



Global Detention Project Submission to the Human Rights Committee

**116th Session (7-31 March 2016)
Sweden (seventh periodic report)**

Geneva, 10 February 2016

Issues concerning immigration detention

The Global Detention Project (GDP) welcomes the opportunity to provide information relevant to the consideration of the seventh periodic report of Sweden submitted to the UN Human Rights Committee (Committee) under article 40(4) of the International Covenant on Civil and Political Rights (ICCPR). The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration or asylum-related reasons.

Upon the examination of the sixth periodic report of Sweden in 2009, in its Concluding Observations (CCPR/C/SWE/CO/6, § 17) the Committee expressed concern that some asylum-seekers have been detained for lengthy periods. The Committee also noted that asylum-seekers said to be a risk to themselves or a threat to others have been placed in remand prisons that also house criminal suspects and convicted criminals. The Committee thus formulated a precise recommendation to Sweden:

“The State party should permit detention of asylum-seekers only in exceptional circumstances, and limit the length of such detentions, also avoiding any placement in remand prisons. The State party should consider placement alternatives for asylum-seekers.”

In the List of Issues Prior to Reporting (CCPR/C/SWE/QPR/7, § 18(c)) dated April 2014 the Committee requested Sweden to provide updated information on the efforts to limit the length of detention of asylum seekers.

In its seventh periodic report dated July 2015 (CCPR/C/SWE/7), Sweden explains (§ 134-136):

134. Detention may only continue as long as the public interest in enforcing a refusal of entry or expulsion order carries more weight than the individual's interest of freedom. If the authorities do not exert themselves to enforce the order, the foreigner shall be released. Since an amendment to the Aliens Act in May 2012, a person who has applied for but been refused asylum may be held in detention for a year at most.

135. The Swedish Migration Agency's Handbook on Migration Procedure contains a section on detention orders. In order to limit the length of detention priority shall be given to cases that are enforceable in practice, i.e. cases where there are sufficient travel documents and cases with transfer orders under the Dublin Regulation. In other cases, where the grounds for detention are met, individuals should not be taken into detention unless there is an enforceable order for refusal of entry or expulsion. In these cases supervision should be used instead. In cases affecting children supervision should be considered to a greater extent. In 2014 the Swedish Migration Agency also issued a general legal position regarding detention in cases where the Dublin Regulation shall be applied (RCI 05/2014).

136. In 2013, 60 per cent of detainees were held in detention for two weeks at most. As a rule the detainees are placed in special detention facilities. For security reasons they may, in exceptional cases, be placed in a prison, remand centre or police arrest facility. Since 1 May 2012 detainees must be kept separate from other inmates (Chapter 10, Section 20 of the Aliens Act). In 2011 an inquiry chair presented proposals for a legislative amendment intended to avoid placement in prisons or remand centres. This inquiry chair's proposal is being processed in the Government Offices.

The [2005 Aliens Act](#), amended several times, regulates the country's migration policy, including immigration detention. Immigration detention in Sweden is the responsibility of a specialised body, the Swedish Migration Agency (Swedish Migration Board), which is part of the Ministry of Justice. Following the 2012 amendment to the Aliens Act, non-citizens can be detained for a maximum of one year. In practice, in 2015 the average duration of immigration detention was 18 days.¹

Sweden operates five dedicated immigration detention centres, located in Gävle, Märsta, Flen, Kålleröd and Åstor, with a total capacity of 255 places.² However, the Aliens Act (Ch. 10, S. 20) allows placing non-citizens in prisons or police custody if the expulsion is ordered because of a criminal offence; because of security reasons they cannot be kept in dedicated detention centres; or for "other exceptional grounds."

¹ Caritas Sweden, "Country Report : Sweden," *Asylum Information Database (AIDA)*, December 2015, <http://www.asylumineurope.org/reports/country/sweden>.

² Swedish Migration Board, *The use of detention and alternatives to detention in the context of immigration policies in Sweden*, European Migration Network (EMN), 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

The GDP would like to highlight the concerns expressed by the Committee about detention of asylum seekers. However, non-citizens in regular asylum procedures represent only a small proportion of the total number of immigration detainees per year. While in 2013, 81 asylum seekers were detained, the number of non-citizens detained on other migration-related grounds was 2,893, of whom 1,454 were rejected asylum seekers and 1,239 non-citizens in Dublin procedures. In addition, 524 persons were detained to prevent irregular entry in the country of because of undocumented stay.³

A trend can be observed of gradually increasing numbers of persons placed in immigration detention, 1,941 in 2011, 2,564 in 2013, 2,893 in 2013, and 3,201 in 2014.⁴ Early reports indicate that in 2015, the number of immigration detainees continued to rise considerably, to 3,524.⁵ However, when the final statistical accounting is released for 2015, it is quite possible that this number will be larger given Sweden's frequently expressed concerns about the numbers of arrivals last year.

Because of the increase in arrivals of asylum seekers and migrants last year due to the humanitarian emergencies in Syria and other countries in the Middle East, the Swedish government announced in January 2016 that it was introducing new border controls at the Sweden-Denmark border and planning to deport an estimated 80,000 non-citizens who the government thinks will fail to qualify for refugee status. The planned deportations may trigger important increases in the numbers of people placed in detention as well as the length of their detention.

The Committee has regularly stressed that immigration detention "could be considered arbitrary if it is not necessary in all the circumstances of the case and proportionate to the ends sought."⁶ This entails a requirement on states to impose detention as the last resort, where non-custodial measures ("alternatives to detention") cannot be applied in a particular case. The Aliens Act provides for one kind of non-custodial measure, namely supervision (reporting obligations) (Ch. 10, S. 6). However, the authorities are not obliged to assess the alternative in each case. As a result, relatively few non-citizens are granted non-custodial alternatives to detention. In 2013, 405 were reportedly offered this alternative to detention, and 421 in 2015.⁷ This represents 12 percent and 14 percent, respectively, of the total number of persons detained on immigration or asylum related grounds.

³ Ibid.

⁴ Caritas Sweden, "Country Report : Sweden," *Asylum Information Database (AIDA)*, December 2015, <http://www.asylumineurope.org/reports/country/sweden>.

⁵ Caritas Sweden, "Country Report : Sweden," *Asylum Information Database (AIDA)*, December 2015, <http://www.asylumineurope.org/reports/country/sweden>.

⁶ *Danyal Shafiq v. Australia*, para. 7(2); *A. v. Australia*, 560/1993, (3 April 1997), para. 9(2); *M.M.M. et Al. v. Australia*, 2136/2012, (25 July 2013), para. 10(3).

⁷ Swedish Migration Board, *The use of detention and alternatives to detention in the context of immigration policies in Sweden*, European Migration Network (EMN), 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm. Caritas Sweden, "Country Report : Sweden," *Asylum Information Database (AIDA)*, December 2015, <http://www.asylumineurope.org/reports/country/sweden>.

Priority questions:

- Placement of migrants in prisons or police facilities:
How many migrants were detained in prisons or police facilities in 2015 or 2014?
- Rarely used alternatives to detention:
Does the country consider introducing procedures to assess viability of reporting procedures instead of detention in every case?
- Announced deportations:
Will deportees be placed in immigration detention before being deported? How will increases in deportations impact detention numbers? If the country's current five immigration detention centres fail to meet increased demands, will the country rely more on criminal justice facilities, and if so how will this impact its adherence to both domestic and international legal norms on the separation of different categories of detainees?