

Input - SR Disability Report on Artificial Intelligence and rights of persons with disability

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Introduction

The Swedish Disability Rights Federationⁱ is the national umbrella for organisations of persons with disabilities, founded in 1942, with **49 member organisations** representing approximately 400 000 persons. We are members of European Disability Forum, EDF, and we endorse their submission and the positions takenⁱⁱ

We welcome the thematic study on **Artificial Intelligence and the rights of persons with disabilities**, that will be presented to the Human Rights Council at its 49th session in March 2022, and hereby submit answers to the questionnaire B, intended for organisations of persons with disabilities, NHRI:s and civil society.

Questions

1. Please provide information about the extent to which technologies such as AI, ML and ADM are used in engagements between the individual and State bodies and private bodies in a way that allows persons with disabilities to better engage positively in society.

To answer this questionnaire, The Swedish Disability Rights Federation has contacted a few public agencies, organisations in civil society and researchers to get further information about any aspects related to disability rights in documents related to national policyⁱⁱⁱ. The answers we received have confirmed the knowledge gap we expected^{iv}. Almost none of the documents we have found mentions disability. When mentioned they lack understanding of the diversity of persons with disabilities and challenges related to privacy. There might be studies that we are not aware of.

1. The following relationships are of particular interest:
 - (i) the individual and State bodies (for example: the

distribution of social advantages, the determination of appropriate taxation/monitoring for taxation fraud, security including border control, the determination/monitoring of immigration status, humanitarian responses including during times of military conflict);

State budget to detect and prevent fraud of welfare benefits is increasing^v, not clear how much is used for AI, but there is already extensive use of AI, and exchange of data between Public Agencies. We have not found information about persons with disabilities and consent to share data. The Swedish Social Insurance Agency and The Swedish Tax Agency^{vi} are using AI to prevent fraud.

(ii) consumers and providers of goods and services (for example: advertising, pricing, accessing goods and services, paying for goods and services, the trend toward e-platforms to replace traditional service provision, and the development of appropriate products and services);

We have been in contact with Swedish Consumers^{vii} who are active in the area of Artificial Intelligence with the European organisation BEUC^{viii} and on national level. We find arguments for protection from discrimination etc, but not specific mentioning of disability.

(iii) workers/employees and employers (for example: recruitment, access to decent work, access to work, reasonable adjustments and other accommodations, health and safety monitoring and support, training and personal development, and disciplinary and termination procedures);

We contacted The Swedish Public Employment Agency as they are presenting more use of AI^{ix}, partly explained by budget cuts (and related to privatisation). ADM is used to help decide on individual support to get a job, text analysis of job ads and CV to decide need for training and to detect discrimination. The Agency expresses high hope that AI will help personalize support, and state it can include 60 variables, but so far the reports we have seen does not understand the challenges with personalisation and classification in relation to the human diversity of disability^x. It is difficult to analyse effects related to disability without independent research. There has been critique of accuracy of the system for assessing

support among staff at the Public Agency^{xi}. Data is also collected by the Swedish Public Employment Agency in a register with different impairments used to allow support or right to assistive technology, but we do not know how it is shared or used for AI, ML or ADM^{xii}.

We have no report to which extent use of AI for recruitment in private sector. We are aware of bias, and tests that exclude persons with disabilities. But how to know if you are excluded because of an algorithm, if you do not know it exists? There is need for further research on the risks of exclusion of persons with disabilities when AI is used for employment.

(iv) learners and the providers of education (for example: the development of equal access to education, inclusive education, and to information, in particular in identifying and remedying deficits in access, providing specific accommodations for persons with disabilities, raising the quality of education, and the utility, relevance, and reliability, of information); and

Many organisations of persons with disabilities and the National Agency for Special Needs Educations, SPSM are working to get better statistics to fulfil the right to education for persons with disabilities^{xiii}. Protecting sensitive data is raised as a barrier by the Swedish National School agency and complexity of consent from children to use data that in cases where there is a risk for identification of individuals.

The first European GDPR fine was related to facial recognition used for school attendance in Sweden.^{xiv} We have found an article about AI in schools for automatic accommodation to individual need for support. But, again, without any explicit mentioning of disability.

(v) individuals and their right to live independently and being included in the community (for example: policies and practices in support of independent living, including access to appropriate housing, essential services, healthcare, transport, and financial security).

Municipalities are using Automated Decision Making, ADM for income support. The municipality of Trelleborg use of ADM has gained a lot of attention^{xv}. But we have not found any study with the perspective of users with disabilities. We know for example that automatic speech recognition in Swedish has improved, but

still very far behind bigger languages, to allow persons with speech impairments or another native language than Swedish, to interact with a robot. Another issue is of course effects for persons with cognitive and/or psychosocial disabilities.

2. Please provide information about the extent to which technologies such as AI, ML and ADM pose a risk to the rights of persons with disabilities when deployed in relation to the areas highlighted in question 1.

Thanks to researchers like Jutta Treviranus^{xvi}, we are aware of the risks for discrimination when AI, ML and ADM are used, because of the great diversity of persons with disabilities, and multiple layers of a persons' identity. There are huge risks related to privacy, discrimination etc that remain hidden, because of lack of awareness. We need laws that protect persons with disabilities from algorithmic discrimination.

3. Please provide information on any formal complaints, official investigations, and related jurisprudence arising from allegations of discrimination against persons with disabilities in relation to the matters highlighted in response to question 2.

We are not aware of any case related to AI apart from the municipality of Trelleborg mentioned earlier but it is not related to disability.

4. Please provide information about all relevant criminal and civil laws, codes, regulatory mechanisms, cases and other determinations that address the rights of persons with disabilities and the matters highlighted in response to question 2.

The European process to propose a regulation for AI has been sent for national consultation^{xvii}. In the case of the EU regulation, we endorse the positions from EDF, mentioned in the introduction. We need protection from algorithmic discrimination and impact assessments of human rights, including universal design, before new technologies are introduced.

5. Please explain the effectiveness of these laws, codes and regulatory mechanisms in relation to the protection and advancement of the rights of persons with disabilities (for example: the reach of those rights, access to courts and tribunals and other enforcement mechanisms).

There is almost a total lack of enforcement of laws related to

rights of persons with disabilities in Sweden. The responsibility of services to citizens, although financed with tax, is fragmented between private and public organisations^{xviii}. Each monitoring public agency can decide themselves on complaint mechanisms, It is not effective, and puts extra load on persons with disabilities to navigate the system. Access to justice is extremely difficult.^{xix}

6. Please provide information on the extent to which persons with disabilities, civil society and organizations of persons with disabilities (OPDs) are consulted and participate in the development of policy and practices in relation to the matters outlined in questions 1 to 2 and the extent to which they are included on the same basis as others.

We are not consulted. There is general lack of understanding CRPD, also article 4,3 and general comment 2 and 7. We have found no research with disability rights perspective or universal design UD (article 4) even if UD is mentioned in the government bill from 2017. We asked the minister for digitalisation about AI and disability rights^{xx}, but the reply gave positions rather than concrete actions^{xxi}. We have also searched for mentioning of disability in the reports and new assignments to public agencies, but not found anything.

With limited resources it is hard to get enough knowledge about AI in civil society. We organised a seminar in 2019 with the researcher Jutta Treviranus participating online with participants from the public sector called AI that does not discriminate^{xxii}. We also attended some meetings of one of many networks, the initiative "AI agenda for Sweden". Civil society was represented by a researcher, a big international retail company, a business consultant, and a representative from our organisation. There were many other groups in the network consisting mainly of industry driven by commercial interests. The imbalance of power and the proposed text led to the decision that we could not endorse the conclusions in the AI Agenda^{xxiii} We proposed financing of courses on AI and disability rights that could be widely spread.

We represented EDF at the Fundamental Rights Forum 2021 in a session called Civic voice in AI regulation debate^{xxiv}. EU funding for research must be used in line with CRPD. Resources for full and effective involvement of OPD:s in line with CRPD general comment 7 are needed. Legislation on public procurement must also be updated. Maybe AI and ML could be used for monitoring of discrimination, accessibility to achieve better enforcement.

The Swedish Disability Rights Federation

i The Swedish Disability Rights Federation, founded in 1942, is an active member of European Disability Forum and the coordinating organisation for CRPD reporting within the network of Human rights within the United Nations Association of Sweden. <http://funktionenratt.se/om-oss/in-english/>

i Government measures to strengthen LBTQ rights collected 2nd of July 2019 <https://www.government.se/articles/2018/07/chronological-overview-of-lgbt-persons-rights-in-sweden/>

ii The European Disability Forum reports and submissions relevant to AI. [Powering Inclusion: Artificial Intelligence and Assistive Technology, Red lines for the use of Artificial Intelligence](#), [EDF response to the European Commission's public consultation for its White Paper on Artificial Intelligence \(AI\)](#), [EDF Plug and Pray report on emerging technologies](#)

iii Examples of documents in Sweden that we have checked with no mentioning of disability are: The government report National approach to Artificial Intelligence 2018, <https://www.regeringen.se/4aa638/contentassets/a6488cceb6f418e9ada18bae40bb71f/national-approach-to-artificial-intelligence.pdf> More reports without any reference to disability on reports from public agencies: https://www.digg.se/om-oss/regeringsuppdrag/avslutade-regeringsuppdrag/oppna-data-datadriven-innovation-och-ai#referensgrupp_inom_ai <https://smer.se/teman/artificiell-intelligens/> https://www.scb.se/contentassets/4d9059ef459e407ba1aa71683fcbd807/uf0301_2019a01_br_xftbr2001.pdf https://www.riksrevisionen.se/download/18.51e04443175c872ce6b29469/1605694925646/RiR%202020_22%20Anpassad.pdf

iv We informed key persons in research related to responsible AI of this study, and asked for help to find relevant studies. The answer was that they could not help and confirmed knowledge gap, despite financing of research from different sources among those the Wallenberg Program on Humanities and Society for AI, Autonomous Systems and Software <https://wasp-sweden.org/>

v Budget for fraud prevention in social security system <https://www.regeringen.se/pressmeddelanden/2021/09/statlig-offensiv-mot-fusk-och-valfardsbrottslighet-i-regeringens-hostbudget/>

vi Article on AI in Public Agencies work on fraud prevention 2020 <https://sverigesradio.se/artikel/7524761> and committee report to the Parliament in 2019 <https://data.riksdagen.se/fil/34F18C68-186C-42AF-A1EC-BA9EB549355B>

vii Reports on AI mentioning discrimination, but not specifically disability <https://www.sverigeskonsumenter.se/vad-vi-gor/digital-sakerhet-och-integritet/overvakningsbaserad-reklam/manipulation-diskriminering/>

viii Report from Swedish consumers <https://www.sverigeskonsumenter.se/vad-vi-gor/digital-sakerhet-och-integritet/ai-som-konsumenten-kan-lita-pa/> and BEUC on Artificial Intelligence <https://www.sverigeskonsumenter.se/media/kgbf3wya/beuc-ai.pdf>

ix Presentation of the Swedish Public Employment Agency use of AI https://www.youtube.com/watch?v=5il3vD4OfIc&list=PLW_9qN4TU_yc0XGswIwIDpSsaoDbcTynx&index=3

Reports about evaluations of services with AI support, a <https://arbetsformedlingen.se/download/18.45f2840b17863cf8a232e3a/1618234051151/Traffsakerhet-i-bedomningen-av-arbetssookande.pdf>

<https://arbetsformedlingen.se/download/18.45f2840b17863cf8a232e20/1618233371550/vad-avgor-traffsakerheten-i-bedomningar-av-arbetssokandes-stodbehov.pdf>
<https://arbetsformedlingen.se/download/18.45f2840b17863cf8a232e03/1618310640824/traffsakerhet-och-likabehandling-vid-automatiserade-anvisningar-rusta-och-matcha.pdf>

^x See AI Data-Driven Personalisation and Disability Inclusion, Mike Wald, 2021

<https://www.frontiersin.org/articles/10.3389/frai.2020.571955/full>

^{xi} Article in Swedish newspaper 2021-05-07

<https://www.dn.se/ekonomi/arbetsformedlingen-gar-vidare-med-omdiskuterat-ai-test>

^{xii} The Swedish Public Employment Agency data policy.

<https://arbetsformedlingen.se/for-arbetssokande/mina-sidor/uppgifter-om-digi-i-vart-register>

^{xiii} SPSM letter about the need for statistics, dilemma of sensitive data and data registered in public agencies

<https://www.spsm.se/contentassets/e738ae87431840eb81c6617f8d2b148c/skrivel-se---behov-av-statistik-om-funktionsnedsattningar.pdf>

^{xiv} First GDPR case in Sweden 2019 https://edpb.europa.eu/news/national-news/2019/facial-recognition-school-renders-swedens-first-gdpr-fine_sv

^{xv} Article about Trelleborg Automated Decision Making and litigation.

<https://www.tandfonline.com/doi/full/10.1080/1369118X.2021.1924827>

^{xvi} See for example Jutta Treviranus <https://www.w3.org/2020/06/machine-learning-workshop/talks/we-count-fair-treatment-disability-and-machine-learning.html>

^{xvii} <https://www.regeringen.se/remisser/2021/05/remiss-av-europeiska-kommissionens-forslag-till-forordning-om-harmoniserade-regler-for-artificiell-intelligens/>

^{xviii} Fragmentation mentioned in Roundtable report, RWI, 2017

<https://rwi.lu.se/publications/roundtable-report-swedish-national-human-rights-institution-exploring-models-options-roundtable-report-organised-raoul-wallenberg-institute-human-rights-humanitarian-law-lund/>

^{xix} Some examples mentioned in our report from Civil Society on List of Issues Prior to Reporting to the CRPD committee 2018. <https://funktionsratt.se/wp-content/uploads/2018/04/Inspel-till-fr%C3%A5gelista-till-FN-2018.pdf> In 2019 we coordinated a national report on the implementation of the CRPD, www.respektforrattigheter.se

^{xx} Questions to Anders Ygeman, March 2021 <https://funktionsratt.se/wp-content/uploads/2021/03/Skrivelse-Anders-Ygeman-20210322.pdf>

^{xxi} Reply to questions from Anders Ygeman <https://funktionsratt.se/wp-content/uploads/2021/04/Uppfoljande-skrivelse-med-fragor-efter-Funktionshinderdelegation-om-digitaliseringspolitiken.docx>

^{xxii} The Swedish Disability Rights Federation www.funktionsratt.se/ai

^{xxiii} We decided not to endorse an initiative called AI agenda for Sweden

<https://funktionsratt.se/wp-content/uploads/2020/03/Yttrande-ang%C3%A5ende-AI-agenda-f%C3%B6r-Sverige-2020-03-06.pdf>

^{xxiv} Recording of webinar at Fundamental Rights Forum 2021

<https://hybrid.fundamentalrightsforum.eu/Programme?session=c2Vzc2lvbjo5NDUzMg%3D%3D>