

A photograph of a person's head and shoulders in profile, looking out of a window. The person has dark, curly hair and is wearing a dark jacket. The background is a blurred cityscape with buildings and a tree, seen through the window panes.

## Child-sensitive return

Upholding the best interests of refugee and migrant children in return and reintegration decisions and processes in Sweden

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unicef 

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This report is part of a joint work carried out by UNICEF to further deepen its understanding of the circumstances under which children are returned from Sweden to their country of origin or a third country. It is one of a series of similar reports developed in the Netherlands, Germany, and the United Kingdom, with the active support of UNICEF PFP. It is based on a qualitative review of government policy and public reports produced by government authorities, civil society, and academia, as well as an analysis of relevant national and regional legislation applicable to the return process for migrant children in Sweden.

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# FOREWORD

Return of irregular migrants and people whose asylum application has been rejected is high on the agenda of most European governments and is discussed at the highest level in the EU. States consider that stepping up returns is necessary to restore public trust in States' ability to control their borders and to alleviate pressure on resources. Under the current narrative, "credible" and "effective" return policies and practices are a precondition to prioritize people entitled to international protection.

The protection and assistance to children in the asylum process – whether they are accompanied by parents or not – is not always adequately implemented by European States in return determination process nor in return conditions.

To better understand how and when children are returned from European countries to either countries of origin or third countries, UNICEF Private Fundraising and Partnership (PFP) and the European UNICEF National Committees in the Netherlands, Germany, Sweden and the United Kingdom have carried out an investigation and assessment on return and reintegration practices and procedures.

The reports identify good practices and lessons and provides concrete recommendations on what should be done to protect and promote a child rights perspective in the process. When it is in the best interest of the child to be returned, as a long term durable solution, the process must be child sensitive and respect the fundamental rights of the child. One of the main findings in the Swedish report is the ambiguity between the implementation of stricter migration laws and policies and how this corresponds to the decision to incorporate the UN Convention on the Rights of the Child, in which the best interest principle plays a central role in ensuring that children's rights are respected. The report also shows that there is a special need to support children accompanied by their families who today lack specific support and attention from authorities.

UNICEF Sweden's main recommendations to the Swedish government and Swedish Migration Agency can be summarised as follows:

- Sweden should revert to its original provision concerning exceptionally distressing circumstances as laid out in Chapter 5, Section 6 of the Aliens Act (2005:716) to allow competent authorities to duly consider the best interest of the child and comply with the amendments made in 2014.
- Establish formalized and coordinated multi-disciplinary best interest procedures to ensure that the child's best interest is a primary consideration in all relevant decisions concerning the child, from their arrival in Sweden until a durable solution has been found.
- Continued training of professions in children's rights and in particular in the method of establishing the best interest of the child. Provide child-sensitive re-establishment and reintegration support that provides each child with an individual reintegration plans.
- Establish an effective forced-return monitoring system and appoint an independent body to carry out this function to assure that the rights and needs of the child are attended.



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## LIST OF ACRONYMS

AMIF	Asylum and Integration Fund
BIA	Best Interests Assessment
BID	Best Interests Determination
CRC	UN Convention on the Rights of the Child
ERRIN	European Return and Reintegration Network
EU	European Union
EFTA	European Free trade Association
IOM	International Organization for Migration
MCA	Migration Court of Appeal
NGO	Non-Governmental Organisation
SBP	Swedish Border Police
SMA	Swedish Migration Agency
SPPS	Swedish Prison and Probation Service
UASC	Unaccompanied Asylum-Seeking Children
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund









## Executive summary

### The scope and purpose of this study

There is increasing concern amongst organizations working on children's rights, including UNICEF, about the process under which migrant children in Europe are returned to their home countries or "safe" third countries. This includes the process for determining who returns, the conditions under which children are returned, and States' obligations for monitoring a child's safety after return. To date, there are no harmonized standards on best interest procedures or on return procedures specific to children (including accompanied children) among European countries, and very limited guarantees on the child rights situation in the countries of origin. Furthermore, there is no standardized monitoring system in place to ensure that children's rights are respected throughout the return process, including in the country of departure, during transit, and in the country of return.

This report is part of a comparative research study carried out by UNICEF's National Committees in Germany, the Netherlands, Sweden and the United Kingdom on the return of asylum-seeking/migrant children – including both unaccompanied and accompanied children – and voluntary and forced returns. It focuses on Sweden's approach, policies and practices relating to children who do not have a legal right to remain in the country. The research involved a desk review of relevant Swedish legislation and regulations, key literature and studies on returns; an analysis of public statistics; and interviews with key informants. The report presents both good practices and current challenges in the present system, as well as recommendations for strengthening the protection of children in Sweden's return procedure.

## Key findings

Due to increased public concern about migration in recent years, Sweden has adopted a stricter migration policy, including a greater focus on returns of rejected asylum-seekers. In parallel, Sweden will incorporate the UN Convention on the Rights of the Child in January 2020, in which the best interest principle plays a central role in ensuring that children's rights are respected. As these two policy agendas move forward, they provide opportunities but also the risk of further incoherence between them.

The research presented in this study indicates falling numbers of voluntary returns from Sweden under the responsibility of the Swedish Migration Agency, while the Swedish Border Police has carried out a fairly steady number of forced returns in recent years. It further identifies several good practices and challenges, which are detailed in the two boxes below.

### Good practices

- Consideration of the best interest of the child is stipulated both in policy and law. An assessment of the child's best interest is included in all refusal decisions concerning both unaccompanied and accompanied children.
- Legal aid is available for a vast majority of asylum cases (some exceptions apply for manifestly well-founded and Dublin cases) throughout the asylum procedure until the return decision can no longer be appealed.
- There is a Guardianship Scheme in place for all unaccompanied and separated children that lasts until the child is returned to their country of origin or a third country.
- Both unaccompanied and accompanied children with return decisions are entitled to the same level of health care and access to education as other children in Sweden. They also maintain their right to government-assisted accommodation and other benefits after a refusal decision has gained legal force.
- There are positive examples of local-level interest and a commitment to supporting unaccompanied and separated children, both through cross-sectoral co-operation and support in preparing the child to return to their country of origin. This is particularly evident in the municipality of Strömsund, which is also supporting 16 other municipalities across Sweden to increase its capability in this regard.
- The Swedish Migration Agency (SMA) offers both financial assistance and reintegration support to both unaccompanied and accompanied children through the European Return and Reintegration Network (ERRIN). Families and children that return voluntarily can receive assistance with the practicalities associated with returns, as well as some financial assistance to support their re-establishment. Reintegration support is available both to those returning voluntarily and through forced returns.

## Challenges

- The Law on temporary limitations to the possibility of being granted a residence permit in Sweden (2016:752) has reduced authorities' ability to consider the child's best interest as part of assessing humanitarian grounds in granting a residence permit.
- There is a lack of understanding of the roles and responsibilities of the various actors involved in the return process. The SMA has the mandated lead, but takes a more transactional, administrative approach during return meetings rather than actively counselling parents/guardians and children through the return process. This results in inconsistent information and hinders effective return preparations.
- SMA officials working with return often lack child-specific training, including how to interact with children and how to convey information in a child-sensitive manner.
- Accompanied children can be in a more vulnerable position, as the SMA defers to the parents for deciding if children will be informed of a refusal decision or if they will participate in return meetings.
- The short time allotted for voluntary returns is insufficient for families with children to come to terms with the decision and undertake the necessary preparations for return.
- Possibilities to extend the term for voluntary return (beyond the standard 30 days) in accordance with the Return Directive and national regulations are under-utilized by authorities.
- Best interest procedures are often applied independently by Swedish authorities according to their respective mandates. This impedes both the development of a shared and concordant view amongst actors of the child's best interest and the identification of a durable solution based on children's individual needs.
- The SMA's best interest procedures are often a general assessment based on policy and law instead of being tailored to a child's individual circumstances. Children in families are frequently provided standard reasons for refusals (such as keeping the child with the family), which neither properly assess their best interests nor examine the child's particular circumstances.
- There is a deficiency of robust tracing procedures and family assessments by competent authorities in the country of return to uphold the best interest procedure, and to ensure adequate reception in the country of return for unaccompanied and separated children.
- Sweden's adherence to the best interest principle can be questioned in the light of its policy of returning children to certain conflict-affected countries, including Afghanistan.
- There is a tendency to apply *ad hoc* or unstated return practices that are inconsistent with policy, such as passively waiting to enforce a return decision until a child has turned 18, when the required safeguards no longer apply. As a result, some children are left in limbo, which has a significant impact on their mental health and well-being.
- Once an unaccompanied and separated child turns 18, they often face destitution and disappearance rather than return.
- There are concerns about the inadequate qualifications of and monitoring performed by legal guardians, as well as insufficient protocols to inform their role and responsibilities throughout the asylum procedure.

- Children are detained for immigration-related purposes, although their numbers are limited. A 2018 Red Cross report found that the Swedish Border Police does not consistently consider the best interest of the child in its detention decisions or in its assessment of alternatives to detention.
- There is a lack of post-return monitoring and follow-up for children and families, for both voluntary and enforced returns.
- The appointment of the Swedish Migration Agency to monitor forced returns does not fulfil the Return Directive's requirement for "effective" monitoring.

## Recommendations

On the basis of these findings, the following recommendations are proposed:

### Best Interest Principle

- Sweden should revert to its original provision concerning exceptionally distressing circumstances as laid out in Chapter 5, Section 6 of the Aliens Act (2005:716) to allow competent authorities to duly consider the best interest of the child and comply with the amendments made in 2014. **(Swedish government/ parliament)**
- Establish formalized and multi-disciplinary best interest procedures (Best Interest Assessments (BIA) and Best Interest Determinations (BID)) to ensure that the child's best interest is a primary consideration in all relevant decisions concerning the child, from their arrival in Sweden until a durable solution has been found. These processes shall be undertaken in co-ordination with other actors that work closely with the child, including Social Services. **(Swedish Migration Agency)**
- For unaccompanied and separated children, the Best Interest Determination should include tracing procedures and a family assessment conducted by competent authorities in the country of return. It should also take into account the long-term effects that a decision or action may have on a child's welfare and development, including the impact of a return decision that is not enforceable. **(Swedish Migration Agency)**
- Ensure that the relevant actors around the child are effectively trained to carry out multi-disciplinary best interest procedures. This should include making staff more capable through training and the adoption of standard operating procedures. **(Swedish Migration Agency, Social Services, Police Authorities and others)**

### The return procedure

- Clarify and strengthen the roles and responsibilities of government actors in the return process based on identified deficiencies to ensure that consistent support is provided to unaccompanied and separated children and families. **(Ministry of Justice)**



- Adopt guidelines by relevant authorities to reinforce children's rights in the return process. These include the importance of qualitative return counselling, access to consistent information, and support throughout the process, including tailored reintegration support that meets the child's needs in the country of return. **(Swedish Migration Agency)**
- Introduce a more flexible approach into the return procedure based on the needs of children and their families, by taking due account of the specific circumstances in each individual case, such as the length of stay, the presence of children attending school, and/or family and social links as stipulated in both the Return Directive and internal instructions (SR 11/2017). **(Swedish Migration Agency)**
- Allow all persons, including young persons and families that have absconded to avoid the enforcement of a return decision, to return to the process with full access to return incentives. **(Ministry of Justice)**
- Ensure that all actors supporting children throughout the asylum and return procedure – including legal guardians, family homes, reception centres and schools – receive relevant training to ensure that children receive consistent and accurate information throughout the process. **(Ministry of Justice)**

#### Child-sensitive case management

- Adopt and implement tailored and child-sensitive case management in the return process, ensuring that officials receive specific training on children's rights and child-sensitive approaches, so that they may take due account of children's rights and meet their individual needs. **(Swedish Migration Agency)**
- Ensure that both unaccompanied and accompanied children – consistent with the best interest principle – have access to accurate information and support, as well as sufficient time to effectively prepare for their return. **(Swedish Migration Agency)**
- Supply child-sensitive re-establishment and reintegration support that provides each child with individual reintegration plans. **(Swedish Migration Agency)**

#### Specifically for unaccompanied and separated children

- Adhere to strict time limits for adjudicating asylum claims and identifying a durable solution without jeopardizing legal guarantees and due process. Unaccompanied and separated children should not be left in limbo following unenforceable return decisions, nor should authorities wait until the child turns 18 years of age to begin return work. **(Swedish Migration Agency)**
- Strengthen existing procedures to ensure that all relevant, durable solutions are considered for unaccompanied and separated children: long-term settlement and integration in Sweden, relocation to a third country (whether via family reunion or resettlement), or return to their country of origin. This should include supporting local authorities to plan with a child for the longer term, regardless of the outcome of the immigration decision, in order to protect the child's rights. **(Swedish Migration Agency)**

- Amend the protocols for legal guardians to deal with the current deficiencies, by, for example, implementing extended training and supervision. **(Ministry of Justice)**

#### Access to legal aid

- Consider providing legal aid to unaccompanied and separated children and families with children, encompassing the period after the refusal decision has gained legal force but has yet to be enacted, to facilitate the provision of consistent legal advice. **(Ministry of Justice)**

#### Detention

- Amend the legislation to recognize that children should never be detained for immigration-related purposes or separated from their parents through detention. **(Swedish government/parliament)**
- Increase the use of alternatives to detention, such as supervision or appropriate care and accommodation arrangements which ensure that families can stay together. **(Swedish Migration Agency, Swedish Police)**

#### Return and reintegration monitoring

- Conduct or commission research on returns and reintegration, and post-return monitoring of children, young people and families, with a view to understanding their outcomes and improving support for their effective return and reintegration. This is particularly important as it regards return to conflict-affected countries. **(Ministry of Justice)**
- Establish an effective forced-return monitoring system and appoint an independent body to carry out this function. Monitoring is currently implemented by the Swedish Migration Agency and therefore not sufficiently independent to qualify as “effective” under Article 8 (6) of the Return Directive. **(Ministry of Justice)**

# PART I: INTRODUCTION & BACKGROUND



## 1 Introduction

Sweden has traditionally been well-known for its generous asylum policy towards persons fleeing persecution and conflict. However, the increase in asylum applications in 2015 to almost 164,000 – including from 35,000 unaccompanied and separated children – and the lack of a common EU response led the Swedish Government to take a series of restrictive measures to both limit the number of persons seeking asylum and to increase the return of persons that are not granted protection in Sweden. This has had a direct impact on children's security of status and their ability to reunite with family, and has limited considerations to individual humanitarian grounds. The long processing times caused by a backlog has also had an adverse impact on children's sense of security and stability.

These restrictive measures included reinstating border controls in the autumn of 2015; adopting temporary legislation in 2016 to align Swedish asylum rules with minimum EU standards; accelerating the return of persons that have received non-appealable refusal decisions; adapting the authorities of the Swedish Migration Agency (SMA) and Policy Authority; and concluding readmission agreements with third countries to facilitate the return of persons with refusal decisions. Moreover, a Government-commissioned Receptions Inquiry proposed in 2018 the adoption of a new reception system for asylum seekers in Sweden, including the establishment of return centres to expedite the return of persons with enforceable refusal-of-entry or expulsion orders.

At the same time, Sweden has also undertaken to clarify the role of the child as a legal entity with their own specific rights, and to place children in greater focus in situations that apply



to them.<sup>1</sup> A decision was taken by the Swedish Parliament in 2018 to incorporate the UN Convention on the Rights of the Child (CRC). Acting on the recommendations of a Government-commissioned inquiry<sup>2</sup>, it was recognized that the impact of the CRC – which Sweden ratified in 1990 – needed to be strengthened in Swedish law and practice, both at state and municipal levels. The inquiry noted several challenges, including for “children in the migration process”, for which its conclusion stated that “[t]he shortcomings are most obvious with regard to the principle of the best interests of the child and the child’s right to express his or her views”. Although explicit provisions exist for the best interests of the child in Swedish legislation concerning children in the migration process, best interest assessments are not often based on the individual circumstances of the child, but rather on general observations of law and policy. It was also found that “[w]ith respect to children’s opportunities to be heard...often no discussions are held with children, and in many cases no motivation is given for this decision”<sup>3</sup>

With the decision to incorporate the CRC into Swedish law, it was also agreed that the rights accorded to children in the Convention must continue to be transformed into other parts of Swedish legislation to ensure its full efficacy in the application of the law. To support these efforts, the Ombudsman for Children in Sweden – the government agency tasked with representing children’s rights and interests based on the CRC – was mandated to support municipalities, county councils/regions and government agencies in their efforts to prepare for the incorporation of the CRC on 1 January 2020.<sup>4</sup>

An additional inquiry was launched in 2018 with the aim of documenting how Swedish legislation and practice complies with the CRC’s stipulated rights, with a particular focus on how the best interest principle is applied.<sup>5</sup> The results of this inquiry will be presented on 15 November 2019.

However, with the temporary law extended for another two years, there is insufficient understanding of how this will affect Sweden’s obligations under the CRC. Indeed, these two areas of policy adaptation – asylum and children’s rights – are intertwined, but their interdependence is seldom well understood.

## 1.1 Aim and scope

This report is part of the preparatory work carried out by UNICEF to define an advocacy strategy on child-compliant return and to further its understanding of the circumstances under which children are returned from Sweden to their country of origin or a third country. It is one of a series of similar reports drafted in the Netherlands, Germany, and the United Kingdom.

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<sup>1</sup> See ‘Convention on the Rights of the Child will become Swedish law’ (29 March 2018; updated 14 June 2018), available at: <https://www.government.se/articles/2018/03/new-legislative-proposal-on-the-convention-on-the-rights-of-the-child/>.

<sup>2</sup> Barnrättsutredningen, *Barnkonventionen blir svensk lag* (SOU 2016:19), available in Swedish at: [https://www.regeringen.se/49315c/contentassets/7bcd0fe8815345aeb2ff0d9678896e11/barnkonventionen-blir-svensk-lag-sou-2016\\_19.pdf](https://www.regeringen.se/49315c/contentassets/7bcd0fe8815345aeb2ff0d9678896e11/barnkonventionen-blir-svensk-lag-sou-2016_19.pdf). For a summary of this report in English, see: <https://www.government.se/information-material/2016/06/english-summary-on-proposals-for-an-act-on-incorporation-the-un-convention-on-the-rights-of-the-child-crc-into-swedish-domestic-law-from-sou-201619.pdf/>.

<sup>3</sup> *Barnkonventionen blir svensk lag* (SOU 2016:19), p. 53.

<sup>4</sup> Regeringskansliet (Government Offices of Sweden), *Ny satsning för att stärka kunskapen om barnets rättigheter*. Available in Swedish at: <https://www.regeringen.se/pressmeddelanden/2017/01/ny-satsning-for-att-starka-kunskapen-om-barnets-rattigheter/>.

<sup>5</sup> Regeringskansliet, *Kartläggning av hur svensk lagstiftning och praxis överensstämmer med barnkonventionen*. Available in Swedish at: [https://www.regeringen.se/4948a5/contentassets/8a3883b7a8414d9bab306afde980f995/kartlaggning-av-hur-svensk-lagstiftning-och-praxis-overensstammer-med-barnkonventionen-dir2018\\_20.pdf](https://www.regeringen.se/4948a5/contentassets/8a3883b7a8414d9bab306afde980f995/kartlaggning-av-hur-svensk-lagstiftning-och-praxis-overensstammer-med-barnkonventionen-dir2018_20.pdf).



Specifically, the report aims to document how best interest procedures for migrant and refugee children – both unaccompanied and those in Sweden with their family – are conducted and monitored in Sweden as part of the asylum and return procedure. It reviews how returns are carried out in practice and the applicable frameworks that govern this process, and documents – through both a literature review and stakeholder interviews – good practices and current challenges. Finally, it provides recommendations for strengthening the protection of children in the return procedure in Sweden, in line with its obligations under the Convention on the Rights of the Child.

## 1.2 Methodology

This report is based on a qualitative review of Government policy and public reports produced by government authorities, civil society, and academia, as well as an analysis of relevant national and regional legislation applicable to the return process for migrant children in Sweden. Furthermore, complementary information has been found in guidelines and standard operating procedures developed by authorities. In order to document further evidence of how the best interest principle is applied in Swedish practice, a total of 20 randomly selected refusal decisions by the SMA concerning both unaccompanied and accompanied children were reviewed.<sup>6</sup> It must be recognized that this is not sufficient to generate any definite conclusions. However, these findings are supported by relevant reports, including a 2016 Government-commissioned inquiry, and by stakeholder interviews. A total of 25 interviews were held with practitioners and subject-matter experts who work for central government, municipalities, and civil society, or in their capacity as guardians, legal practitioners or representatives of reception centres and family homes.<sup>7</sup> Finally, statistics from the SMA and the Swedish Police Authority were also reviewed concerning the number of children returned on an annual basis, the main countries of destination, and the return incentives approved by the SMA on an annual basis.

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<sup>6</sup> This included returns to Morocco, Iraq, Afghanistan, Somalia, Albania, and Iran.

<sup>7</sup> Consulted stakeholders include representatives of the following actors involved in the return process: the Ministry of Justice; the Swedish Migration Agency; the Swedish Border Police; the National Board of Health and Welfare; municipalities; social workers; legal guardians; legal representatives/counsel; reception centres for unaccompanied and separated children; family homes; Save the Children Sweden; the Swedish Red Cross; Caritas; FARR (Flyktinggruppernas Riksråd); Stockholm Stadsmission; Svenska Kyrkan; Barnens Asylrättscentrum; and Barnrättsbyrån.



## 2 Background and data on migration and asylum in Sweden

### 2.1 Background

In 2017, the number of forcefully displaced persons reached 68.5 million worldwide, of whom children accounted for more than half.<sup>8</sup> By reason of their young age and distance from home, children face heightened dangers throughout the migratory process in countries of origin, while in transit, and following their return.<sup>9</sup> This includes the potential for physical, psychological and sexual abuse, exploitation, trafficking, and forced disappearances.

In Europe, the large-scale movement of refugees and migrants into the continent in 2015 included a significant number of children. Of the 99,995 unaccompanied and separated children that sought asylum in the European Union, more than 35,000 of them came to Sweden. Their arrival presented exceptional challenges to governments and their child protection systems, and exposed continuing deficiencies in the reception of and appropriate care arrangements for children.<sup>10</sup>

The lack of harmonization within the EU in asylum and migration policy has resulted in variations in asylum recognition rates amongst Member States. For example, the average

<sup>8</sup> United Nations Refugee Agency (UNHCR), 'Global Trends: forced displacement in 2017', available at: <https://www.unhcr.org/global-trends2017/>.

<sup>9</sup> Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/65/PDF/G1734365.pdf?OpenElement>.

<sup>10</sup> Sweden received a total of 162,877 asylum applications, including 35,015 claims made by children accompanied by their parents and 35,369 lodged by unaccompanied and separated children.

asylum recognition rate in EU/EFTA for Afghan nationals in 2017 was 47.2 percent. In Sweden, the recognition rate during the same time period was 37.1 percent, while it was 84.2 percent in France.<sup>11</sup> Accompanying the lack among EU Member States (and Norway) of harmonized procedures for determining durable solutions for asylum-seeking and migrant children, are often limited guarantees for children's rights in the country of origin or place of habitual residence.

While Sweden's reception capacity and ability to care for unaccompanied and separated children has been the focus of much debate, there is increasing concern in Sweden amongst children's rights advocates about the asylum and determination process, the conditions upon which children are returned, and the ethics of forced return, in particular in the context of Sweden's policy on returns to Afghanistan.

Sweden's response to the significant increase in the arrival of asylum seekers in 2015 was initially based on temporary measures that included reinstating internal border controls in the autumn of 2015 and adopting temporary legislation (Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige) in 2016 to align Sweden's asylum rules with the minimum standards permissible under the EU *acquis communautaire*.

The Government has also taken several initiatives to accelerate the return of persons who have received a final and non-appealable refusal decision, including withholding benefits and other support to adults without children and issuing instructions to the SMA to shorten the time period between a refusal decision and return.<sup>12</sup> The allocation of responsibilities between the SMA and the Police Authority regarding the enforcement of return decisions has been strengthened, and the latter has been given the authority to hold persons for an additional 24 hours beyond the standard maximum of 24 hours without a formal detention decision, in order to enforce a return decision.<sup>13</sup> Sweden has also concluded several readmission agreements with third countries, and relies on regional agreements concluded by the EU to facilitate the identification and readmission of persons with return decisions.

In addition to these temporary measures, a Government-commissioned Receptions Inquiry in 2018 put forward a new reception system for asylum seekers in Sweden, which included proposals for establishing return centres to expedite the return of persons with enforceable refusal-of-entry or expulsion orders, as well as for the transfer of persons issued with a transfer order under the Dublin Regulation. The Inquiry proposed that these centres be located close to airports and house families with children. While recognizing the negative impact this may have on children's ability to continue their schooling until the enforcement of the return decision, it argued that this concern is outweighed by the need to make it less attractive for families with enforceable return decisions to remain in Sweden. It further recommended that unaccompanied and separated children are exempted from staying in these return centres, and instead continue to live with their foster families or in reception centres until they leave Sweden.

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<sup>11</sup> Migration Policy Institute, Asylum Recognition Rates in the EU/EFTA by Country, 2008-2017, available at: <https://www.migrationpolicy.org/programs/data-hub/charts/asylum-recognition-rates-euefta-country-2008-2017>.

<sup>12</sup> Ministry of Justice, Regeringsbeslut (2016), Uppdrag att förkorta tiden från asylansökan till återvändande, available in Swedish at: <https://www.regeringen.se/49b7b1/contentassets/4b60596119254d6fb55a95e11e6d6e56/uppdag-att-forkorta-tiden-fran-asylan-sokan-till-atervandande.pdf>.

<sup>13</sup> Aliens Act (2005:716), Chapter 9, Section 12. This hold is non-appealable and not subject to legal aid. The Aliens Act is available in Swedish at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/utlanningslag-2005716\\_sfs-2005-716](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/utlanningslag-2005716_sfs-2005-716).

The Swedish Migration Agency has also focused on decreasing the backlog of applications, particularly concerning those from unaccompanied children. In 2017-2018, Sweden received 47,168 new asylum applications but adjudicated a total of 101,813 cases.<sup>14</sup> This includes 9,109 applications made by unaccompanied and separated children.<sup>15</sup> As from 24 January 2019, Sweden had a total of 4,760 return cases open for children, including 557 for unaccompanied and separated children.

In accordance with Swedish policy, children who are found not to be in need of international protection or who have other grounds to remain in Sweden shall return to their country of origin or a third country. As further described in Chapter 4 of the present report, Sweden has both legal and policy provisions that mandate an assessment of the best interest of the child before a refusal decision is issued and then *ex officio* in the return proceedings. Although voluntary return is preferred, particularly for unaccompanied and separated children, Sweden does not have a policy that prevents the forced return of minors.

## 2.2 Statistical overview

Voluntary returns of accompanied children from Sweden, carried out by the SMA (2016-2018)

Type of return	2016	2017	2018
Dublin transfer	1,770	593	542
Country of origin	1,723	1,044	748
Unknown	17	10	4
Third country	275	100	60
<b>Total:</b>	<b>3,785</b>	<b>1,747</b>	<b>1,354</b>

Top ten destination countries from Sweden

Destination	2016	2017	2018
Germany	1,385	299	303
Iraq	637	182	145
Albania	242	147	73
Serbia	149	112	59
Ukraine	74	126	67
France	35	53	108
Macedonia	75	74	36
Kosovo	75	65	32
Italy	64	51	37
Bosnia and Herzegovina	66	59	25
<b>Total:</b>	<b>2,802</b>	<b>1,168</b>	<b>885</b>

<sup>14</sup> Statistics from the Swedish Migration Agency, available in Swedish at: <https://www.migrationsverket.se/Om-Migrationsverket/Statistik/Asyl.html>. For an English-language version, see: <https://www.migrationsverket.se/English/About-the-Migration-Agency/Statistics/Asylum.html>.

<sup>15</sup> Corresponding statistics are not available for accompanied children.

Voluntary returns of unaccompanied and separated children from Sweden, carried out by the SMA (2016-2018)

Type of return	2016	2017	2018
Dublin transfer	193	191	100
Country of origin	176	125	70
Unknown	11		
Third country	11	3	6
<b>Total:</b>	<b>391</b>	<b>319</b>	<b>176</b>

Top ten destination countries from Sweden

Destination	2016	2017	2018
Germany	61	85	47
Albania	45	59	34
Afghanistan	77	22	5
Denmark	46	26	10
Iraq	32	17	8
Norway	31	9	5
Finland	14	20	5
France	9	16	10
United Kingdom	9	3	1
Belgium	5	5	2
<b>Total:</b>	<b>329</b>	<b>262</b>	<b>127</b>

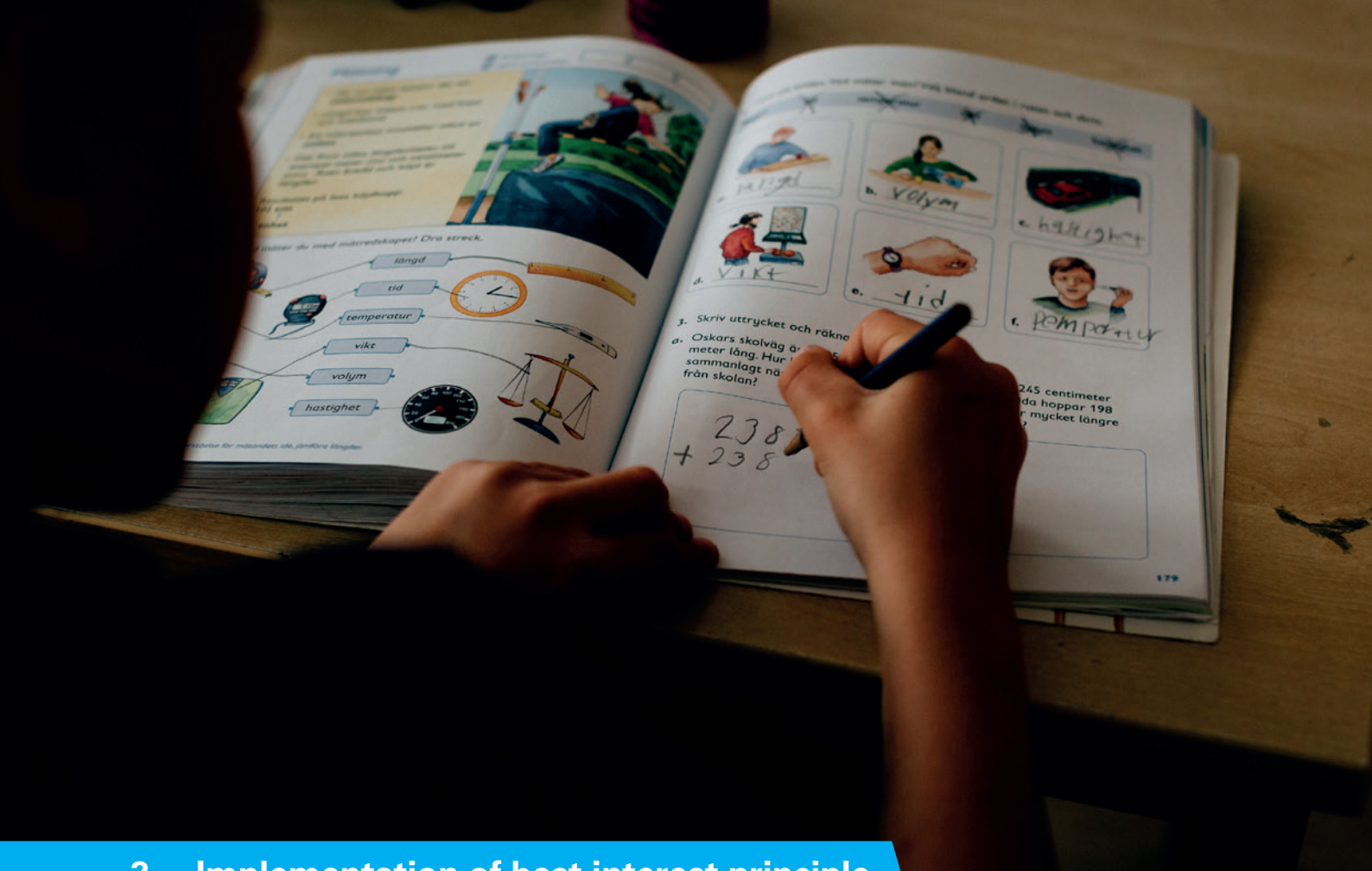
Forced returns of children from Sweden, carried out by the SBP (2016-2018)<sup>16</sup>

Year	Number of forced returns
2016	667
2017	564
2018	610

<sup>16</sup> Statistics received from the Swedish Border Police by email on 5 April 2019. Currently, the police do not separately record accompanied and unaccompanied children



## PART II: **FINDINGS**



### 3 Implementation of best interest principle

#### 3.1 Legal procedure and practice

The Swedish Migration Authority (SMA) is instructed to perform child impact assessments for any important decision on behalf of a child, and must in the determination of the child's asylum claim take their best interest into consideration, including assuring the right of the child to be heard and – if required – involving appropriate bodies in the process. The best interest principle has been incorporated as a general provision in Chapter 1, Section 10 of the Aliens Act. It stipulates that particular attention must be given to what is required with regard to the child's health and development, and to the best interest of the child in general.<sup>17</sup> The subsequent section states that on matters concerning a child's right to stay in Sweden, a child shall be heard unless this is deemed inappropriate.<sup>18</sup> In accordance with its own regulations, the SMA shall carry out, a child impact assessment before any decision or action is taken concerning a child.<sup>19</sup> This is supported by the agency's internal guidelines, which state that, prior to adjudicating an application for a residence permit, an individual assessment must be made to identify the best interest of the child with regards to age, gender, situation in Sweden and the country of origin, and in consideration of, *inter alia*, the child's right to life, development, health, care, and education. The guidelines further state that the assessment shall be conducted in relation to the child's protection needs based on relevant country of origin information and with consideration to any specific humanitarian grounds, thus making clear a connection with the SMA's mandate.

<sup>17</sup> Aliens Act (2005:716), Chapter 1, Section 10.

<sup>18</sup> Ibid., Chapter 1, Section 11.

<sup>19</sup> Förordning (2007:996) med instruktion för Migrationsverket, available in Swedish at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2007996-med-instruktion-for\\_sfs-2007-996](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2007996-med-instruktion-for_sfs-2007-996); and the SMA's internal Child Policy GDA 6/2011.

Considerations on humanitarian grounds were strengthened by the adoption of the 2005 Aliens Act, with the inclusion of residence permits based on exceptionally distressing circumstances. The Aliens Act further stated that these reasons could be less severe for children than for adults. The legislator's intent was that this would ensure that the best interest of the child was given due consideration. This provision was amended through the temporary law in 2016 stating that the adjudicator could only consider such circumstances if Sweden would otherwise contravene an international convention.

The recommendation to adopt internationally accepted standards on best interest procedures that are multi-disciplinary and precede the identification of a durable solution for the child is relevant in the Swedish context. The 2016 Government-commissioned Inquiry on the Rights of the Child<sup>20</sup> noted that, although explicit provisions on the best interests of the child exist in Swedish legislation respecting children in the migration process, the best interest assessments undertaken by the SMA are not often based on the individual circumstances of the child, but rather on general observations of law and policy. This conclusion was also confirmed through the stakeholder interviews and the review of 20 randomly selected SMA refusal decisions concerning unaccompanied and separated children and children with family (both the interviews and review are explicated further below).

Recent studies by the Swedish Refugee Advice Centre<sup>21</sup> and the Swedish Red Cross<sup>22</sup> also indicate that considerations of the best interest of the child as part of assessing exceptionally distressing circumstances under the Aliens Act have been restricted by the temporary law, as it is now only possible to grant a residence permit if Sweden is otherwise "in contravention of its commitment to an international convention." The legislator's original intent with the amendment to Chapter 5, Section 6 in 2014 – before the temporary law was adopted – was to ensure that the best interest of the child was sufficiently considered.<sup>23</sup> The Swedish Refugee Advice centre questions in its study if Sweden is complying with its international commitments in cases concerning children; for example, when children with resignation syndrome are not granted a residence permit. It notes that the lack of interpretative support both in the preparatory work and case law has led the SMA and the Courts to take a restrictive approach in their application of this provision.

The analysis of 20 randomly selected refusal decisions for both unaccompanied and separated children, as well as for children with family returned to Afghanistan, Eritrea, Iran, Iraq, Morocco, and Somalia, points to certain commonalities respecting how the best interest principle is applied and assessed in the asylum and return procedure:

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<sup>20</sup> See Barnrättsutredningen, *Barnkonventionen blir svensk lag* (SOU 2016:19).

<sup>21</sup> Swedish Refugee Advice Centre, 'Migrationsrättens framtid – En redogörelse för de juridiska riskerna med att förlänga den tillfälliga lagen (2016:752) om tillfälliga begränsningar av möjligheten av få uppehållstillstånd i Sverige', available in Swedish at: <https://sweref.org/wp-content/uploads/2018/10/Migrationsrattens-framtid-en-redogorelse.pdf>. See also: Swedish Refugee Advice Centre, 'I strid mot ett svenskt konventionsåtagande?' (2018), available in Swedish at: <https://sweref.org/wp-content/uploads/2018/08/I-strid-mot-ett-svenskt-konventionsatagande-5.4.pdf>.

<sup>22</sup> Swedish Red Cross, *Humanitära konsekvenser av den tillfälliga lagen* (2018), available in Swedish at: <https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om-oss/fakta-och-standpunkter/rapporter/konsekvenser-av-den-nya-lagen-181206.pdf>. A summary thereof in English is available at: <https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om-oss/fakta-och-standpunkter/rapporter/humanitarian-consequences-of-the-swedish-temporary-aliens-act-181206.pdf>.

<sup>23</sup> Proposition 2013/14:216, *Särskilt ömmande omständigheter*, pp. 15-16, available in Swedish at: <https://www.regeringen.se/contentassets/0d5f1f78ead84a33b6181caf456c95e5/sarskilt-ommande-omstandigheter-prop.-201314216>.

- All decisions state – as part of a general overview of the applicable legislation – that the SMA must consider the best interest of the child and the rights of children as stipulated in the CRC.
- In decisions that concern one or more children and their parent(s), a best interest assessment is noted for each individual child.
- In a majority of the decisions, the SMA assesses and takes a decision on the best interest of the child without consulting other actors, including those who may work more closely with the child, e.g. social workers.
- The SMA only requests additional information or opinions from other actors when the age of an unaccompanied and separated child is in question. These opinions – with the exception of the findings of the National Board of Forensic Medicine – are, however, consistently deemed to have little evidential value. In fact, the SMA's conclusion often disagrees with the opinion of the consulted social worker.
- Other types of documentation from actors close to the child (e.g. social workers and educators) are also consistently given little evidential value.
- In two cases, reports from medical professionals (a psychologist and an M.D.) were discounted by the SMA, because it found them to be incomplete and/or incompliant with the National Board of Health and Welfare's Guidelines. The SMA made no attempt to clarify the substance of the reports or to request a second opinion.

### 3.2 Stakeholder analysis of the implementation of the best interest principle

**Best interest determinations are often not based on individual circumstances, but rather on general observations of law and policy.**

According to all of the stakeholders consulted from civil society and to all of the consulted legal practitioners, best interest determinations are often not based on individual circumstances, but rather on general observations of law and policy. Several point to general statements on the best interest of the child in refusal decisions that are neither forward-looking nor take into account the child's individual circumstances. For children with family, it is often sufficient to assess the parent's asylum claim before concluding that it is in the best interest of the children to stay with their parents. Furthermore, return decisions do not declare the other considerations that may have outweighed the best interest of the child, such as Sweden's interest in controlling immigration. This makes it difficult to understand the Agency's reasoning in individual cases and, accordingly, to explain the decision to a child. The SMA's lack of substantive reasoning in best interest assessments also complicates responding to this reasoning in a subsequent appeal.

One lawyer stated that whilst a child impact assessment that undersets the best interest assessment is standard SMA practice, the impact assessment is not always referred to in the refusal decision. She has on several occasions requested access to these assessments so that she may review them on behalf of clients, but has not received them from the Agency.

The best interest principle was also questioned by many in connection with Sweden's policy on returning children to Afghanistan and other conflict-affected areas. It was noted that children returning to Afghanistan can neither lead a normal life nor exercise their rights. A reception centre staff member gave an example of a nine-year-old girl who had voluntarily returned with

her father to Ghazni in 2018. She had attended school in Sweden for two and a half years and was fluent in Swedish. The family was forced to flee into the mountains and live in a cave for several months following the Taliban offensive on Ghazni in July 2018. Although the family has since returned to their home, the girl has not been able to return to school or leave the house due to the security situation. The stakeholder described her frustration at trying to comprehend the SMA's decision that it was in the girl's best interest to return to Afghanistan.

It was also noted that the SMA's best interest assessments have deteriorated in recent years, since they emphasize reducing their file backlog rather than ensuring the quality of individual assessments. This also influences the SMA to refer to its initial best interest assessment (from its original decision) for any future decisions based on subsequent applications. One stakeholder also stated that case officers have difficulty in pursuing professional development opportunities due to a climate of promoting "tough decisions".

**The lack of a holistic approach to best interest assessments may result in diverging conclusions, and decisions by certain stakeholders not to act in support of the child.**

The absence of a holistic approach to best interest assessments was noted by several stakeholders. Inflexible administrative procedures amongst authorities and strict confidentiality rules prevent effective co-operation for the child's best interests. Instead, considerations of the child's best interest are managed in isolation by different authorities. These considerations include efforts to find a durable solution for the child, assessing the asylum claim (including any humanitarian considerations), and any interventions/actions taken by the Social Services related to the child's situation in Sweden.

Several stakeholders emphasized that any documentation provided by schools and social workers to support the best interest assessment by the SMA is often disregarded. They find it difficult to understand how the SMA is qualified to overrule or disregard medical attestations or best interest assessments submitted by Social Services, particularly since many other actors work more closely with the children and have both the competence and opportunity to better assess their well-being and situation.

One social worker further explained that interventions on behalf of a child – even when found to be in their best interest – are sometimes abandoned as a result of the impending return. This is exemplified by situations in which children are removed from the charge of their parents by Social Services and placed in foster care, but, when the time comes to execute the return decision, the family is reunited and they are returned together. According to stakeholders, the SMA is of the view that any family dysfunction is the responsibility of the authorities in the country of return. Information about the situation is, however, rarely conveyed to the authorities in the country of return.

Several respondents stated that the SMA does not well enough take account of the Social Services' views of the child's best interest. An interviewed SMA official acknowledged that relevant actors may hold contrasting opinions of what is in the best interest of the child, based on the mandate of that actor. He further stated that there is a perception within the Agency that when conducting best interest assessments, some social workers are guided by their personal views and not their professional expertise. Although the feasibility of closer co ordination has



been explored, it was abandoned due to regional independence and confidentiality rules. A lack of political will and an aversion to increased costs have also hindered further exploration of the Barnahus model in the reception and return of unaccompanied and separated children (a Barnahus, or 'Children's House', is a centre at which different agencies co-work to assist child victims of crime, particularly sexual abuse and violence). The National Board of Health and Welfare has issued guidance to Social Services on how attestations concerning the child's best interest shall be drafted.

**The Law on temporary limitations to the possibility of being granted a residence permit in Sweden (2016:752) has reduced the possibilities to consider the child's best interest.**

Several lawyers noted that the 2016 temporary legislation has limited the migration authorities' ability to consider the best interest of the child in its assessment of exceptionally distressing circumstances as grounds for granting a residence permit. Whereas the original provision in the 2005 Act was intended to reinforce the best interest of the child and provide the adjudicator with some additional flexibility when assessing children's humanitarian reasons for asylum (more generously than for adults), this is suspended under the temporary law. Furthermore, a lack of direction and guidance, both in the preparatory legislative work and precedential rulings by the Migration Court of Appeal on how to interpret the new legislation, has led the SMA and Courts to take a very restrictive approach.

*"SMA case officers often disregard attestations by social workers when assessing the best interest of the child, as many believe these are based on their personal views and not on professional standards"*

- SMA official on the lack of multi-disciplinary best interest procedures to inform a durable solution based on the child's individual needs

*"Our interventions on behalf of a child are indirectly impacted by the SMA's return decision. The treatment that was decided for a child under the The Care of Young Persons (Special Provisions) Act was terminated not because we thought care was no longer necessary, but because the return decision was being enforced anyway"*

- Social worker on the conflicting best interest assessments and interventions of Social Services and the SMA



## 4 Asylum, immigration and return procedures in Sweden

### 4.1 Swedish legislation, policy, and steering documents

The Aliens Act (2005:716) is the principal legislation concerning residency and employment in Sweden, including the right to asylum.<sup>24</sup> The Act also regulates the conditions on which a foreigner may be refused entry to or expelled from Swedish territory. The provisions of the act are still in force unless otherwise suspended in accordance with the adoption of the Law on temporary limitations to the possibility of being granted a residence permit in Sweden (2016:752).<sup>25</sup>

The definition of the term “refugee” and persons otherwise in need of protection is outlined in Chapter 4 of the Aliens Act.<sup>26</sup> The temporary law has, *inter alia*, suspended Section 2.a (persons otherwise in need of protection) and made temporary residence permits the norm. Residence

<sup>24</sup> The Aliens Act is supported by several other pieces of legislation and decrees, including the Law on the Reception of Asylum Seekers and Others (1994:137), Amendment to the Law (1994:137) on the Reception of Asylum Seekers and Others (2016:381), the Aliens Act Ordinance (2006:97), and the Ordinance on the Act on Reception of Asylum Seekers (1994:361). These are available in Swedish at, respectively: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1994137-om-mottagande-av-asylsokande-mfl\\_sfs-1994-137](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1994137-om-mottagande-av-asylsokande-mfl_sfs-1994-137); <https://data.riksdagen.se/fil/4BB887AF-93CB-4A5B-83AC-9150170D071F>; [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/utlanningsforordning-200697\\_sfs-2006-97](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/utlanningsforordning-200697_sfs-2006-97); and [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-1994361-om-mottagande-av\\_sfs-1994-361](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-1994361-om-mottagande-av_sfs-1994-361).

<sup>25</sup> Sveriges Riksdag (Swedish Parliament), Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige, available in Swedish at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svenskforfattningssamling/lag-2016752-om-tillfalliga-begransningar-av\\_sfs-2016-752](https://www.riksdagen.se/sv/dokument-lagar/dokument/svenskforfattningssamling/lag-2016752-om-tillfalliga-begransningar-av_sfs-2016-752).

<sup>26</sup> See, for example, a press release by the Swedish Government dated 3 May 2016, available in English at: <https://www.government.se/press-releases/2016/05/proposal-to-temporarily-restrict-the-possibility-of-being-granted-a-residence-permit-in-sweden/>.

permits on grounds of exceptionally or particularly distressing circumstances as stipulated in Chapter 5, Section 6 of the Act are now only permissible if refusing entry to or expelling the person would contravene a Swedish commitment to an international convention. Rules regulating expulsion and refusal of entry and enforcement of such decisions are stipulated in Chapters 8 and 12 of the Act respectively. The Return Directive's Article 10.2 has been transposed into Chapter 12, Section 3.a, which stipulates that "*a return decision concerning an unaccompanied and separated child cannot be enforced before the responsible authority is satisfied that the child will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the country of return*". The preparatory work indicates that a reception facility can constitute a social welfare authority, an orphanage, or another institution that is suitable for the reception and care of the child.<sup>27</sup>

Complementary measures include the Social Services Act (2001:453), in which Chapter 1, Section 2 states that all actions taken on behalf of a child must allow for the best interest of the child. When taking decisions or other measures relating to childcare, or for otherwise treating children within its jurisdiction, the child's best interest must be the decisive factor. The Social Services, which are responsible for safeguarding children's rights within its municipal borders, regardless of the child's circumstances and legal status, has both procedures and tools (Barnets Behov i Centrum – *The Needs of the Child in Focus*) in place to strengthen the rights of children in its operations and to enhance their meaningful participation. However, the decentralized structure of the Social Services in Sweden can result in differing interpretations and applications of the Social Services Act, which impact on children's access to equal rights irrespective of their migration status and situation.<sup>28</sup> The UN Committee on the Rights of the Child has criticized Sweden in this regard, and for disparities in its implementation of the CRC in the municipalities, counties, and regions.<sup>29</sup> It has recommended that Sweden establish a high-level mechanism with a clear mandate and the authority to ensure equal access to all rights at the regional and local levels, and to provide the necessary human, technical, and financial resources for its effective operation.

The Law on the Reception of Asylum Seekers and Others (1994:137) was also subject to some significant amendments in 2016, which have a bearing on the benefits afforded to asylum seekers at the end of the period for their voluntary return following a refusal decision. The 2016 amendments state that adults lose their entitlement to a daily allowance and accommodation, as well as to subsidized health care and medication. Of particular note is that these changes are also applicable to older children, who upon their turning 18 years of age must leave their accommodation and have their daily allowance stopped. Adults with children are entitled to a reduced allowance, while maintaining their accommodation and receiving a full allowance for their children. The Government judged that these restrictions would lead to cost reductions and encourage returns. Civil society has criticized these restrictions for placing many persons, in particular young individuals, in an even more precarious position, and has warned that more

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<sup>27</sup> Regeringens proposition 2011/12:60, 'Genomförande av återvändandenedirektivet', available in Swedish at: <https://data.riksdagen.se/fil/9DEA2E06-2895-4382-906D-2D14FC8DA5D3>.

<sup>28</sup> See Save the Children Sweden, CONNECT project (2014), 'One plus One Equals Three: a mapping of the reception and protection of unaccompanied children in Sweden', available at: [http://www.connectproject.eu/PDF/CONNECT-SWE\\_Report.pdf](http://www.connectproject.eu/PDF/CONNECT-SWE_Report.pdf).

<sup>29</sup> UN Committee on the Rights of the Child (2015), Concluding observations on the fifth periodic report of Sweden, para. 11, available at: <https://www.refworld.org/docid/566e7e8c4.html>.

people will turn to civil society organizations for assistance with accommodation, food, and health care.<sup>30</sup>

## 4.2 Bilateral and multilateral agreements

The EU recognizes that international co-operation with countries of origin is key to achieving sustainable return.<sup>31</sup> It has therefore stepped up its co-operation with non-EU countries to take back their citizens on the basis of readmission agreements and memorandums of understanding. Readmission agreements have so far been concluded with the two Chinese Special Administrative Regions (Hong Kong and Macao), Sri Lanka, Russia, Ukraine, the Western Balkan countries (Albania, Bosnia and Herzegovina, Kosovo, FYR Macedonia, Montenegro, and Serbia), the Republic of Moldova, Georgia, Turkey, Armenia, Azerbaijan, Cape Verde, and Pakistan. Besides determining the rules for the readmission of nationals who do not or no longer fulfil the conditions for entry into or stay in a Member State, these agreements also aim to promote legal migration and combat irregular migration and human trafficking.<sup>32</sup>

Sweden has also concluded several bilateral readmission agreements with countries of origin in parallel with the above-mentioned efforts of the EU.<sup>33</sup> They are general readmission agreements which, while they apply to unaccompanied minors, do not directly target them. The only exceptions are the agreements with Afghanistan and Kosovo, which state that the parties shall ensure adequate reception facilities for unaccompanied minors who cannot be returned to a member of their family or to a nominated guardian.

## 4.3 Return general procedures

A cornerstone of Swedish migration policy is the government's stated intent that persons found not to be in need of international protection or who for other reasons do not have a right to remain in Sweden should, as soon as possible, return to their country of origin or a third country. This is intended to happen on a voluntary basis, but the legislation also allows for forced returns should the former not be deemed possible. Recent legislative and policy amendments, which include both incentives to leave (e.g. re-establishment and reintegration support) and disincentives to stay (by means of the withdrawal of benefits and services for adults with non-appealable refusal decisions), have been adopted to "encourage" voluntary returns.

The return process typically begins once the refusal decision has gained legal force and

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<sup>30</sup> Swedish Red Cross (2016), *Consequences of the amendment to Sweden's Reception of Asylum Seekers Act*, available in Swedish at: <https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om-oss/fakta-och-standpunkter/rapporter/lagesrapport-lma-2016.pdf>.

<sup>31</sup> EU Return Directive (2008/115/EC), Preamble, para. 7. Available at: <https://www.refworld.org/docid/496c641098.html>.

<sup>32</sup> European Commission, 'The Global Approach to Migration and Mobility' (2011), available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0743>.

<sup>33</sup> Readmission agreements have been concluded with Afghanistan, Switzerland, Croatia, Romania, Macedonia, Kosovo, Bulgaria, Estonia, Latvia, Lithuania, Slovakia, Poland, Bosnia and Herzegovina, and Armenia. The readmission agreements can be accessed through <https://www.regeringen.se/sokresultat/?page=1&query=%c3%a5tertagande#result>.



domestic remedies have been exhausted.<sup>34</sup> The decision will stipulate the time period within which a person must 'voluntarily' leave Sweden without being subject to a re-entry ban. This is typically two weeks (for manifestly unfounded cases) to four weeks for adults, as well as families with children. If the case concerns an unaccompanied and separated child, the stated time period will be longer (typically five months) in order to ensure an adequate reception in the country of return. There are possibilities to extend the period for voluntary return as noted in the SMA instruction SR11/2017 for reasons such as allowing a child to complete the school year or to investigate other family and social links.<sup>35</sup>

Several stakeholders reported that whereas the SMA previously had a clear strategic direction to give priority to and advance child-related policy/issues, political developments in Sweden have led to a reduced focus on children in the migration process. The specific child units within the SMA have been disbanded, and the Child Co-ordinator position at HQ level has been discontinued. In particular, there are no guidance documents about children in the return process.

There are several organizations in Sweden that support both adults and children in the asylum procedure and return process. Many believe that the role of civil society organizations has grown as a result of restrictions to both rights and financial benefits once a refusal decision is enforceable. The types of services provided in the return process include legal advice and counselling services on options following a refusal decision and the consequences thereof, advocacy on rights in the return process, and raising public awareness of the situation of persons returning. Finally, some civil society organizations provide emergency shelter to families and young adults who either abscond in order to avoid the enforcement of a return decision or are unable to return due to practical obstacles. Many have also provided shelter to young adults who have applied for a temporary residence permit to complete their secondary education, but are without access to financial assistance and accommodation while the SMA processes their case.

#### 4.4 Return meeting

The SMA supports the return of families and unaccompanied and separated children through return meetings. These meetings, naturally, are in the main about the return process, and in them is provided information concerning travel requirements and the possibility to apply for re-establishment and/or reintegration support. The frequency of the meetings will depend on the SMA officer and the progress made in obtaining the identity documents necessary for the return.

As a first step, a return meeting is organized with an SMA reception officer soon after the refusal decision has gained legal force. If the return involves an unaccompanied and separated child, it is the responsibility of the legal guardian to accompany the child to the meeting. It is not uncommon for staff at the reception center or foster parents to accompany the child as

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<sup>34</sup> An applicant can also choose to accept the initial decision by the SMA and sign a declaration of satisfaction. Once signed, the refusal decision cannot be appealed, and the applicant is expected to plan their return home or to a third country.

<sup>35</sup> Migrationsverket, SR 11/2017, *Rättsligt ställningstagande angående förutsättningarna för förlängning av tidsfrist för frivillig avresa*, available in Swedish at: <https://lifos.migrationsverket.se/dokument?documentSummaryId=39244>.





well. Although the SMA should already in the return decision have considered the availability of an adequate reception (i.e. from a member of the child's family, a nominated guardian, or adequate reception facilities) for an unaccompanied and separated child in the country of return, the Agency must in this phase ensure that these conditions are in place before the child can be returned. The legal guardian and the child have a responsibility to support this process by providing contact information for parents and acquiring the necessary identity documents. During the return itself, the responsible agency (i.e., the SMA or the Border Police) accompany the child and ensure that the child is transferred to responsible authorities or parents in the country of origin. Children who are accompanied by their parents in Sweden will only attend the return meeting if so wished by their parents. The SMA is unable to collect statistics about the children's participation, although it notes the presence or absence of children at such meetings. The SMA officer shall inform parents of their responsibility to discuss the return with their children, but it is unclear whether this is routinely done in practice.<sup>36</sup>

The SMA has developed internal guidelines to support the return meeting with unaccompanied and separated children. These stipulate that the overall aim of the meeting is to: 1. Ensure that the child and legal guardian understand the implications of the enforceable refusal decision, including, for example, available return incentives, consequences of non-compliance, and support at their disposal for explaining the decision to family in the country of origin; 2. Discuss the child's thoughts on returning and understand the attitudes of the child, legal guardian, and family to voluntary return; 3. Describe the child and legal guardian's responsibilities to obtain identity documents for the return; and 4. Explain the decision's impact on financial and other support services for children that are close to turning 18 years of age.

## 4.5 Access to legal aid

All unaccompanied and separated children are appointed public counsel, as are families with children. There is an exception for families if the case is considered manifestly well-founded and it is assumed that the applicants will be granted asylum. In Dublin procedures, the right to public counsel is available from the outset for all cases of unaccompanied and separated children, whilst others, including families with children, only have a right to legal assistance in exceptional circumstances.

The public counsel represents the child throughout the asylum proceedings until the decision has gained legal force. They will review the first decision made by the SMA with the child or family, and if required discuss the possibility of appealing this decision. The same is applicable following a ruling by the Migration Court. However, once a return decision has gained legal force, the role of the public counsel ends.

Several stakeholders have remarked that contradictory and/or incorrect information about the asylum process can lead to increased vulnerability and have a negative impact on children's mental health and their willingness to accept a negative decision against their asylum claim. In parallel, many stakeholders emphasized that children's well-being throughout the return process is often bound to that of their parents. Moreover, the lack of legal support in return

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<sup>36</sup> Email from SMA expert dated 14 May 2019.

proceedings can result in different actors providing inconsistent information to children and parents, which can result in unrealistic expectations of a positive outcome of subsequent applications, based on perceived obstacles to the enforcement of the return decision.

## 4.6 Guardianship

The Chief Guardian of the municipality is responsible – on their own initiative or following an application by the SMA or the Social Welfare Board – for appointing a legal guardian for unaccompanied and separated children. The child has a right to express their opinion of the appointment, which shall be made as soon as possible following the child's arrival in Sweden or when the child first comes into contact with Swedish authorities. The Chief Guardian also assesses the suitability of guardians, ensures that they receive the required training, and provides oversight. In accordance with the Children and Parents Code (1949:301), the guardian can be a non-specialist, but should be experienced and suited to working with children in vulnerable situations. Furthermore, they must possess sufficient knowledge of children's needs and of Swedish society, and understand the asylum procedure. The role of the legal guardian is set out among other places in the Act on legal guardian for unaccompanied and separated children (2005:429).

The legal guardian is in charge of managing the child's personal affairs and makes any legal decisions on their behalf, but is not responsible for the day-to-day care of the child. Their duties include applying for a residence permit on behalf of the child; assisting in contact with the SMA, Social Services, the school, and health care authorities; applying for financial support; managing the child's financial assets; and providing other general support. Although the public counsel (see section 5.5, *ante*) is responsible for providing legal assistance throughout the asylum procedure, the guardian is also expected to participate and support the child. The guardian's role continues following a negative decision on the asylum claim, and ends once the child has returned to their country of origin or a third country. During the return process, the guardian shall support the child with information and represent the child during contact with the SMA, including in return meetings. The guardian is responsible with the child for making necessary preparations to facilitate the return, such as helping the child to obtain identity documents and locate family members, and assisting the child's contact with family or relatives in the country of origin.

The guardianship ceases automatically when the child turns 18 years old, the age of majority, or when – by way of a medical age assessment – the child is determined by the SMA to already be 18 years or older and this decision has gained legal force.

Among the common challenges to the support of unaccompanied and separated children throughout the asylum procedure are the inconsistent qualifications of guardians. As noted in a 2017 UNICEF report<sup>37</sup> and other reports<sup>38</sup>, national legislation defines the formal

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<sup>37</sup> UNICEF, 'Protected on Paper? An analysis of Nordic country responses to asylum-seeking children' (2018), available at: <https://www.unicef-irc.org/publications/940-protected-on-paper-an-analysis-of-nordic-country-responses-to-asylum-seeking-children.html>.

<sup>38</sup> See, for example, UNCHR, 'This Is Who We Are – A study of the profile, experiences and reasons for flight of unaccompanied and separated children from Afghanistan seeking asylum in Sweden in 2015' (October 2016), available at: <https://www.refworld.org/docid/581b4b684.html>.



qualification requirements very broadly, leading to a wide variance in the quality of guardians' performances. The absence of a cap on the number of children a single guardian may support has also led some guardians to take responsibility for many more children than they can adequately look after, resulting in children being neglected and ill-informed.

Several of the stakeholders interviewed related their concerns with the qualifications of some legal guardians and interpreters used by the SMA. One stakeholder noted that, particularly in Dublin transfers, a child without access to legal aid can be left vulnerable to the actions of the guardian. She described the highly publicized case of a 16-year-old girl who had spent most of her childhood in Sweden, but due to family conflict was no longer able to live with her mother.<sup>39</sup> The SMA disregarded the family situation and decided that she should be transferred to Italy (where the SMA states that she and her family had residency permits). The transfer was handed over to the Swedish Border Police. The girl's legal guardian was reported to the police for not looking after her best interests and for facilitating her transfer to Italy. The girl has since returned to Sweden on her own accord and intends to apply for asylum there.

## 4.7 Age assessment

The Aliens Act was amended in 2017 with a requirement for the SMA to assess a person's age earlier in the asylum process. This is performed using both medical and non-medical methods. The amended law states that a temporary age assessment should be carried out straight away in the initial phase of the asylum procedure, through interviews and a request for the applicant to submit identity documents. If the applicant cannot provide suitable evidence of their age, the SMA may offer them the opportunity to undergo a medical age assessment. This is conducted by the Swedish National Board of Forensic Medicine upon referral by the SMA and with the consent of the asylum applicant. The result of the medical assessment, together with other available supporting information, forms the basis for the SMA's decision of whether the applicant should be re-registered as an adult.

In 2017, medical age assessments were conducted in 65 percent of all asylum investigations concerning unaccompanied and separated children. The SMA estimate that approximately 80 percent of the applicants were registered as adults following the assessment.<sup>40</sup> It should also be noted that the medical age assessment procedure has been heavily criticized by several parties, and has been suspended at times due to changing scientific data.

The age assessment procedure employed by the National Board of Forensic Medicine upon referral from the SMA is contentious and has been criticized by both scientists and the public. Several stakeholders strongly believe that many children have been wrongly classified as adults, which in turn has had an impact on their rights and the outcome of their asylum claim. Further to this, many organizations and social workers point out the vulnerable situation of youths when they turn 18 years of age, or when they are deemed to be adults by means of an age assessment. In such circumstances, legal guardianship ceases immediately, and the young

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<sup>39</sup> See, for example, SVT Nyheter, '16-åriga Selma tillbaka i Sverige efter flykten från Italien' (19 March 2019), available in Swedish at: <https://www.svt.se/nyheter/lokalt/varmland/16-ariga-selma-tillbaka-i-sverige-efter-flykten-fran-forvaret-i-italien>.

<sup>40</sup> Migrationsverket, Årsredovisning 2017 (published 2018), available in Swedish at: <https://www.migrationsverket.se/download/18.4cb46070161462db1137cf/1519296859864/Migrationsverkets%20%C3%A5rsredovisning%202017.pdf>.





adult is forced to move out of the reception centre or family home. For young adults with return decisions, the municipalities have various practices in place for providing accommodation. A social worker explained that some young adults can remain in their family home until the Migration Court has reviewed the refusal decision, on the condition that they remain in school and attend to their studies. Otherwise, the person would need to find their own accommodation or move to a SMA-managed reception centre. These are often located far from where the young adult attends school and has family or friends.

#### **4.8 Return procedures for accompanied children**

Children in families are often overlooked in the return process. Authorities see it as a parent's responsibility to inform a child of and prepare them for the return. However, in an effort to protect their children, parents do not always inform their children of a refusal decision or an impending return. This is aggravated by the short timelines stipulated for voluntary return, which do not allow sufficient time for the affected persons to come to terms with the decision and undertake the necessary preparations for return, such as acquiring school or medical records.

#### **4.9 Voluntary returns**

The SMA is responsible for facilitating all voluntary returns of rejected asylum seekers and for ensuring that adequate reception conditions are in place in accordance with the Aliens Act before an unaccompanied and separated child is returned.

All decisions concerning children with family in Sweden are stipulated a voluntary departure time of four weeks. The possibility of extending this period so that children may complete the school year is left open. This was however not considered in any of the cases analysed in the present study. Unaccompanied and separated children were, in most cases, provided with a voluntary departure time of five months. This was completely waived in two cases where the children had previously absconded and/or applied for asylum in another EU Member State. In one case concerning an unaccompanied and separated child returning to Albania, the time period for voluntary departure was only four weeks. The rationale for such a short period was unclear, given that another Albanian child in similar circumstances was given five months to prepare for voluntary departure.

#### 4.10 Incentives to facilitate return: re-establishment and reintegration assistance

Financial and in-kind support can be made available to returnees who are returning to a country in which the conditions for re-establishment are limited due to severe conflict. A re-establishment grant is offered to both children and adults on the condition that the asylum application has been rejected or withdrawn and that the returnee intends to return voluntarily. Applications for re-establishment support must be submitted no later than two months after the notification of the refusal decision or the withdrawal of the asylum application. Although not stipulated in the Ordinance Act<sup>41</sup> as such, the two-month time period within which applications are to be made commences from the time the return decision gains legal force.<sup>42</sup> As noted above, this is coupled with a requirement to leave Sweden within a certain period in order to avoid a re-entry ban.

An application for re-establishment support is made to an SMA reception officer. The Agency's decision cannot be appealed. The grant is equivalent to SEK 30,000 for each person over the age of 18 years, and SEK 15,000 for children under the age of 18. A family can receive a maximum of SEK 75,000.<sup>43</sup> The funds are administered through the IOM or via bank transfers in countries where the IOM has no presence.

At present, the SMA considers that persons returning to the following countries are eligible to receive financial support for re-establishment: Afghanistan, the Central African Republic, the Democratic Republic of Congo, Ivory Coast, Eritrea, Iraq, Yemen, Liberia, Libya, Mali, Sierra Leone, Somalia, Palestine, Sudan, South Sudan, Syria, and Chad.

Sweden is also a member of the co-operation programme ERRIN (European Return and Reintegration Network). Through this programme, returnees can apply for in-kind reintegration support in their country of return up to a total sum of €2,500 for voluntary returns and €2,000 for 'involuntary' returns. ERRIN is aimed at adults, children in families, and children without custodians who are returning to their country of origin during the period that the co-operation

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<sup>41</sup> Förordning om återetableringsstöd is available in Swedish at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2008778-om-ateretableringsstod-for\\_sfs-2008-778](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2008778-om-ateretableringsstod-for_sfs-2008-778).

<sup>42</sup> Confirmed in internal SMA guidance documents and in an e-mail from an SMA expert dated 21 March 2019.

<sup>43</sup> Information on return incentives is available at the Swedish Migration Agency's website: <https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/When-you-have-received-a-decision-on-your-asylum-application/If-your-application-is-refused/Support-for-your-re-establishment/Financial-support.html>.

programme is running. Support is available for the following countries: Afghanistan, Morocco, Iraq (Kurdistan), Iraq (central and south), Pakistan, Russia, and Nigeria.

The support includes reception on arrival in the country of return and is further adapted to individual needs, including assistance with starting a business, access to the labour market or education (including vocational training), job counselling, temporary accommodation, and support in contacts with public authorities, as well as legal counselling and medical care.

Applications are made to the SMA once the return decision has gained legal force or the asylum application has been withdrawn. The Agency's decision on reintegration support cannot be appealed. ERRIN support for returns to Afghanistan was suspended by the SMA in February 2019 following concerns that the partner agency International Returns and Reintegration Assistance (IRARA) was not able to satisfactorily account for their invoicing.<sup>44</sup>

#### 4.11 Forced returns

The SMA may refer the return to the Swedish Border Police (SBP) if it does not believe that the person will leave on their own accord or if the person has absconded. For unaccompanied and separated children, the SBP will then also take over the responsibility for organizing travel documents and ensuring that the child is appropriately received in the country of return.<sup>45</sup> The police can also refer a case back to the SMA if it finds that the child cannot be returned to the country of origin or third country.<sup>46</sup>

The SBP can delegate the execution of the return decision to the Swedish Prison and Probation Service (SPPS), but they remain the responsible authority. In most cases, the returnee is escorted to the airplane by the SPPS; the airline and country of return (including transit airports) are notified but the returnee travels on their own. In other cases, the returnee departs Sweden on their own accord by confirming their departure with a departure certificate, which they present to airport officials. Only in cases where the returnee declares that they will not comply with the decision or has special needs (e.g. medical needs) would the SPPS or SBP escort the returnee to the country of return. This practice is also applicable to unaccompanied and separated children. As part of the SBP's duty to ensure the adequate reception of the minor, parents or relatives are requested to verify their identity before the child is handed over to their care.<sup>47</sup> Unaccompanied and separated children or families with children often travel privately and only in exceptional circumstances are they placed on chartered flights with other passengers.

The SBP's internal instructions for the execution of return decisions state that specific considerations for children must be made in the planning of the return. The instructions further dictate that when the return is being carried out, children shall not, while at or in proximity

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<sup>44</sup> Swedish Migration Agency, press release of 6 February 2019: 'Migrationsverket pausar utbetalning till samarbetsorganisation i Afghanistan', available in Swedish at: <https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2019/2019-02-06-Migrationsverket-pausar-utbetalning-till-samarbetsorganisation-i-Afghanistan.html>.

<sup>45</sup> Phone conversation with Head of Unit at the Swedish Border Police, Stockholm Region, 21 March 2019.

<sup>46</sup> Aliens Act, Chapter 12, Section 3a.

<sup>47</sup> Ibid.

to their school, be searched for or collected. Furthermore, police are to wear civilian clothing when collecting children or speaking to them about return. The SBP must also consider the best interest principle in their dealings with children, but have no specific procedure to conduct such assessments. The police can refer a case back to the SMA if they find that the child cannot be returned to the country of origin or third country.

## 4.12 Detention

Although the number of asylum seekers has steadily decreased since 2015, Sweden continues to increase its detention capacity, detaining more individuals and for longer periods. The rules regarding the detention of children for immigration-related purposes are mainly set out in the Aliens Act (Chapter 10, Section 2, paragraphs 1 and 2). In addition, there are rules regarding immigration detention in EU law, including the Dublin Regulation, the Return Directive, and in the Reception Conditions Directive. The Aliens Act stipulates that children may not be detained for more than 72 hours unless there are exceptional circumstances; they can then be held for an additional 72 hours (a maximum of six days) (Chapter 10, Section 5). However, in agreement with the supremacy of EU law, this is not applicable in detention related to transfers under the Dublin Regulation. The Aliens Act (Chapter 10, Sections 6 and 7) also enables authorities to use supervision as an alternative to detention. This entails reporting to the Police Authority or an SMA office at regular intervals.

A total of 13 children were detained in 2018 on immigration-related grounds.<sup>48</sup> This comprised three unaccompanied and separated children and ten children accompanied by their parents, who spent an average of 7 days in detention. There were 53 detention decisions for children in 2017.

A 2018 report<sup>49</sup> conducted by the Swedish Red Cross indicates serious shortcomings in the implementation of immigration detention legislation. They analysed 57 immigration detention decisions concerning children taken by the Swedish Police Authority in 2017, and found numerous flaws with the legality of the decisions, including the failure to provide adequate support for the validity of the decisions, and applying the rules of the Aliens Act in cases where the Dublin Regulation takes precedence. In particular, the report also points to the lack of consideration for alternatives to immigration detention, and observes that the application of Swedish law does not meet the requirement of necessity, according to which immigration detention is a measure of last resort. Alternatives were not taken into account in 38 per cent of the decisions examined, which the Red Cross concluded was a breach of the Aliens Act, the Dublin Regulation, the Charter of Fundamental Rights of the European Union, and the Convention on the Rights of the Child. In none of the decisions was it stated that immigration detention was deemed to constitute a measure of last resort. Furthermore, the report found that proportionality assessments were lacking in a majority of decisions. In 33 per cent of their decisions, the police failed to apply the best interest principle; in 61 per cent of the decisions, keeping the child together with their family was judged to be in their best interest.

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<sup>48</sup> Statistics received from the SMA by e-mail on 4 February 2019.

<sup>49</sup> Swedish Red Cross, *Barn i förvar – en undersökning av Svenska Röda Korset* (2018), available in Swedish at: <https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om-oss/fakta-och-standpunkter/rapporter/barn-i-forvar-181126.pdf>



### 4.13 Return counselling and preparation

It was reported in several interviews that the SMA lacks the capacity to effectively administer the return of rejected asylum seekers, including by supporting children and parents with sufficient information, counselling, and other preparations for return.

Other agents that interact more regularly with children and/or parents (such as Social Services) take a varying degree of responsibility for the return process, due to their differing perspectives of their roles and mandate. One exception is the municipality of Strömsund, which has taken a cross-sectoral approach to working on preparations for returns at an early stage in the asylum process, principally with unaccompanied and separated children but also with families (see box below).

#### Good Practice

As a model of good practice, the municipality of Strömsund often informs the child of the refusal decision (together with the guardian) before the child is officially notified by the SMA. This ensures that the child is informed of the decision in an environment where they feel safe. The Social Services thereafter call for a joint meeting with the child and all relevant actors (including the legal guardian and the school representatives) to establish a common understanding of the child's needs and their required support. Municipality representatives highlight the importance of having established routines emplaced within the municipality, as the time limits are often short between an enforceable return decision and its execution.

A stakeholder from a leading child rights agency felt that approaches to cross-sectoral co ordination to support children in the return process were significantly better before 2015, when clearly articulated roles and responsibilities ensured predictability and facilitated children's sense of safety. Presently, the Police Authority, Social Services and schools lack effective co-operation. Instead of providing complete and consistent information to children, authorities seemingly speak only through their respective mandates. Children find this confusing, leaving them to search for their own information with varying degrees of success.

*"It is the municipalities responsibility to lay the puzzle for the children – not for them to find the puzzle pieces and try to make sense of it all..."*

– Representative from Strömsund municipality

Most of the stakeholders (guardians, reception staff/foster parents, legal practitioners, and NGO representatives) interviewed for this project believe that the return meeting with the SMA does not constitute return counselling. They see it rather as an information session on stakeholders'

obligations to facilitate the child's return and of available options for reintegration assistance.<sup>50</sup> Previously, several return meetings took place to support and prepare children for return, but there is now only one meeting with the child about what they need to do to ease the return, and the manner in which this knowledge is communicated resembles the reading of a check-list. Besides, SMA officials do not have any child-specific training to support discussions, and they do not provide information in a child-sensitive manner.

Furthermore, there is a lack of understanding among the various actors involved in the return process of its particularities and the exact nature of their respective roles and responsibilities within it. A social worker stated that the municipality in which she works does not believe that it has a role in the return process. She further highlighted the difficulties of supporting a child due to a want of specialized knowledge and interaction with children. Providing support to reception centre staff or family homes would have a greater impact, as they interact with the child on a daily basis. The lack of information-sharing by the SMA concerning the reason for the refusal also complicates this work. Another stakeholder stressed the impact of strict confidentiality rules between authorities. For example, schools are not always aware that a child has received a refusal decision, which hinders their ability to effectively support the child in school and/or issue school records ahead of the return. At other times, schools may stage protests in support of the child, but in vain, as the SMA and/or Court are not thereby persuaded to reverse their decision.

None of the stakeholders interviewed reported any situation in which the SMA contacted local authorities or facilitated or encouraged contact with organizations in advance of the return. They were, further, unaware of any family assessments made in the home country.

Finally, all experts interviewed emphasized the short time limit granted for accompanied children and young adults (2-4 weeks) to come to terms with a return decision and undertake the necessary preparations to return home. Although both the Return Directive and Aliens Act<sup>51</sup> allow for an extension of the time limit for voluntary departure – including permitting a child to complete the school year<sup>52</sup> – this is under-used. SMA officials acknowledge that the Agency has become stricter in its approval of extensions, as other considerations, such as the family absconding at the end of the extension, are also accounted for its assessment. Some experts are therefore of the opinion that return counselling should start earlier in the asylum process, to provide more time for the family to adjust to the decision and prepare for the return.

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<sup>50</sup> The SMA's internal guidelines for the return meeting (Samtalsguide för ÅV-samtal med barn utan vårdnadshavare efter laga kraft (2016-04-25)) state that the purpose of the meeting is to ensure that the child and guardian understand the consequences of the return decision gaining legal force and the alternatives; to followup on the child's feelings about voluntary return; to pursue the child and guardian's efforts to obtain identification documents; and to appreciate the views of the child, guardian, and family on voluntary return. For youths that will soon turn 18 years of age, it is also noted that the return meeting shall ensure that they understand when the right to financial assistance ends.

<sup>51</sup> Proposition 2016/17:61, 'Uppföljning av återvändandedirektivet och direktivet om varaktigt bosatta tredjelandsmedborgares ställning' (2016), p. 26. Available in Swedish at: <https://www.regeringen.se/4aef0a/contentassets/b57606eec64a4bdf865760713109e-d8a/uppfoljning-av-atervandandedirektivet-och-direktivet-om-varaktigt-bosatta-tredjelandsmedborgares-stallning-prop.-20161761>.

<sup>52</sup> See Swedish Migration Agency, SR 11/2017, *Rättsligt ställningstagande angående förutsättningarna för förlängning av frivillig avresa*. In order for an extension to be considered for allowing a child to complete the school year, the returnee (or the parents) must show that they are actively working to obtain travel documents. SMA officials are also instructed to ascertain the child's age and whether an extension may enable the child to receive a diploma for the completion of studies.



#### 4.14 Transition into adulthood

It is evident from both the stakeholder interviews and statistical analysis that Sweden in reality returns very few unaccompanied and separated children to their country of origin due to the difficulties of ensuring adequate reception, particularly in conflict-affected countries. Instead, there appears to be an “unofficial” practice of waiting for children to turn 18 years old. This position is attested by interviews with SMA officials. A stakeholder from a child rights agency criticized the SMA’s lack of efforts to ensure adequate reception in the country of return, or to offer support for overcoming other practical obstacles encountered in the return process. She pointedly remarked: “It would be much better for a 17-year-old child to be returned to an adequate reception and a support network than to wait a year and return him or her to nothing...”

Furthermore, a 2016 report by Barnrättsbyrån highlights the ‘limbo’ situation facing many unaccompanied and separated children and young adults from Morocco following an unenforceable return decision. Interviews with the Swedish Police Authority, the SMA, Social Services, and the State Secretary for the Minister of Interior, document the vulnerable situation of children and young adults who have either not applied for asylum or received refusal decisions against their applications. The report illustrates the difficult transition in status that a child experiences as they become an adult, in respect of rights, support, and the State’s obligation towards them. Although co-operation between Sweden and Morocco on facilitating returns has improved since the report’s publication, the findings also demonstrate some of the practical obstacles that children and young adults continue to face in the return process (e.g. acquiring identity documents) and the reluctance of some states to accept their return.

*“It would be much better for a 17 year old child to be returned to an adequate reception and a support network than to wait a year and return him or her to nothing...”*

– Representative of a leading child rights organisation

*“He arrived in Sweden when he was only 13 years old. Although he received a negative decision last year, the SMA has still not done anything to trace his family. Instead the reception officer told us at the last return meeting that they will wait another year and return him once he turns 18. I cannot even begin to tell you the negative impact this has on his well-being and daily life”*

– Foster parent of a 17 year-old-boy with a return decision

#### 4.15 Barriers to return

The Aliens Act declares that both practical and temporary obstacles to return shall be considered in the initial assessment of an asylum claim. If it is not deemed possible to carry out the return decision due to practical obstacles, such as the absence of an adequate reception at the return location, this may constitute grounds to issue a temporary or permanent residence permit for the individual concerned. However, several stakeholders observe that such obstacles are not sufficiently addressed in the initial decision, but instead “pushed forward” to the return proceedings. The SMA’s work to ensure adequate reception begins only after the refusal decision has gained legal force. The child and legal guardian have a duty to co-operate in this process by providing identity documents and names and contact information of parents and family members in the country of return.<sup>53</sup>

Several stakeholders noted that a ruling by the MCA (MIG 2008:38) has placed significant responsibility on children to prove that obstacles to their return are legitimate. In practice, this has effectively transferred the burden of proof from the authorities, who are to show that adequate reception is available, on to the child, who is to show that this is not the case. The ruling states that, “when the individual has not tried to remove possible obstacles to executing the refusal decision or an attempt to execute the return decision has not yet been made, it cannot be concluded that there is a concrete obstacle to return”. It is apparent from the interviews conducted that this has led to contrasting views between authorities and other stakeholders of where responsibility lies for a return decision not being carried out.

Another issue that arose in stakeholder interviews stemmed from the recognition that, despite some children desiring to return to their countries of origin, their parents often did not wish to be traced, or, when found, did not want to consent to their child’s return. Consequently,

<sup>53</sup> A ruling by the Migration Court of Appeal (MIG 2015:23) states that unaccompanied and separated children shall – based on their age and maturity – co-operate in the assessment of reception in the country of origin.



unaccompanied minors could not return even when willing. One social worker spoke of another issue of children wanting to return home, but not being supported by adults close to them. One stakeholder believed that this was a matter on which public discussion has not been encouraged.

In practice, this has resulted in some unaccompanied and separated children finding themselves in a legal limbo of being denied a status, but unable to return. Stakeholders point to several negative effects, including stress, frustration, depression, and self-destructive behaviour. A foster parent to a young boy, arriving in Sweden when he was 13 years old, explained that the SMA had still not undertaken any efforts to trace the family or to ensure any other adequate reception, almost a year after the refusal decision. As this child is now 17 years old, an SMA official instead informed him in a return meeting that he would be returned when he turned 18 years old. The foster parent could not overstate the boy's stress as a result of this or the impact that it has had on him in school and daily life.

*"I would rather be poor and homeless in Stockholm than poor and homeless in Afghanistan"*  
– 17-year-old boy

This is a common sentiment among these young people. Several experts interviewed in the report also spoke about the difficult situation in which young asylum seekers find themselves, particularly once a return decision has gained legal force. A respondent from a civil society organization in Stockholm commented that young adults often choose to abscond in order to avoid being returned to their country of origin.

#### 4.16 Monitoring after return

Sweden lacks independent monitoring of forced returns. Some stakeholders raised concerns at the conflict of interest for the SMA in adjudicating both refusal and return decisions and then monitoring the enforcement of decisions where returns are removals executed by the Police Authority. They believe that it is more appropriate for the Parliamentary Ombudsman to take on such a role. They also described a complete lack of follow-up from Swedish authorities on children returned to their countries of origin, both in terms of a general monitoring scheme and for individual cases. This was confirmed by officials from the Ministry of Justice, who related that Sweden does not view follow-up after return as an obligation.

# **PART III: CONCLUSIONS & RECOMMENDATIONS**



## 5 Conclusions

Given the increasing concerns about migration in Sweden and across the European Union, Swedish authorities have focused on returns and a stricter migration policy. At the same time, Sweden is incorporating and applying the Convention on the Rights of the Child throughout its legislation, in which the best interest principle plays a central role in ensuring that children's rights are respected. As these two policy agendas move forward, there is an increasing risk of incoherence there-between.

The legislative and policy focus on the CRC has promoted positive developments in some areas, which are to be encouraged. The mainstreaming of the CRC in Swedish law is compelling government authorities to review their practices in regard to child rights. One example of good practice established in Sweden is its adherence to the best interest principle, as laid out in both legislation and policy. The challenge is how to ensure this principle is taken forward throughout the asylum system, particularly in the context of returns. It appears that the temporary law adopted in 2016 has limited the migration authorities' ability to consider the best interests of the child in its assessments, by allowing consideration of exceptionally distressing circumstances only if Sweden would otherwise be in contravention of its international commitments.

There is clear evidence of local-level interest and commitment to supporting the child. With the assistance of the SMA, Strömsund municipality is guiding 16 other municipalities to work more harmoniously across various sectors to prepare children earlier in the process for a possible return. This project ensures that adults close to children have knowledge of the asylum process, which positions them to better support children throughout the process and its possible outcomes, including readying them for a potential return.

However, there are also clear practical and legal issues that Sweden will need to resolve before reconciling its interests in constraining migration with its international obligations to uphold child rights.

There is a lack of understanding among the various actors involved in the return process, both of its particularities and of their respective roles and responsibilities within it. While the SMA clearly has the lead on paper, it does not appear to have the resources or the knowledge to effectively oversee and implement the Swedish return system. In particular, the SMA does not have the capacity to effectively support children throughout the return procedure. It tends to take a transactional, administrative approach, as opposed to actively supporting parents/guardians and children in need through preparation, counselling and advice to overcome administrative obstacles. It also appears that SMA staff lack child-specific training, particularly in how to interact with children. The municipalities' Social Services may be closer to the child, but often do not see it as their role to provide particular care for children within the return procedure, instead believing that to support the child with their life in Sweden is their principal duty. In addition, the absence of legal support during the return process means that children and parents might receive conflicting sources of advice and information that hinder proper preparations for return and may lead to unrealistic expectations that return can be avoided. Children with families appear to be overlooked throughout the process.

Another important observation from this study is the inconsistent application of the best interest principle by Swedish authorities. Foremost, the SMA's best interest assessment is more of a general assessment based on policy and law, instead of being tailored to the child's circumstances. Other actors, such as the Social Services, also conduct independent best interest procedures, but do so in accordance with their own specific mandates, regulations and tools, while others (chiefly the Police Authority) appear to lack standardized procedures for assessing best interests in their operations. This leads to disagreeing best interest assessments, rather than a holistic view that can provide a comprehensive picture of the long-term best interest of the child. Remarks by the Swedish Red Cross on the lack of consideration shown by the SBP for finding alternatives to detention, and their failure to rigorously apply the best interest principle in their decisions to detain children, also clearly demonstrate that Sweden can do more to implement alternatives to detention and thereby ensure that children are not detained for immigration-related reasons.

Moreover, Sweden's obligations to children's rights as defined in the CRC clearly apply to children who are situated within its territory.<sup>54</sup> At least one EU Member State (the Netherlands) appears to have a differing view of their extra-territorial responsibilities under the CRC when returning children to countries in which there is a greater risk that their rights will be violated.

This study also contributes to our understanding of the importance of family tracing in the asylum procedure of unaccompanied and separated children, as well as the difficulty in so doing. In order to identify more durable solutions for children that accord with their best interests, the SMA should strengthen its approach to family tracing and ensure that family assessments by qualified actors are included when deciding whether a child returning to family is in their best interests.

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<sup>54</sup> Sweden takes a more restrictive approach to its extra-territorial responsibilities to ensure the best interest of the child. The Ministry of Justice confirmed its view in a conference call on 11 April 2019.



Another important observation is the tendency to apply *ad hoc* or unstated return practices that are inconsistent with policy. The SMA understandably finds it challenging to enforce return decisions for children to certain countries, particularly those that are conflict-affected, in which adequate reception conditions are difficult to establish. Rather than facing this issue head-on, the SMA appears to have developed an unofficial practice of waiting to enforce return decisions until the child has turned 18, when the same safeguards no longer apply. This also creates uncertainty for some children who have had their asylum application rejected but are unable to return home. Beyond this, a decision by the highest appeals court has placed considerable responsibility with children/adults to verify the practical obstacles to their return. This has a significant impact on their mental health, and has established a very high burden of proof that cannot realistically be met by children or the adults who support them. Given the very real impact on children's well-being (and consequently on Sweden's obligations under the CRC), return practices should be the outcome of carefully considered decisions taken by recognized authorities in consultation with key stakeholders.

## Good practice

### **Project "Best Interests of the Child and Return" [Barnets bästa vid återvändande] – Strömsund municipality, Sweden**

This project, funded through the Asylum, Migration and Integration Fund (AMIF), was initiated by the Swedish Migration Agency and Strömsund municipality in August 2017, and will run until June 2020. The project aims to: increase competence and co-ordination amongst relevant stakeholders, and therethrough develop a more sustainable return process for unaccompanied and separated children; build a common understanding of what constitutes the best interest of the child; and augment support for compliance with the return decision. The project targets staff in managerial positions at municipal social services and in care facilities and reception centres, alongside foster families, social workers, legal guardians, and staff in charge of training.

The project is founded on the belief that return can be a durable solution and in the child's best interests, and it emphasizes the importance of access to accurate information and realistic expectations, early counselling on the return process, and helping the child to plan accordingly. Municipality staff inform the child already in the reception phase that the asylum process may end in a return decision. Increased knowledge amongst stakeholders close to the child ensures that advice given and actions taken are reasoned from the same information, and with the shared understanding of responsible actors in different parts of the process. Finally, a manual for co-ordination and processes for those actors working with the child is currently being produced. The project has also established a platform for social workers, to exchange practices and knowledge on how to effectively discuss difficult issues with minors, such as the possibility to return, or how to deal with trauma (including PTSD).

There are currently 16 municipalities involved in the project, and all information material resources developed are available at [www.begripligt.nu](http://www.begripligt.nu).



## 6 Recommendations

The following recommendations are made to support the development in Sweden of policy that provides durable solutions for children with consideration to their best interest as required by the UN Convention on the Rights of the Child.

### Best interest principle

**Sweden should revert to the original provision concerning exceptionally distressing circumstances in Chapter 5, Section 6 of the Aliens Act to allow the SMA and the Courts to duly consider the best interests of the child and honour the intent of the amendments made in 2014. (Swedish Government/Swedish Parliament)**

**Sweden should adopt a rigorous approach to the best interest principle by giving priority to the following:**

- Establish formalized and multi-disciplinary best interest procedures (Best Interest Assessments (BIA) and Best Interest Determinations (BID)) that are in constant effect, from the child's arrival in Sweden until a durable solution is identified. Actors involved in the process should not be limited to those within Swedish migration authorities, even if they have received specific training on children's rights and child-friendly procedures, but also take into account the advice of child protection actors that work more closely with the child, including Social Services. The best interest proceeding should be led or co-led by Social Services with the knowledge and capacity to determine a durable solution that is in the best

interest of the child based on the child's individual circumstances. This is also applicable to children in families. The process should also take account of the views of the child, the child's parents/caregivers, the child or family's legal advisor, the guardian for unaccompanied and separated children, and any other relevant expert(s) as may be appropriate. (Swedish Migration Agency)

- Incorporate tracing procedures and a family/reception centre assessment for the country of return into the best interest decision for an unaccompanied and separated child, to determine if return is truly in the child's best interest. The process should also take into account the long-term effects that a decision or action may have on a child's welfare and development, including living at length with a return decision that is not enforceable. (Swedish Migration Agency)
- Develop internal guidelines on children's rights in the return procedure that help forward return counselling, support throughout the process, and tailored reintegration support that meets children's needs in the country of return. (Swedish Migration Agency)
- Consistently consider the option of extending the period for voluntary departure in line with the Return Directive and its own legal instruction SR 11/2017, taking into account the specific circumstances of the individual case, such as the length of stay, the presence of children attending school, and the existence of other family and social links. (Swedish Migration Agency)
- The legislator's intent with the amendment to Chapter 5, Section 6 of the Aliens Act in 2014 was to ensure that the best interest of the child was sufficiently considered. This has been restricted by the temporary law (2016:752) and must be restored.

**Swedish authorities should allow all persons, including those children and parents who have absconded, to continue the process with access to return incentives. (Ministry of Justice)**

## **Child-sensitive procedures**

**Sweden should adopt tailored and child-sensitive case management in the return proceedings by giving priority to the following:**

- Apply a tailored approach to case management in the return process to ensure that, consistent with the best interest principle, children have access to accurate information and can prepare effectively. This includes not just the provision of child-friendly information, but face-to-face counselling to ensure that children (and parents where appropriate) understand their situation, can share their views and ask questions, are better prepared (particularly for return), and consequently feel more at ease throughout this demanding process. (Swedish Migration Agency)
- Re-establishment and reintegration support should be child-specific and include individual reintegration plans. (Swedish Migration Agency)

- Provide access to legal advice for unaccompanied and separated children and families with children in the return proceeding. This will not only ensure realistic expectations from all parties, but also safeguard children's rights in the return process. (Ministry of Justice)
- Swedish migration authorities should adhere to strict time limits for adjudicating asylum claims and identify durable solutions without jeopardizing due process. (Swedish Migration Agency and the Courts)

**Actors involved in the return process should establish clear roles and responsibilities, identify deficiencies in support to children and their parents and deal with these deficiencies in a consistent and concordant manner.**

**Actors involved in the return process should focus on improving their skills and training to ensure that all have the required knowledge to carry out best interest procedures and support children in a child-sensitive manner. (Swedish Migration Agency, Social Service, Police Authorities and others).**

- SMA officials should receive specific training on children's rights and child-friendly approaches to ensure that the Agency's return work, including counselling, is child-sensitive and takes children's rights into account. (Swedish Migration Agency)
- All actors that support children throughout the asylum procedure – including legal guardians, family homes, reception centres, and schools – should receive training in the asylum procedure to ensure that the child receives realistic and relevant information throughout the proceedings. (Swedish Migration Agency)
- Establish guidelines and protocols for guardians, and strengthen and expand their training and supervision. (Chief Guardian authority)

## **Access to legal aid**

**Consider providing legal aid to unaccompanied and separated children and families with children, encompassing the period after the refusal decision has gained legal force but has yet to be enacted, to facilitate the provision of consistent legal advice. (Ministry of Justice).**

## **Detention**

**Children should never be detained for immigration-related purposes or be separated from their parents as a result of detention.**

- Sweden should seek to amend the Aliens Act to stipulate that children shall not be detained for immigration-related purposes, irrespective of their migration status or that of their parents. Detention is never in their best interests. Where needed, alternatives to detention should be implemented, such as appropriate care and accommodation arrangements that enable children and families to live together in communities. (Ministry of Justice) Return and reintegration monitoring



## Return and reintegration monitoring

**Conduct or commission research on returns and reintegration, and post-return monitoring of children, young people and families, with a view to understanding their outcomes and improving support for their effective return and reintegration. (Ministry of Justice)**

- Establish an effective forced-return monitoring system and appoint an independent body to carry out this function. At present, monitoring is not sufficiently independent to qualify as “effective” under Article 8 (6) of the Return Directive. (Ministry of Justice)
- Consider the model adopted by the Netherlands for following up on both children in families and unaccompanied children for three months after their return. (Ministry of Justice)

## Forced returns

**The Swedish Government should re-consider the appropriateness of appointing the Swedish Migration Agency in a monitoring role in the execution of forced returns.**

- Closely observe the approach to monitoring the execution of removal decisions. Under the current system, the SMA monitors the enforcement of its own decisions, particularly in cases where police support is required. This may present a conflict of interest in certain circumstances, or hinder each party from raising issues that need to be confronted. (Ministry of Justice)

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———— 'Ny satsning för att stärka kunskapen om barnets rättigheter' (3 January 2017).

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———— Regeringens proposition 2013/14:216, 'Särskilt ömmande omständigheter' (3 April 2014).

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——— 'I Want to Feel Safe: Strengthening child protection in the initial reception of unaccompanied and separated children in Sweden' (2018).





# ANNEX 1 – SUPPORTING DOCUMENTS FOR SWEDISH MIGRATION AGENCY AND OTHER AUTHORITIES

## Legal instructions<sup>55</sup> issued by the SMA's Legal Unit

- SR 02/2019 Rättsligt ställningstagande angående motsättningar mellan asylsökande barn, god man, offentligt biträde och vårdnadshavare
- SR 21/2018 Rättsligt ställningstagande angående hälsotillstånd och vårdmöjligheter som grund för uppehållstillstånd för barn och barnfamiljer med särskilt fokus på devitaliserade barn
- SR 20/2018 Rättsligt ställningstagande angående åldersbedömning
- SR 11/2017 Rättsligt ställningstagande angående förutsättningarna för förlängning av tidsfristen för frivillig avresa.
- SR 41/2017 Rättsligt ställningstagande angående daktning av asylsökande barn för slagnig i Eurodac
- SR 24/2017 Rättsligt ställningstagande angående verkställighet av beslut som rör ensamkommande barn
- SR 57/2016 Rättsligt ställningstagande angående principen om familjens enhet i asylärenden
- SR 36/2016 Rättsligt ställningstagande angående prövning och bedömning av barns ärenden om uppehållstillstånd enligt 5 kap. 6 § och 12 kap. 18 § första stycket 3. Utlänningslagen
- SR 25/2016 Rättsligt ställningstagande angående praktiska verkställighetshinder
- SR 24/2016 Rättsligt ställningstagande angående innebörden av svenskt konventionsåtagande och artikel 8 vid tillämpning av tillfälliga lagen
- SR 23/2016 Rättsligt ställningstagande angående praktik och arbete för skolungdomar, undantag från kravet på arbetstillstånd och ersättning för praktik
- SR 37/2015 Rättslig kommentar angående förordnande av offentligt biträde i asylärenden
- SR 36/2015 Rättsligt ställningstagande om att höra barn
- SR 08/2015 Rättsligt ställningstagande angående behörig ställföreträdare för ett barn i ärenden om uppehållstillstånd
- RCI 09/2011 Rättsligt ställningstagande angående bedömningar av rätten till familjeliv enligt artikel 8 i Europakonventionen

## Other supporting documents for SMA case officers

- KCI 41b/2017 – Kvalitetschefens instruktion om initialprocessen för barn utan vårdnadshavare i skyddsprocessen
- RCM 03/2014 Stöd för prövningen av barnärenden
- PM gällande tvångsrekrytering av minderåriga
- Rättsutredning om hinder att samtala med barn om annat än deras ärende
- Rättsverkan av en migrationsdomstols åldersbedömning när domen inte går Migrationsverket emot
- Rättsutredning om vissa frågor rörande gifta barn
- Begreppet ankomstkommun och frågan om vilken kommun som ansvarar för att ordna tillfälligt boende för ett ensamkommande barn i avvaktan på anvisning
- Rättsutredning – Frågor om bedömning av ålder
- Närvaro av offentligt biträde vid ålderssamtal i Dublinärenden
- Rättslig bedömning gällande omdaktningar för VIS

<sup>55</sup> Available at: [www.lifos.se](http://www.lifos.se).



- GDA nr 6/2011 – Policy för Migrationsverkets arbete med barn
- Migrationsverkets utredningssamtal med barn - slutrapport
- Processkartläggning – Migrationsverkets arbete med barnbilaga behovsinventering
- Att tänka efter före – Konsekvensanalyser för beslut inom asylprövningen som rör ensamkommande barn
- Checklista, utredningssamtal med barn
- Intervjuguide, utredningssamtal med barn
- Samtalsguide för ÅV-samtal med barn utan vårdnadshavare efter laga kraft
- Skyddsprocessen - ett helhetsperspektiv
- Processbeskrivning för medicinska åldersbedömningar i skyddsprocessen
- Handbok – Allmänt om barn
- Handbok – Utredning
- Handbok – Bedömning av barns asylärenden
- Förvaltningsprocess – Barnets bästa och barnkonsekvensanalys
- Asylprocessen för ensamkommande barn – Från ansökan till beslut

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## Rulings<sup>56</sup> by the Migration Court of Appeal

- MIG 2018: 20 – Särskild vikt måste fästas vid att principen om barnets bästa ska ges företräde vid prövningen av om en inskränkning av rätten till respekt för familjeliv enligt artikel 8 Europakonventionen är proportionerlig. Eftersom det skulle strida mot svenska konventionsåtaganden att under aktuella förhållanden inte tillåta familjeåterförening ska uppehållstillstånd beviljas.
- MIG 2017:6 – En underårig pojke som saknade både nätverk i Afghanistan och lokalkännedom om landet bedömdes vara särskilt sårbar. Med hänsyn till detta och med beaktande av den mycket svåra situationen för barn i Afghanistan, ansåg domstolen att han var att anse som alternativt skyddsbehövande enligt Util. 4:2 1st 1 ledet.

<sup>56</sup> Available at: [www.lifos.se](http://www.lifos.se).

- MIG 2015:23 – Det föreligger särskilda skäl emot att meddela ett återreseförbud då ett barn som fått ett utvisningsbeslut inte lämnat landet inom föreskriven tidsfrist på grund av omständigheter som bedömts ha legat utanför hennes kontroll.
- MIG 2008:27 – Föräldrars nöjdförklaring är också tillämpligt på barnens avvisningsbeslut.
- MIG 2008:38 Det är den sökande som har bevisbördan för att visa att det finns skäl för uppehållstillstånd enligt 5 kap. 6 § utlänningslagen. Det betyder att den sökande även har bevisbördan för att visa att det finns ett praktiskt verkställighetshinder
- MIG 2015:23 Barn utan vårdnadshavare skall, utifrån sin ålder och mognad, medverka i utredningen kring mottagandet i hemlandet.
- UM 312-15 – Vid en överföring till Italien av barnfamiljer med underåriga barn krävs det garantier som säkerställer att familjen tas emot på ett lämpligt sätt. De krav som ställs i Tarakhel-domen måste vara uppfyllda. Individuella garantier kan hämtas i verkställighetsskedet. (Se även SR 01/2015)
- UM 1348-06 – Klargörande av synnerligen ömmande omständigheter med hänsyn till barns hälsotillstånd, vistelsetid och anpassning till Sverige.
- MIG 2018-16 – Omständigheter som i praxis bedömts medföra ett skyddsbehov för ett barn har inte ansetts skyddsgrundande för en person som fyllt 18 år.
- MIG 2009:8 – Synnerligen ömmande omständigheter enligt 5 kap. 6 § utlänningslagen har inte ansetts föreligga för ett ensamkommande barn utan anhöriga i Sverige.
- MIG 2009:9 Synnerligen ömmande omständigheter enligt 5 kap. 6 § utlänningslagen har vid en sammantagen bedömning ansetts föreligga för ett ensamkommande barn utan anhöriga i Sverige vars framtida psykosociala utveckling och hälsa på ett avgörande sätt skulle äventyras om han tvingades återvända till hemlandet. Härvid beaktades också de omständigheter som bidragit till pojken's allvarliga hälsotillstånd, hans avsaknad av kontaktnät i hemlandet samt de rådande förhållandena i hans hemland.
- UM 2437-13 Det är den asylsökande som har att göra sannolikt att han är minderårig. I första hand är skriftlig bevisning relevant. Det finns inte någon skyldighet för Migrationsverket att erbjuda läkarundersökning eller andra åtgärder som kan ingå i en medicinsk åldersbedömning. I detta fall kunde den asylsökande inte göra sannolikt att han var minderårig genom sin muntliga utsaga samt identitetskort, sk tazkira.



## ANNEX 2 – STATISTICS AND DATA

Top ten open return cases for children in 2018 based on nationality							
	Unaccompanied			With family			
Citizenship	Female	Male	Total	Female	Male	Total	Total
Afghanistan	13	377	390	357	404	761	1151
Iraq	12	57	69	325	380	705	774
Albania	2	61	63	85	71	156	219
Iran	1	13	14	64	64	128	142
Stateless	3	5	8	55	75	130	138
Georgia		3	3	59	72	131	134
Mongolia	2	2	3	65	63	128	132
Serbia	2	2	4	44	66	110	114
Syria	1	9	10	38	42	80	90
Unknown		2	2	38	49	87	89

Opened return cases for children in 2016, 2017, and 2018 (based on the top ten asylum-seeking nationalities in 2018)											
		2016			2017			2018			
Citizenship	Sex	UASC	Family	Total 2016	UASC	Family	Total 2017	UASC	Family	Total 2018	Total
Afghanistan	F	14	433	447	4	239	243	13	357	370	1157
	M	290	466	756	273	290	563	377	404	781	2242
Total		304	899	1203	277	529	806	390	761	1151	3999
Albania	F	5	180	185	5	89	94	2	85	87	704
	M	81	207	288	89	87	176	61	71	132	1058
Total		86	387	473	94	176	270	63	156	219	1762
Eritrea	F	4	19	23		4	4	2	5	7	59
	M	5	16	21	2	3	5	3	8	11	73
Total		9	35	44	2	7	9	5	13	18	132
Ethiopia	F	6	11	17	3	13	16	3	18	21	79
	M	24	20	44	18	16	34	20	28	48	152
Total		30	31	61	21	29	50	23	46	69	231
Gambia	F		3	3		3	3		5	5	13
	M	1	1	2	4	8	12	1	2	3	24
Total		1	4	5	4	11	15	1	7	8	37
Georgia	F	1	48	29	1	72	73		59	59	218
	M		56	56		82	82	3	72	75	247
Total		1	104	105	1	154	155	3	131	134	465

Opened return cases for children in 2016, 2017, and 2018  
(based on the top ten asylum-seeking nationalities in 2018)

		2016			2017			2018			
Citizenship	Sex	UASC	Family	Total 2016	UASC	Family	Total 2017	UASC	Family	Total 2017	Total
Iran	F	2	75	77		28	28	1	64	65	196
	M	4	80	84	2	44	46	13	64	77	243
<b>Total</b>		6	155	161	2	72	74	14	128	142	439
Iraq	F	19	488	507	6	268	274	12	325	337	1243
	M	40	634	674	39	334	373	57	380	437	1644
<b>Total</b>		59	1122	1181	45	602	647	69	705	774	2887
Morocco	F		14	14	1	11	12	1	16	17	52
	M	27	11	38	11	17	28	20	10	30	183
<b>Total</b>		27	25	52	12	28	40	21	26	47	235
Russia	F		46	46	4	64	68	2	33	35	229
	M	1	65	66	3	61	64	2	39	41	236
<b>Total</b>		1	111	112	7	125	132	4	72	76	465
Somalia	F	18	20	38	7	22	29	6	12	18	141
	M	88	60	148	42	38	80	36	19	55	386
<b>Total</b>		106	80	186	49	60	109	42	31	73	527
Stateless	F	2	78	80	1	59	60	3	55	58	287
	M	9	100	109	8	78	86	5	75	80	383
<b>Total</b>		11	178	189	9	137	146	8	130	138	670
Syria	F	10	414	424	6	74	80	1	38	39	714
	M	22	479	501	8	54	62	9	42	51	811
<b>Total</b>		32	893	925	14	128	142	10	80	90	1525

## ANNEX 3 – RE-ADMISSION AGREEMENTS

### Regional agreements

The EU has concluded re-admission agreements<sup>57</sup> with the following countries and regions:

Albania	Moldova
Armenia	Montenegro
Azerbaijan	Pakistan
Bosnia and Herzegovina	Russia
Cape Verde	Serbia
Former Yugoslav Republic of Macedonia	Sri Lanka
Georgia	Turkey
Hong Kong	Ukraine
Macao	

### Bilateral agreements

Sweden has concluded re-admission agreements<sup>58</sup> with the following countries:

Afghanistan	Latvia
Armenia	Lithuania
Bosnia and Herzegovina	Macedonia
Bulgaria	Poland
Croatia	Romania
Cyprus	Slovakia
Estonia	Switzerland
Kosovo	Vietnam

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<sup>57</sup> Available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en).

<sup>58</sup> Available at: <https://www.regeringen.se/sokresultat/?page=1&query=%c3%a5tertagande#result>.

## ANNEX 4 – RE-ESTABLISHMENT GRANTS

At present, the Swedish Migration Agency considers persons returning to the following countries eligible to receive financial support for re-establishment: Afghanistan, the Central African Republic, the Democratic Republic of Congo, Ivory Coast, Eritrea, Iraq, Yemen, Liberia, Libya, Mali, Sierra Leone, Somalia, Palestine, Sudan, South Sudan, Syria and Chad.

Re-establishment grants approved in 2016-2018				
	2016	2017	2018	Total
Unaccompanied and separated children	78	29	14	121
Accompanied children	549	178	142	869
<b>Total</b>	<b>627</b>	<b>297</b>	<b>156</b>	<b>990</b>

Re-establishment grants for children per destination country				
Citizenship	2016	2017	2018	Total
Afghanistan	95	9	5	109
Iraq	415	159	129	703
Yemen	2			2
Kenya			4	4
Libya		3		3
Somalia	3		2	5
State of Palestine	10	5		15
Stateless	4	1		5
Syria	19	1	2	22
Under investigation	1			1
<b>Total</b>	<b>549</b>	<b>178</b>	<b>142</b>	<b>869</b>

Sweden is also a member of the cooperation programme ERRIN (European Return and Reintegration Network). Through this program, returnees can apply for in-kind reintegration support in their country of return to the sum of €2,500 for voluntary returns and €2,000 for 'involuntary' returns. ERRIN is aimed at adults, children in families, and children without custodians who are returning to their country of origin during the period that the cooperation programme is running. Support is available for the following countries: Afghanistan, Morocco, Iraq (Kurdistan), Iraq (central and south), Pakistan, Russia, Nigeria.

Applications are made to the SMA once the return decision has gained legal force or the asylum application has been withdrawn. The Agency's decision on reintegration support cannot be appealed. ERRIN support for returns to Afghanistan was suspended by the SMA in February 2019 due to concerns that the partner agency IRARA was not able to satisfactorily account for their invoicing.<sup>59</sup>

<sup>59</sup> Swedish Migration Agency, press release of 6 February 2019: 'Migrationsverket pausar utbetalning till samarbetsorganisation i Afghanistan', available in Swedish at: <https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2019/2019-02-06-Migrationsverket-pausar-utbetalning-till-samarbetsorganisation-i-Afghanistan.html>.



Re-integration support (ERRIN program) approved in 2016-2018		
	2017	2018
Unaccompanied and separated children	17	5
Accompanied children	75	101
<b>Total</b>	<b>92</b>	<b>106</b>

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