

تقرير باللغة الانجليزية حول قاعدة بيانات اللجوء في السويد لعام 2015



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روابط مواقع التواصل الاجتماعي في السويد



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aida

Asylum Information
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Asylum Information Database

Country Report

Sweden



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The information is up-to-date as of April 2015.

The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Statistics

Table 1: Applications and granting of protection status at first instance in 2014

| | Total applicants in 2014 | Refugee status | Subsidiary protection | Humanitarian Protection | Rejections (in-merit and admissibility) | Refugee rate | Subsidiary protection rate | Humanitarian Protection | Rejection rate |
|---|--------------------------|----------------|-----------------------|-------------------------|---|--------------------|----------------------------|-------------------------|--------------------|
| | A | B | C | D | E | $B/(B+C+D+E)$ % | $C/(B+C+D+E)$ % | $D/(B+C+D+E)$ % | $E/(B+C+D+E)$ % |
| Total numbers | 81,301 | 10,263 | 19,158 | 1,321 | 17,299 | 21.9% | 39.8% | 2.7% | 35.6% |
| <i>Breakdown by countries of origin of the total numbers</i> | | | | | | | | | |
| Syria | 30,583 | 1,759 | 14,584 | 10 | 1,286 | 9.9% | 82.6% | 0.05% | 7.2% |
| Somalia | 4,831 | 761 | 279 | 24 | 1,680 | 27.7% | 10% | 0.8% | 61.2% |
| Afghanistan | 3,104 | 621 | 339 | 497 | 861 | 26.7% | 14.6% | 21.4% | 37.1% |
| Serbia | 1,512 | 1 | 0 | 21 | 929 | 0.1% | 0% | 2.2% | 97.7% |
| Eritrea | 11,499 | 5,131 | 115 | 1 | 1,160 | 80% | 1.8% | 0.01% | 18.1% |
| Bosnia Herzegovina | 496 | 2 | 4 | 2 | 307 | 0.6% | 1.2% | 0.6% | 97.6% |
| Iran | 997 | 328 | 4 | 27 | 314 | 48.7% | 0.6% | 4% | 46.6% |
| Albania | 1,699 | 3 | 9 | 2 | 1,126 | 0.2% | 0.8% | 0.2% | 98.8% |
| Iraq | 2,666 | 117 | 89 | 195 | 314 | 16.4% | 12.4% | 27.2% | 44% |
| Kosovo | 1,474 | 2 | 6 | 61 | 782 | 0.2% | 0.7% | 7.1% | 92% |
| <i>Other main countries of origin of asylum seekers in the EU</i> | | | | | | | | | |
| Russia | 879 | 175 | 14 | 24 | 478 | 25.3% | 2% | 3.5% | 69.2% |

Source: Swedish Migration Agency
 Statistics on second instance decisions not available.

Table 2: Gender/age breakdown of the total numbers of applicants in 2014

| | Number | Percentage |
|-----------------------------------|---------------|------------|
| Total number of applicants | 81,301 | |
| <i>Men</i> | 54,817 | 67 % |
| <i>Women</i> | 26,484 | 32 % |
| <i>Unaccompanied children</i> | 7,049 | 8% |

Source: Swedish Migration Agency

Table 3: Comparison between first instance and appeal decision rates in 2014

| | First instance | | Appeal | |
|----------------------------------|----------------|------------|--------|------------|
| | Number | Percentage | Number | Percentage |
| Total number of decisions | 53,503 | | | |
| Positive decisions | | | | |
| Total | | | | |
| <i>Refugee Status</i> | 10,263 | 19 % | | |
| <i>Subsidiary protection</i> | 20,478 | 37 % | | |
| <i>Hum/comp protection</i> | 479 | 0.8 % | | |
| Negative decisions | 22,283 | 41 % | | |

Source: Swedish Migration Agency
 Statistics on second instance decisions not available.

Overview of the legal framework and practice

Main legislative acts relevant to asylum procedures, reception conditions and detention

| Title in English | Original Title (SE) | Abbreviation | Web Link |
|--|--|--------------|--|
| Aliens Act 2005:716 | Utlänningslagen 2005:716 | UtlL | < http://www.government.se/content/1/c6/06/61/22/bfb61014.pdf > (EN) < http://www.notisum.se/rnp/sls/lag/20050716.htm > (SE) |
| <i>Amended:</i> Act amending the Aliens Act 2009:1542 | Lag om ändring i utlänningslagen 2009:1542 | | < http://www.immi.se/lagar/aliens-act-amendments.pdf > (EN) < http://www.notisum.se/rnp/sls/sfs/20091542.pdf > (SE) |
| Reception of Asylum Seekers and Others Act 1994:137 | Lagen om mottagande av asylsökande 1994:137 | LMA | < http://www.notisum.se/rnp/sls/lag/19940137.htm > (SE) |

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

| Title in English | Original Title (SE) | Abbreviation | Web Link |
|---|--|--------------|--|
| Aliens Ordinance Act 2006:97 | Utlänningsförordningen 2006:97 | UtlF | < http://www.notisum.se/rnp/sls/lag/20060097.htm > (SE) |
| Ordinance on the Law on Reception of Asylum Seekers 1994:361 | Förordning om lagen om mottagande av asylsökande 1994:361 | LFA | < http://www.notisum.se/rnp/sls/lag/19940137.htm > (SE) |

Overview of the main changes since the previous report update

The report was previously updated in **December 2013**.

Statistics

- Sweden has remained one of the main destinations of asylum seekers in the EU. In 2014, out of a total 81,301 applicants in Sweden, 30,583 came from Syria, 11,499 from Eritrea, 7,863 were stateless, 4,831 came from Somalia and 3,104 from Afghanistan. Sweden reported the highest relative increase in applications in the EU for that year.

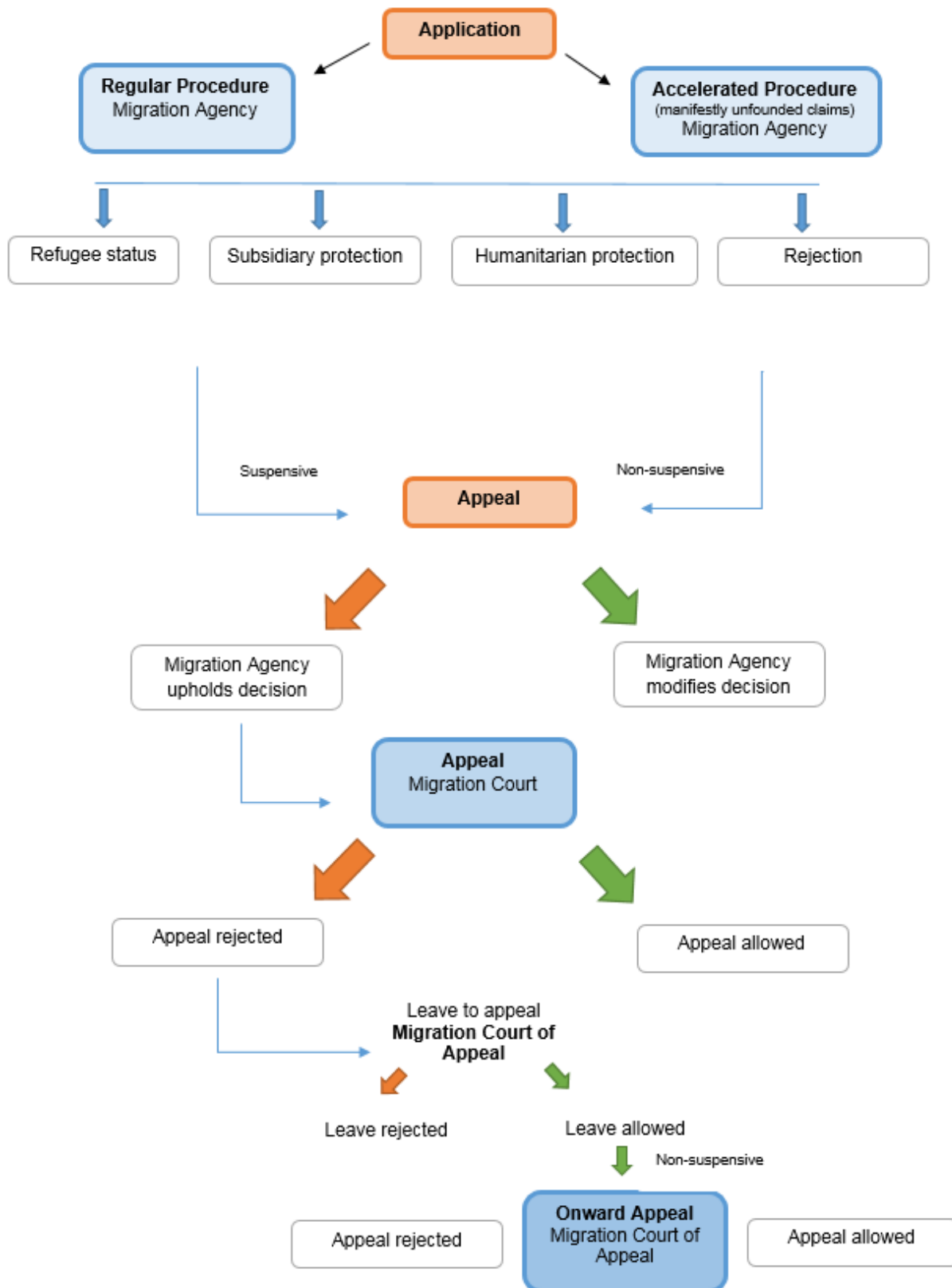
Procedure

- Applications by Syrians, Eritreans and – to some extent – Somalis are processed under a fast-track procedure. In 2014, 58% cases of Sweden's total asylum caseload were processed under this expedited procedure. The aggregate recognition rate for these 3 nationalities was 77% (including Dublin cases).
- In February 2015, however, Sweden modified its assessment of Southern Somalia from an "area of internal armed conflict" to an area where there is a high level of conflict failing to reach the level of intensity of a civil war. Following this assessment, Somali applicants need to prove that they have been individually affected by the conflict to be eligible for international protection. This new policy is expected to further reduce the recognition rate for Somalis, which already receded from 50% in 2012 to less than 40% in 2014.
- Applications from persons originating from Western Balkan countries, as well as Mongolia, are treated as "manifestly unfounded" under the accelerated procedure, whereby a decision is taken within 3 months. Human resources are directed towards rapidly processing these cases, not least in order to allow the expulsion of persons with legally enforceable removal decisions and make more accommodation available to new arrivals.
- Due to the fast-track processing of both "well-founded" and "unfounded" nationalities, however, applications from other nationalities are often put on temporary hold by the Migration Agency, thereby creating delays between the lodging of a claim and the personal interview.
- Following the European Court of Human Rights (ECtHR)'s ruling in *Tarakhel v Switzerland*, the Swedish Migration Agency (previously known as "Swedish Migration Board") issued a position on the judgment in December 2014. The Migration Agency's position makes a narrow reading of *Tarakhel*, by holding that the obligation of the sending state to seek individual guarantees from the receiving state does not apply in respect of applicants who do not belong to families with children or other vulnerable groups. Moreover, it considers that persons who already hold a residence permit in the receiving state do not enter the reception system upon return, and are therefore excluded from the scope of the ruling. The Migration Agency's position also holds that guarantees of reception conditions need not be requested until there is a legally enforceable decision and transfer is being planned.
- In 2014, a more comprehensive model for medical age assessments was introduced by the Migration Agency, in accordance with recommendations by the National Board of Health and Welfare. The model has developed a template and instructions for age assessments, which include a medical examination, but also an assessment by a pediatric expert. This mechanism is inoperative in practice, however, as pediatric experts refuse to make determination based on the data collected, thereby any leaving no probative value to the age assessments.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators:

Which types of procedures exist in your country? Tick the box:

- | | | |
|---|---|--|
| - regular procedure: | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - border procedure: | yes <input type="checkbox"/> | no <input checked="" type="checkbox"/> |
| - admissibility procedure: | yes <input type="checkbox"/> | no <input checked="" type="checkbox"/> |
| - accelerated procedure (labelled as such in national law): | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - accelerated examination ("fast-tracking" certain case caseloads as part of regular procedure): | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure): | yes <input type="checkbox"/> | no <input checked="" type="checkbox"/> |
| - Dublin procedure | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |

3. List of authorities intervening in each stage of the procedure

| Stage of the procedure | Competent authority (EN) | Competent authority in original language (SE) |
|---|--|--|
| Application on the territory | Migration Agency | Migrationsverket |
| Dublin (responsibility assessment) | Migration Agency | Migrationsverket |
| Refugee status determination | Migration Agency | Migrationsverket |
| Appeal <ul style="list-style-type: none"> • First appeal • Second (onward) appeal | <ul style="list-style-type: none"> • Migration Court • Migration Court of Appeal | <ul style="list-style-type: none"> • Förvaltningsrätten • Migrationsdomstolen • Kammarrätten i Stockholm, Migrationsöverdomstolen |
| Subsequent application (admissibility) | Migration Agency | Migrationsverket |

The police also has authority to intervene at all stages of the procedure. The government has authority to intervene in cases raising security issues.

4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

| Name in English | Number of staff | Ministry responsible | Is there any political interference possible by the responsible Minister with the decision-making in individual cases by the first instance authority? |
|------------------|--|----------------------|--|
| Migration Agency | 5,546 936 dealing with asylum cases | Ministry of Justice | Not in individual cases. However, each year, the Ministry of Justice sets targets for the Migration Agency in government regulatory directives. |

5. Short overview of the asylum procedure

The Migration Agency and Migration Courts

The administrative system in Sweden differs from the rest of Europe in terms of division of tasks. All government decisions in Sweden are collective and all public agencies are subordinate to but independent from the government. Unlike in other countries, Swedish Secretaries of State have limited discretion to take independent decisions. All government decisions are taken jointly by the Government. Different Secretaries of State are responsible for different areas and may also act as heads of ministries. Some tasks performed by ministries in other countries are performed by civil service departments in Sweden, which are overseen by a ministry. The Migration Agency, previously known as "Migration Board", is the central administrative authority in the area of asylum and subordinate to the Government as a whole. It reports to and cooperates at various levels with the Ministry of Justice. According to the Constitution, the Migration Agency is according fully independent from the Government or the Parliament in relation to individual decisions and the Government is prohibited from influencing its decisions. This also applies to the Agency's policy in different topics. The Migration Agency is responsible for the processing of applications for the coordination and division of tasks between the divisions of Asylum, Managed Migration and Citizenship. Its coordination of responsibility includes ensuring effective case management in line with Sweden's Alien and Citizenship Act, as well as upholding due process. The Migration Agency is also responsible for aliens without residence permits until such time when a permit has been granted and the person has settled in a municipality. Legal provisions pertaining to the Migration Agency are found primarily in the Aliens Act 2005 and the 2006 Ordinance with Instructions for the Migration Agency.

While an application is being examined or appealed, the asylum seeker is covered by the Reception of Asylum Seekers and Others Act 1994, which is applied by the Migration Agency. Once a decision has been reached in relation to a specific asylum application, two scenarios might occur.

- In case the application was successful, the Migration Agency Reception Unit is responsible for the facilitation of the asylum seeker's settlement in a municipality through cooperation with the Employment Agency (*Arbetsförmedling*).
- Where the application is, however, unsuccessful or a residence permit was refused, the asylum seeker will be returned to their country of origin.

Since the reform of the Aliens Act in 2006, Sweden has an asylum procedure where first instance decisions are taken in an administrative procedure by the Migration Agency, and appeals are dealt with on an adversarial basis at two levels in the administrative courts. A first appeal may be lodged before the Migration Court. There are currently 4 Migration Courts, which are special divisions of the County Administrative Courts (*Förvaltningsrätten*) in Stockholm, Gothenburg, Luleå and Malmö.

There is a further possibility to appeal before the Migration Court of Appeal (*Migrationsöverdomstolen*), to which leave to appeal has to be requested. The Migration Court of Appeal is a section of the Administrative Court of Appeal in Stockholm (*Kammarrätten i Stockholm*). For other administrative cases, the highest court of appeal is the Supreme Administrative Court (*Högsta förvaltningsdomstolen*) which, however, does not deal with asylum claims.

First instance procedure

Asylum applications can only be made at designated offices of the Migration Agency to which airport and port applicants are referred to.

Asylum cases can either be dealt with under the **accelerated procedure** cases or the **regular procedure**. Asylum applicants under both regular and accelerated procedures have similar rights to accommodation, financial allowances and health care. All applicants are issued with an administrative identity card (LMA card) which enables them to access benefits. Manifestly unfounded cases are dealt with in the accelerated

procedure and normally no legal counsel is granted, unless the applicant is an unaccompanied minor. Where the applicant has requested legal assistance, the decision not to appoint a legal representative at first instance can be appealed to the Migration Court. If not requested at first instance, legal assistance can be requested on appeal. However, there is no suspensive effect of appeals in manifestly unfounded cases so the request for legal aid may not be addressed before expulsion takes place. Decisions in accelerated procedures must be taken within 3 months from the lodging of an application.

The Migration Agency is responsible for examining all asylum claims at first instance but also for assessing subsequent applications and determining whether new circumstances can lead to a different outcome in cases that have already been fully processed and where there is a legally enforceable removal order.

Public legal counsel is appointed free of charge in all asylum cases in the regular procedure. The applicant can request a specific lawyer, but in most cases it is the Migration Agency that designates legal representatives. Interpreters are available at all stages of the procedure. There is always an oral interview at the Migration Agency, whereas at the Migration Court and the Court of Appeal level an oral hearing is not mandatory but can take place on request if it facilitates decision-making or is determined necessary in accordance with current practice as determined by the Migration Court of Appeal.

In **Dublin procedures**, the right to legal counsel is acknowledged at first instance for unaccompanied minors; other applicants only have a right to legal assistance only if exceptional grounds prevail. Such an exceptional situation could be established where the reception conditions in the receiving country are known to be poor and the principles in the European Court of Human Rights (ECtHR)'s ruling in *MSS v Belgium and Greece* apply.¹ At the appeal stage, a request for legal assistance can be made but will not automatically be approved, especially if the court deems that an appeal is unlikely to be successful (See guideline decisions from the Migration Appeals Board UM 5998-14 and UM 3055-14).² However, appeals against decisions in the Dublin procedure have suspensive effect.

Some NGOs such as FARR and Caritas offer limited legal assistance in Dublin cases. Assistance can be provided in making appeals which are submitted in the name of the applicant. Asylum seekers are also informed by some NGOs on the right to lodge appeals themselves and make submissions in their own language.

It is only since the implementation of the Dublin III Regulation that regular refugee and asylum lawyers have obtained the chance to come into contact with the intricacies of the Dublin system. This may over time lead to a desirable increase in legal expertise in this area.

Appeal

There are two levels of appeal. A first appeal is submitted before the Migration Court, and an onward appeal before the Migration Court of Appeal. First instance decisions must be appealed within 3 weeks, whether under the regular or the accelerated procedure. When a first instance decision is appealed, the appeal is first reconsidered by the Migration Agency. The Agency has the discretion to either change its earlier decision, should important new circumstances warrant that, or confirm the rejection. In the latter case, the appeal is forwarded by the Agency, sometimes with comments, to the Migration Court.

The appeal before the Migration Court has suspensive effect, except for appeals lodged against decisions rejecting a "manifestly unfounded" application in the accelerated procedure.

The appeal is a written procedure. The applicant has the right to request an oral hearing but this is only granted if it is deemed beneficial for the investigation or if it would result in a rapid determination of the

¹ ECtHR, *MSS v Belgium and Greece* (2011) 53 EHRR 2.

² Migration Court of Appeal, UM 5998-14, 19 December 2014; UM 3055-14, 19 December 2014.

case. If new grounds for seeking protection are presented for the first time at court level, the court may refer the case back to the Migration Agency for reconsideration. This is because an applicant has the right to have their protection grounds assessed at two separate instances.

The applicant or the Migration Agency have 3 weeks from the date of the Migration Court's decision to request leave to appeal to the Migration Court of Appeal. Leave to appeal is granted if "it is of importance for the guidance of the application of the law that the appeal is examined by the Migration Court of Appeal or there are other exceptional grounds for examining the appeal."³ Such exceptional reasons can exist where the Migration Agency has made a serious procedural error. Free legal aid is provided for the purpose of making an application for leave to appeal. If leave is granted, further legal assistance is provided.

The Migration Court of Appeal is the main source of precedent in the Swedish asylum system. Decisions by the Migration Courts are not deemed to have any special precedent-creating status, even though they may contain important legal reasoning.

The Migration Court of Appeal can exceptionally hold an oral hearing but in most cases there is only a written procedure.

Decisions of the Migration Court of Appeal are final and non-appealable. When the Migration Court of Appeal hands down its decision, the expulsion order is enforceable and the rejected applicant is expected to leave Sweden voluntarily within 2 weeks.

In national security cases, the Migration Agency is the first instance and the Migration Court of Appeal provides views on the appeal, but the Government is legally responsible for the final decision. However, if the Migration Court of Appeal determines that upon return there is a risk of torture or other breaches of Article 3 of the European Convention on Human Rights (ECHR), which has been incorporated into Swedish law, the Government has to abide by this opinion.

B. Procedures

1. Registration of the Asylum Application

Indicators:

- Are specific time limits laid down in law for asylum seekers to lodge their application? Yes No
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs? Yes No

The Migration Agency is the only authority responsible for registering an asylum application. Asylum applications can only be made at designated offices of the Migration Agency in Stockholm (Solna and Märsta), Gävle, Norrköping, Gothenburg and Malmö. If a person seeks asylum at an airport or port, they are referred to the Migration Agency.

There are no specific time-limits laid down in law within which a claim must be made. In reality, however, if a late claim is made, the applicant must put forward reasons for the delay during the asylum interview, but still risks having their credibility called into question for not having sought protection earlier.

³ Ch. 16 Section 12 Aliens Act.

There have been no reported problems for asylum seekers regarding the registration of their claim in practice.

2. Regular procedure

General (scope, time limits)

Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): N/A
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? Yes No
- As of 31 December 2014, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered 4,240

The Migration Agency has a wide range of tasks in the field of migration and has special units for different kinds of applications e.g. work permits, family reunification, citizenship and asylum. A law or political science degree is generally required to work on asylum cases. There are special units for dealing with Dublin cases.

Much effort has been put in by the Migration Agency in the last 2 years to reduce the waiting period for asylum decisions at first instance. Currently 54% of cases are decided within 4 months and there is no significant backlog. However, since 2013, the average waiting period for a first instance decision has increased from 3.5 months to 7 months. Even though more staff has been employed to compensate this delay, this has not had an immediate effect on average processing times.

At present, the Agency prioritises the expedition of processing of asylum applications submitted by Syrian and Eritrean nationals, under a practice that in most cases leads to a positive decision. Furthermore, the processing of manifestly unfounded cases, especially from applicants originating from the Balkans, has been streamlined into the accelerated procedure (see Accelerated Procedures below). Consequently, applications submitted by asylum seekers from other, non-prioritised nationalities can be put on temporary hold by the Migration Agency, thereby causing a prolongation of the timeframe between lodging an asylum application and the actual interview.

Appeal

Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
 - Yes No
 - o if yes, is the appeal judicial administrative
 - o If yes, is it suspensive Yes No
- Average processing time for the appeal body to make a decision: Not available

There are 2 levels of appeal in Sweden: The first level consists of 4 Migration Courts (*Migrationsdomstol*) and the second is the Migration Court of Appeal (*Migrationsöverdomstol*).

The Migration Court procedures

A refusal decision by the Migration Agency can be appealed before the Migration Court and has suspensive effect under the regular procedure.⁴ In manifestly unfounded cases, the appeal has no suspensive effect.⁵

Appeals are made to the 4 Migration Courts in Stockholm, Luleå, Malmö and Gothenburg. Appeals can be made both in relation to facts and/or points of law. The asylum seeker has 3 weeks after having been informed of the first instance decision to lodge an appeal.⁶ The decision is communicated in writing to the asylum seeker by a staff member of the Migration Agency's nearest reception centre with the assistance of an interpreter, often available by telephone, in a language understood by the applicant. It is the duty of the legal representative to contact their client to submit an appeal and examine the refusal decision. However, an asylum seeker can also refrain from appealing the decision by signing an appropriate form and withdrawing the claim.

An appeal can be lodged by the applicant in their own language, with some indication in Swedish or English – for practical reasons – as to the nature of the reasons for appeal. In a regular procedure an appeal is expected to be lodged in Swedish by the appointed lawyer but where no legal assistance is available the Migration Agency has a responsibility to ascertain the general content of a submission in a language other than Swedish and its relevance as a basis of an appeal. This does not mean that all the contents need to be translated in detail before a decision can be made. The appeal is formally addressed to the Migration Court but is sent first to the Migration Agency, which has the legal right to review its decision based on any new evidence presented. If the Migration Agency does not change its decision, the appeal is forwarded to the Migration Court which can independently decide if further translation is necessary.

Oral hearings at the Migration Court are not mandatory but can be requested by the asylum seeker through their lawyer. A decision has to be made by the judge on the matter of an oral hearing before the case is examined by the court. Where the court refuses an oral hearing, the applicant is given a set date by which the appeal must be completed. The 4 courts vary in the extent to which oral hearings are granted. In 2013, the national average was 20%: Malmö granted oral hearings in 33% of cases, Gothenburg in 21% of cases and Stockholm just 14%. Figures for 2014 are not available.

An oral hearing may be open to the public initially but before the proceedings start the judge inquires about the applicant's wishes in this respect and makes a decision accordingly. The judge may, however, outweigh the wishes of the applicant and declare that the hearing be video recorded e.g. in cases of national security.

Decisions are published but formulated in a way as to minimise any harm to the applicant. Names can be omitted on request and certain parts of the testimony can be declared confidential and therefore not be included in the final decision. The Courts' decisions are not available online. However, upon request, the general public has access to all decisions in paper or electronic version.

Asylum seekers in the regular procedure have free legal aid and are usually called to a meeting with the lawyer to prepare the appeal to the Migration Court. The reasons for the first instance rejection are explained and the applicant has an opportunity to provide new evidence or arguments to support his or her case. An interpreter is available at this meeting. On rare occasions, legal counsel may fail to submit the appeal in time and this means the case cannot continue. However, there is a mechanism whereby an appeal can be made to have the late submission accepted by the court. The outcome of such an appeal depends on whether there are any extenuating circumstances e.g. in the event of serious illness or death of the applicant's legal counsel. If all the elements of the appeal cannot be submitted within the 3-week period when an appeal has to be lodged, the legal counsel can ask for an extension to complete the

⁴ Ch 12 Section 10 Aliens Act.

⁵ Ch 8 Section 6 Aliens Act.

⁶ Ch. 23 Section 2 Administrative Law (Förvaltningslagen).

appeal. This is often granted. If the applicant wants an oral hearing at court, this has to be specifically requested. When this is done and the request is refused, however, the applicant is not always informed by counsel that the request has been turned down and can live in hope that he or she will be able to put forward their case in court.

The Migration Court of Appeal procedures

“Leave to appeal to the Migration Court of Appeal is issued if:

- (1) it is of importance for the guidance of the application of the law that the appeal is examined by the Migration Court of Appeal or
- (2) there are other exceptional grounds for examining the appeal.”⁷

In general administrative procedure law, there is a further ground for leave to appeal “if reason exists for an amendment of the conclusion made by the county administrative court”.⁸ However, this ground does not apply to the Aliens Act. Leave is only granted where an appeal may be of importance as a precedent, or if there are exceptional reasons, such as a serious procedural error made by the Migration Agency.

The applicant and the Migration Agency have 3 weeks to appeal to the Migration Court of Appeal after the delivery of the Migration Court’s decision to the applicant.⁹ Decisions of the Migration Court of Appeal are final and non-appealable.

The Migration Court of Appeal is the main source of jurisprudence in the Swedish asylum system. Decisions by the Migration Courts are not deemed to set precedent, even though they may contain important legal reasoning.

The Migration Court of Appeal can exceptionally hold an oral hearing but in most cases there is only a written procedure. Decisions on leave to appeal are taken by 2 persons, a judge and a case officer. There are no lay judges at the Migration Appeal Court; it only comprises qualified judges. If leave to appeal is granted, a decision is taken by 3 judges, while exceptionally important cases are decided by a panel of 7 judges.

Free legal aid is provided for public counsel to make an application for leave to appeal. If leave is granted, then further legal aid is provided. Until a decision on leave to appeal is handed down, the appeal has suspensive effect.¹⁰ If leave is refused, the expulsion order is legally enforceable.

In 2014, a total of 9,831 appeals were made to the Migration Court of Appeal, out of which 7,000 cases concerned asylum claims. Only 42 cases were given leave to appeal.

When the Migration Court of Appeal hands down its decision, the expulsion order is enforceable and the person is expected to leave Sweden voluntarily within 2 weeks.

In national security cases, where the asylum seeker is considered as a potential threat to national security, the Migration Agency is the first instance and the Migration Court of Appeal provides views on the appeal, but the Government is legally responsible for the final decision.¹¹ However if the Migration Court of Appeal determines that there is a risk of torture or other breaches of Article 3 ECHR, which has been incorporated into Swedish law, then the Government has to abide by this opinion.¹²

Personal Interview

⁷ Ch. 16 Section 12 Aliens Act.

⁸ Section 34a(2) Administrative Court Procedure Act (1971:291).

⁹ Ch. 16 Section 10 Aliens Act.

¹⁰ Ch 16 Section 10 Aliens Act.

¹¹ Ch. 2a Special Control of Aliens Act (Lagen om särskild utlänningskontroll) 1991:572.

¹² Ch. 10 Special Control of Aliens Act.

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure? Yes No
- If so, are interpreters available in practice, for interviews? Yes No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
- Are interviews conducted through video conferencing? Frequently Rarely Never

Swedish legislation and regulations allow for a personal interview in all asylum cases. All interviews, whether within the ambit of the regular or accelerated procedure, are carried out by the authority that is responsible for taking decisions on the asylum applications. These are carried out by officers of the Migration Agency and are divided into 2 phases. A reception officer interviews the applicant regarding personal details, health, family and general background and can also request that any supporting documents be provided. The asylum case officer carries out an interview to establish the basis of the claim in the presence of a legal representative, an interpreter and the asylum seeker. While video interviews are increasingly conducted, they remain a rare practice applied only if the applicant is residing at long distance from the Migration Agency's designated interview office.

The interview may be audiotaped by the asylum case officer but this is not mandatory. Since the asylum case officer only makes a recording for the purpose of double-checking the notes taken during the interview, the audio-recording is not considered formally part of the processing of the asylum application and therefore the permission of the asylum seeker is not required before a recording is made. For that reason, the tape is not made accessible to legal counsel or the applicant, although changes are currently being discussed with a view to making official recordings available to counsel.¹³ Legal counsel and/or the applicant can record the interview themselves with their own recording devices but there are no statistics that show how often this occurs.

Almost *verbatim* notes are taken and the transcript is made available to the applicant through the legal counsel to comment on and add to before a decision is made in the case.¹⁴ A specific date is given by the Board, usually 1 to 2 weeks for when these comments and additional information have to be submitted. They are often appended to or included in the written appeal.

The applicant may request an interpreter and counsel of the same gender. The Migration Agency is not legally bound to provide this but does its best to accommodate these requests.¹⁵ If the interpreter is lacking the necessary skills and this becomes apparent during the interview the case worker can abort the interview and rearrange for another time with a competent interpreter. In practice, if there is a clear problem with interpretation during the interview, then the asylum seeker can point to it and have the interview discontinued. In that case, a competent interpreter will be engaged on the next occasion. It is not possible for the authorities to select interpreters sharing the same religious belief as an applicant because it is forbidden in Sweden to register a person's faith. This means that the level of trust in the interpreter can vary and that sensitive issues may be avoided by the applicant. In the case of converts to Christianity, for instance, there is great sensitivity on this issue and a lack of knowledge of the relevant vocabulary has been noted by the authorities. Word lists have been prepared by the Swedish Christian

¹³ Migration Agency, *Information from senior legal adviser at the Migration Board provided to Caritas*.

¹⁴ The Migration Agency has introduced quality assurance procedures that retroactively require an analysis of how a case has been handled from various perspectives. This includes methods of promoting a learning organisation and check-lists have been introduced covering many issues. The team the case-worker belongs to examines quality assessment reports on a regular basis and the team-leader has the responsibility for establishing and developing good practice: Migration Agency, *Information provided to Caritas Sweden* (March 2015).

¹⁵ Note that Article 15(2)(c) APD introduces that obligation "wherever possible".

reduced by a decision of the Migration Agency or at a later stage by the Court. These decisions can be appealed separately by the legal counsel. On average, 10-15 hours of work is usually approved at the first instance for regular asylum cases and any hours beyond those have to be carefully motivated based on the exceptional nature of the case. Interpretation costs are reimbursed separately, along with other necessary expenses. Lawyers do not get paid for investigating country of origin information.

Other areas of legal practice are often better remunerated than asylum cases. Currently, the fees for asylum cases are around €150 an hour. At the Court level, the legal costs are higher if there is an oral hearing compared to a mere written procedure.

There are no special requirements for lawyers with regard to their knowledge of asylum and migration law. It is sufficient that they have a law degree in order for them to be appointed. The Migration Agency maintains a list of persons who have registered to be legal counsel in asylum and migration cases and distributes cases according to their availability. There are no requirements on legal counsel to pass any tests in this area of law and this means there can be an uneven level of competence which in individual cases can be to the detriment of the asylum seeker's protection grounds. The asylum seeker has the right to complain if the appointed legal counsel does not fulfil their duties and to request a new lawyer. However, this is rarely granted. Lawyers have to have seriously breached their professional duties to be removed from a case e.g. drunken behaviour or other gross misconduct not directly related to the handling of the substance of the case. Migration law is not very prestigious in the legal profession but initiatives have been taken at the Universities of Uppsala and Lund to give training to students at doctoral level in this field who will monitor and analyse current practice in international law.

3. Dublin

Indicators:

- Number of outgoing requests in 2014: 10,760
- Number of incoming requests in 2014: 3430
- Number of outgoing transfers carried out effectively in 2014: Not available
- Number of incoming transfers carried out effectively in 2014: Not available

Procedure

Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State?
Not available

Sweden interprets the Dublin Regulation rules rather strictly and respects the hierarchy established by the Regulation. The Swedish Aliens Act refers to the Dublin Regulation rules but not in detail since the Regulation has direct effect in Swedish law.

All asylum seekers are fingerprinted if they are 14 years or older and checked both in the Eurodac and Visa Information System (VIS) databases. Due to ongoing developments with VIS, the Swedish authorities predict an increase in Dublin cases where the responsibility lies on another EU country. In 2014, 10 760 requests were made, out of which 1,818 were based on VIS hits. So far in 2015, 2,463 requests have been made, out of which 259 were based on VIS information.

The applicant is initially informed in writing and orally that a Eurodac hit has been registered and is given the opportunity to register any objections to being sent to the assigned country. A decision is then made to formally transfer the person and this decision is communicated in person by the Migration Agency to the applicant. The applicant has to sign that this decision has been received. The reception officer then

discusses the practicalities of the trip to the designated country and indicates how soon this could take place. If the applicant appears willing to cooperate, a date is later fixed for the transfer. If the applicant does not cooperate, then the case will be handed over to the police for a forced transfer. A decision is also made to reduce the daily allowance to the asylum seeker because of their unwillingness to cooperate. The applicant is informed of the right to appeal in person and the right to write it in their own language if need be but also told that an appeal will not have a suspensive effect unless the Migration Court makes a different assessment.

Most Dublin transfers take place on a voluntary basis. However, a considerable number of applicants abscond, not least unaccompanied children. Asylum applicants are not detained when they are being notified that another country is responsible for assessing their asylum application. However, in 2012 a strategy was introduced and is being developed within a flexibility project of housing Dublin cases when a hit is recorded in Eurodac closer to the detention centres from which they can be transferred instead of allowing them to settle initially anywhere in Sweden.¹⁸ There are also ongoing discussions on detaining persons pending transfer or at least requesting them to report regularly to the Migration Agency to show they are still present in the country.

The Migration Agency has produced information sheets in a number of languages outlining the mechanisms of the Dublin Regulation, although technical issues such as the effects of the VIS system are not easily comprehensible to asylum seekers. The asylum seeker receives a copy of these and later a copy of the acceptance by the other Member State. The asylum seeker is informed that a request is being made and about the evidence the request is based on.

Of the outgoing requests made in 2014, 3,902 cases were “take charge” and 3,347 “take back”. Italy was the most frequent country with 3226 requests for transfer followed by Germany (1034), Norway (750), France (664) Spain (568) and Poland (526). 871 “taking charge cases” and 1818 “taking back cases” were refused. Outgoing requests according to Dublin II were 3567 in number of which 1427 were to Italy, 290 to Germany, 276 to France, 236 to Spain and 202 to Norway. The average case processing time for establishing Dublin cases by the Migration Board was 33 days (53 days for Italy).

Incoming requests according to Dublin III were 3430 of which 3258 were dealt with during 2014. Requests registered during 2014 under Dublin II amounted to 895 registered and 949 were addressed. Germany, Austria and Norway were the most frequent countries.

6,605 outgoing cases were resolved as follows; 2,271 persons left Sweden voluntarily, 3,772 persons absconded, 386 cases were forcibly removed by the police and 87 cases were written off.

As of April 2015, since the recast Dublin Regulation entered into force in January 2014, Sweden has made use of the “dependent persons clause”¹⁹ and the “discretionary clauses”²⁰ as follows: Sweden was deemed responsible under Article 16 of the Regulation for 3 cases in 2014 and 3 cases in 2015, while it has undertaken responsibility pursuant to Article 17 for 37 cases in 2014 and 126 cases in 2015.

The average processing time for all Dublin cases in 2014 was 196 days.

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
 Yes No

¹⁸ Migration Board, *Report from the Migration Board on increased flexibility* (1 November 2012).

¹⁹ Article 16 Dublin III Regulation.

²⁰ Article 17 Dublin III Regulation.

- o if yes, is the appeal judicial administrative
- o If yes, is it suspensive Yes No
Only upon request from the applicant and agreement from the Migration Agency
- Average processing time for the appeal body to make a decision as of April 2015:
 - o Migration Courts: 189 days in Gothenburg, 144 days in Malmö, 66 days in Stockholm, 165 in Luleå.
 - o Migration Court of Appeal: 39 days

In Dublin cases, there is no legal counsel appointed at first instance (except for unaccompanied children), so the asylum seeker must either appeal alone or seek the support of friends or NGOs. The appeals procedure is not different from the appeal system that applies in the regular procedure.

In line with Article 27 of the Dublin III Regulation, if an applicant requests for their appeal to have suspensive effect, the Migration Agency usually suspends the transfer until the decision of the Court. Moreover, appeals in Dublin cases are often expedited quickly by the Migration Court and the Migration Court of Appeal. The appeal body does not take into account the recognition rates in the responsible member state when reviewing the Dublin decision.

Occasionally, some courts will take into account the reception facilities of the destination country but this factor alone is not sufficient for the appeal to be successful. Following the ECtHR's ruling in *Tarakhel v Switzerland*,²¹ the Swedish Migration Agency issued a position on the judgment in December 2014.²² The Migration Agency's position makes a narrow reading of *Tarakhel*, by holding that the obligation of the sending state to seek individual guarantees from the receiving state does not apply in respect of applicants who do not belong to families with children or other vulnerable groups. Moreover, it considers that persons who already hold a residence permit in the receiving state do not enter the reception system upon return, and are therefore excluded from the scope of the ruling. The Migration Agency's position also holds that guarantees of reception conditions need not be requested until there is a legally enforceable decision and transfer is being planned.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure? Yes No
 - o If so, are interpreters available in practice, for interviews? Yes No

According to a guideline decision by the Migration Court of Appeal,²³ all Dublin cases are subject to a personal interview conducted by the Migration Agency through an interpreter but without the presence of legal counsel. However, in the case of an unaccompanied child, the guardian is present. The interview does not go into the asylum grounds in any detail but a brief outline of flight reasons is made in most of the interview documentation. Questions are asked about relatives in other EU countries, previous stays in EU countries, the health condition of the applicant, any objections to being sent to the responsible EU Member State, and attitude towards leaving voluntarily. A transcript of the interview is made but not normally communicated to the asylum seeker since it is only in Swedish. If there are close relatives in another EU country, Swedish authorities take no action to inform that country of the presence of a relative

²¹ App No 29217/12 (ECHR, 4 November 2014).

²² Migration Agency, 'Rättslig kommentar angående Europadomstolens dom i målet *Tarakhel mot Schweiz*, ansökan nr 29217/12' (Legal Comment regarding the European Court's judgment in *Tarakhel v Switzerland* (1 December 2012) available at: <http://lifos.migrationsverket.se/dokument?documentAttachmentId=41520>).

²³ Migration Court of Appeal, UM 607-06, 22 January 2007.

in Sweden, but await a request from the other country regarding the desirability of family reunification and written consent from the family present in Sweden to be reunited.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? Yes always/with difficulty No

The Migration Court can appoint legal counsel in Dublin appeals but does take into account whether the grounds for appeal raise issues that could lead to a change in the decision. The difficulties with regard to access to legal assistance in the regular procedure are also applicable here (see Regular Procedure: Legal Assistance).

Suspension of transfers

Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? Yes No
 - o If yes, to which country/countries? Greece

Following the *MSS v Belgium and Greece* ruling, all transfers to Greece are suspended where the person has not been provided with protection status there.

Sometimes, transfers can be suspended based on the individual circumstances of the case. Sometimes this decision is made by a court otherwise by the Migration Agency as a result of a subsequent application. In a 2013 ruling, the Migration Court ruled against the transfer of Syrian nationals to France under the Dublin Regulation on the ground that the Migration Board had not considered the risk of indirect *refoulement* i.e. whether the asylum seekers would face a risk of return to Syria once transferred to France.²⁴

4. Admissibility procedures

There is no admissibility procedure in Sweden.

5. Border procedure (border and transit zones)

There is no border procedure in Sweden.

6. Accelerated procedures

General (scope, grounds for accelerated procedures, time limits)

²⁴ Migration Court, UM 2739-13, 17 April 2013.

The law makes no express reference to “accelerated procedures”. However, under the Aliens Act, there is a basis for handling manifestly unfounded claims in an accelerated procedure. The Migration Agency may issue an enforceable return order, which is not suspended pending appeal, “if it is obvious that there are no grounds for asylum and that a residence permit is not to be granted on any other grounds.”²⁵

It is the Migration Agency that deals with applications under this procedure, while appeals are dealt with by the courts but only if the applicant is still present in the country.

A 2012 legal instruction, issued by the Head of the Legal Unit of the (then) Migration Board,²⁶ established that an expulsion with immediate effect should be considered in the following cases:

- the provision of false information in all essential elements;
- the application is unrelated to the right of asylum;
- the application presents manifestly insufficient grounds for asylum; and
- the application concerns newly born children in some cases, if the parent(s) have already been issued with a transfer decision.

The Migration Court of Appeal has ruled that the requirement of “*manifestly* unfounded” involves the ability to make a clear assessment regarding the right to a permit without any further examination.²⁷ The assessment should not be summary, by being solely based on the circumstance that the applicant has a certain nationality to which normally asylum is not being granted, for instance. The assessment of “manifestly” must always be based on the circumstances of the individual case.

Nevertheless, all asylum applications from Western Balkan states are currently treated as manifestly unfounded.

The time-limit for a decision under the accelerated procedure is 3 months. If the time-limit has not been respected the case will be dealt with by regular procedure.

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
 - Yes No
 - o if yes, is the appeal: judicial administrative
 - o If yes, is it suspensive? Yes No

There is no difference in time-limits in for lodging appeals under the accelerated procedure compared to the regular procedure (see Regular Procedure: Appeal). The same time-limit of 3 weeks after the decision is notified applies.

However, appeals against decisions taken in the accelerated procedure have no suspensive effect. In the meantime, the applicant can be removed by the police, in which case the appeal, if ever made, is abandoned. In fact, many applicants refrain from appealing and leave voluntarily in order to avoid forced removal and being issued with a re-entry ban.

Personal Interview

²⁵ Ch. 8, Section 6 Aliens Act. See also Ch. 12, Section 7 Aliens Act.

²⁶ Migration Board, “Rättschefens rättsliga ställningstagande angående avvisning med omedelbar verkställighet enligt 8 kap. 6 § utlänningslagen.” (Legal instruction from the Head of the Legal Unit regarding the expulsion with immediate enforcement under Chapter 8. 6 § Aliens Act) (2012) Legal Instructions, RCI 03/2012.

²⁷ Migration Court of Appeal, MIG 2006:7, UM 230-06, 31 October 2006; UM 2244-10, 22 December 2010.

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure? Yes No
 - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route? Yes No
 - o If so, are interpreters available in practice, for interviews? Yes No

- Are interviews conducted through video conferencing? Frequently Rarely Never

A personal interview is mandatory, as per a guideline decision of the Migration Court of Appeal.²⁸ There are no differences in the way the interview is carried out compared with the regular procedure apart the absence of a legal representative present. Occasionally, some NGOs or friends can assist with appeals but they are rarely present at the oral interview.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice?
 Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure?
 Yes not always/with difficulty No

The Aliens Act states that there is no automatic obligation to provide legal counsel in manifestly unfounded cases.²⁹ However, if the court is of the opinion that the case is not manifestly unfounded, then the court orders suspension of the expulsion order and legal counsel will be appointed. Such a case is referred back to the first instance if there is not sufficient information regarding material grounds for a permit to be granted.³⁰ The difficulties with regard to access to legal assistance in the regular procedure are also applicable here (see Regular Procedure: Legal Assistance).

C. Information for asylum seekers and access to NGOs and UNHCR

Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?
 Yes not always/with difficulty No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?
 Yes not always/with difficulty No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes not always/with difficulty No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?

²⁸ Migration Court of Appeal, MIG 2007:4, UM 607-06, 22 January 2007.

²⁹ Ch 18 Section 1 Aliens Act.

³⁰ Wikrén & Sandessjö, *Utlänningslagen med kommentarer* (Commentary on the Aliens Act) 9th edition (Norstedts Juridik 2010), 555.

Yes not always/with difficulty No

The official language of Sweden is Swedish and therefore all decisions are only written in Swedish. The 1994 Ordinance on the Reception of Asylum Seekers states that the Migration Agency must inform the applicants of UNHCR and NGOs that provide services to asylum seekers.³¹ There is also information in a variety of languages available through the Migration Agency on various aspects of the asylum procedure. This information is available on the website,³² and occasionally in printed form or in booklets at reception centres. Special efforts have been made to take into account the needs of information of illiterate persons by frequently using audio-visual methods. The website enables persons to have the text read out to them in Swedish or English. There are plans to make this service available even in other languages, notably Somali. The Agency has also produced material for children both unaccompanied and in families, explaining to them the asylum procedure in seven different languages.³³ Reception centres for asylum seekers also have leaflets available in a number of languages on the various aspects of the procedure, as well as on conditions of reception. A video explaining the asylum process and procedures has been produced by the Migration Agency in cooperation with NGOs. This video is frequently shown in the waiting room for asylum seekers. 7 to 12 languages – depending on the subject matter – have been selected, in which information is provided. The languages selected correspond to the main nationalities of asylum seekers arriving in Sweden in recent years (Syria, Somalia, Eritrea, Kosovo, Afghanistan, Iraq, Albanian, Serbia, Ukraine, Libya, Mongolia, Russia, Georgia, Nigeria, Azerbaijan and Iran).

The Migration Agency has also produced leaflets in the above languages containing specific information on the Dublin III Regulation, namely on the Dublin criteria determining the Member State responsible,³⁴ as well as on Dublin procedures followed after a country other than Sweden has been deemed responsible.³⁵ However, there is no specific leaflet for unaccompanied minors regarding the Dublin Regulation, as per Article 4(3) of the Dublin III Regulation.

Furthermore, at every stage of the asylum procedure, caseworkers have a duty to explain in their meetings with applicants the next stage of the procedure to each applicant. After a refusal at the first instance, each applicant is summoned to a meeting at the nearest office of the Migration Agency's 58 reception offices to discuss their situation and to be provided with information on the possible future outcomes of their case.

Information is also provided by NGOs, notably in this field by the Swedish Network of Refugee Support groups (FARR), which publishes on its website an 88-page booklet entitled *Goda Råd* (Good Advice).³⁶ This information on the entirety of the procedure focuses on what asylum seekers can do themselves to contribute to a fair process and contains links to other NGOs in Sweden. This information is available and can be downloaded in English, Swedish, Arabic, Russian, Spanish and Persian. The Swedish Refugee Advisory Centre and the Swedish Office of Amnesty International also provide online information in a number of languages which is of relevance to asylum-seekers.

There are some refugee groups that have formed their own organisations to support asylum seekers. One of these is an Eritrean organisation called AEASS, the Association for Eritrean Asylum Seekers in Sweden, which provides individual counselling and general information on asylum matters, though it as

³¹ Section 2a Ordinance on the reception of asylum seekers.

³² Migration Agency, *Protection and Asylum in Sweden*, available at: <http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden.html>

³³ Migration Agency, *For Children*, available at: <http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Children-seeking-asylum.html>.

³⁴ Migration Agency, *"I have asked for asylum in the EU – which country will handle my claim?"*, available at: http://www.migrationsverket.se/download/18.39a9cd9514a34607721425/1421422682336/dublin-vilket-land_en.pdf.

³⁵ Migration Agency, *"I am in the Dublin procedure – what does this mean?"*, available at: http://www.migrationsverket.se/download/18.39a9cd9514a34607721417/1421422698207/Dublinprocessen_en.pdf.

³⁶ FARR, *Good Advice for Asylum Seekers in Sweden* (2011), available at: http://www.farr.se/files/GodaRad/GR_engelska_2011.pdf.

not active as previously, due to current practice regarding Eritrean nationals. Another is the Swedish branch of the International Federation of Iranian Refugees (IFRS).

Information is also available at the detention centres to which UNHCR and NGOs have access. All detention centres have computers available with internet access for all detainees. Legal counsel also has an obligation to provide information on the asylum procedures to the client.

Despite all these efforts more needs to be done by all actors to make relevant information available in reality at the appropriate time for all asylum seekers taking into account their specific needs.

D. Subsequent applications

Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?
 Yes No
- Is a removal order suspended during the examination of a first subsequent application?
 - o At first instance Yes No
 - o At the appeal stage Yes No
- Is a removal order suspended during the examination of a second, third, subsequent application?
 - o At first instance Yes No
 - o At the appeal stage Yes No

When an asylum application has been rejected and the decision is final and non-appealable, there is a possibility for newly arising circumstances to be considered under the grounds of “impediments to enforcement”. Such new circumstances may give rise to a residence permit on humanitarian grounds or practical obstacles to removal,³⁷ or, if such a permit cannot be granted, lead to a re-examination of the initial case.³⁸

Under Section 18 of the Aliens Act, the Migration Agency may grant a residence permit where “new circumstances come to light that mean that:

- (1) there is an impediment to enforcement under [Article 3 ECHR or Article 33 of the 1951 Refugee Convention];³⁹
- (2) there is reason to assume that the intended country of return will not be willing to accept the alien;
or
- (3) there are medical or other special grounds why the order should not be enforced”.

If the impediment is only temporary, the Agency may grant a temporary residence permit or order the suspension of the removal order. Where the impediment is of a “lasting nature”, however, a permanent residence permit may be granted.⁴⁰ Decisions made pursuant to this provision cannot be appealed before the Migration Court and are final.

Conversely, Section 19 of the Aliens Act deals with subsequent applications invoking new circumstances where:

³⁷ Ch. 12, Section 18 Aliens Act.

³⁸ Ch. 12, Section 19 Aliens Act.

³⁹ Ch. 12, Sections 1-2 Aliens Act.

⁴⁰ Ch. 12, Section 18 Aliens Act.

- (1) these new circumstances “can be assumed to constitute a lasting impediment to enforcement referred to in [Article 3 ECHR or Article 33 of the 1951 Refugee Convention];⁴¹ and
- (2) these circumstances could not previously have been invoked by the alien or the alien shows a valid excuse for not previously having invoked these circumstances”.

Where these 2 cumulative criteria are met, and if a residence permit on humanitarian grounds cannot be granted, the Migration Agency must re-examine the case. Sur place reasons such as conversion to a new religion after a final decision can be grounds for reopening the case if there is a risk of persecution in the home country. The Migration Agency has no discretion to re-examine the application where these conditions are not met, however.⁴²

Section 19 therefore concerns new grounds for international protection and not humanitarian grounds or practical problems in enforcing expulsion. Accordingly, a negative decision on a subsequent application may be appealed. Submissions are made in writing and an oral hearing rarely takes place. There is no limitation in the number of subsequent applications that can be submitted, insofar as new grounds for protection are presented.

The refusal of entry or expulsion order may not be enforced before the Migration Agency has decided on the question of whether there will be a re-examination or, if such re-examination is granted, before the question of a residence permit has been settled by a decision that has become final and non-appealable.

Decisions made either not to grant re-examination, or to refuse a subsequent application on the merits, can be appealed to the Migration Court and further to the Migration Court of Appeal. A separate decision to stay the removal order must be made by the Court to prevent the expulsion order from being carried out in the meantime. An appeal must be lodged within the normal time-limit of 3 weeks following receipt of the negative decision.

In 2014, 6,200 subsequent applications were submitted. Decisions were taken in [11365] applications, while 948 cases were approved.

This requirement of providing a valid reason for not presenting new circumstances at an earlier stage can in practice undermine the absolute protection of Article 3 ECHR. In Swedish practice cases involving a real risk of treatment mentioned in Article 3 ECHR can be ignored if the applicant is deemed not to have had valid reasons for not presenting the facts earlier. This aspect of the law was criticised by legal expert and former judge Bertil HübINETTE in the official review of the Aliens Act in 2009 but the matter has yet to be addressed.⁴³ It is worth noting, nevertheless, that this provision of the Aliens Act is in line with the rules laid down by Article 40(4) APD on subsequent applications.

There is no free legal assistance in submitting a subsequent application. However, if the application is admitted for re-examination by the Migration Agency – or through a stay in the expulsion order at court level if the Migration Agency’s decision is appealed – legal counsel can be appointed. Asylum seekers can also approach NGOs for advice. However, the procedure is written and complex with statistically little chance of changing the negative decision, and applicants also have no access to free interpretation. It should also be noted that some NGOs have cut back their services to asylum seekers while others such as the Advisory Centre for refugees and asylum seekers are expanding their services in cooperation with the Church of Sweden.

⁴¹ Ch. 12, Sections 1-2 Aliens Act.

⁴² Ch. 12, Section 19 Aliens Act.

⁴³ Department of Justice, *Utvärderingsutredningen. Den nya migrationsprocessen (Evaluation Survey. The new migration process)* (June 2009) SOU 2009:56, available at: <http://www.regeringen.se/sb/d/11385/a/128855>.

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special Procedural guarantees

Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes No Yes, but only for some categories
- Are there special procedural arrangements/guarantees for vulnerable people? Yes No Yes, but only for some categories

The legal framework with regard to the needs of vulnerable asylum seekers is part of the 1994 Law on the Reception of Asylum Seekers (LMA). The LMA provides the legal framework and briefly mentions the provision for the needs of vulnerable groups. The issue of special needs of vulnerable asylum seekers is mainstreamed in the training of caseworkers. The Migration Agency has developed training courses for caseworkers who interview children and those who have completed this training are designated as case workers especially for unaccompanied children. Similar courses have been carried out and instructions issued in relation to women refugee claimants and claimants with LGBTI grounds.

Currently, there is a special working group at the Migration Agency looking at vulnerable groups from all aspects, as part of the impending transposition of the recast Asylum Procedures Directive (APD) into Swedish law. This means that there will be clearer indications in the near future how on the system will live up to its obligations in this field.

All asylum seekers are offered health screening and at least 50% take advantage of this. This is particularly important in relation to survivors of torture and traumatised persons. However, because of confidentiality rules, this information is not automatically available to caseworkers. The legal counsel can however request access to this information with the permission of the applicant.

Applicants who are mentally handicapped and unable to act as a legally competent person must have a guardian appointed by the County Court and no investigation shall take place until such a person has been appointed.⁴⁴

If special reports are needed to verify trauma of various kinds, the Migration Agency can grant an extension of the normal procedure time to accommodate this need and to collect additional documentation, for instance. However, in practice, the Agency tends to want to keep a tight schedule and often goes on to process a case even if all the material is not available.

2. Use of medical reports

Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm? Yes Yes, but not in all cases No

⁴⁴

Migration Board, "Rättsligt ställningstagande angående handläggning av psykiskt funktionshindrades vuxnas ansökningar om uppehållstillstånd när det gäller förordnande av förvaltare eller god man" (Legal Counsel's Legal position on processing of applications submitted by mentally disabled adults and with regard to appointment of legal representatives or legal guardians) (16 February 2012) RCI 05/2012, available at: <http://lifos.migrationsverket.se/dokument?documentSummaryId=26955>.

- Are medical reports taken into account when assessing the credibility of the applicant's statements? Yes No

The Aliens Act does not contain any guidelines for medical examinations and there are no routine or standard procedures to refer victims of trauma to a medical examination. The matter is under investigation by the Migration Agency but so far there are no institutionalised procedures.

The Swedish asylum procedure operates on the principle that any evidence can be admitted in support of an asylum claim. Therefore, the law does not expressly refer to the possibility of a medical certificate in support of the applicant's statement regarding past persecution or serious harm. As a result of the *RC v Sweden* ruling of the European Court of Human Rights,⁴⁵ however, Sweden has been reminded of the obligation on its authorities to carry out a medical examination if there is an indication from an initial non-expert medical report that the applicant could have been a victim of torture.

In such a case, the Migration Agency or the Migration Court is obliged to request an expert medical examination, based on the Istanbul Protocol, of the person and to pay for those costs. The certificate has to be formulated in accordance with the rules of the National Social Welfare Board and be signed by an expert in the field. Medical reports may also be requested and submitted by the asylum seeker or their legal counsel at any stage of the procedure. If the medical report plays an important role in the outcome of the case, then the costs may be reimbursed by the Court or the Migration Agency. In 2012, the Migration Board published guideline notes drafted by its Legal Unit, outlining when medical reports should be requested by the authority e.g. when there is evidence of torture.⁴⁶ These guidelines state that where asylum seekers invoke injuries resulting from having been subjected to torture or other egregious treatment on the basis of which international protection can be granted and submit a medical certificate in support, the latter should be paid out of public funds. Exceptions may be made in the where: (a) injuries are not disputed; (b) the Migration Agency intends to grant the applicant refugee status or alternative protection status; (c) the applicant's narrative contains extensive credibility gaps; and (d) the situation in their country of origin has changed to such an extent that the previous risks of torture and other egregious treatment on the basis of which international protection can be granted is considered to no longer exist.

If the Migration Agency finds that further investigation of the physical and/or psychological damage should not be at public expenditure, the applicant should be given reasonable time to submit further investigations at their own expense.

3. Age assessment and legal representation of unaccompanied children

Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?
 Yes No
- Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

Age assessment

⁴⁵ ECtHR, *RC v Sweden*, App No 41827/07 (ECHR, 9 June 2010).

⁴⁶ Migration Board, "Rättsligt ställningstagande angående medicinska utredningar av åberopade skador" (Legal guidance on medical investigations and reported trauma) (5 July 2012) RCI 20/2012, available at: <http://lifos.migrationsverket.se/dokument?documentSummaryId=27933>.

The Migration Court of Appeal has made it clear that the burden of proof lies with the applicant to establish their stated age as probable, with the aid of supporting documents, where available.⁴⁷

However, the Migration Agency has no duty to establish a specific age and the benefit of the doubt can be accorded to the asylum seeker.⁴⁸ Age assessment is also important if it is uncertain whether the applicant is older than 14 years of age. This has consequences regarding the possibility of taking and checking fingerprints in Eurodac and hence of finding another Member State who might be responsible for examining the asylum request.

Where documents or other evidence proving the applicant's age as probable are not available, the age stated at the time of lodging of the application is noted down. If doubts arise regarding the applicant's real age based on observation of their behaviour, then the claimed age can be altered in the records and the person is transferred to the procedure for adults. In other cases, the statements of the individual are examined and questions can be asked in order to try to determine the person's real age.

The Migration Agency has also offered a medical age assessment in ongoing cases that have been investigated, where the applicant has failed to make it probable that he or she is under 18 years either on the basis of documents or information provided in general.

There is no obligation for the Migration Agency to offer a medical examination; only a duty to inform the asylum seeker of the possibility. The cost of such an examination has to be borne by the applicant. Under that practice, the Migration Agency staff could therefore carry out subjective age assessments that cannot be appealed and may only be challenged if the applicant is able to engage professional expertise at his or her own expense.

The medical examination

If the age of an unaccompanied child is in doubt and establishing it is necessary for the proper handling of the application, then the Migration Agency could previously request that an age assessment be made using skeletal or dental evidence. This is not stipulated in law but is part of the practice directions of the then Migration Board. There are also guidelines from the National Social Welfare agency (*Socialstyrelsen*) on both the use and interpretation of results of age assessments.⁴⁹ The Migration Court of Appeal has also handed down a decision on the use and validity of such methods.⁵⁰ According to this judgment, no single method can be exact enough to establish the exact age of a person in their late teens. A more holistic approach is necessary in which all the factors must be weighed in by a paediatric specialist. Where an individual applicant refuses to participate in a medical investigation, this in itself is not sufficient to assume that the applicant is not a child.

A more comprehensive model for medical age assessments was introduced by the Migration Agency in 2014, in accordance with the National Board of Health and Welfare's recommendation.⁵¹ The model has developed a template and instructions for age assessments, which include a medical examination, but also an assessment by a pediatric expert.⁵²

⁴⁷ Migration Agency, Guideline Decision MIG2014:1.

⁴⁸ Article 25(5) APD.

⁴⁹ National Social Welfare Agency, "*Medicinsk åldersbedömning för barn i övre tonåren*" (*Medical age assessment of children in their late teens*) (26 June 2012) Doc. 31156/2011, available at: <http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18780/2012-6-54.pdf>.

⁵⁰ UM 6147-11, 13 October 2011.

⁵¹ See Migration Board, "*Rättsligt ställningstagande angående åldersbedömning*" (*Legal guidance on Age Determination*) (11 June 2014) RCI 13/2014, available at: <http://lifos.migrationsverket.se/dokument?documentAttachmentId=41082>.

⁵² For a critique of the reliability of medical examinations, see Gregor Noll, 'Junk Science? Four Arguments against the Radiological Age Assessment of Unaccompanied Minors Seeking Asylum' (7 January 2015) available at: <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=4914090&fileId=4914104>.

Yet this approach to age assessment has not worked in practice. First, currently only 2 counties in Sweden offer the service and the capacity for full age examinations as recommended is small, thereby resulting in very lengthy response times. The main reason for such delays is the fact that the certificates obtained from the county councils have completely lacked justification for the conclusions drawn and it has not been possible to obtain additional information upon request.

The probative value of the 2014 model is thus very limited and therefore seems to undermine the purpose of the investigation.

Guardianship

All unaccompanied children have the right to be represented by a guardian as soon as they have lodged an asylum claim. The law also requires that legal counsel be appointed promptly. Guardians need to be persons of high moral character and may come from different social backgrounds.

Every municipality, which is the responsible entity for the reception of unaccompanied children, has a "chief guardian" (*överförmyndare*) whose role is to assess a person's suitability to be a guardian. General knowledge of managing personal finances and common sense, combined with a personal and social involvement, are considered appropriate qualities.

There is no time-limit for the appointment of a guardian. Guardians are reimbursed for their costs and also receive a nominal fee. No requirements with regard to formal education or specialist knowledge in the field of asylum are imposed prior to eligible for appointment. All guardians are appointed by the chief guardian in the municipality and in many cases are increasingly frequently offered basic training courses. There are also national organisations for guardians that also organise courses and exchange views and experiences. Both established NGOs in the field of asylum and the Migration Agency offer courses for guardians. With the arrival of an increasing number of unaccompanied children in Sweden, the need for guardians is increasing. In order to maintain a certain level of quality, one national organisation of guardians is suggesting there should be a cap placed on the number of children assigned to one guardian. Currently, there are no available statistics on the average number of children represented per guardian.

No differences are made between Dublin cases, manifestly unfounded cases or regular procedure cases regarding the right to a guardian. Every unaccompanied child is assigned a guardian but, should an age assessment lead to the person being considered an adult, the assignment ceases.

In 2014, 4,971 persons sought asylum as unaccompanied children, with 1,142 coming from Afghanistan.

F. The safe country concepts

Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? Yes No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? Yes No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? Yes No
- Is there a list of safe countries of origin? Yes No
- Is the safe country of origin concept used in practice? Yes No
- Is the safe third country concept used in practice? Yes No

The safe country concepts are not applicable in Sweden. It is worth noting, however, that applications from specific countries of origin such as the Western Balkan states are treated as “manifestly unfounded” claims (see section on Treatment of Specific Nationalities below).

G. Treatment of specific nationalities

Sweden is one of the main destinations of Syrian asylum seekers. In 2014, out of a total 81,301 asylum seekers, 30,583 came from Syria, 11,499 from Eritrea, 7,863 were stateless, 4,831 came from Somalia and 3,104 from Afghanistan.

Applications by Syrians, Eritreans and, to some extent, Somalis as well as unaccompanied children are processed under an expedited procedure, which in 2014 led to decisions in 58% of Sweden’s total asylum caseload. This has also led to a recognition rate that is extremely high in current statistics, with 77% cases approved in 2014.

The recognition rate has varied from 25 to 35% for regular cases in previous years. The main reason for the hike is the large number of Syrian and Eritrean applicants who are almost always granted permission.

Persons obtaining positive decisions can be placed in municipalities as immigrants more quickly. Currently, many apartments rented by the Migration Agency are occupied by persons with legally enforceable expulsion orders (around 11,000) and persons with permanent residence permits awaiting a place as an immigrant in a municipality (around 12,000). Therefore giving priority to manifestly well-founded cases eases logistical pressure. The police have been instructed by the government to increase their efforts to expel persons with legally enforceable decisions still present in Migration Agency accommodation in order to make more accommodation available to new arrivals.⁵³

With regard to Somalia, Sweden has recently changed its policy by modifying its assessment of Southern Somalia from an area of internal armed conflict to an area where there is a high level of conflict failing to reach the necessary intensity level of a civil war.⁵⁴ In a situation of a widespread internal armed conflict, individuals need not prove individual grounds but only that they originate from that area. However, due to the changed assessment of the situation in Somalia, Somali asylum seekers now need to prove that they have been individually affected in order to be granted a residence permit. Therefore it is expected that the high acceptance rate for Somalis, already receding from 50% in 2012 to less than 40% in 2014, is likely to further drop.⁵⁵

Furthermore, many applicants from the Balkan countries have their cases treated as manifestly unfounded even if they are individually assessed. Decision-making resources are diverted to this group when there is a large influx of applicants in order not to miss the 3-month time-limit for dealing with a case as manifestly unfounded (see section on Accelerated Procedures above). Even though Sweden only registers the nationality of asylum seekers and not their ethnicity, many asylum seekers in this group are of Roma origin. Similar procedures are followed with regard to asylum applications from Mongolia.

Due to the fast-track processing of the above nationalities, applications submitted by asylum seekers from other, non-prioritised nationalities can be put on temporary hold by the Migration Agency, thereby causing a prolongation of the timeframe between lodging an asylum application and the actual interview.

⁵³ See also Government of Sweden, ‘Establishment of New Arrivals in Sweden to be Reformed’ (19 February 2015), available at: <http://www.government.se/sb/d/19557/a/254622>.

⁵⁴ Migration Agency, *Analysis av situationen i Somalia (Analysis of the Situation in Somalia)* (26 February 2015) available at: <http://lifos.migrationsverket.se/dokument?documentAttachmentId=41769>.

⁵⁵ As per Eurostat data, recognition rates include Dublin decisions as “rejection” decisions.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
 - o During the accelerated procedure?
 - Yes Yes, but limited to reduced material conditions No
 - o During the regular procedure:
 - Yes Yes, but limited to reduced material conditions No
 - o during the Dublin procedure:
 - Yes Yes, but limited to reduced material conditions No
 - o During the appeal procedure (first appeal and onward appeal):
 - Yes Yes, but limited to reduced material conditions No
 - o In case of a subsequent application:
 - Yes Yes, but limited to reduced material conditions No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

In Sweden, all asylum applicants have access to the benefits of the reception system. If they have their own resources, they must use these first, as the provision of reception conditions is conditional upon lack of sufficient resources.⁵⁶ The lack of resources is established at the initial interview with a reception officer of the Migration Agency at the moment when the asylum seeker lodges the asylum application.

However, applicants lodging a subsequent application do not have access to the full set of material reception conditions.

2. Forms and levels of material reception conditions

Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31 December 2014 (per month, in original currency and in euros):

| <i>Category of applicant</i> | <i>Allowance in accommodation centres with food provided</i> | <i>Allowance in private accommodation</i> |
|------------------------------|--|---|
| Single adult | 720 kr / €84 | 2130 kr / €225 |
| Adults sharing accommodation | 570 kr / €60 per person | 1830 kr / €198 per person |
| Child aged 0-3 | 360 kr / €39 | 1110 kr / €114 |
| Child aged 4-10 | 360 kr / €39 | 1290 kr / €135 |
| Child aged 11-17 | 360 kr / €39 | 1500 kr / €150 |

From the third child onwards, allowance is reduced by 50%.

Housing

Housing offered by the Migration Agency is either in an apartment, in a normal housing area or at a reception centre. Asylum seekers can choose to live at a centre but in that case they might need to move

⁵⁶ Ch. 15 LMA.

to a town where the Migration Agency can offer them a place. For decades, the general Swedish approach to accommodating asylum seekers has been based on a dispersal or solidarity principle where the “whole of Sweden” model is at the forefront. This means that every municipality is expected to be ready to accommodate asylum seekers. To facilitate this, each County Administrative Board encourages municipalities to sign agreements with the Migration Agency. The majority of municipalities have done this and the recalcitrant ones have been chastised in some contexts. The government is seriously considering whether to make the reception of asylum seekers mandatory, as it already is for the reception of unaccompanied minors.

If asylum seekers have money of their own, they must pay for accommodation themselves. If not, accommodation at a centre is free. Single persons need to share a room. A family can have its own room but must expect to share an apartment with other people. It is possible that asylum seekers are moved around within the centre or to another centre during the processing period.

In case an asylum seeker is granted a residence permit, and is entitled to an “Introduction Plan” to devise their education and professional plans and provide for language training, courses on Swedish society, vocational training and work experience, the Public Employment Service can in connection with the introduction interview, assist them to get housing in a municipality, when conducting the introduction interview. However, in most cases, refugees themselves arrange a housing contract themselves. It is only when they have a contract that they can begin their introduction programme and get more financial support for the coming 2 years. Failing this, they have to remain in their current accommodation (often at the Migration Agency’s facilities) until new accommodation is found and live off the same sum of money as an asylum seeker, but have the right to instruction in Swedish and to attend the orientation course in Swedish society.

In case asylum seekers are granted a residence permit on the basis of employment, they must arrange their own housing. If asylum seekers choose to arrange themselves for a place to live, they are as a rule personally responsible for the cost of their accommodation. If for any reason they cannot continue living in accommodation they have arranged themselves, it is possible for them to move to one of the Migration Agency’s centres that has capacity.

Financial allowance

The level of asylum financial support was set in 1994 and has not been raised or adjusted since. The monthly amounts of financial allowances differ for applicants staying in accommodation centres where food is provided free of charge (and the allowance only covers pocket money), and applicants staying in private accommodation, where the allowance should also cover food.

In any event, beyond food, the allowance should be able to cover clothes and shoes, medical care and medicine, dental care, toiletries, other consumables and leisure activities. If asylum seekers are granted a daily allowance by the Migration Agency, they receive a bank card where the money is deposited.

The levels of financial allowance are as follows:

| Category of applicant | Allowance in accommodation centres with food provided | Allowance in private accommodation |
|------------------------------|---|------------------------------------|
| Single adult | 720 kr / €76.50 | 2,130 kr / €226 |
| Adults sharing accommodation | 570 kr / €60 per person | 1,830 kr / €194 per person |
| Child aged 0-3 | 360 kr / €38 | 1,110 kr / €117 |
| Child aged 4-10 | 360 kr / €38 | 1,290 kr / €137 |
| Child aged 11-17 | 360 kr / €38 | 1,500 kr / €159 |

From the third child onwards, the level of financial allowance is reduced by 50%. Some NGOs are currently campaigning for these levels to be adjusted to the increase in living costs and for the elimination of

discrimination against third and subsequent children in relation to the amount of money that is made available.

Asylum seekers can apply for extra allowances for expenses that are necessary for a minimum living standard, such as cost of winter clothing, glasses, supplements, handicap equipment and infant equipment. This special contribution in some cases may be submitted for charges for medical, pharmaceutical and dental costs, which are partly subsidised.

However, the relatively low level of basic allowance means that most asylum seekers cannot buy new articles but turn to second-hand stores to provide for their clothing and other needs. It must be noted that the allowance for asylum seekers is considerably lower than the allowance for Swedish nationals in need of social assistance, which covers similar areas of support. The following table relating to the amount of the monthly social welfare allowance as of April 2015 illustrates this difference:

| Category | Asylum seekers | Swedish nationals on social welfare |
|--|------------------|-------------------------------------|
| Single adult | 2,130 kr / €226 | 3,880 kr / €412 |
| 2 adults | 3,660 kr / € 388 | 6,360 kr / €675 |
| 1 adult 1 child (aged 2) | 3,240 kr / €344 | 5,970 kr / €634 |
| 1 adult 2 children (aged 2-5) | 4,530 kr / €481 | 9,080 kr / €964 |
| 2 adults 2 children (aged 5-12) | 6,160 kr / €654 | 11,630 kr / €1,235 |
| 2 adults 3 children (aged 2-5-12) | 7,020 kr / €745 | 13,830 kr / €1,469 |
| 2 adults 4 children (aged 12-14-15-17) | 8,160 kr / €867 | 19,450 kr / €2,066 |

Sources: *The National Social Welfare Board and the Migration Agency*

3. Types of accommodation

Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 49,395
- Number of places in private accommodation: 26,459
- Number of places in other accommodation:⁵⁷ 2,633
- Number of reception centres:⁵⁸ 180
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
- What is, if available, the average length of stay of in the reception centres? 334 days
- Are unaccompanied children ever accommodated with adults in practice? Yes No

Housing offered by the Migration Agency is either in an apartment, in a normal housing area or at a centre. Asylum seekers can choose to live at a centre but in that case they will need to move to a town where the Migration Agency can offer them a place. Asylum seekers may also choose to opt for private accommodation with friends or relatives. However, the Migration Agency can only influence matters concerning the accommodation they themselves provide since they hold the contracts for the flats and can make demands on the owners regarding material conditions.

⁵⁷ Special homes for children where they cannot be accommodated with their family for social or health reasons, and safe houses for threatened women.

⁵⁸ This refers to the number of municipalities where the Migration Agency rents flats or other accommodation..

Occasionally, unaccompanied children under 18 are accommodated in foster families, who may also be close relatives. These families and the material conditions under which they live have to be approved by the local social welfare office. Unaccompanied children are never accommodated with adults.

Single women are housed together with other single women or single mothers taking into account language and which part of the world they come from. Families are kept together.

Accommodation facilities can be problematic for LGBTI asylum seekers as they can end up experiencing harassment. However, they can always request a transfer and also use the Applicants' Ombudsman, a complaints mechanism within the Migration Agency, or address their complaint to the Discrimination Ombudsman.

The preferred forms of accommodation for housing asylum seekers are individual flats which are rented in most municipalities working with the Migration Agency in Sweden. As of April 2015, over 63% of the 78,387 asylum seekers currently in Sweden live in such accommodation, while around 34% arrange private accommodation for which they receive no special rent allowance. Around 3% are housed in special accommodation for health or other reasons. The rent is free in accommodation provided for by the Migration Agency, as are electricity and water.

When there is a high influx of applicants, the Migration Agency has short-term contracts with hotels, camping sites, holiday villages and the like serving as temporary accommodation centres. In March 2015, there were 180 such contracts for temporary accommodation for up to 17,800 asylum seekers. There, the material and living conditions can vary and are in general not on a par with the regular accommodation. The Migration Agency phases out this temporary housing as the influx of new asylum seekers subsides or as accommodation is vacated because persons with expulsion orders leave the country. Asylum seekers who can no longer cope with living in private accommodation have a right to request a place with the Migration Agency but cannot choose where they will be placed. Asylum seekers can also move from Migration Agency accommodation to private accommodation. In both those situations the allowance to the asylum seekers is the same.

Persons at any stage in the procedure are housed under these conditions. Currently, the Migration Board has revised its estimated arrivals figure for 2015 from around 100,000 to around 80,000 based on the number of arrivals from January to March 2015.

Private housing is extremely rarely used by the authorities but, since asylum seekers have the freedom to choose where to live, private housing has played an important role.

4. Conditions in reception facilities

Asylum seekers are mainly accommodated in private houses and apartments rented by the Migration Agency in 180 municipalities across Sweden. Apartments are often located in a big apartment building and are considered as reception centres in the Swedish system but this is still on the basis of individual housing within the apartment buildings concerned. There are hardly any purpose-built large-scale open reception centres for asylum seekers being used in Sweden. Overall, this means that asylum seekers are very much in charge of their daily activities and are able to cook for themselves but are also responsible for cleaning their individual accommodation, buy their own food and so forth. In that respect, the level of financial allowance available to asylum seekers could raise difficulties in practice (see section on Reception Conditions: Forms and Levels of Material Reception Conditions above).

The Migration Agency is responsible for the reception centres and for supervising the accommodation they provide in ordinary flats in regular residential areas and to assist asylum seekers. The ordinary rules

for the number of persons per room do not apply to asylum seekers, so more people can live in a 3-room flat than is regularly the case when municipal authorities designate accommodation for citizens.

Most of the temporary accommodation is privately owned and in only a few places can asylum seekers make their own food. This is provided at the reception centre and complaints arise fairly frequently about the type and quality of the food served. Some centres have a skeleton staff and when, problems arise, it can take time to find a solution. The Migration Agency has also been criticised for not having staff visit these temporary centres to answer the many questions asylum seekers have about their situation.

While there are no reports on restrictions on leisure or religious activities, there are also complaints about the lack of organised activities during the asylum procedure. In some centres, *pro bono* organisations offer different activities and opportunities to learn Swedish in informal ways. The Migration Agency is currently examining ways of improving the level of meaningful activities with funding from the government and input from civil society.

5. Reduction and withdrawal of material reception conditions

Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?
 Yes No
- Does the legislation provide for the possibility to withdraw material reception conditions?
 Yes No

Under the Law on the Reception of Asylum Seekers (LMA), reductions in the asylum seeker's allowance can be made for adults if they refuse to cooperate in the asylum procedure or refuse to respect an expulsion order. Lack of cooperation may consist e.g. in refusing to take measures to obtain identity documents or refusing to appear at arranged appointments with the Migration Agency. Such a restriction of material reception conditions is not permitted in respect of children, however.

The lowest level of reduction is 24 kr (€2.55) per day but the intermediary level of 42 kr (€4.45) per day is the one most frequently used. Asylum seekers have the right to appeal these decisions to the County Administrative Court, however appeals are almost always rejected. These reductions are phased and amount initially to 35-40% of the allowance as indicated in the section on Forms and Levels of Material Reception Conditions above. Some people whom Sweden is unable to expel can live at this level for many years. Currently, there are almost 11,000 persons in this situation. They also lose the right to work after a final decision is taken on their case.

6. Access to reception centres by third parties

Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes with limitations No

Since most asylum seekers live in private flats, there is no problem of access for any interested groups or individuals. The Swedish Law on the Reception of Asylum Seekers (LMA) provides that information should be provided to all asylum seekers on organisations providing assistance to asylum seekers.

7. Addressing special reception needs of vulnerable persons

Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice? Yes No

The needs of vulnerable asylum seekers are taken into account in designating suitable accommodation and where needed they are placed in the vicinity of institutions that can provide expert care.

The Migration Agency has special flats available to accommodate the needs of persons who are in wheelchairs. Persons with various forms of physical handicaps can have their needs assessed by the staff of the local municipality, who base their assessments on the general rules for the population at large. The municipality makes recommendations regarding an individual's need for special care and the agreed costs are paid by the Migration Board. There is a contract with a Folk High School in Leksand to accommodate deaf asylum seekers. The Migration Agency can also in cooperation with the police arrange safe houses for threatened individuals, frequently women. In these situations, even the municipal social welfare authority can be involved.

The special needs of LGBTI persons are currently being addressed more seriously in the context of housing. The Swedish Association for Gays and Lesbians (RFSL) has successfully lobbied for LGBTI persons' interests and more effort is being made to find suitable solutions, which sometimes can consist in living in student-like corridor facilities

There is no separate accommodation provided for traumatised persons. There are specific homes for unaccompanied children where the municipality has the overall responsibility for the welfare of the children. Their needs are dealt with in accordance with general legislation in this field.

Municipalities also have the responsibility for meeting the welfare needs of all children and can arrange for them to be sent either alone or with their family to a suitable residence where they can obtain expert help in relation to their problems.

Currently, there is a special working group at the Migration Agency looking at vulnerable groups from all aspects, as part of the impending transposition of the recast Asylum Procedures Directive (APD) and Reception Conditions Directive (RCD) into Swedish law. This means that there will be clearer indications in the near future how on the system will live up to its obligations in this field.

8. Provision of information

Asylum seekers receive information with regard to the reception system for asylum seekers in Sweden, including with regard to housing and allowances at the initial interview at the Migration Agency when they lodge their asylum application. Such information is provided by the reception officer of the Migration Board. The following information is provided:

"Housing offered by the Migration Board (accommodation centre) is either in an apartment in a normal housing area or at a centre. If you choose to live at a centre you will need to move to a town where we can offer you a place. If you have money of your own you pay for the accommodation yourself. If you do not have any money the centre accommodation is free. Single persons will need to share a room. A family can have its own room but must expect to share an apartment with other people. It could be that you need to move around within the centre or to another centre during the processing period. If you are granted a residence permit, and are

entitled to an introduction plan, the Public Employment Service can in connection with your introduction interview, help you to get housing in a municipality. If you are granted a residence permit on the basis of employment, you must arrange your own housing. If you choose to arrange somewhere to live yourself you will as a rule be personally responsible for the cost of the accommodation. If for any reason you cannot remain living in accommodation you have arranged yourself, you can move to one of the Migration Board's centres where there is room for you. Contact the reception unit where you are registered for further information.

Apart from food, the daily allowance should be sufficient to pay for: clothes and shoes, medical care and medicine, dental care, toiletries, other consumables and leisure activities. If you are granted a daily allowance by the Migration Board you will receive a bank card where the money is deposited."

This information is provided both orally and in writing. In general fellow countrymen or other asylum seekers inform each other of more detailed aspects. Each asylum seeker also has access to a reception officer of the Migration Agency who can provide more detailed information. The number of languages documents are available in can vary from 8 up to 21 (information on the bank card). The information on housing is available in Albanian, Arabic, Bosnian, Croatian, Serbian, Persian, Romani, Russian, Somali, and Tigrinja.

9. Freedom of movement

There are no restrictions in law or practice to the freedom of movement of asylum seekers within Sweden. However if accommodation is requested from the Migration Agency, asylum seekers are not free to choose their place of residence.

B. Employment and education

1. Access to the labour market

Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? Yes No
- If applicable, what is the time limit after which asylum seekers can access the labour market: The day after the application for asylum
- Are there restrictions to access employment in practice? Yes No

Asylum seekers can be exempted from a work permit if they are able to establish their identity through original documents or authorised copies. If they are not able to do this at the time of application for asylum, they can do so later and in that case another decision will be made on their right to work. An asylum seeker is not granted a work permit but is thus exempted from the need to have one and is hence allowed to work. This right lasts until a final decision on their asylum application is taken, including during appeals procedures, and can extend beyond that if the applicant cooperates in preparations to leave the country voluntarily. If the applicant refuses to cooperate and the case is handed over to the police for expulsion procedures, then the right to work is discontinued.⁵⁹ Persons who are unable to substantiate their identity are still allowed to be at workplaces for short periods of time (with a maximum of 3 months at one place) but this is only to enable them to gain some work experience for which they may not be remunerated.

⁵⁹ Handbok i Migrationsrätt section AT-UND page 5 published by the Migration Agency. www.migrationsverket.se

Asylum seekers can generally not work in areas that require certified skills such as in the health care sector, so their choice is limited in practice to the unskilled sector. Jobs are not easy to get because of language requirements and the general labour market situation with high youth unemployment and a general unemployment rate of around 8%. Should an asylum seeker obtain a job offer at another place in Sweden, then they can move there and get nominal support towards living costs of 350 kr (€40) for a single person and 850 kr (€100) for a family. Those who obtain jobs are able to improve their economic situation and possibly to switch from being an asylum seeker to a labour market migrant if they manage to work 6 months before receiving a final negative decision at the second instance or after their appeal to the Migration Court of Appeal is refused. If their employer is at that stage able to offer a 1-year contract or longer, then they must apply for permission to work in Sweden within 2 weeks of the final decision entering into force. A successful applicant must have a valid passport and will receive a temporary permit of at least 1 year and at most 2. After 4 years on temporary permits, a person who still has a job can then apply for a permanent residence permit. These temporary permits allow for family reunification and the right of the spouse to work.⁶⁰

The ability to switch from an asylum seeker to a labour migrant was introduced by the current government as part of its policy to develop labour migration of third-country nationals to Sweden and to respond to situations where highly qualified persons amongst rejected asylum seekers with skills needed in Sweden and who had shown through work experience that they had the required proficiency and knowledge would have a chance to access the labour market. The fact that such a person has desired labour market skills does not in any way influence the assessment of the asylum grounds.

2. Access to education

Indicators:

- Does the legislation provide for access to education for asylum seeking children?

| | |
|---|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|-----------------------------|
- Are children able to access education in practice?

| | |
|---|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|-----------------------------|

Asylum seeking children have full access to the Swedish school system and they are to a great extent integrated in regular schools. They are not covered by the law obliging children between the ages of 6 and 16 to attend school but have the right to attend, if they so wish. The right to go to school has also been confirmed in law for those children still present in Sweden with an expulsion order and who have absconded with their parents.⁶¹

Children also have the right to lessons in their own mother tongue on a regular basis if there are more than 5 pupils with the same language in the area. Itinerant home language teachers are employed. Children between 16 and 19 often have to attend a preparatory course to improve their skills in Swedish and other core subjects before being able to access vocational education. Nevertheless, once they have gone through this preparatory phase they are not prohibited in theory from taking a vocational course. If a teenager begins a 3-year course at the age of 16 or 17 and is still in Sweden without a permit 2 years later, they will be allowed to continue their course. However, persons who are over 18 upon arrival in Sweden have no access to secondary education.

Adults do not have general access to the education system as asylum seekers. For adults, Caritas has recently witnessed a worsening of provisions. Up to 2 years ago, the Migration Agency organised instruction in Swedish for asylum-seeking adults but this was discontinued in January 2012 as the Agency had succeeded in curtailing the waiting period for their asylum decisions to 3-4 months and therefore there was little point in offering courses in Swedish. No organised activities are offered at a general level

⁶⁰ Ch. 4a Aliens Ordinance.

⁶¹ <http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Arenden/201213/UbU12/>.

currently but the Migration Agency is in the process of addressing this matter and changes are expected in the second half of 2015. Some NGOs and churches offer shorter courses in Swedish on a regular basis.

C. Health care

Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?
 Yes No
- In practice, do asylum seekers have adequate access to health care?
 Yes with limitations No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
 Yes Yes, to a limited extent No

During the asylum process and until the asylum seeker leaves Sweden or is granted a residence permit, they are entitled to necessary medical care as provided by the LMA. This law is also applicable to asylum seekers who are granted temporary protection under Chapter 21 of the Aliens Act – in the event of a mass influx of displaced persons – but ineligible for registration in the population registry.

County councils are the authorities that are responsible for district health centres (*vårdcentralen*), hospitals and the National Dental Service (*Folktandvården*).

Adults' right to health and medical care

Every asylum seeker has the right to a free medical examination. They are entitled to emergency or urgent medical and dental care. The local county council decides on what kind of care that includes. They are also entitled to gynaecological and prenatal care, as well as care in accordance with the Swedish Communicable Diseases Act.

Children's right to health and medical care

Children and teenage asylum seekers under 18 are entitled to the same health care as all others who live in Sweden.

Fees for health and dental care

Asylum seekers pay 50 kr (€5.30) to see a doctor at the district health centre or to receive medical care after obtaining a referral. Other medical care, such as with a nurse or physical therapist, costs 25 kr (€2.65) per visit. Medical transportation costs €5. The fee for emergency care at a hospital varies from county to county.

Medication

Asylum seekers pay no more than 50 kr (€5.30) for prescription drugs. That applies to children as well.

The 400 kr (€42) rule

If an asylum seeker pays more than 400 kr (€42) for doctor's appointments, medical transportation and prescription drugs within 6 months, they can apply for a special allowance. The Migration Agency can compensate for costs over 400 kr. The "400 kr rule" applies individually for adults and common for siblings under 18. Dental and emergency hospital care are not covered.

Detention of Asylum Seekers

A. General

Indicators:

- Total number of asylum seekers detained in 2014 (including those detained in the course of the asylum procedure and those who applied for asylum from detention) 3201
- Number of asylum seekers detained or an estimation at the end of 2014 (specify if it is an estimation): 230 (estimate)
- Number of detention centres: 5
- Total capacity: 255

4 authorities have the power to make decisions on detention in Sweden. The police authority can make such a decision before asylum seekers have their asylum case registered at the Migration Agency and also in cases where aliens are present illegally in the country or have been expelled on grounds of criminality and served their sentence but are still in the country.⁶² The police are also responsible for taking decisions on detention when the Migration Agency has handed over a case to them. This happens when the Migration Agency no longer considers that the persons will leave the country on a voluntary basis even though their appeal has been rejected. Normally a rejected asylum seeker has 14 calendar days to leave the country voluntarily, although this may in practice be extended if the circumstances warrant this.

The Migration Agency can take decisions on detention as long as they are handling the asylum case or an application for a residence permit.⁶³ The Migration Courts can make decisions on detention while dealing with an appeal. If they make a decision on detention as the first instance the decision can be appealed to the Migration Court of Appeal.

If a case is being dealt with by the government e.g. expulsion due to criminality or to a security threat, it is the Minister responsible who decides on whether an alien should be detained or not.⁶⁴ The police are also allowed to place an alien in detention, even if this is not their formal responsibility, when circumstances so require e.g. if there is a clear risk of an alien disappearing once apprehended. Even the coastguards and customs officers can detain an alien if there is a danger that the alien will go into hiding. However the detention must be reported immediately to the police, who then take over responsibility.⁶⁵

In the current system, the officers of the Migration Agency are not allowed to use coercive force to implement a decision. They must therefore call on the police for assistance to for example escort an alien to or from the detention centre or to enforce and expulsion order when a detainee refuses to comply.⁶⁶

In 2014, the number of asylum seekers and persons with enforceable return decisions detained was 3,201. This reflects a rise in the number detained, as it detained 2,893 third-country nationals in 2013, while 2,564 were detained in 2012 and 1,941 in 2011.⁶⁷

⁶² Ch. 10, Section 13 Aliens Act.

⁶³ Ch. 10, Section 14 Aliens Act.

⁶⁴ Ch. 10, Section 15 Aliens Act.

⁶⁵ Ch. 10, Section 17 Aliens Act.

⁶⁶ Ch. 12, Section 14 Aliens Act.

⁶⁷ EMN, *The use of detention and alternatives to detention in the context of immigration policies in Sweden* (2014) Report EMN Sweden 2014:1, available at: <http://www.emnsweden.se/download/18.36084ac214622cf65994917/1408357679536/EMN+SE+Study+The+use+of+detention+and+alternatives+to+detention+2014.pdf>, 14.

In Sweden, there are 5 detention centres (Gävle, Märsta Flen, Kålleröd and Åstorp) with a total of 9 units and an overall capacity of 255 persons.⁶⁸

The number of persons detained because of inability to identify themselves is minimal, whereas the number of Dublin detainees who may still have an appeal pending is a little higher. In practice many applicants in Dublin procedures abscond before an attempt to remove takes place.

In 2013, out of a total 2,893 third-country nationals detained, only 81 persons were asylum seekers in the regular procedure and 167 were asylum seekers under the accelerated procedure. 1,239 persons were detained for the purposes of Dublin procedures that year.⁶⁹ Figures for 2014 are not yet available.

There have been no reports of overcrowding in the detention centres. The detention centre in Märsta, near Arlanda airport, has the highest rate of use with over 90% of capacity utilised over the year (72% was the national average in 2012). The detention centres in Flen and Gävle are used most frequently if there is insufficient capacity in Märsta.

B. Grounds for detention

Indicators:

- In practice, are most asylum seekers detained
 - o on the territory: Yes No
 - o at the border: Yes No
- Are asylum seekers detained in practice during the Dublin procedure?
 Frequently Rarely Never
- Are asylum seekers detained during a regular procedure in practice?
 Frequently Rarely Never
- Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never
 - o If frequently or rarely, are they only detained in border/transit zones? Yes No
- Are asylum seeking children in families detained in practice? Frequently Rarely Never
- What is the maximum detention period set in the legislation (inc extensions): 12 months
- In practice, how long in average are asylum seekers detained? 8 calendar days

The detention of an alien who is seeking asylum can take place at any time during the asylum procedure and also after the claim has been rejected at the final instance.

Grounds for detention

Under Ch. 10, Section 1 of the Aliens Act, an alien, whether an asylum seeker or irregular migrant, over the age of 18, may be detained where:

- (1) His or her identity is unclear and cannot be established with probability; *and*
- (2) "The right of the alien to enter or stay in Sweden cannot be assessed anyway."⁷⁰

⁶⁸ *Ibid*, 18.

⁶⁹ *Ibid*, 14.

⁷⁰ Ch. 10, Section 1, para 1 Aliens Act.

Moreover, an alien may be detained:

- (1) Where it is necessary for the investigation of his or her right to remain in Sweden;
- (2) Where it is probable that he or she will be refused entry or will be expelled; or
- (3) For the purpose of deportation.⁷¹

In principle, detention under points (2) and (3) of para 2 can only be ordered if there are some reasons to presume that, but for detention, the alien will abscond or will engage in criminal activities in Sweden.⁷²

While the first ground for detention for the purpose of establishing identity is in line with the recast Reception Conditions Directive (RCD),⁷³ the second set of permissible grounds for detention seems to raise tensions with the Directive in a number of respects:

- Firstly, the provision allowing detention for the purpose of investigating the applicant's right to remain in Sweden seems drafted with considerable width and ambiguity. Under the RCD, Member States may only detain applicants to ascertain their right to enter during a border procedure,⁷⁴ or to identify elements of the claim that cannot be obtained without detention e.g. where there is a risk of absconding.⁷⁵ Given that Sweden does not examine applications at the border, the ground in Ch. 10, Section 1(1) of the Aliens Act would only be applicable in applications on the territory. In these cases, however, detention cannot be applied broadly for the purpose of investigating the claim.
- Secondly, the likelihood of a rejection decision does not constitute a lawful reason for detaining an asylum seeker under the grounds of Article 8(3) RCD.
- Thirdly, pre-deportation detention *per se* is prohibited in respect of asylum seekers. Article 8(3)(d) RCD only permits Member States to detain asylum seekers who lodge a claim for the sole purpose of delaying or frustrating the enforcement decision, while Article 8(3)(f) RCD allows detention in Dublin procedures where there is a "significant risk of absconding". Ch. 10 Section 1(3) of the Aliens Act, however, formulates detention for the purpose of deportation much more broadly.

Duration of detention

Generally, detention of aliens may not exceed 2 weeks, unless there are exceptional grounds for longer detention.⁷⁶ Persons who are issued with an expulsion or refusal of entry order may be detained for up to 2 months, with a possibility of extension.⁷⁷ Even if there are such exceptional circumstances, the alien is not detained longer than 3 months or, if it is likely that the execution will take longer because of the lack of cooperation by the alien or it takes time to acquire the necessary documents, more than 12 months. The time-limits of 3 and 12 months do not apply if the alien is expelled by ordinary courts because of crimes.

The 2-month time-limit therefore does not apply to asylum seekers throughout the examination of their claim, unless a deportation order has already been issued against them. Asylum seekers are in principle detained for up to 2 weeks. Moreover, detention for the purposes of investigating the alien's right to remain in Sweden under Ch. 10, Section 1, para 2(1) cannot exceed 48 hours.⁷⁸

Detention of vulnerable groups and children

⁷¹ Ch. 10, Section 1, para 2 Aliens Act.

⁷² Ch. 10, Section 1, para 2 Aliens Act.

⁷³ Article 8(3)(a) RCD.

⁷⁴ Article 8(3)(c) RCD.

⁷⁵ Article 8(3)(b) RCD.

⁷⁶ Ch. 10, Section 4, para 2 Aliens Act.

⁷⁷ Ch. 10, Section 4, para 2 Aliens Act.

⁷⁸ Ch. 10, Section 4, para 1 Aliens Act.

Persons who have been victims of torture or are otherwise vulnerable are not excluded from being detained, despite international recommendations to exclude them.

According to Ch. 10, Section 2 of the Aliens Act, a child may be detained in 2 circumstances:

- (1) "It is probable that the child will be refused entry with immediate enforcement" *and* "there is an obvious risk that the child will otherwise [abscond] and thereby jeopardise an enforcement that should not be delayed";⁷⁹ *or*
- (2) For the purpose of enforcing a refusal of entry or an expulsion order.⁸⁰

In both cases, there is an express condition that alternatives to detention ("supervision") have proved insufficient to meet the purpose pursued.⁸¹ Children may not be detained for over 72 hours or, in exceptional circumstances, another 72 hours, thereby totalling 6 days.⁸² A child cannot be separated from its guardians through the detention of either the guardian or the child.⁸³ Where the child has no guardian in Sweden, detention may only be applied in exceptional circumstances.⁸⁴

Children are very seldom detained in practice. However, a surge was reported in 2013, during which 85 children were detained, out of which 14 were unaccompanied; in contrast, only 25 children were detained in 2012 and 32 in 2011.⁸⁵ Figures for 2014 are not yet available.

Alternatives to detention ("supervision")

Supervision is an alternative measure that may be used instead of detention.⁸⁶ While authorities are obliged to consider supervision before ordering detention of children,⁸⁷ such a duty does not exist in respect of other third-country nationals detained. In that light, the Swedish Aliens Act does not currently comply with the obligation in Article 8(2) RCD to detain asylum seekers only where less coercive measures cannot effectively be applied.

Supervision entails regular reporting to the police or to the Migration Agency, depending on which authority is responsible or the decision. It may also entail surrendering passports or other identity documents.⁸⁸

Similarly to detention, supervision in the asylum context is mainly applied in relation applicants in Dublin procedures. In 2013, out of a total 405 third-country nationals subject to supervision, only 12 were asylum seekers under the accelerated procedure, while 90 were subject to supervision for the purposes of Dublin procedures that year. Only 20 children were placed under supervision, including 1 unaccompanied child.⁸⁹ Figures for 2014 are not yet available.

C. Detention conditions

Indicators:

⁷⁹ Ch. 10, Section 2, para 1 Aliens Act.

⁸⁰ Ch. 10, Section 2, para 2 Aliens Act.

⁸¹ Ch. 10, Section 2, para 1(3) and para 2(2) Aliens Act.

⁸² Ch. 10, Section 5 Aliens Act.

⁸³ Ch. 10, Section 3 Aliens Act.

⁸⁴ Ch. 10, Section 3 Aliens Act.

⁸⁵ EMN, *The use of detention and alternatives to detention in Sweden* (2014) 14.

⁸⁶ Ch. 10, Section 6 Aliens Act.

⁸⁷ Ch. 10, Section 2, para 1(3) and para 2(2) Aliens Act.

⁸⁸ Ch. 10, Section 8 Aliens Act.

⁸⁹ EMN, *The use of detention and alternatives to detention in Sweden* (2014) 23-24.

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures? Yes No
- Do detainees have access to health care in practice? Yes No
 - o If yes, is it limited to emergency health care? Yes No
- Is access to detention centres allowed to
 - o Lawyers: Yes Yes, but with some limitations No
 - o NGOs: Yes Yes, but with some limitations No
 - o UNHCR: Yes Yes, but with some limitations No

Place of detention

There are currently 5 detention centres in Sweden in or near the major cities of Stockholm, Gothenburg and Malmö, and in the towns of Flen and Gävle, with a total capacity of around 235 places. These centres can also hold third-country nationals who have never sought asylum but have received an expulsion order on other grounds such as minor crimes or for overstaying.

The detention centres have to take responsibility for all those aliens who have received an expulsion or deportation order. However, persons who have an expulsion order because they committed a serious crime these persons are detained either by the prison authority or the police.

Furthermore, detainees who pose a real threat to others can also be removed to police custody.⁹⁰ However, a child under 18 may never be placed in a prison or in a police holding centre. There are no special detention centres for children.

The placement of asylum seekers and irregular migrants in police custody units and prisons has been criticised by NGOs and the Council of Europe Committee on the Prevention of Torture (CPT).⁹¹ As a response, a new form of detention centre, called “transit centre”, was to be set up during 2013 near Arlanda airport. Further reasons for this initiative were the need to decrease the average time spent in detention, minimise the risk that detainees be subjected to unnecessary transfers and to minimise the number of transports carried out by the Prison and Probation Service transport service (*Kriminalvårdens transporttjänst*). This new facility would be located adjacent the already existing detention centre near Arlanda, and would have a capacity of 20 persons.

General conditions of detention

Chapter 11 of the Aliens Act contains specific rules on how the detention centre should be run. Aliens who are held in detention must be treated humanely and their dignity should be respected.⁹² By humane treatment is meant that: (a) the foreigner is always the focal point and their case must be dealt with in a legally safe and expedient manner; (b) a good relationship must be established between the detainee and the staff from the very outset of the detainee’s entry to the premises; (c) the foreigner must be able to feel secure and safe in this exposed situation; and (d) the staff must be sensitive to the needs of the detainee.

In 2012, common guidelines have been introduced applicable to all detention centre staff members in relation to the registration of the arrival of a detainee and the detainee's departure.

⁹⁰ Ch. 11, Section 7 Aliens Act.

⁹¹ See Swedish Red Cross, “*Forvar under lupp*” (*Detention centres under the magnifying glass*) (May 2012) available at: <http://www.redcross.se/pressrum/rapporter-och-dokument/?itemid=20129>; CPT, *Report sent to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 18 June 2009* (11 December 2009) available at: <http://www.cpt.coe.int/documents/swe/2009-34-inf-eng.htm>.

⁹² Ch. 11, Section 1 Aliens Act.

Conditions in detention centres should be as close as possible to those at regular reception centres, run by the Migration Agency. The only difference should be that the detainees are in a closed building and therefore have certain restrictions to their freedom of movement. Coercion or limitations in freedom of movement should not exceed what is necessary based on the grounds for the deprivation of freedom.

Religious observance is possible for persons of all creeds. It is a basic right according to the Swedish Constitution. However this does not mean they can leave the centre to go to a mosque, shrine or church. Instead a neutral room is reserved for religious observance at the detention centre. Detainees are also able to request visits from pastors, imams and others who are important in their religious observance. Some faith communities see to it that a leader or a representative visits the detention centre regularly.

While at the detention centre, the detainee has the right to a daily allowance in the same way as other asylum seekers (currently around €3 a day, since they have free meals). Daily activities are organised for both their physical and mental health. There is a library with access to the internet, a number of other computers, a gym room and an enclosed outdoor area for ball games. Detainees are expected to help out with activities of daily living, keeping their rooms tidy and helping with work in the kitchen. If they refuse then their daily allowance can be reduced.

In other cases, a problematic detainee can be confined in their room if this is necessary for the orderly running of the centre and for safety reasons or if the foreigner represents a danger to themselves or to others.⁹³ Such a decision must be reviewed as often as is required but at least every third day. If the person is a danger to themselves then a medical examination should be promptly ordered. There is no requirement that detention confined to a room at the centre must be tried before removing someone to police custody or to the prison services.

Detainees are allowed visitors and to receive and make phone calls on an unrestricted basis but there can be limitations based on practical reasons regarding the safe running of the detention centre.⁹⁴ Drunken visitors will not be admitted, nor will visits in large numbers at the same time. Visiting hours should be generous and flexible and at times that are suitable to the visitor. More flexibility is shown to members of the family than to adult friends of the detainees. These visitors can never be searched bodily, however, if it is necessary, a visit can be supervised for reasons of security. But a visit by legal counsel can only be supervised at the request of the detainee or legal counsel. If it is suspected that illegal objects have been handed over to the detainee then the detainee may be bodily searched after the visit. Visits should in general take place privately in a suitable room. If a visit is denied for some reason then the detainee has the right to appeal the decision. If a visitor does not wish to give his or her name then this is not in itself grounds to deny a visit, nor is it in itself sufficient grounds to decide to supervise the visit. NGO's and UNHCR have unlimited access to detention centres.

A detainee is not allowed to have alcoholic drinks or other stimulants or any object that can hurt anyone or be to the detriment of the keeping of order at the detention centre.⁹⁵ Basically the detainee should be allowed to retain objects of personal value and other belongings. Belts and braces are not normally taken from the detainee nor are objects such as personal cutlery, perfume bottles and deodorants. However the possession of a knife is not allowed. Regarding medicine there are restrictions to possessing a large number of sleeping tablets. Since the staff at the detention do not have medical training it can sometimes be difficult to know what to decide in individual cases. However, they can refer to guidelines issue by the Social Welfare Board.

Detainees have the right to freedom of information and the right to express opinions in the same way as other citizens. Therefore no restrictions can be placed on the individual's possession of certain

⁹³ Ch. 11, Section 7 Aliens Act.

⁹⁴ Ch. 11, Section 4 Aliens Act.

⁹⁵ Ch. 11, Section 8 Aliens Act.

newspapers or magazines. However the Migration Agency does have a responsibility to limit the spreading of or access to for example pornographic materials or TV programmes which can be found offensive by other detainees.

If the detention centre staff suspects that a detainee may be in possession of forbidden substances such as drugs, alcohol or objects that can harm others or be a threat to order at the centre then a body search can be ordered. The detainee is often searched by the police before arriving at the centre. If that was the case the detainee will not be searched on arrival. If a body search is ordered then the law stipulates that it must not be carried out more thoroughly than the situation requires. Respect should be shown towards the detainee and a witness should be present unless this possibility is declined by the detainee. Women may not be bodily searched by a man nor in the presence of other men unless they are doctors or qualified nurses. There are different degrees of body searches. The Migration Board's staff is never allowed to carry out searches that involve examining the outer and inner parts of the body or the taking of tests. The Board staff can only examine clothes or any other object the person is wearing, bags, packages and other objects brought by the detainee to the centre.

Mail sent to the detainee can sometimes be the object of examination, in which case it should be opened in the presence of the detainee.⁹⁶ If the detainee does not consent to the package being opened in their presence then the object should be put aside and not opened. An examination of the contents should not include reading a letter or other written documents. Mail from legal counsel, lawyers, international organs that have the right to receive complaints from individuals or from the UNHCR must not be opened. If it is clear from the weight or thickness of a letter that it only contains written material then it should be handed over to the detainee without any inspection. However if there is a reasonable suspicion that the letter or package contains drugs, alcoholic drinks or dangerous objects then the detainee should be summoned and the object may be inspected. A letter must not be opened or scanned before the detainee gives their permission. If staff suspects that a letter may have passport or other identity document in it they are not allowed to open that mail. The only way the authorities can use their right to take care of a passport is if the detainee shows it to them.

Personal belongings that the detainee cannot have in their room are stored at the detention centre, unless the property is illegal, in which case it is handed over to the police.⁹⁷ They can have access to these objects upon leaving the detention centre, as a list needs to be made of all stored objects.

Regular security inspections are conducted at the detention centre to make sure that windows, walls, alarm systems, electricity plugs and the like are in order. However such inspections cannot involve a routine search of the personal belongings of the detainees. Bags, bedclothes, cupboards, wardrobes and chests of drawers cannot be searched, unless there is well-founded suspicion of possession of forbidden objects.

All detainees have access to health care at the same level as other applicants, therefore, requiring, regular visits from nurses and doctors.⁹⁸ All detainees have access to open air at least 1 hour a day often in a closed courtyard.

In 2011-2012, a project examined the special needs of female detainees and made proposals within the current system to incorporate a gender-friendly approach. A proposal has also been made to set up a special detention centre for women but no action has been taken so far.

D. Judicial Review of the detention order

⁹⁶ Ch. 11, Section 10 Aliens Act.

⁹⁷ Ch. 11, Sections 11-12 Aliens Act.

⁹⁸ Ch. 11, Section 5 Aliens Act.

Indicators:

- Is there an automatic review of the lawfulness of detention? Yes No

With the exception of 48-hour detention of persons pending investigation on their right to remain in Sweden (see section on Grounds for Detention above), a detention order must be reviewed within 2 weeks, while detention orders against persons issued with a removal decision are reviewed within 2 months.⁹⁹ Review of alternatives to detention (“supervision”) is carried out within 6 months.¹⁰⁰

Where time limits are not respected, a decision to detain or hold a person under supervision ceases to be legally binding.¹⁰¹

Each review of a detention order must be preceded by an oral hearing.¹⁰² This also applies to supervision, unless it appears obvious from the nature of the investigation or other circumstances that no hearing is needed.

Depending on the authority responsible for the initial decision to detain, an appeal can be made either to the Migration Agency, the Migration Courts or to the Migration Court of Appeal. In the case of the latter, no leave to appeal is required as is the case for an asylum application. In certain cases, it is the responsible minister that can make a decision on detention. This detention decision can be reconsidered in accordance with the time-limits and changed by the government. A government confirmation of a detention order can only be changed by another authority if new circumstances arise that are raised before the Migration Agency in the form of a subsequent application. However, a government order must also be reviewed according to the legal time limits.

E. Legal assistance

Indicators:

- Does the law provide for access to free legal assistance for the review of detention?
 Yes No
- Do asylum seekers have effective access to free legal assistance in practice? Yes No

After 3 days in detention, an asylum seeker has access to free legal assistance on detention matters only.¹⁰³ Prior to that date, other persons such as a private lawyer, a person with a power of attorney, possibly from an NGO, and the applicant may request a review of the detention order.

However, if an expulsion is planned to take place on the fourth day of detention, it sometimes happens that legal counsel is not appointed promptly.

⁹⁹ Ch. 10, Section 9, para 1 Aliens Act.

¹⁰⁰ Ch. 10, Section 9, para 2 Aliens Act.

¹⁰¹ Ch. 10, Section 10 Aliens Act.

¹⁰² Ch. 10, Section 11, para 1 Aliens Act.

¹⁰³ Ch. 18, Section 1, para 1(4) Aliens Act.

ANNEX I – Transposition of the CEAS in national legislation

Directives transposed into national legislation

N/A

Pending transposition and reforms into national legislation

| Directive | Deadline for transposition | Stage of transposition / Main changes planned | Participation of NGOs |
|--|----------------------------|---|-----------------------|
| Directive 2011/95/EU Recast Qualification Directive | 21 December 2013 | No draft proposed yet | |
| Directive 2013/32/EU Recast Asylum Procedures Directive | 20 July 2015 | No draft proposed yet | |
| Directive 2013/33/EU Recast Reception Conditions Directive | 20 July 2015 | No draft proposed yet | |