's work to commemorate the 100-year anniversary of its democracy. The workshop sessions, together titled the Democracy lab (*Demokratilabb*), resulted in the Civil Society Declaration of Intent (*Civilsamhällets avsiktsförklaring*) for a strong democracy during the next 100 years, discussed further in section 3.1.<sup>17</sup> The Declaration of Intent was created and adopted through a creative and problem-based process, including a wide representation of perspectives and experiences of a variety of CSOs. The process was based on the principles for the Swedish government's engagement and relationship-building with civil society, namely dialogue, quality, diversity, transparency, continuity, and independence and impartiality.<sup>18</sup> In the Declaration of Intent, CSOs independently formulate their contribution and commitment to a strong democracy. It is intended to inspire to democratic contributions and to clarify the role of CSOs in democratic development, and it includes commitments both internally within CSOs and externally, in their relations with wider society and the democratic system.<sup>19</sup> The Declaration of Intent was launched and presented to the Minister of Culture (*Kulturministern*), who is responsible for matters relating to democracy and civic space, in December 2021.<sup>20</sup>

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<sup>17</sup> Nationellt organ för dialog och samråd mellan regeringen och det civila samhället (NOD) (2021), '[NOD:s demokratilabb: en vecka av kreativa och konkreta arbetsprocesser](#)', 27 April 2021.

<sup>18</sup> Nationellt organ för dialog och samråd mellan regeringen och det civila samhället (NOD) (2021), Letter of intent ([Avsiktsförklaring](#)), official web page.

<sup>19</sup> Nationellt organ för dialog och samråd mellan regeringen och det civila samhället (NOD) (2021), [Ett starkt civilsamhälle för en stark demokrati](#), Civil Society Declaration of Intent.

<sup>20</sup> Nationellt organ för dialog och samråd mellan regeringen och det civila samhället (NOD) (2021), '[Civilsamhällets avsiktsförklaring överlämnad till kulturministern](#)', 10 December 2021.

## 2.3 European Court of Human Rights finds Swedish law on mass surveillance to violate human rights

Topic	Monitoring the legality and proportionality of laws, measures and practices; triggering the judicial review of laws, measures and practices and the enforcement of rulings; strategic litigation
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In May 2021, the European Court of Human Rights (ECtHR) issued a leading judgement against Sweden on the matter of secret bulk surveillance.<sup>21</sup> The case was brought to the ECtHR by Centrum för rättvisa, a Swedish foundation working for fundamental rights and freedoms through strategic litigation and advocacy.<sup>22</sup> In the case, the ECtHR found that the Swedish secret surveillance regime, including bulk interception of communications and intelligence sharing under the so-called FRA law (*FRA-lagen*), violated the right to privacy under Art 8 of the European Convention on Human Rights (ECHR). The ECtHR considered that although states have a wide margin of appreciation on surveillance relevant to national security, such a regime had to fulfil a number of key requirements for compliance with the ECHR. The Court found the Swedish regime to have three defects, namely the absence of i) a clear rule on destroying intercepted material not containing personal data, ii) a requirement that the privacy of individuals be considered in the decision-making on whether to share information with foreign partners, and iii) effective review after the fact.<sup>23</sup> Since the publication of the judgement, Sweden has adopted legislative changes to the FRA law which according to the government are intended to strengthen human rights protections and to facilitate the authorities' handling and exchange of personal information with other actors.<sup>24</sup> The Centrum för rättvisa has however criticized the measures for extending the mandate of the relevant authorities further and failing to take the necessary measures to ensure Sweden's compliance with the ECtHR judgement.<sup>25</sup>

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<sup>21</sup> European Court of Human Rights (ECtHR), *Centrum för rättvisa v. Sweden*, No. 35252/08, 25 May 2021.

<sup>22</sup> Centrum för rättvisa, Our mission ([Vårt uppdrag](#)), official web page.

<sup>23</sup> ECtHR, '[Grand Chamber judgment Centrum för rättvisa v. Sweden - Insufficient safeguards in bulk signals-intelligence gathering risked arbitrariness and abuse](#)', press release, 25 May 2021.

<sup>24</sup> Sweden, Government of Sweden (*Regeringen*), [Behandling av personuppgifter vid Försvarsmakten och Försvarets radioanstalt](#), Prop. 2020/21:224, legislative proposal, 13 September 2021.

<sup>25</sup> SVT Nyheter, [Trots domstolens kritik: FRA-lagen utökades innan brister åtgärdats](#), 27 November 2021.



## 3 Other relevant developments

### 3.1 Promising practice: the Democracy 100 years-project

2021 marked the 100-year anniversary of the first time both women and men were able to vote in the parliamentary elections in Sweden. During the past two years, the government therefore undertook a national democracy campaign titled Democracy 100 years – coalition for a strong democracy (*Demokratin 100 år – samlings för en stark demokrati*).<sup>26</sup> Within the scope of the project, the government involved various national and local agencies in activities to strengthen democracy and gave them additional funding and tasks related to the topic. Enhanced support was also provided to civil society to strengthen its contribution to the democratic system.<sup>27</sup> The campaign also included the creation of the Committee for a Strong Democracy (*Kommittéen Demokratin 100 år*) to plan, coordinate, and implement various activities to strengthen democratic participation, ownership, and resilience between 2018 and 2021. The work of the committee was directed at a wide range of actors including civil society, agencies, municipalities, and the school system. Specific activities were intended for instance to build the skills needed for the public to take an active part in democracy; encourage and inspire public participation in democratic processes; and strengthen the support for fundamental democratic principles.<sup>28</sup> The committee also developed the Declaration for a strong democracy (*Deklarationen för en stark demokrati*), intended to serve as a basis for democratic cooperation of the signing parties and to encourage clear commitment to democratic principles. Signing the Declaration entails signing on to democratic, human rights and rule of law principles and rejecting discrimination, extremism, xenophobia, corruption, and racism. The Declaration is directed at a variety of different societal actors including municipalities, regions, governmental agencies, organisations, and companies. All signing parties also had to define clear and tangible activities to be undertaken during the 2021 jubilee year.<sup>29</sup> The Declaration and connected activities led to the adoption of for instance the Civil Society Declaration of Intent, discussed above in section 2.2. A full list of the

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<sup>26</sup> Sweden, Government Offices (*Regeringskansliet*) (2021), Democracy 100 years ([Demokratin 100 år](#)), official web page.

<sup>27</sup> Sweden, Government Offices (*Regeringskansliet*) (2021), Assignment to authorities and support to civil society to strengthen democracy ([Uppdrag till myndigheter och stöd till det civila samhället för att stärka demokratin](#)), official web page.

<sup>28</sup> Sweden, The Committee for a Strong Democracy (*Kommittéen Demokratin 100 år*), Assignment ([Uppdrag](#)), official web page; [English](#).

<sup>29</sup> Sweden, The Committee for a Strong Democracy (*Kommittéen Demokratin 100 år*), Declaration ([Deklaration](#)), official web page; [English](#).

actors that have signed on to the Declaration and their individual democratic commitments for the year 2021 is available online.<sup>30</sup>

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<sup>30</sup> Sweden, The Committee for a Strong Democracy (*Kommittéen Demokratin 100 år*), Actors and commitments ([Aktörer och åtaganden](#)), official web page.