Amanda Bertilsdotter Nilsson

Sweden’s proactive obligations to protect accompanied children from commercial sexual exploitation

Master thesis
30 credits

Supervisor: Rebecca Stern

Master’s Programme in
International Human Rights Law

Spring 2012
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4</td>
<td>The Palermo Protocol</td>
<td>30</td>
</tr>
<tr>
<td>4.5</td>
<td>THE EUROPEAN REGION</td>
<td>33</td>
</tr>
<tr>
<td>4.5.1</td>
<td>Summing up</td>
<td>38</td>
</tr>
<tr>
<td>5</td>
<td>MIGRATION</td>
<td>39</td>
</tr>
<tr>
<td>5.1</td>
<td>Introduction</td>
<td>39</td>
</tr>
<tr>
<td>5.2</td>
<td>The Migration Board</td>
<td>39</td>
</tr>
<tr>
<td>5.2.1</td>
<td>Grounds for residence permit</td>
<td>40</td>
</tr>
<tr>
<td>5.2.2</td>
<td>The application procedure</td>
<td>43</td>
</tr>
<tr>
<td>5.3</td>
<td>Social Service</td>
<td>48</td>
</tr>
<tr>
<td>5.4</td>
<td>The Police Authority</td>
<td>51</td>
</tr>
<tr>
<td>5.5</td>
<td>Summing up</td>
<td>54</td>
</tr>
<tr>
<td>6</td>
<td>SUGGESTED IMPROVEMENTS</td>
<td>55</td>
</tr>
<tr>
<td>6.1</td>
<td>Kinship investigations</td>
<td>55</td>
</tr>
<tr>
<td>6.2</td>
<td>The individual interview</td>
<td>57</td>
</tr>
<tr>
<td>6.3</td>
<td>Cooperation between authorities</td>
<td>59</td>
</tr>
<tr>
<td>6.4</td>
<td>Prevention through the national law</td>
<td>61</td>
</tr>
<tr>
<td>7</td>
<td>CONCLUSION</td>
<td>63</td>
</tr>
</tbody>
</table>

SUPPLEMENT A

SUPPLEMENT B

BIBLIOGRAPHY

TABLE OF CASES
Summary

This paper seeks to provide an analytical framework for designing more effective law enforcement for the crime of commercial sexual exploitation of children. The author has chosen to focus on a group of children particularly at risk in the society due to the lack of attention, namely accompanied children in the migration process.

Out of a total of 1086 asylum seeking accompanied children arriving to Sweden in 2011, as many as 706 were registered as missing by the end of the year. Hence, almost 65 per cent of the accompanied children arriving to Sweden during 2011 disappeared. A child who disappears is a child who cannot enjoy its fundamental human rights, hence a child at risk.

Trafficking and other kinds of sexual exploitation of children is a crime more widespread than we wish to believe. To tackle the hard fact that it exists right here and now the society often, unknowingly chose to ignore. The ignorance of the existence of commercial sexual exploitation of children, the lack of priority and cooperation between the relevant authorities, such as the Migration Board, the Social Services and the Police creates opportunities for perpetrators who wish to exploit migrating children at risk.

This paper examines the Swedish State’s proactive international obligations through the ratification of the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as well as the relevant regional provisions. The paper firstly defines the crime of commercial sexual exploitation and explains the situation where accompanied children might be at risk in the migration system. The main part of the paper focuses on the legal obligations deriving from the international and regional provisions on children’s rights and discusses the main principles that Sweden has to comply with. The second half of the paper explains the national migration system and examines whether this is in line with the previously discussed international obligations. In conclusion, the paper suggests improvements in order for the State to design a more effective law enforcement to combat the crime of commercial sexual exploitation of children and to decrease the number of children who disappear in the Swedish migration system.
Preface

I would like to express my thanks to ECPAT Sweden for providing me with the opportunity to gain a deeper knowledge through an internship. Especially, I would like to thank Ida Hellrup and Joanna Lundquist, for their support and encouragement throughout the process. Furthermore, I would like to thank Lena Svenaeus and Jessica Lyding for their constructive feedback and hours of proofreading. In addition I wish to express my gratitude to my supervisor, Rebecca Stern, for her helpful support and guidance when needed the most.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BrB</td>
<td>Brottsbalken</td>
</tr>
<tr>
<td>BRÅ</td>
<td>Brottsförebyggande rådet</td>
</tr>
<tr>
<td>CSEC</td>
<td>Commercial Sexual Exploitation of Children</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>EBO</td>
<td>Eget Boende</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>ECPAT</td>
<td>End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FARR</td>
<td>Flyktinggrupporns och Asylkommitéernas riksråd</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>LMA</td>
<td>Lag om mottagandet av asylsökande m.fl.</td>
</tr>
<tr>
<td>LVU</td>
<td>Lag med särskilda bestämmelser om vård av unga</td>
</tr>
<tr>
<td>NBHW</td>
<td>National Board of Health and Welfare</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>NMT</td>
<td>Nationellt Metodstöds Team</td>
</tr>
<tr>
<td>NPA</td>
<td>National Plan of Action</td>
</tr>
<tr>
<td>Prop</td>
<td>Proposition</td>
</tr>
<tr>
<td>ROKS</td>
<td>Riksorganisationen för kvinnojourer och tjejerjourer i Sverige</td>
</tr>
<tr>
<td>SOU</td>
<td>Statens Offentliga Utredningar</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
</tbody>
</table>
1 INTRODUCTION

1.1 Background
In August 2010 one of the leading newspapers in Sweden reported that 660 migrating children were registered as ‘missing’ during the first six months of 2010 in the Swedish Migration Board’s system. Only 166 children had been traced by the end of that same period.\(^1\) Why did the children disappear and what happened to them? What obligations does the Swedish State have to search for migrating children who disappear? Are those the same obligations as for Swedish children?

Former Human Rights Commissioner of the Council of Europe, Thomas Hammarberg had, only a few months before, stressed the alarming situation of migrating children in Europe. He stated, "What we do know indicates that the situation is dramatic. Many [children] live on the streets, disappear from the centres where they are accommodated, are kidnapped and exploited, fall into the hands of traffickers and are denied basic health care and education."\(^2\) The newspaper Politico in the United Kingdom shortly after highlighted a similar example as the Swedish situation. Politico reported of migrating children who disappeared from ‘open’ residential centres, calling for actions by the State.\(^3\)

One can only speculate about the faith and future of the children mentioned in the articles above. Some of the missing children may have continued their journey to another country or travelled back to their home country. Others may be hiding somewhere in Sweden while waiting for their asylum cases to be barred and some may be working of their “debt” to their trafficker. The main question is: How can it still be accepted that children disappear in Sweden?

When asking Swedes to identify migrating children at risk, most would refer to unaccompanied children, as this is what the media has delivered to us. The media rarely reports about the accompanied children’s situation. Probably because the society are believers of the care provided by a parent or custodian. Hence, when a child is applying for a residence permit together with an adult, the care of the child is automatically placed in the hands of this presumed parent or custodian. This assumed kinship, which is not established, opens paths for those who wish to exploit the permeable migration system, built partly on international obligations and promises.

---


Trafficking and other types of sexual exploitation of children is a crime more widespread than one wish to believe. To tackle the hard fact that it exists right here and now the society often, unknowingly, chose to close their eyes. The ignorance of the existence of commercial sexual exploitation of children, the lack of priority and cooperation between the relevant authorities, such as the Migration Board, the Social Services and the Police creates opportunities for perpetrators who wish to exploit migrating children at risk.

The numbers of international and regional legal frameworks regulating the crime of sexual exploitation of the child have increased over the past 20 years. As a result the issue of sexual exploitation of the child has finally been placed on the international political agenda. However, although an improvement, it is clearly not enough, as children still disappear.

One could question whether the children’s situation has improved as much as one could have expected or wished for back in 1989, when the Convention on the Rights of the Child was adopted. Also considering that 23 years have passed by and the Convention has an almost universal ratification. NGOs have reported that it is still hard to see the progresses on a national level in many countries, and why is this?4

The lack of progress is a result of an inconsistent implementation process, which is depending on the political engagement. When a State signs a treaty, the signature is subject to ratification. Without ratification, the State is only obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty but without obligations. Thus, the State has not expressed its consent to be bound by a treaty until it ratifies it and with ratification comes obligations.5 To fully consent to a treaty’s obligations’ should imply to fully implement those obligations.

The Swedish media stressed the issue of unaccompanied children’s disappearance in the beginning of the century.6 The situation for unaccompanied children has since improved considerably. Yet, the problem of children’s disappearance in the migration system is more complex than that.

Due to the authorities’ strong trust in the safety net supposedly provided by the ‘core family’, the accompanied children are neglected. Neglected in the sense that the child’s view and individual rights are not prioritised, but looked at from a collective point of view as accompanied to someone else. The confidence in the parent or custodian as a safety net might result in an inconsiderate handling of the individual child’s best interest in a migration case. Lack of proper routines or lack of needed cooperation when handling a

case involving a child might open up loopholes. This makes it possible to continue the commerce of commercial sexual exploitation of children.

It is the responsibility of the State to ensure the protection of all children in Sweden. It is the responsibility of the State to work preventive to ensure that no child is a victim of commercial sexual exploitation. It is also the responsibility of the State to educate the professionals as well as the general society to understand and to act. These responsibilities are promises made to the international society and to these children when ratifying the core provisions of children’s rights. The commitments made when ratifying international and regional frameworks are not just political results on a piece of paper, but commitments for change.

1.2 Purpose and Research Question
The purpose of this paper is to map the Swedish State’s legal responsibilities in regards to accompanied children who disappear in the migration process and consequently run a great risk of becoming victims of the commercial sexual exploitation in children. The author will try to answer whether there are flaws in the implementation of the international provisions since children do disappear and so few are found? If so, where in the migration system can we identify these flaws and what should be done to better meet the requirements that are created to ensure the protection of all children, especially those at risk for commercial sexual exploitation?

To be able to ensure the protection of migrating children the key word is ‘implementation’. Thus, the discussion is whether the Swedish State has fulfilled its proactive obligations when implementing the Convention on the Rights of the Child\(^7\) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.\(^8\) These international obligations together with other regional obligations affecting Sweden, such as those originating from the European Union and the Council of Europe, oblige the State to identify and protect children who already are, or who might become victims of commercial sexual exploitation.

1.3 Method and Materials
The primary sources that will be used in this paper are the Concluding Observations to the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. To apply the international obligations deriving from the above-mentioned international provisions, to the Swedish migration system, the author has chosen to focus on Sweden’s proactive obligations and implementation. The legal international obligations will be compared to the obligations set out in

---


the Aliens Act, especially in regards to the provisions relating to children, asylum and family reunification. As the implementation procedure is depending on the work of the Swedish Government, the author see the importance of studying their reports to the Committee on the Rights of the Child, their follow-ups and initiative to action plans and investigations. The reports and work of NGOs’ are of special importance when analysing the work of the Government and hence in order to further elaborate on that information, research and reports from Swedish and International child rights’ organizations such as ECPAT, Save the Children (Rädda Barnen), UNICEF, FARR and ROKS have been of great help.

The work of the central authorities involved, being the Migration Board, the National Board of Health and Welfare (Social Services) and the Police are analysed through their own reports and interviews. To analyse the development in relation to promises made and the work that have actually been done, statistics from the Migration Board and the National Council for Crime Prevention will be of great help. To obtain the best answers, the interviews of pertinent persons from different fields, organizations and backgrounds, will use a semi-formal frame, where the main questions are in relation to the implementation of the above-mentioned provisions, awareness of the specific issue of accompanied children and whether the person sees the need for improvements.

Researching and discussing the subject of children who are under a State’s protection, but who disappear, is a delicate subject and might not always be well perceived by the State, though recognized as an issue. This might explain why some interviewees express their wish to be anonymous.

### 1.4 Definitions

The definition of a ‘child’ (any human being below the age of 18 years) found in UN Convention on the Rights of the Child, is applied throughout this paper. The age of sexual consent is 15 years in Sweden, however this does not change the fact that you are still a child until you turn 18 years.

The collective and broad term ‘children at risk’ has been defined to include children and youth who have physical, psychological or social problems, grow up under difficult circumstances or are situated in an unsafe environment. This paper will focus on a specific group of children included in the broad group of ‘children at risk’. The specific group of children in this study have migrated to Sweden together with an adult, but after registration at the Migration Board, they disappear for an unknown reason. These children are considered to be at risk of commercial sexual exploitation.

The term ‘accompanied child’ refers to a child who arrives at the border with an adult claiming to be the child’s parent or custodian. Hence, whether

---

9 CRC, supra note 7, article 1.
10 Brottsbalken –BrB (1962:700), (Swedish Criminal Code), chapter 4, para. 4.
the adult actually is the factual parent or custodian does not matter in relation for the child’s status as accompanied.\textsuperscript{12}

A child who, at the arrival to Sweden, is separated from his or her parent or legal custodian is considered unaccompanied.\textsuperscript{13} Sometimes academics distinguish between an unaccompanied child and a separated child. The Committee on the Rights of the Child explains the difference by stating that separated children may be separated from their caregiver but not necessarily from other relatives.\textsuperscript{14} When in this paper using the term ‘unaccompanied child’ the reference is to the definition found in the Aliens Act.\textsuperscript{15} Hence, there is no difference between unaccompanied and separated children, but instead whether the child has arrived alone or not.

The main legal provisions discussed in this paper are the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Throughout the paper these provisions will be referred to as the ‘CRC’ and the ‘OPSC’. The crime Commercial Sexual Exploitation of Children will be referred to as ‘CSEC’.

1.5 \textbf{Disposition}

The paper is divided into seven larger chapters and has a child-centred perspective. Hence, the situation will be analysed from the principle of the best interest of the child. The discussion is based on the situation of the accompanied child, but throughout the paper the differences and parallels with the unaccompanied child will be highlighted.

The first chapter introduced the subject and research question. The second chapter builds upon the first by giving a more detailed description of the crime and the risk groups. With the basic definitions at hand, the paper will continue to discuss the legal framework and the migration procedure in Sweden. Lastly, the author will conclude with suggestions for improving Sweden’s proactive work for designing a more effective law enforcement of the crime of CSEC.

\textsuperscript{12} Socialdepartementet, SOU 2004:71, Sexuell exploatering av barn i Sverige, (22 juni 2004), p. 86.
\textsuperscript{13} Lag om mottagande av asylsökande m.fl. –LMA (1994:137), (Act on the Reception of Asylum seekers), para. 1.
\textsuperscript{14} UN Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, (1 September 2005), para. 12.
\textsuperscript{15} LMA, supra note 13.
2 COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

2.1 The crime of commercial sexual exploitation of children

CSEC was defined for the first time at the first World Congress against the Sexual Exploitation of Children, held in Stockholm in 1996. The initiator to the Congress was the (then newly created) organization ECPAT. The Congress was the first of its kind and aimed at gathering Governments from all over the world with the purpose of placing the issue on the international political agenda.

The 122 gathered Governments discussed and highlighted the problem and realised the need for a consistent definition for the term ‘CSEC’. The discussions resulted in a Declaration and an Agenda for Action through which the crime of CSEC was defined as consisting of three primary and interrelated forms of commercial sexual exploitation of children, those being prostitution, pornography and trafficking for sexual purposes.\(^\text{16}\)

An extract from the Declaration reads as follows:

“\text{The commercial sexual exploitation of children is a fundamental violation of children’s rights. It compromises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children and amounts to forced labour and a contemporary form of slavery.}”\(^\text{17}\) (Emphasis added by the author).

To better understand the crime of CSEC, it is important to know how it differs from the broader defined crime ‘sexual abuse’ of a child. As can be seen from the Declaration and Agenda for Action, CSEC comprises of a commercial factor, namely a payment or compensation (tangible or intangible, such as food, clothing, cash, games, a place to sleep or the comparable). When referring to the term ‘sexual abuse’ this commercial factor is absent.\(^\text{18}\) Although the two crimes are often overlapping, CSEC further differs from sexual abuse because it involves a third party, a profiteer, i.e. a trafficker or a pimp.

CSEC inflicts severe physical and psychological harm on children and the key word for its existence is ‘demand’. The crime would not exist without

\(^\text{17}\) Stockholm World Congress against Commercial Sexual Exploitation of Children, \textit{Declaration and Agenda for Action}, (August 1996), article 5.
\(^\text{18}\) Karlén, \textit{supra} note 16.
the market of demand for children for sexual purposes. Bribe and corruption among police forces or law enforcement as well as wartimes and natural disasters, where the system automatically collapses, are factors facilitating the crimes existence.

That CSEC does exist is no secret, but what is still often unknown, is its broad existence in developed countries. Most people choose (sometimes unknowingly) to not see the crime, as it is too appalling. To not be responsive to the crime is the biggest betrayal for the victims and one main reason behind the global market of demand. If more people were to be more aware of the crime’s existence, it would be easier to combat, as it would make the business more difficult for the profiteers. Hence, the best way is to step by step block the possibilities.

The operative legal enforcement system cannot easily work preventive, but each route that is blocked is saving a child’s future and life. The primary task of combatting the crime of CSEC rests with the State and the individual family, but the role of the civil society should not be underestimated. Information campaigns, education and efficient law enforcement are of absolute importance to win the battle of this demand-based crime.

### 2.2 RISK GROUPS

#### 2.2.1 Introduction

The parent or custodian of a child *should* provide, and act as a safety net around the child. However, what happens when the parent or custodian is not acting in the best interest of the child or where the child does not have a parent or custodian to care for him or her?

There is a reason to why we have specific provisions relating to children’s rights. We often hear that we should learn from children to live more in the present, however from our experiences as adults we learn the importance of looking ahead and analyse situations. Children are children because they are still learning. Through experiences and guidance the child learns to separate reality from fantasy. When the guidance provided by the family or the social safety net disappears, the child is often left in difficult and vulnerable situations. Perpetrators of CSEC are well aware of these difficult situations and rapid in taking advantage of it.

Hammarberg has stated that migrant children are one of the most vulnerable groups of today’s society.\(^\text{19}\) However, to migrate is not equal to be at risk, as children can be exposed to perpetrators anywhere, but the reasons behind the migration might place a child in a more vulnerable situation.

Several children are fleeing persecution or war, and others are running away from poverty, violence or destitution. Other factors, which might force a child to migrate, are depending on the social structure such as poor education possibilities and a malfunctioning society. Children separated from caretakers or in general without sufficient protection from an adult are particularly vulnerable. In several cases, the reason behind migration is a

\(^\text{19}\) Hammarberg, *supra* note 2.
parent’s wish for something better for their family.\textsuperscript{20} Every so often a parent might send a child off with a stranger and his or her promise of a better life for the child. Sometimes the parent does not see any other way out of the situation than using the child as a reason for a future family reunification in another country.\textsuperscript{21} Occasionally, a child has emigrated by him- or herself in the hope of finding something better.\textsuperscript{22}

In the past years, the identified group of children presumed to be at risk of CSEC in the Swedish migration system, have been unaccompanied children applying for asylum.\textsuperscript{23} By the media claimed to be a result of a loophole consisting of an unclear division of responsibility between the authorities.\textsuperscript{24} This is most likely true, but not only for the unaccompanied children. The same uncertainty among the authorities affects accompanied children arriving to Sweden, but for some reason this has still not caught the eyes of the media and hence not the Government.

### 2.2.2 Family reunification situations

The right to family reunification is an important element of legal tradition. A child’s possibility of obtaining a residence permit based on family reunification is regulated in the Aliens Act as well as the CRC. The Aliens Act entails the right to family reunification for a child when the child’s parent or custodian is in Sweden with a residence permit, or when a child’s parent or custodian is married or living together with someone who is residing legally in Sweden.\textsuperscript{25} The CRC states “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.”\textsuperscript{26}

The motive explaining the lack of attention given to the risk group of accompanied children is not settled. However, one of the factors may well be the trust the authorities place in the adult accompanying the child. The civil society and authorities are comparing the situation of unaccompanied children to that of accompanied children. Their comparison results in an assumption that accompanied children at least have a caretaker. Often, these assumptions are just assumptions, but the child is nevertheless placed in the

\begin{itemize}
  \item \textsuperscript{20} Socialstyrelsen och Migrationsverket, \textit{Förbättringar i mottagandet av barn från annat land som kommer till Sverige utan medföljande legal vårdnadshavare}, Redovisning av regeringsuppdrag 2002-107-7, p. 20.
  \item \textsuperscript{22} SOU 2010:71 \textit{supra} note 11, p. 86.
  \item \textsuperscript{24} SOU 2010:71, \textit{supra} note 11, p. 86.
  \item \textsuperscript{25} Utlänningslag (SFS 2005:716) (Aliens Act), chapter 5, paras. 3 & 3a.
  \item \textsuperscript{26} CRC, \textit{supra} note 7, article 10(1).
\end{itemize}
trust of the accompanied adult without a proper investigation of the assumed kinship.27

To assume a kinship based on a simple affirmative answer to the Migration Board official’s question of whether this kinship is correct, is not enough. To have trust in the core family and the good of the individual human being is essential. Nevertheless, it is just as essential to be open-minded that this might not always be the case and to act on it right away.

If a kinship between an adult and a child in a family reunification case is difficult to prove, the Migration Board has the opportunity to offer a DNA test to secure the kinship.28 This use of DNA testing has decreased since 2009,29 nevertheless the Migration Board has estimated that it will increase again during 2012 because of the Migration Court of Appeal’s judgement earlier this year.30 The judgement opened up for an easier family reunification when a person’s identity cannot be settled. The court stated that when a kinship is confirmed through a DNA test, an evidence-relief rule would remove the demand of a settled identification.31 The decision is based on the principle of proportionality after having weighed the interests of the child and family reunification towards the State’s interest of combatting irregular migration.

The Court thus placed the right to family reunification before the best principle of the child. To allow family reunification is just as crucial as to be able to confirm the kinship, as an unverified kinship might be a case of CSEC and irregular migration.

2.2.3 Neglected children

Even though the kinship might be settled there are other risk situations in need of enhancement. More attention should be given to the child of a mother who migrates to marry a Swedish husband. The child, who is granted a residence permit through family reunification, is at risk of being neglected and especially the best interest of the child.32

ROKS, a Swedish Women’s Lobby Organization has disclosed that it is not necessarily the woman who is the main attraction for the husband, but that the woman might be used as a cover-up for the husband’s exploitation of the child. Hence, we need to be more attentive to the child and its best interests, and not only consider the fact that following its mother is always the best. It might also be so that the child ‘by accident’ becomes an object as an extension of the husband’s abuse of the mother.33

28 Aliens Act, supra note 25, chapter 13, para. 15.
29 See supplement 1.
30 Lena Eriksson, Migrationsverket 20 April 2012.
31 Migrationsöverdomstolen, Mål Nr UM 10897-10.
32 Aliens Act, supra note 25, chapter 5, para. 3(2)(b).
33 E. Wilén, Fruimporten fortsätter – om kvinnor som utsätts för våld i anknytningsrelationer, ROKS, (2010), p. 3.
After a judgment by the Migration Court of Appeal earlier this year, it is even more important to be attentive to the child’s best interest in these situations. The case involved a man who previously had been sentenced for sexual abuse of a child and harassment of his previous wife. The Migration Court believed that a residence permit for his second wife would entail a high risk for the wife’s child. However, the Migration Court of Appeal changed this, by stating that the principle of the best interest of the child cannot stand alone as an argument to refuse a residence permit based on family reunification.  

During 2012, a team of experts, led by Judge Nina Nordengren, carried out an investigation called “Women and children in the borderland of justice”. The investigation focused on women who are given residence permits based on family reunification but end up being treated as imported objects. The investigation is prioritizing the situation of women but does also explicitly include the situation of the accompanied child. However, due to the short timeframe, the situation of accompanied children was not a prioritized issue. Nordengren has thus emphasized the need of a separate investigation to highlight the situation of the accompanied child.

2.2.4 The family reunification of asylum seekers

A distressing issue in relation to accompanied asylum seeking children is, as have been mentioned, the poor kinship investigation. As opposed to families who are not seeking asylum, the tool to secure a kinship through DNA testing is not available for family reunification in asylum cases. Therefore, there are no legal frameworks to guarantee that the adult claiming to be a parent or custodian in an asylum case actually is the real parent or custodian of the child. The burden of proof is placed on the asylum seeker.

The burden of proof might correctly be placed on the applicants, but why are asylum seeking applicants not given the same opportunities to prove their kinship as other families wishing to reunite? There is no fair answer to this question.

Such a situation where DNA testing would be desired is when the child arrives late and where the parent or custodian did not mention the child’s existence in their initial arrival. The alleged parent(s) might arrive a few months or years before, registering three accompanying children. Suddenly a fourth child appears at the application unit and the parents claim that the child is one of their own, which they (for some reason) had forgotten to mention in their initial application.

34 Migrationsöverdomstolen, Mål nr UM 5200-11.  
36 Ibid. p. 5.  
37 Meeting with Nina Nordengren, April 2012.
Incidents like this might have reasonable explanations, such as fear of the authorities or other previous bad experiences. Nevertheless, to forget to mention your own child in an asylum application is not something common or something that can easily be blamed on previous circumstances. To rule out that the child is at risk of CSEC, a DNA test would be preferable also for asylum seeking families.

2.2.5 Trafficked children
A report from UNICEF presented earlier this year, focusing on trafficking in the Nordic countries, stated that “[n]ational authorities report, for example, that it is difficult to reach and identify accompanied children who may have been trafficked, and that limited means exist to identify children trafficked within the EU.”

Two types of trafficking in children which are difficult to detect are the use of look-alike passports and the abuse of the registered child in a parent’s passport. Trafficking through look-alike passport is the use of a passport where the picture in the passport looks like the child at the border but is actually someone else. Trafficking through the abuse of a parent’s passport can be a mother who has two children registered on her passport and travels out of the country without her children. Shortly after the mother returns with two children who she claims to be the children registered in her passport. As there is no registration of her ‘real children’ having left the country or not and no kinship test is done, it is very difficult for the border police to detect. Trafficking through the abuse of a parent’s passport is fortunately not as common anymore. Children are to a greater extent than previously receiving their own passports and hence not registered on their mother’s passport. Trafficking in children through these two means is a fairly new type of abuse of the system and happening right in front of the eyes of the authorities.

---

3 MISSING CHILDREN
To better understand the scope of the problem the author will shortly discuss the issue based on some recent statistics from the Swedish Migration Board.\textsuperscript{40}

Out of a total of 1086 asylum seeking \textit{accompanied} children, as many as 706 were registered as missing by the end of 2011.\textsuperscript{41} 105 children went missing before they were given a decision from the Migration Board and 601 disappeared after they were given a decision. This means that only 380 accompanied asylum seeking children were found (34.9 per cent).

The same statistics also showed that 160 asylum seeking \textit{unaccompanied} children, out of a total of 217, were registered as missing by the end of 2011. 104 unaccompanied children went missing before they were given a decision from the Migration Board and 56 disappeared after they were given a decision. This means that only 57 unaccompanied children were found (26.3 per cent).

Just by looking at these statistics one can conclude that there is a need for a review of the working methods in relation to children who arrive with or without an accompanying adult. These statistics are only concerning asylum seeking children, hence the numbers of missing children might be even greater when including family reunification.

The numbers show that the majority of children disappear after they have been given a decision. This might indicate that they are hiding while waiting for their case to become barred. To hide from the authorities is unfortunately quite common today. It is so common that even a Government official stated that the vast majority of children who disappear do so because they do not accept a negative answer to their asylum application.\textsuperscript{42} Hence, saying that children who disappear do so by own will. The author finds this argument difficult to believe and does not consider it to be based on solid grounds.

It is important to remember that when a child does hide from the authorities he or she is an easy target for the perpetrators who are well aware of the vulnerable situation the child is in, i.e. being a child outside the State’s protection. Even though there are some organizations and schools offering help to these families and children, the situation for the children is horrible. They are living in limbo without access to basic human rights and with a constant fear of being found. Somehow the family or the child itself needs to earn money for a living and as the normal civil society is rarely an option, these families might seek themselves to the organized criminality in order to earn a living.

To sell your body, or even under those circumstances your child’s body, might seem like the only way to survive. Sometimes the parent/custodian is involved and other times it might be the child itself who is lured into the

\textsuperscript{40} See supplement 2.
\textsuperscript{41} The term ‘missing’ means that they have not showed up for their scheduled meeting at the Migration Board.
\textsuperscript{42} Interview with Maria Nordin Skult, May 2012.
black-market and dirty business. Once you are in, it is hard to get out and it is undoubtedly not the child’s own will.

By this the author wish to express that even though the child is considered an irregular migrant hiding with or without its family, the child is still missing in the sense of not being registered anywhere. The child is then missing its basic human rights enshrined in the four main principles of the CRC discussed below. To try to improve the situation of asylum seekers in hiding is one of the more difficult issues the society has to deal with. Although difficult, it is important that the Government officials and the society understand that first of all this is not the child’s own will and secondly, there are children who disappear before a decision is given. Where are those children today?

Unfortunately statistics of whether accompanied children have disappeared together with parents/custodian or by themselves are not available today. These statistics would be helpful in order to better map where the children might have gone or if they at all have left the country. Statistics of parents leaving the country without their children might suggest that the child is at risk and that the family constellation was forged. Children who have left together with their parents/custodian are more likely to be cared for by their parent(s) and hence hopefully not at risk for sexual exploitation. This does not mean that the same risk situation might be accurate, however less likely.
4 LEGAL FRAMEWORK

4.1 Introduction
With a focus on the main legal tools for children’s rights, namely the CRC and the OPSC, this chapter will address the different legal frameworks adopted by Sweden to protect the rights of the migrating and exploited child. Additionally, the UN Trafficking Protocol, also called the Palermo Protocol will be discussed and analysed in short as many of the accompanied children are victims of trafficking.

After discussing the international obligations the principal regional legal frameworks from the European Union and the Council of Europe will be enhanced shortly. These regional legal obligations are especially important, after the adoption of the Dublin Regulation, which provides States with the opportunity to send migrants back to where they first arrived in Europe.

4.2 The UN Convention on the Rights of the Child
The CRC came into force in 1989 and has an almost universal ratification with the exception of Somalia and USA (both countries have signed the CRC but not ratified it). The provision being the prime tool for the protection of the child right defines a ‘child’ as any human being below the age of 18 years. The CRC is guided by its four main principles being the principle of non-discrimination (art.2), the principle of the best interest of the child (art.3), the principle of the right to life and development (art.6) and the principle of the right to be heard (art.12). These principles are significant when used separately, and at the same time guiding principles for the other articles in the CRC.

Articles 34 and 35 of the CRC oblige the State to give sufficient protection, and to implement tools to prevent the risk of the child becoming a victim of all forms of sexual exploitation and sale or traffic of the child. These two core values of the CRC derives from article 4 of the Universal Declaration on Human Rights, which states that no one shall be held in slavery or servitude.

Since the CRC came into force, other international legal frameworks have been created and welcomed to specify and enhance the importance of these rights on both international and regional level. The focus on the child, as an individual right holder, has increased in the past decade and we are gradually starting to see the progress of the many legal frameworks, designed to protect the child. An example of the child’s enhanced legal status in Sweden can be seen from a recent proposition to change the

---

44 CRC, supra note 7, article 1.
45 UN General Assembly, Universal Declaration of Human Rights, (10 December 1948), 217 A (III), article 4.
Nevertheless, taking into consideration that today, 23 years after the birth of the CRC, children’s rights are still not recognized in all States and the struggle to implement the CRC continues. A study conducted by Save the Children Sweden in connection to the 20th anniversary of the CRC concluded, “… the concluding observations of the Committee are being implemented to a large extent at the national level, [but] it is difficult to determine whether the Committee’s recommendations have directly led to progress being made at National level.”

Too often the child is still seen as an object or a product that can be sold, instead of a human being with equal rights. This indicates that there is still a long way ahead to recognize the child as a human being with the same basic human rights as an adult. More focus has to be placed on States’ efficient implementation of the CRC.

4.2.1 Implementation and Incorporation, what difference does it make?

Ratification in the Swedish legal system

Affirmed in a case from 1974, Sweden has adopted a dualistic approach. This means that national and international law co-exist in our society. According to the dualistic approach, the State has a constitutional freedom to choose between the public international law and national law. This meaning that a norm can be internationally binding, without being nationally applicable. The above-mentioned case argues that a ratified treaty is not automatically directly applicable by the Swedish Courts, unless incorporated into Swedish legislation.

According to Public International Law it does not matter how a State fulfils its international obligations, but that it does. Nevertheless, co-existence of two systems of laws is not without difficulties. To avoid a conflict between national laws and an international treaty or norm, three different methods are used in the Swedish legal system; harmonization of norms, transformation and incorporation.

The first method, harmonization of norms (normharmoniserings), suggests that either through a decision by the Government or an interpretation by the Court, it is confirmed that harmony exists between the international treaty or norm and the national law. Thus, the national law is interpreted in harmony with the international treaty. This harmonization of norms suggests that an international treaty shall be interpreted in conformity with

---

47 Save the Children Sweden, supra note 4, p. 40.
48 RÅ 1974:121
the international provisions *as far as possible* when incorporated into Swedish law.
The second method, *transformation*, suggests a transformation of the international treaty into Swedish law. It means that the content of the treaty is converted into Swedish law through revising or translations.
The third method, *incorporation* (inkorporering) suggests that an international treaty should be included in its original sense in the national law.\(^{50}\) One example of this is the ECHR.

Even though any method is allowed for the international treaty to be considered ratified, incorporation is by the international society considered to be the safest method in order to fully fulfil the treaty obligations.

*Pro’s and Con’s*

The CRC is not fully incorporated in the Swedish legislation, but most of its rights are already part of Swedish law through its ratification. The Committee on the Rights of the Child (The Committee hereinafter)\(^{51}\) has criticized the Swedish State more than once for not incorporating the CRC in Swedish law, last time in 2011.\(^{52}\) The Committee claims that this non-incorporation might undermine the efficiency of the CRC’s core meaning.\(^{53}\) It should be noted that the Committee’s recommendations are not binding, but nevertheless, the Committee is the primary interpreter of the Convention and hence, its statements and recommendations have great weight and value. However, if international public law does not demand incorporation to rightfully ratify a treaty, which arguments lay the foundation for this statement by the Committee and which arguments are hindering incorporation?

One can argue in favour of the Committee’s statement and claim that incorporation would ensure that the CRC would be implemented in its entirety and thus clarify the role of the child as a legal subject with its own rights.\(^{54}\) Today, the CRC is merely known as an existing legal provision referred to once in a while, but due to its non-incorporation never used as a legal framework to build a case on. Without the CRC incorporated into Swedish law, the CRC is interpreted on the basis of Swedish law (which might not always be in conformity with the CRC).

Through incorporation the CRC would, according to the Swedish Ombudsman for Children, most likely become better incorporated in practice. The effect of a better incorporation in practice would result in a

---

\(^{50}\) Ibid, pp. 47-50.

\(^{51}\) The Committee on the Rights of the Child is the monitoring body of the CRC. They evaluate each State Parties implementation of the CRC, according to article 44 of CRC. Their recommendations are not legally binding but have a significant impact.

\(^{52}\) UN Committee on the Rights of the Child, *Concluding Observations, Sweden*, 7 October 2011, CRC/C/OPSC/SWE/CO/1, para. 11.


broader knowledge in the general society and among those working with the law. This in turn, would improve the compliance of children’s rights.55

If incorporating the CRC, the principle of non-discrimination in article 2 is one example of a provision that could gain a wished positive effect, increasing the equal right of non-Swedish children in the administrative proceedings. Kajsa Wahlberg, detective inspector at the Intelligence Service within the National Criminal Investigation Department in Sweden and Sweden’s trafficking rapporteur, argues that the Swedish police and prosecutors are investigating cases from the point of view of how children in general should be treated in Sweden, while the Courts are placing more weight into how the child is treated in its home country relying on cultural differences.56

One example can be seen from a recent judgement where the prosecutor investigated a possible case of trafficking of a Romanian girl called Zina. In short, Zina had been brought to Sweden by her family to beg and steal. The prosecutor laid forward a considerably profound investigation pointing at a possible trafficking situation of Zina. The Court considered Zina’s situation to not be that bad after all, at least it was not worse than her parents. They claimed that since the trip to Sweden was the girl’s own initiative, it could not be considered trafficking.57 All in all, one can assume that the Court looked at the situation in her country of origin and blamed cultural differences. It is doubtful that the Court would have come to the same conclusion if Zina had been a Swedish girl begging on the streets in Stockholm.

There are naturally also a number of arguments in favour of hindering the incorporation of the CRC. One argument is the political compromise behind some of the articles. Another is that the CRC is created with a language that is foreign to the Swedish legal system. Thirdly, the critics argue that incorporation would be problematic because the CRC does not only entail children’s rights _per se_ but also some economic, social and cultural rights.58

Moreover, there are concerns of the broad interpretation responsibility the Swedish Court would gain, with the following risk of a too narrow interpretation of the CRC by the Court.59

The arguments against incorporation are, according to the author, quite weak and old fashion. All rights enshrined in the CRC are just as important for the child, no matter whether these are economic, social or individual rights. Furthermore, the argument in relation to the Courts interpretation can be countered with the interpretation the Courts are forced to make in relation

55 Ibid.
56 Interview with Kajsa Wahlberg.
to the European Union law, which does not seem to create a major difficulty.

Summing up

One could argue for both points, but in the end the author agrees with the Committee’s criticism. Incorporation of the CRC would not place the child in a worse position than it has today, in relation to its rights. The argument stating that due to interpretation of earlier case law, the law would be interpreted narrower is not solid.\textsuperscript{60} Case law change as the society change and ratification without incorporation might not give the child the same guarantees to enjoy all rights stated in the CRC.

The author is also agreeing with the Swedish Ombudsman for Children, who has highlighted that although Sweden in general overlook the rights of the child, in some contexts, the CRC and the national law still differs a lot.\textsuperscript{61} Incorporation would most likely change that. The rights enshrined in the CRC would gain a more individual meaning, as it would not only be an instrument used by the legislative power when creating new legislation.\textsuperscript{62}

The Ombudsman additionally emphasise that in the end the central concern is not whether the CRC would be incorporated, but how the current legislation is actually applied.\textsuperscript{63} Can we say that the current Swedish legislation is applied satisfactory in order to live up to the State’s international obligations, for example in relation to the core principles? States may, and should, set national standards that exceed the international framework – given that it is only a required minimum.\textsuperscript{64}

\subsection{4.2.2 The principle of the best interest of the child}

The principle of the best interest of the child means that each child must be seen as an individual and special consideration must be given to his or her particular circumstances. Already back in 1959, the best interest of the child was enhanced as a core principle, through the UN Declaration on the Rights of the Child.\textsuperscript{65}

The CRC principle shall be seen as a mediating principle, assisting in resolving conflicts between rights within the overall framework of the CRC. It requires decision makers and legislators to make the best interest of the child a primary consideration, and not only a consideration. This means that it shall be the first consideration among others.\textsuperscript{66}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{60} Ibid.
\item \textsuperscript{61} Barnombudsmannen, supra note 54.
\item \textsuperscript{62} Åhman, supra note 57, p. 19.
\item \textsuperscript{63} Barnombudsmannen, supra note 54.
\item \textsuperscript{65} UN General Assembly, Declaration of the Rights of the Child, 20 November 1959.
\end{itemize}
\end{footnotesize}
The principle is an umbrella provision that should be interpreted broadly when implementing the CRC. This means that it should enable the interpreter to implement the law as an 'open concept', allowing to make a free, discretionary assessment, considering all of the issues relating to the individual child.

The principle and migrating children

Chapter 1, section 10 of the Aliens Act require the authorities to take the principle of the best interest of the child into account on reception, during investigation, in assessing whether there are humanitarian reasons for granting a residence permit (exceptionally distressing circumstances), in questions concerning family reunification and where an entry is refused. Jane McAdam argues that in relation to a refugee status determination, this means that the principle should not only apply when the child is seeking asylum alone, but also when affected by a parent’s application. A child might be affected by a parent’s application when a parent is seeking asylum due to persecution, but where the persecution might not be pointed against the child as an individual.

The Committee’s critique from both 2005 and 2009 included Sweden’s procedure and best interest of the child assessment. In the Concluding Observation from 2005 the Committee especially emphasised the lack of commitment to make a clear and comprehensive assessment of the child’s kinship including particular vulnerabilities and protection needs. A few years later, in 2009, the Committee stated:

"...the Committee is concerned that the principle of the best interests of the child is not sufficiently implemented in practice, including in the administrative spheres. The Committee also remains concerned that the best interests of asylum seekers and migrant children are not sufficiently taken into consideration in asylum processes." (Emphasises added by the author).

It is essential that the Swedish Government continue its work towards fully incorporating the CRC into Swedish law in order to live up to the obligations the Swedish State once signed for. The Government has stressed that although the principle of the best interest of the child should be applied

---

71 UN Committee on the Rights of the Child, Concluding Observations, Sweden, CRC/C/SWE/4, (12 June 2009), para.29.
broadly and not only in relation to the Migration Board process, it cannot stretch so far that it transforms into an independent criteria for a residence permit.\textsuperscript{72} This would risk exploitation of the child when the reasons for protection to be awarded a residence permit are not enough.\textsuperscript{73} A migrant child is first and foremost a ‘child’ and should have the possibility to enjoy the same rights as any other child.

4.3 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The CRC’s strong normative framework was complemented and further reinforced with the adoption of the OPSC, in 2002.\textsuperscript{74} The OPSC provides additional protection from sexual exploitation for the child and is designed to narrow the gap between international standards and reality on the ground.\textsuperscript{75} It criminalizes specific acts relating to the sale of children, child prostitution, and child pornography and lays down \textit{minimum} standards for protecting child victims in criminal justice processes.\textsuperscript{76} Furthermore, the OPSC calls on all State Parties to assure that all acts are fully covered by the criminal law of the respective State and it especially underscores the role of prevention. To be able to evaluate the preventative work, the proactive implementation work by the State and the monitoring of it, is fundamental.

Marta Santos Pais, the Special Representative of the UN Secretary-General on Violence against Children, points to the core issue of this paper, namely the importance of monitoring the impact of each State’s implementation of the international treaty in order to avoid loopholes. She emphasises that:

\begin{quote}
\textit{“It is critical to overcome the perception of this child rights violation as a social taboo...It is also vital to monitor the impact of all these measures, to avoid loopholes in child protection and to effectively address evolving challenges and concerns...”}\textsuperscript{77}
\end{quote}

The principle tool for this monitoring is the reporting system to the Committee.

\textsuperscript{72} Prop. 1996/97:25, supra note 21, p. 247.
\textsuperscript{73} Ibid.
\textsuperscript{74} OPSC, supra note 8.
\textsuperscript{76} UNICEF, supra note 64, p. 2.
\textsuperscript{77} Santos Pais, supra note 75, p. 560
4.3.1 Reporting

In 2006 Sweden ratified the OPSC and it came into force February 2007.\textsuperscript{78} As can be seen in this sub-chapter, many of the provisions found in the OPSC are similar to those in the Palermo Protocol, which entered into force a few years before the OPSC. Both provisions derive from the United Nations, but based on two different Conventions. This indicates both how broad the crime of CSEC is, but also the international society’s determination of combating it.

Even though both protocols are discussing similar topics, i.e. sale of children and trafficking, the Committee (the same Committee as the one for CRC) has emphasised that the two crimes are not identical.\textsuperscript{79} Therefore, it is important for the State to separate the obligations deriving from the respective protocols.

To interpret the content of the CRC, the Committee issues \textit{General Comments} on the respective articles in need of clarification. There is yet no General Comment to the OPSC, but the Committee, as well as NGOs’ such as UNICEF, have created guidelines and handbooks to guide the State Parties in their implementation.\textsuperscript{80}

The Committee has emphasized that the process of preparing the State Party report should be a broad and a participatory one, which offers an opportunity to conduct a comprehensive review of national legislation, administrative rules and procedures, and practices. Although the responsibility for reporting is with the respective State Party, NGOs may and should contribute to this process.\textsuperscript{81} This because it might be difficult for the Committee to obtain a complete picture of the current situation in a concerned State and hence information provided by NGOs’ is therefore an essential element in the monitoring process. The information provided by the NGOs could of course both enhance and criticise the information given by the State. However, due to the fact that the reports submitted by the States Parties tend to present the legislative framework and often do not consider the implementation process, the NGO reports are crucial in order to gain the best overall picture.\textsuperscript{82}

Other important actors in the monitoring process include ombudsmen for children and national and international human rights institutions for children. As these bodies operate nationally and internationally, they can assist in identifying gaps in the implementation.


\textsuperscript{79} OPSC Concluding, \textit{supra} note 52, para. 11(d).

\textsuperscript{80} UNICEF, \textit{supra} note 64.


\textsuperscript{82} Ibid.
Sweden submitted its first report to the Committee in 2009 and was later, in 2011, requested to hand in further information in regards to its implementation. This latest list of issues concerning additional and updated information will be used as the basis for analysing Sweden’s implementation of the OPSC.

4.3.2 Implementation

“Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis."

The reference to ‘the following acts’ are those acts listed in OPSC’s article 2; “(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”

It should be noted that Sweden has made a reservation to article 2(c) and the wording ‘by whatever means’.

Additionally, those acts should be punished by “appropriate penalties that take into account their grave nature.” To date, the Committee has not given a proper explanation of the exact interpretation of this provision. Thus, the interpretation is in the hands of the respective State Parties.

The three main crimes stated above are all criminalized in the Swedish penal code. However, the author considers it questionable whether they are all punished with appropriate measures taking into account the gravity of the crime. The purchase of a sexual act of a minor is in the Swedish Criminal Code sanctioned with a minimum penalty of a fine and a two years imprisonment as a maximum. The sanction for child pornography as stated in the Swedish Criminal Code is also a fine or, if considered a serious offence, a maximum of six years imprisonment. The sale of a child has a

83 UN Committee on the Rights of the Child, List of issues concerning additional and updated information related to the initial report of Sweden, CRC/C/OPSC/SWE/1, (6 July 2011).
84 OPSC, supra note 8, article 3(1)(a).
85 Ibid., article 2.
86 Ibid., article 3(3).
87 BrB, supra note 10, chapter 4, para. 1(a); chapter 16, para 10(a) and chapter 6, para. 9.
88 Ibid., chapter 6, para. 9.
89 Ibid., chapter 16, para 10(a).
sanction stretching from two to ten years’ imprisonment.⁹⁰

The average sanction for the crime of child pornography and for the crime of purchasing sex of a child is a fine and not imprisonment.⁹¹ To purchase sex from a child, as if the child was a product, and be punished with a fine cannot be considered to have a deterrent effect on the perpetrator and in general on the crime’s status. A fine, can as such be a severe sanction, but as will be discussed further below, there is a concern both in regards to preventive measures but also in relation to the OPSC’s demand of appropriate measures in relation to the gravity of the crime. The sanctions for the crimes of CSEC are very weak both in relation to the severity of the crime but also in relation to other crimes as it is at the very bottom of the scale of Swedish crime sanctions. As a consequence of the low sanctions these crimes are not given priority.⁹²

4.3.3 Preventive Measures
The Committee places considerable emphasis on the preventive measures in the OPSC and its implementation. Article 9(1) of the provision require the State Parties to:

“...adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention should be given to children who are especially vulnerable to such practices.”⁹³ (Emphasis added by the author).

Quality of protection to migrating children

One of the issues, the Swedish Government was asked to further elaborate on to the Committee was the measures taken to ensure that, in practice, foreign child victims of all offences under the OPSC have access to assistance and protection services which meet the same quality standards as those provided to Swedish children.⁹⁴ The answer by the Swedish Government was that the same assistance is offered to all children, however recognising that “…there are signals from the specialists working with foreign children that these children not always get the assistance and protection service with the same quality standards as for Swedish

⁹⁰ Ibid., chapter 4, para 1(a).
⁹² Ibid. (ECPAT)
⁹³ OPSC, supra note 8, article 9(1)
⁹⁴ UN Committee on the Rights of the Child, Consideration of the initial report of Sweden, CRC/C/OPSC/SWE/Q/1, (6 May 2011), para. 8.
children."^95 The Committee thus again recommended Sweden to take all necessary measures to ensure that this is seen to before the next and upcoming fifth report to the Committee.\(^96\)

As previously stated, an incorporation of the CRC might enhance the use of the non-discrimination principle in the Swedish Courts and the administrative system as such.

**Preventive care and rehabilitation**

An area of concern is the treatment of offenders, both in preventive purposes before a crime is committed and the treatment of relapse perpetrators. An efficient proactive implementation and strategy for this would most likely result in a decreased demand.

The author’s opinion is that anyone who has committed (also in the sense of incitement) a sexual crime against a child shall be offered treatment to fully understand the crime and its impact on the child as a victim. Hence, the author places trust in proper treatment and care, no matter if the given sanction is a financial penalty or a long imprisonment.

Today, care and rehabilitation services are only offered to sexual offenders within prisons. Since most individuals purchasing sex from a child do not receive a more severe sanction than a fine, most of the perpetrators never come close to being offered treatment. Without proper rehabilitation and treatment the majority will most likely be back on the market shortly after the sentence is paid. What preventive cause can a fine then bring when compared to care and rehabilitation?

The treatment offered within the prisons, is not mandatory. Though, it is required to accept treatment in order to enjoy furlough or be released on parole. This would then indicate that most offenders do probably accept this treatment.

Statistics from 2010 and the Swedish National Council for Crime Prevention (BRÅ), states that the number of reports of the crime of purchasing sex from a child\(^97\) increased with 55 per cent from the year before.\(^98\) Wahlberg explains the increased reporting as being a result of the National Plan of Action on Trafficking and Prostitution\(^99\), which highlighted the issue.\(^100\) However, even though the numbers of reports have increased, the statistics show that only nine perpetrators were given a sanction for the crime of purchasing sex from a child. Two out of these nine were sanction with imprisonment.\(^101\) These alarming numbers were recently highlighted

---

^95 UN Committee on the Rights of the Child, *Written replies by the Government of Sweden to the list of issues related to the consideration of the initial report of Sweden*, CRC/C/OPSC/SWE/Q/1/Add.1, (1 Sept 2011), para. 45.
^96 OPSC Concluding, *supra* note 52, para. 36.
^97 BrB, *supra* note 8, chapter 4, para. 9.
^98 BRÅ, *supra* note 91, p. 50.
^100 Interview with Kajsa Wahlberg.
^101 BRÅ, *supra* note 91, p. 188.
by one of the leading Swedish newspapers, *Dagens Nyheter*. The newspaper published three articles underlining the alarming situation by referring to statistics and reciting several judgements from this year, where Swedes had been purchasing sexual services from children in and around Stockholm. The series of articles finally led to a statement by the Minister of Justice, Beatrice Ask and the Minister for Children and the Elderly, Maria Larsson, who both admitted that there is a loophole in the system risking the protection of children.\(^{102}\)

To feel a sexual attraction to a child shall be seen as a warning sign. Those who feel attraction to children often feel ashamed of their thoughts. This shame results in that they do not dare to seek help.\(^{103}\) If they do seek help they are very poorly received in the open day-care facilities. Currently there is only one facility available for men suffering from conditions such as compulsive sexual behaviour and sexual addiction. This facility is found at Karolinska University Hospital Centre for Andrology and Sexual Medicine in Stockholm and at the moment only open for men residing in Stockholm. To better meet the need from the entire country, they recently opened a ‘hotline’ called *Preventell*, for those who wish to seek help for their sexual attraction to children, or those who wish to report a sexual crime against a child.\(^{104}\) This ‘hotline’, which so far has had a positive response, is only financed until 2014. As the need for a nationwide facility is alarming, the author can only hope that the Government will find a way to continue financing the project.

The National Board of Health and Welfare (NBHW) have also emphasized the need for resources and rehabilitation being offered all over the country.

> “The National Board of Health and Welfare emphasizes the importance of the development of regional proficiency centres to facilitate access for children and young people to evidence based treatment efforts geographically nearer their home district.”\(^{105}\)

The warning sign must be given attention to before there is an actual victim. Whenever and however a person tries to satisfy its sexual attraction for a child, a child’s integrity and future is being wrecked. Hence, to sexually offend a child is a crime no matter the severity of the act as such.

The author agrees with the Committee when stating that this area of preventive care and rehabilitation is in desperate need of being improved, as these are the individuals who are pressuring the demand, which is the key of CSEC’s existence.\(^{106}\) Without the demand, there is no crime!

103 OPSC Concluding, *supra* note 52, para. 36.
105 Ibid.
106 OPSC Concluding, *supra* note 52, para. 22.
Awareness

Article 9(2) of the OPSC sets forth a general obligation to:

“promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol”.

In 2011, Sweden was asked by the Committee to update information on the implementation of mandatory training on the OPSC for all persons working with and for children.107 Furthermore, the Committee requested training programmes in follow-up to the Swedish National Plan of Action for Safeguarding Children from Sexual Exploitation (2007).108 The NPA from 2007 was supposed to be updated in 2010, but there is still no new NPA in regards to sexual exploitation of children. It is expected later this year, hence with a three-year delay.

Sweden’s answer to the Committee included a long list of initiated projects by different sectors. In general it was a report indicating that progress had been made in relation to educating the public.109 Some of the examples were that the Swedish Government adopted a National Plan of Action to combat prostitution and trafficking in human beings for sexual purposes in July 2008.110 Another action pointed out by the Swedish Government was the training of practising judges and education of young judges, which included a mandatory section on trafficking, where ECPAT Sweden was one of the lecturing organizations. The importance of the education of judges was highlighted already in 2004 through Government’s own report of the investigation on sexual exploitation of children. The report’s inquiry of judgments regarding sexual offences against children showed that the Courts’ often lacked knowledge about the dynamics and consequences.111 This is why it is now disturbing to hear that ECPAT’s education of young judges will not be part of the mandatory education of the judges anymore. The reason behind this decision is that the Government does not consider the crime of CSEC to be a priority issue anymore.112

4.3.4 Summing up

All these efforts are good and much needed however there is room for improvement. Firstly, the National Plan of Action from 2007-2010 has not been updated. Although expected later this year, it is much delayed and it can only be considered very unfortunate that the Government has not

---

107 UN Committee on the Rights of the Child, List of issues concerning additional and updated information related to the initial report of Sweden, CRC/C/OPSC/SWE/Q1, para. 2(a)(b).
108 Ibid.
110 NPA, supra note 99.
111 SOU 2004:71, supra note 12, p. 197
112 ECPAT conversation with Domstolsverket, (14 maj 2012).
considered it a priority. Christopher Carlson, lawyer at the office of the Swedish Ombudsman for Children confirms the lack of priority. He states that the issues faced by the accompanied children are known to the Ombudsman’s office, but unfortunately there are not enough resources to make it a priority issue.\textsuperscript{113}

Secondly, most of the efforts done in relation to education are pointed towards the professionals. This is a step in the right direction, but the awareness campaigns towards the public are just as important. The Committee’s well-founded concern in relation to the general knowledge of the OPSC can be seen through a Swedish survey conducted by \textit{You.Gov.} in December 2010 on request by ECPAT Sweden.\textsuperscript{114} The result of the survey showed that out of the 1010 interviewees 57 per cent did not act when they came in contact with child pornography. The survey further showed that the awareness of the crime of CSEC had increased, but when asked of how they reacted they showed an uncertainty in how to react, who to contact and when. Some of the answers included giving the perpetrator an angry look or leaving the place as a demonstration of not consenting. Hence, the initial reaction was not to report the crime to the police and consequently giving the child and opportunity to gain justice. To combat the crime of CSEC, this knowledge needs to be widespread.

Thus, the author shares the Committee’s concern in their concluding observation.

\begin{quote}
"Furthermore, the Committee is concerned that the State party does not have an overall strategy for the implementation of the Optional Protocol and that measures taken to address the underlying demand factors leading to offences under the Optional Protocol remain inadequate."\textsuperscript{115}
\end{quote}

Hence, Sweden’s implementation of the OPSC is still lacking measures for addressing the demand. To ensure the protection of all children, and especially children who are more vulnerable, Sweden needs to increase and improve its awareness-raising measures and strengthen the use of preventative measures. This means to strengthen the general awareness of the public through more and better campaigns and place more focus on preventative actions such as care and rehabilitation for all offenders.

\subsection*{4.4 The Palermo Protocol}

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children supplementing the UN Convention against

\begin{footnotesize}
\begin{itemize}
\item[113] Interview with Christopher Carlson.
\item[114] \textit{You.Gov} Survey was an online interview conducted in December 2011. It reached 1010 women and men over the age of 16 years from all over the country. The Survey is done in relation to the work of ECPAT Sweden from 2005-2010.
\item[115] OPSC Concluding, \textit{supra} note 52, para. 12.
\end{itemize}
\end{footnotesize}

Since trafficking is often, although not exclusively, transnational in nature, coordination and cooperation between states is indispensable, hence the importance of the Palermo Protocol. Through the drafting of the Palermo Protocol the global society came together and for the first time defined a legally binding definition of trafficking. The internationally recognized definition reads:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

The provision further states that in case of trafficking in children, the means described above do not matter.

Through the Palermo Protocol the State Parties are obliged to implement measures providing for the physical, psychological and social recovery of victims of trafficking. Additionally, each State Party shall seek to provide for the physical safety of victims while they are within its territory. When providing assistance to and protection of victims, the State Party shall take into account the age, gender and special needs, in particular the special needs of children, including appropriate housing, education and care.

This entails that Sweden has an international obligation to ensure that children who are victims of trafficking and currently residing in Sweden without a residence permit, are under the responsibility of the Swedish State. The responsibility includes the possibility for recovery and general safety, which per se comprise the right to housing, education and care.

---

118 Ibid.
119 Ibid., supra note 116, para. 3(a).
120 Ibid., para. 3(c).
121 Ibid., para. 6(3).
122 Ibid., para. 6(5).
123 Ibid., para. 6(4).
Some important and relevant provisions of the Palermo Protocol are those assigning obligations to implement preventive measures. After having presented the obligations found in the OPSC, it is clear that the Palermo Protocol has been a source of inspiration, as the obligations in the two provisions are very similar. The Palermo Protocol’s obligations relevant to the group of children discussed in this paper are the following.

“States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”124 (Emphasis added by the author).

Sweden has an obligation to ensure that the national legislation and other measures are formulated and conducted with the aim of discouraging the demand of trafficking in children. Subsequently, if the current legislation is considered to be satisfactory, the State still has an obligation to ensure that other measures such as educational, social or cultural are strengthened in order to work proactive to discourage the demand.

"States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons...The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-Governmental organizations, other relevant organizations and other elements of civil society.”125 (Emphasis added by the author).

This obligation, also mentioned in the OPSC, is essential in order to actually combat the crime in the long term. As the situation is today, there are only short-term action plans with fairly good efforts to improve the education. However, there is room for improvement in terms of education of the crime of trafficking and the behaviour of child victims.

"Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information...”126 (Emphasis added by the author).

The cooperation between the different authorities working with migrating children is essential to combat the crime of trafficking and closing the

124 Ibid., para. 9(5).
125 Ibid., para. 10(2).
126 Ibid., para. 10(1).
unwished but existing loopholes. This cooperation between authorities will be discussed further in the following chapter on *Migration*.

The Palermo Protocol is the main international legal provision in regards to the crime of transnational trafficking. By ratifying this legal tool, Sweden has agreed to a number of obligations, all of them necessary and crucial to compel with in order to eliminate the crime of trafficking. Issues especially emphasised by Wahlberg, (the Swedish trafficking rapporteur), are the education and training for all relevant professionals involved as well as the loopholes in the cooperation between the authorities.\(^\text{127}\)

### 4.5 THE EUROPEAN REGION

Sweden is not only bound by international treaties but has obligations originating from the major regional human rights entities, the Council of Europe and the European Union. The evolution of international law proves that regional instruments are very often necessary to complement global efforts.\(^\text{128}\) Experience has also proved that, in areas where independent monitoring systems exist (e.g. the CoE Trafficking Convention), they have gained high credibility with the States Parties. Moreover, the cooperative nature of such mechanisms is fully understood and recognised and hence, improving the implementation procedure, which otherwise can be controversial.

Therefore, these two entities and their respective monitoring mechanisms as well as provisions regulating the crime of trafficking and the crime of sexual exploitation of children are important tools in the regional work against the offences of CESC.

The CoE consists of 47 Member States and was founded in 1949. The primary aim of the CoE is to create a common democratic and legal area throughout the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law.\(^\text{129}\) One of its main objectives is to find common solutions to the challenges facing the European society, such as trafficking and sexual exploitation of children.\(^\text{130}\) The Conventions of the CoE are prepared and negotiated within the institutional framework and are not statutory acts. Important to note is that the Conventions owe their legal existence to the consent of those Member States that sign and ratify them. Hence, consenting to fight the crimes and enhance human rights.

The EU is a unique economic and political partnership between 27 European countries, created in the aftermath of the Second World War. One

---

\(^{127}\) Interview with Kajsa Wahlberg.


\(^{130}\) Council of Europe, *Who we are*, [www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en], accessed 22 April 2012.
of its main goals is to promote human rights both internally and around the world. The abolition of border controls between EU countries, it is now possible for people to travel freely between the EU Member States. Common minimum standards and procedures for asylum seekers are intended to guarantee a high level of protection for those who need it, while ensuring that national asylum systems cannot be abused. The Swedish EU Commissioner Cecilia Malmström is especially interested in creating a more secure but still open migration system within the EU. Unfortunately, the open borders have not only brought good consequences, but also an open gate to the crime of trafficking and sexual exploitation of children.

The aim of the EU Directives’ is to bring different national laws into line with each other within the field of human rights. The Directives lay down certain results that must be achieved in every Member State. How to adapt these Directives into the national legislation is at the discretion of each Member State.

The CoE and the EU share the same fundamental values on human rights, democracy and the rule of law. However, they are separate entities performing different, yet complementary, roles. The CoE brings together Governments from across Europe to agree on minimum legal standards in a wide range of areas within its fundamental values. It then monitors how well these countries apply the standards that they have chosen to sign up for. The EU on the other hand refers to those same European values as a key element of its deeper political and economic integration processes. The EU often builds upon CoE values when drawing up legal instruments and agreements that apply to its 27 member states.

The two Conventions and two Directives that will be presented below are similar but yet different. Most importantly, due to their different foundation, they apply differently to Sweden as a Member State, i.e. Directives being more or less directly applicable as part of European Union law and the CoE Conventions depending on the signature and ratification of the State.

**Convention on Action against Trafficking in Human Beings**

In 2005 the Committee of Ministers adopted the *Council of Europe Convention on Action against Trafficking in Human Beings* (CoE Anti-
Trafficking Convention hereinafter). It entered into force on 1 February 2008 and two years later Sweden ratified it.137

While other international instruments already exist in this field, the CoE Anti-Trafficking Convention, the first European treaty in this field, is a comprehensive treaty focusing mainly on the protection of victims of trafficking and safeguarding their rights. The definition found in the Anti-Trafficking Convention goes further than the Palermo Protocol, as its scope extends to all forms of trafficking, “whether national or transnational, whether or not connected with organized crime.”138

In addition, the Convention provides that a person should have access to appropriate services when the competent authorities (which in this case would be the Migration Board, Social Services or the Police) have reasonable grounds to believe that he or she has been trafficked.139

**Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**

In 2007, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CoE Convention hereinafter)140 was opened for signatures and Sweden was one of the first countries to sign the Convention. However, Sweden has not yet ratified it.141

The aim of the Convention, which entered into force on 1 July 2010, is to prevent and combat sexual exploitation and sexual abuse of children, to protect the rights of victims of offences and to promote national and international cooperation.

Following a Swedish Government resolution from 2008, a Sexual Offence Commission was set up to report on the then newly signed CoE Convention and what legal consequences a future ratification of this provision would carry.142 The Committee identified several inadequacies in the Swedish legislation in relation to articles 18, 22, 25.4 and 33 of the CoE Convention. In order for Sweden to satisfy the requirement of the provision, amendments to the Swedish Criminal Code would be necessary, hence the slow ratification process.143

The CoE Convention is a tool of great importance as the risk group discussed in this paper is in great need of the specific protection enlisted in the CoE Convention. By identifying that Sweden is in need of amending its

137 Council of Europe Treaty Office, Signatures and Ratifications, 22 April 2012.
138 CoE Anti-Trafficking Convention, *supra* note 136, article 2.
139 *Ibid.*, article. 10(2).
national law in order to fulfil the obligations of the CoE, Sweden is also indirectly admitting to not being able to provide full protection against these crimes.

EU Directive on Prevention and Combating Trafficking in Human Beings and Protecting its Victims

The EU Charter on Fundamental Rights states “Trafficking in human beings is prohibited.” In previous years the EU paid attention to the fight against trafficking primarily through the Framework Decision on Combating Trafficking in Human Beings of 2002. In 2011, a new Directive, the Directive on Prevention and Combating Trafficking in Human Beings and Protecting its Victims, replaced the Framework Decision.

Tougher sanctions for traffickers and better protection for victims are the key aims of the new EU provision on trafficking in human beings. It also further broadened its scope of application and applies to trafficking in human beings for illegal adoption, forced marriages, sexual exploitation and labour exploitation.

In December 2010, the EU Commissioner Cecilia Malmström, appointed Myria Vassiliadou to the position of European Anti-Trafficking Coordinator. Vassiliadou’s task is to improve coordination and coherence between EU institutions, EU agencies, Member States, third countries and international actors in the field of anti-trafficking.

To improve the cooperation even further, the Directive also entails a requirement by all EU States to set up a National Rapporteur responsible for monitoring the implementation of anti-trafficking policy at national level. As previously mentioned in this paper, the Swedish National Rapporteur is criminal inspector Wahlberg.

When asked the question of how the Commission is working in order to highlight the issue of trafficking of accompanied children, Vassiliado answered:

---

“The Commission understands the particular vulnerability of children and is, in fact, committed to highlight this issue in its policy. In the Directive, children are amongst the particularly vulnerable victims, and, therefore, penalties for traffickers of children are higher. In light of their vulnerability to trafficking, children should be provided with specific assistance, support and protection – this is reflected in the Directive. The Directive also has an article dedicated especially to unaccompanied children; however, as a whole this does not preclude accompanied children from benefiting from the abovementioned elements. Hence, by transposing the Directive into national legislation and implementing it, Member States will better address human trafficking, prosecute traffickers, and improve protection and support to victims. Member States could also further enhance training of public officials and increase awareness of the phenomena so to prevent children being trafficked or identify them at an early stage.” (Emphasis added by the author).

Sweden has implemented the Directive but could, as stated by Vassiliadou, work more proactive in relation to training of public officials and raising the general awareness, especially in regards to accompanied children.

**EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography**

Until last year, the 2003 Framework Decision on combating the sexual exploitation of children and child pornography laid down a set of common minimum rules for EU States. In particular, it established common provisions on criminalisation, sanctions, aggravating circumstances, assistance to victims and jurisdiction. However, it did not include new developments, such as the crime of grooming. Thus, in December 2011 the EU Council adopted a new Directive, the Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography as a result of an amendment to the previous Framework Decision from 2004.

---

149 Directive 2011/36, supra note 143, article 4.2(a).
150 Ibid., articles 13-15.
151 Ibid., article 16.
152 Interview with Myria Vassiliadou.
The aim of the Directive is to harmonize around twenty relevant criminal offences. Furthermore, it aims at setting high level of penalties and opening up the possibility to prosecute new developments within the crime of sexual exploitation of children. Sweden has to implement this new Directive by the end of next year and it will most certainly require some larger amendments of the current legislation as the provision is similar to the CoE Convention, but also stretches further. The first report on this implementation is estimated by the end of this year.155

4.5.1 Summing up

To sum up, the main European entities working to promote human rights and the rights of the individual are well aware of the issue of trafficking and sexual exploitation of children. The European Court of Human Rights’ decision in Rantsev v. Cyprus and Russia in 2010 intensified the importance of recognizing the crime of trafficking as a crime that can be equalized to torture. The case established that human trafficking is a violation of Article 4 of the European Convention on Human Rights, and that Member States are required to meet certain positive and procedural obligations to provide effective mechanisms to protect individuals against human trafficking, investigate such crimes, and prosecute and punish the offenders.156

The provisions from the past years have taken into consideration the issues of implementation that can be seen from the UN provisions through implementing separate monitoring bodies (GRETA for the Anti-Trafficking Convention). To increase the monitoring system of the implementations is one key to find greater success from the already existing provisions. The international society need to be careful when creating new legislation and ensure that the Member States are following the development on a national basis as well.

Sweden has, by signing the new CoE Convention, recognized that we believe in the legislation and the obligations deriving thence. However, silently affirming is not going to make a difference. It is time for the Government to step up and start implementing the provisions on the ground and not just on political levels.

155 Justitiedepartementet, Maria Hölcke, 14 May 2012.
156 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, (7 January 2010), para. 282.
5 MIGRATION

5.1 Introduction
One should always look at a specific situation from the child’s perspective and not from the migration status perspective. Hence, children registered as migrants in Sweden should not be received differently dependent on what status they have when they arrive, accompanied or not. This is to ensure that the legal process of migration, meaning from the registration at the border or at an embassy to the execution of the following decision, is always in the best interest of the child. 157

This chapter will discuss the process, procedures, actions and obligations of the different authorities in relation to the arrival of a migrating child who might be at risk of disappearing. The thought behind the chapter is for the reader to be able to follow a child from the point of registration until a decision is made and see the possible risks that might arise.

The discussion will initiate with the role of the Swedish Migration Board who has the de facto responsibility of a migrating child from the time of registration until a decision is made. 158 Furthermore, the author will discuss the responsibility of the National Board of Health and Welfare (Social Services hereinafter), who through its municipalities is responsible for the child’s well being when awaiting the decision. Lastly, the author will describe the role of the Swedish Police Authority, as the authority responsible for border control and the search for missing people.

In sum, this chapter will try to answer how these respective authorities are acting in accordance with the previously mentioned international obligations by referring to the national law they are acting on.

5.2 The Migration Board
“An alien entering or staying in Sweden must have a visa unless he or she has a residence permit or has a long-term resident status.” 159

In theory, there are four possible approaches to seek entry into Sweden. An alien can either apply for a temporary or permanent residence permit (i.e. family reunification), apply for a short-stay visa (i.e. for a visit or student), claim asylum or can be considered otherwise in need of protection due to exceptionally distressing circumstances.

As previously mentioned, children have the same right as adults to seek entry into Sweden, based on the risk of misuse of the system, if children were given extended rights. 160

---

157 Aliens Act, supra note 25, chapter 1, section 10.
158 Ibid., chapter 10, section 13.
159 Ibid., chapter 1, section 3.
160 See section 3.1.2
5.2.1 Grounds for residence permit

“A residence permit is a permit to stay in Sweden for a certain time [temporary residence permit] or for an unlimited time [permanent residence permit].”\(^{161}\) The basic rule is that anyone residing in Sweden for more than three months must have a residence permit, with the exception of Nordic or EU citizens.\(^{162}\)

In most cases involving children, the reason behind an application for a residence permit is family reunification. The Aliens Act’s right to family reunification follows from a variety of Convention commitments, e.g. article 8 of the European Convention on Human Rights and article 10(1) of the CRC. Thus, the Aliens Act states that residence permit based on family reunification can be given to:

“...a child who is an alien, is unmarried and a) has a parent who is resident in or has been granted a residence permit to settle in Sweden or b) has a parent who is married to or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden”\(^{163}\)

Apart from residence permits based on family reunification or temporary visits, a residence permit can be awarded to individuals who seek asylum, i.e. a refugee, an individual eligible for subsidiary protection or an individual otherwise in need of protection.\(^{164}\) The Aliens Act defines asylum as a residence permit granted to an alien because he or she is a refugee or otherwise in need of protection.\(^{165}\) This definition is based on international provisions, such as the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention),\(^{166}\) the Universal Declaration of Human Rights (UDHR)\(^{167}\) and the International Covenant on Civil and Political Rights (ICCPR).\(^{168}\)

Article 14 of the UDHR states “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”\(^{169}\) The right to seek asylum does not necessarily imply that the person has an absolute right to be granted asylum. Article 14 is preceded by the provision about freedom of movement in article 13 of the UDHR, which is replicated in the ICCPR.\(^{170}\) Gregor Noll has described this right to asylum to be “an empty right without

\(^{161}\) Aliens Act, supra note 25, chapter 1, section 4.
\(^{162}\) Ibid.
\(^{163}\) Ibid., chapter 5, section 3(2).
\(^{164}\) Ibid., chapter 5, section 1.
\(^{165}\) Ibid., chapter 1, section 3.
\(^{167}\) UDHR, supra note 45.
\(^{169}\) UDHR, supra note 45, article 14.
\(^{170}\) ICCPR, supra note 168, article 12(2)(4).
To better understand what Noll is referring to, the three conditions where an individual is considered to be an asylum seeker will be explained below.

The Aliens Act, influenced by article 1(a)(2) in the 1951 Convention, defines a refugee as a person who:

“is outside the country of the alien’s nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.”

The second group of asylum seekers are those who are eligible for subsidiary protection. This is if you are in danger of:

- being punished by death;
- being punished physically, tortured or exposed to other inhuman or humiliating treatment or punishment; or
- as a civilian, being hurt because of armed conflict.

Status declaration as a person otherwise in need of protection is a Swedish concept that applies only in Sweden, while the two other concepts are based on the Refugee Convention and EU rules. The grounds for protection are:

- external or internal armed conflict;
- other severe tension in the home country;
- well-grounded fear of being subjected to serious abuse; or
- a natural disaster.

The Aliens Act declares that in cases where a residence permit cannot be awarded on other grounds (see above), it may be awarded to an alien if, during an overall assessment of the alien’s situation, there are exceptionally distressing circumstances.

In making this assessment, particular attention shall be paid to the alien’s state of health, his or her adaptation to Sweden and his or her situation in the country of origin. Those exceptionally distressing circumstances might be severe health conditions considered to be life threatening, special bonds, or

---

172 Aliens Act, supra note 25, chapter 4, section 1.
173 Ibid., chapter 4, section 2.
175 Aliens Act, supra note 25, chapter 5, section 6.
other reasons such as that the country of origin refuses to accept the alien.\textsuperscript{176} In general, it is extremely hard to be awarded a residence permit based on\textit{exceptionally distressing circumstances}, as the circumstances really have to be\textit{exceptional}.

Except from the general obligation in chapter 1, section 10 of the Aliens Act, to consider the best interest of the child, a child has an extended possibility to seek residence permit if there are grounds of\textit{exceptionally distressing circumstances}. The Aliens Act specifically states that children may be awarded residence permits even if the circumstances that have come to light do not have the same seriousness and weight as those required for a permit to be awarded to adults.\textsuperscript{177}

The special provision for children is created to better enhance the importance of the child’s individual circumstances to be awarded a residence permit.\textsuperscript{178} The circumstances for an investigation under the Aliens Act chapter 5, section 6(2) are the same as for an adult. However, because of the importance of a child’s development and that change might affect a child’s development more severe than an adult, the Migration Board or the Court has to take certain factors into deeper consideration. Those factors are the time the child has spent in Sweden, the special bonds the child has created and the child’s health.

Nevertheless, even though the child does not have to prove the same seriousness as an adult, it is still very rare to award a residence permit based on\textit{exceptionally distressing circumstances} to a child.\textsuperscript{179} The difficulty can be seen in a decision from Uppsala in 2009, where a Bangladesh girl born 1993 initially was denied residence permit and were to be sent back to Bangladesh.\textsuperscript{180} The unaccompanied girl had been trafficked, sexually exploited and the relatives in Bangladesh were the one who has initiated the trafficking. The grounds for the decision were that Bangladesh offered an orphanage and NGOs could give her support. Several adults who had been in contact with the girl reacted very strongly over the decision and doubted the information and that the girl would be given adequate help and support if sent back to Bangladesh. Together they assisted the girl to appeal the decision to the Migration Court, where she was later awarded a permanent residence permit.\textsuperscript{181}

\textsuperscript{176}\textcite{Prop. 2004/05:170, Ny instans- och processordning i utlännings- och medborgarskapsärenden, (26 maj 2005), p. 195.}
\textsuperscript{177}\textcite{Aliens Act, supra note 25, chapter 5, section 6, 2nd sentence.}
\textsuperscript{178}\textcite{Prop. 2004/05:170, supra note 176.}
\textsuperscript{179}\textcite{Flyktinggruppernas och Asylkommittéernas riksråd (FARR), Goda Råd till dig som söker asyl i Sverige, 2nd ed. Stockholm (2011), p. 10.}
\textsuperscript{180}\textcite{Asylprövningsenheten i Uppsala, Beslut 8 oktober 2009.}
\textsuperscript{181}\textcite{Migrationsdomstolen, Mål nr. UM 13896-10.}
5.2.2 The application procedure

**Registration**

When applying for a residence permit or a visa, the principle rule is that this should be done before entering Sweden by visiting a Swedish embassy in your home country. To apply through an embassy is the most common way when a child is applying for a residence permit based on family reunification.

When applying for a residence permit based on family reunification, the child is asked questions of why he or she wants to move to Sweden. The embassy then starts an investigation to make sure that the facts stated by the child are correct. After the initial individual interview at the embassy, the case file will be sent to the Migration Board in Sweden. The Migration Board contacts the family member residing in Sweden and further investigates the facts given at the embassy abroad. Based on the gathered facts and possible interviews with family members in Sweden, the Migration Board makes a decision. The picture below explains the progress.

This process of applying through an embassy is not always possible, due to various reasons, such as war or persecution where the individual had to flee the country. Therefore, in exceptional cases, an alien can apply directly at the Swedish border or at a Police station.

The Swedish Police Authority is responsible for border control and consequently also in charge of an alien until he or she has been registered at the Migration Board. Therefore, if a child is detected at the border or at a local police station and claims asylum, the Police transfer the case to the Migration Board’s application unit.

*Dublin regulation*

Regardless of a child’s approach to the application unit, the first step before initiating an application is to identify the child’s identity through a valid passport or other comparable document. This stage might be difficult if

---

proper identification (i.e. valid passport) does not exist and the Migration Board might ask for additional papers in order to establish the identity of the applicant.

After all initiating procedures of establishing whom the applicant actually is, the Migration Board examines if any other country is responsible for the child’s application according to the permissive Dublin Regulation.\(^{183}\)

The Dublin Regulation is a mechanism to determine which EU Member State that is responsible for examining an application for asylum.\(^{184}\) The regulation states that asylum seekers must lodge their application for asylum in the first EU country they enter. Hence, if a State can prove that the individual has passed through the border of another State, made an application for asylum in another Member State or was issued a visa or residence permit by one of the Member States, the State may return the asylum seeker to that initial Member State. As a permissive and not mandatory provision, an alien’s possibility to be awarded a residence permit is the individual State’s discretion.

The system is designed in order to prevent ‘asylum shopping’, but has been widely criticized in the media in the past years, as some claim that children are being sent back to inhumane settings in for example Greece\(^{185}\) and Malta.\(^{186}\) These reports are important to consider. A child that might risk being sent back to inhumane conditions could end up hiding from the authorities or in some other way try to escape from the situation.

When it is settled that the child should not be sent back to another EU country, the Migration Board can initiate an application to seek entry to Sweden.

**Interview**

After the formal registration, the child is interviewed in order to establish the kinship and to find out why and on what grounds the child and its family is seeking entry into Sweden. Chapter 1, section 11 of the Aliens Act explicitly states:

> “In assessing questions of permits under this Act when a child will be affected by a decision in the case, the child must be heard, unless this is inappropriate. Account must be taken of what the child has said to the extent warranted by the age and maturity of the child.”

---


\(^{184}\) *Aliens Act*, supra note 25, chapter 5, section 1, para.6.

\(^{185}\) Migrationsverket, *Sverige skickar tillbaka många ensamkommande barn*, (9 mars 2012), <www.migrationsverket.se/info/2590.html>; Press release by The European Council on Refugees and Exiles (ECRE), *The EU should stop sending asylum seekers to countries that do not guarantee their protection*, (22 October 2010).

This provision entails the right to be heard in every matter affecting the child, a right based on the core principle in article 12. Hammarberg has emphasized the importance of this individual interview with the child. “Children coming with parents are not just possessions, and could have their own reasons for migrating.”

The CRC Committee has through one of its General Comments stated that all children should be heard in administrative matters, such as those matters concerning refugee or asylum. Furthermore, the Committee has recommended, “wherever possible, the child must be given the opportunity to be directly heard in any proceedings.” (Emphasis made by the author). The General Comments are recommendations and therefore it is left to each and every State to decide whether this individual interview should be a practice or not. The Swedish practise is based on a Governmental proposition from 1996. The proposition stated that each and every child should be interviewed individually, especially since there might be divergent interest between the child and its parent or custodian. This is clearly stated in the Aliens Act. The Swedish Government also emphasised the importance of the right to be heard in a report from 2011. The report confirmed that decisions in asylum cases involving children should contain an account of the child’s own reason and how the child’s best interest have been considered, whether accompanied or not.

According to a Commentary to the Aliens Act, it might be considered inappropriate to interview a child if he or she is very young or due to psychological reasons. However, the Swedish Migration Board’s internal guidelines (Handbok i Migrationsärenden) has a reference to psychological studies having shown that very young children can articulate their feelings and describe what has happened to them if they are interviewed in an appropriate manner. Appropriate manner is referring to the use of drawings or simply by studying their way of playing and their reactions in certain situations.

Today, a child under the age of eight is rarely heard individually. This should not be an acceptable practice, as children as young as four should be considered to be able to form their own opinions and provide them, if only
in a slightly different manner. The individual interview is crucial in order for the child to have the chance to reveal any circumstances that might indicate that any abnormality. Furthermore, it is important that those who interview the child are specifically trained for the task, and consequently can interpret the child’s reactions or stories accordingly.

According to a study conducted by Anna Lundberg where she is questioning the best interest of the child in Swedish asylum cases, the Migration Boards handling officers seems to be lacking enough training in order to deal with the task. Lundberg concludes her research by stating:

“Several of the interviewees in the study talked about the handling officer’s need for support from other professional groups that have deeper knowledge about children’s needs and interests, such as doctors or social workers. This is necessary to be able to deal with a tense situation at work and to be able to assess what the children convey.”

She further concludes that the consequence of this deficiency was that the Migration Board officials’ refrained from interviewing the child alone due to fear of re-traumatizing the child or to protect the child from an unpleasant situation. To refrain from giving the child, as an individual right holder, his or her right to be individually heard is not in accordance with the best interest of the child nor with the right to be heard. Lundberg’s study present that the accompanied child had only met with an individual official for a personal interview in 49 per cent of all the cases. In another 12,5 per cent of the cases the child’s point of view had been delivered by the parent. Furthermore, the study revealed that in more than 40 per cent of the decisions involving children between 4-11 years old, the child was not heard individually.

An alarming situation is stated by one of the interviewed officials in her study.

“Often when children have been subject to abuse, rape or other horrifying things, it is really difficult. They don’t want to talk. There has to be someone with suitable skills in the room who can lead the conversation and judge how the child is feeling. Now there isn’t. The child falls silent in these situations. It is mostly the parents who tell the child’s story. In those cases one gets, unfortunately, a little

198 Ibid.
199 Aliens Act, supra note 25, chapter 1, article 11; CRC, supra note 7, article 12.
200 Lundberg, supra note 197, p. 61.
suspicious. Is this true? We really want the child to speak.”201 (Emphasis added by the author).

One has to take into consideration that a few years have passed since this study was conducted, but according to the author’s recent interviews with Migration Board officials, the situation and stories are more or less the same. Hence, one can question the use of the internal handbook.202

The Migration Board’s officials have a difficult task when appointed a family asylum case. A family consisting of a father, mother and two children is, by most officials indirectly considered as one application. Even though, in reality, it should be considered as four individual applications. Not seldom is it so that the father is being interviewed first, then the mother and lastly, if at all, the children.203 The children’s stories, and often also the mother’s, are considered in the light of the father’s initial story. Hence, the individual child’s story becomes part of a collective instead of the individual application it should be.204

The author considers it to be questionable whether the Migration Board’s handling of separate interviews for each and every child regardless of their migration status, is in accordance with the principle of the best interest of the child? The Aliens Act is clear, the child should be heard unless inappropriate. The examples described above are not pointing on inappropriate situations, but merely difficult situations. Situations that could have been handled better if the handling officer were given the appropriate education and support.

Waiting for a decision

After the so-called oral review of the application (interview), the Migration Board official might contact the Swedish embassy in the respective country to complement the application. When the application is considered to be complete it is sent to the Migration Board’s decision maker. The decision maker review the work done by the handling official and should especially look at the interview with the child to establish that the child has been heard properly. The Migration Board’s objective is that all decisions shall be taken within six months, but this does not apply to unaccompanied children, where the objective is three months. This indicates that an accompanied child, who might be in just as bad condition or situation, is not given the same priority as an unaccompanied child.205

201 Ibid.
202 Migration Board officer, 12 April 2012.
203 Ibid.
5.3 Social Service

While an asylum application is being processed, the Migration Board can arrange housing for asylum seekers in what is usually called reception centres. These reception centres are not centres per se, but usually consist of rented ordinary furnished self-catering apartments.\(^{206}\) Families generally live together unless it is not considered to be in the best interest of the child. According to the reception unit at the Migration Board in Malmö, around 40 per cent of the asylum seekers are requesting help from the Migration Board to find housing. The other 60 per cent find their own housing through family and friends already in the country, also called EBO homes (eget boende).\(^{207}\) Thus, unlike in some other countries, asylum seekers in Sweden have the possibility to arrange their own housing and can enjoy the freedom of movement without restrictions within the country.\(^{208}\)

When asylum seekers prefer to arrange housing on their own, they are required to provide a physical address of the place where they will be staying.\(^{209}\) This is obligatory in order to enable the Migration Board to reach the person when necessary. The rule only states that it should be an address and often this address is only a postal box. The reason for not giving out the factual address of the housing is most likely because the family is afraid of being found if their application is turned down.\(^{210}\) This situation might restrict the Migration Board’s control of the accommodation. Naturally, this is out of respect for the individual and their right to settle down freely where they wish. Nevertheless, this means that when a kinship is not settled and the child is still living with the family (which is highly possible), there is no real possibility to control or investigate the housing situation.

For unaccompanied children, the Migration Board appoints a certain municipality after a special arrangement between the municipality and the Migration Board. This special arrangement, based on an amendment to the Act on the Integration of Immigrants and Reception of Asylum Seekers,\(^{211}\) oblige the appointed municipality to accommodate the unaccompanied child within its municipality. The child might be placed in a temporary foster family or occasionally in reception centres together with other unaccompanied children.

The above-mentioned possibility to arrange your own housing situation also applies to an unaccompanied child and is applied in the majority of cases. In these cases, the Migration Board can go outside of the previously mentioned law and accept a placement in another municipality, even though there is no


\(^{207}\) Interview with Mikael Horn.

\(^{208}\) Ibid.


\(^{210}\) Interview with Mikael Horn.

\(^{211}\) LMA (1994:137), *supra* note 13, para. 3.
special arrangement. Before placing an unaccompanied child in an EBO home, the Social Service in the respective municipality are obliged to investigate the placement, to make sure that it is in accordance with the principle of the best interest of the child.\textsuperscript{212} Exactly what this investigation, conducted by the municipality, should focus on is not yet described anywhere.\textsuperscript{213} While waiting for the result of a housing investigation (which might take up to four months), the unaccompanied child should be placed in a temporary home, upon the responsibility of the Social Service.\textsuperscript{214} However, if the child wishes to stay with the family, which is being investigated, he or she can do so.

Thus, for unaccompanied children the Social Service has an obligation to investigate their EBO housing but this obligation does not exist for the accompanied child. That the obligation does not exist for accompanied children relates to that the accompanied adult is assumed to take the responsibility of an accompanied child and provide a good environment.

The Social Service has an even greater possibility to ‘control’ the unaccompanied child through the appointment of a \textit{guardian ad litem} and a legal representative. The role of the \textit{guardian ad litem} for an unaccompanied child is to help and guide the child through the asylum process, take part in the planning and execution of the child’s housing situation and to be the custodian of the child.\textsuperscript{215} The individual acting as a \textit{guardian ad litem} should have a close contact with the child. Thus, this individual has an exclusive possibility to detect any suspicious behaviour or company.

\textit{A guardian ad litem} is not appointed to an accompanied child, as the child’s interest is supposed to be taken into consideration by its parent or custodian. An asylum seeking family is appointed a legal counsel to help and guide them through the application. This counsel is supposed to take into consideration the best interest of the child, however, this interest is often forgotten when the child’s individual applications becomes part of a collective application.\textsuperscript{216}

Thus, once again the Social Service responsibility in relation to the accompanied child is far less than for the unaccompanied child. All this might be understandable as the unaccompanied child is more vulnerable in many situations, but it cannot justify the discrimination against the vulnerable accompanied child who seems to have been forgotten. This assumption of kinship among the authorities is critical. UNICEF has reported that some municipalities are showing an alarming naivety in

\textsuperscript{212} Socialtjänstlagen (2001:453), (Social Services Act) chapter 11, paras. 1, 2; chapter 6, paras 1, 6.
\textsuperscript{214} Socialtjänstlagen (2001:453), supra note 212, chapter 4, para. 1.
\textsuperscript{216} Migration Board officer, April 2012.
relation to a child’s claimed kinship.\textsuperscript{217} If, the child has indicated that the kinship is real to the Migration Board, there is no further follow-up. Hence, this is why it is so important that the Migration Board officials are consistent in reporting any suspicions to the Social Service straight away.

Other responsibilities of the Social Service

Apart from being responsible for the housing of a child and its family, the Social Services in the respective municipality is responsible to ensure that all children, including asylum seeking children, can attend school and be provided with health care.\textsuperscript{218} Asylum seeking children between the ages of 7-16 years old are not covered by the compulsory education attendance, but they do have the same right to education.\textsuperscript{219} The respective municipality is responsible for ensuring that asylum seeking children, who do wish to attend school, are offered a place on the same terms and conditions as other children living in the municipality.\textsuperscript{220} To follow up on all children who have been registered at the Migration Board and make sure that they do attend school is essential. This, as a child who does not show up in school might be at risk.

The Social Service is the authority who actually meets the child and its family when awaiting a decision or when being integrated in the society. Therefore the Social Services have an exceptional chance to discover any suspicious behaviour indicating that the child is at risk. Essential is that the officials are well educated to detect and interpret situations, but more important is that the officials feel secure in the cooperation between the authorities. The Social Service has an obligation to report any circumstances that might risk the protection of the child.\textsuperscript{221} This obligation to report is applicable to any official working for the Social Service. To act upon this obligation requires trust between the authorities and certainty of who actually has the responsibility.

It is important to educate and follow up on the Social Service obligations to cooperate with other relevant authorities. If an official from the Social Service considers that a child is in need of protection, the official should report this immediately to the Police.\textsuperscript{222} This immediate reporting is one task that needs to be improved in the cooperative work between the authorities. If the official is hesitating in when to report and to whom, the child might be a victim of sexual exploitation of even disappears in the meanwhile. When and if the case then finally ends up at the Police officers desk, it might be too late to act quickly and in the best interest of the child.

\textsuperscript{218} Ibid.
\textsuperscript{219} Skollagen (2010:800), (Education Act) chapter 7, para. 2, 3rd sentence.
\textsuperscript{220} It is the municipal authority that is responsible for schooling although it is the Swedish Migration Board that pays the cost.
\textsuperscript{221} Socialtjänstlagen (2001:453), supra note 212, chapter 14, para. 1.
\textsuperscript{222} Skollagen (2010:800), supra note 219, chapter 5, para. 1a.
In February this year, the municipality in Stockholm came with a set of guidelines in relation to unaccompanied children and the Social Services responsibility. The guidelines are clearly describing the responsibility of the municipality where the unaccompanied child arrives and what actions to take. These guidelines are very good and a progress in relation to cooperation between authorities. Hopefully, these guidelines will be used as guiding principles for all municipalities in the near future.

The ‘only’ thing missing is similar guidelines in relation to possible risk situations for accompanied children. When separating the needs of unaccompanied and accompanied children, the risk of neglecting the latter increases.

Lastly, the author would like to highlight a discussion that is accurate in relation to the CoE Convention as well as the new Directive on sexual exploitation from the EU. For the child to be able to enjoy its right to education as well as development, it is essential that the school environment is safe. For the school environment to be safe, the school authority need to be able to assure that no employee is posing a risk for the child.

Today, Sweden has a law stating that an employer shall request an extract of the criminal record from an individual applying for a job within the educational sphere. However, there is no prohibition against actual employment of an individual who has a criminal record with sexual offences. According to the author, this means that, in reality, the Swedish provision loses its intention. To ensure safety and development of the child, as enshrined in CRC’s core principle of the right to development in article 6, the employees at a day-care, youth organization or school should carry a clean record in regards to sexual offences of children. Hence, to develop the provision to include a prohibition to employ, would increase the safety of all children.

5.4 The Police Authority

Preventive work

As mentioned several times before, the keyword for the existence of CSEC is demand. Hence, much of the Police authorities preventative work is focused on changing the attitude among those people who purchase services, such as sex, from the organized criminal networks. It is important that the perpetrators understand that every separate deal they make, they contribute to the market. The individual’s act of purchasing sex from a child affects the universal demand, but this is rarely something the perpetrator reflects over.

---

224 Ibid., chapter 2, para. 31.
The crimes of trafficking and prostitution have been a high-priority crime in the past years, especially after the Swedish Government granted the Police Authority with an extra SEK 40 million to work preventative through the National Plan of Action against Prostitution and Trafficking (NPA). The goal was to strengthen the operational measures, raising awareness within the Police organization and to develop better methods to combat trafficking in persons.

Johan Ståhle, previously involved in the creation of the Swedish NPA, explains that the most visible effect of the NPA was a better cooperation between the relevant authorities. Instead of the Police being notified after a child had disappeared and then standing without any evidence to base the case on, the NPA created opportunities for better cooperation between the authorities and thus also increased prevention. A specific action in relation to an unaccompanied child presumed to be at risk was that he or she was placed in a reception centre further away (without sacrificing the need of the individual). To place the child in a peripheral housing situation would make it more difficult for the child to disappear without being noticed. The staffs at the reception centre were also better prepared in the case a child was preparing to leave the premises for some unknown reason. Among other tools the staff had a list of phone numbers to call which led straight to the right person, instead of going through a phone chain before reaching the correct contact. The Police was, consequently, notified before the child had disappeared and could locate its resources to that reception centre and try to prevent the disappearance.

The thought behind the NPA was to allocate the right resources at the right time, instead of each and every authority working with their respective task and then handing over the case to the next authority. Subsequently, the authorities were pushing forward the case and the responsibility to the next authority. This would in the end result in that there was no authority responsible. The NPA explains that: “The fight against trafficking in human beings also requires a well developed cooperation across authority boundaries so that the authorities' overall expertise can be leveraged to best effect.”

The results of the NPA have been analysed by the Swedish National Council for Crime Prevention and their recommendations are currently under process by the Government. Many of the positive working methods identified by the NPA have continued under the responsibility of the counties. However, as can often be seen when analysing a short-term plan of action, the efforts and resources decrease when the working period is over.

225 NPA, supra note 99.
226 Interview with Johan Ståhle.
227 NPA, supra note 99, p. 22.
Responsibilities and Obligations

As described previously in this chapter it is the responsibility of the Police Authorities to control the Swedish borders both externally and internally. The crime relating to many of the accompanied children is trafficking across international borders. The Swedish Police is very proactive in their work to combat the crime of trafficking. Their overall strategy is to attack the organized criminal networks that already exist in Sweden and to work preventative so that new networks do not see the benefit of establishing operations in the country. The goal of the Police Authorities work is to make Sweden an unattractive market for organized criminal networks, who usually is the key behind this crime.\(^\text{228}\)

To reach the goal of making Sweden an unattractive market, the essential tool in the preventative work is cooperation between authorities, such as the Migration Board, the Social Services, the Prosecutors Office and Taxation Authority. When the work of other authorities is affecting the work of the Police authority, there is an existing obligation to cooperate.\(^\text{229}\)

The International Prosecutors Office in Sweden is the authority indicting any trafficking crime in Sweden. In order to ease the process when illegal migrants are involved, a new law was adopted in 2004.\(^\text{230}\) According to the new provision, an alien can be awarded a temporary residence permit in order for his or her important contribution to the case and therefore making it relevant for the person’s presence in Sweden. Behind the provision lays the fact that, especially in trafficking cases concerning sexual purposes, it takes time for the victim to feel safe in the environment where he or she has been abused. Even if the victim might feel secure with the authorities it is still very hard to describe and talk about the crime. The prosecutor’s difficulties in obtaining information from a child who has been a victim of sexual exploitation can be seen in a Swedish case from 2010.\(^\text{231}\) If adding the fact that the child is an alien, the trust issues and safety might be even more difficult to obtain. Hence, when a child has agreed to stay in Sweden to contribute to a case of trafficking, he or she is often considered to need a safe and adapted housing situation and can then be placed in a LVU home (a home specialized to provide special arrangements regarding health care of youth).\(^\text{232}\)

The National Board of Health and Welfare recently came with a new alarming report stating that the situation for migrating unaccompanied children placed in LVU homes is worrying and that there is a visible difference in the treatment and standards when comparing to the LVU


\(^{229}\) Socialtjänstlagen (2001:453), supra note 212, chapter 14, § 3.

\(^{230}\) Aliens Act, supra note 25, chapter 5, section 15.

\(^{231}\) HovR Skåne och Blekinge, Mål nr B-188-10.

\(^{232}\) Lag (1990:52) med särskilda bestämmelser om vård av unga (LVU), (The Care of Young Persons Act) para. 3.
homes for Swedish children. Again, it is proved that Sweden need to work better with non-discrimination in relation to migrating children. These children are by no means worth less than Swedish children.

5.5 Summing up
One can conclude that the national laws under the respective authority are well formulated and in accordance with Sweden’s international obligations. The author believes that the elements that makes it possible to abuse a migrating child are; the gaps in the implementation and the lack of efficient cooperation between the authorities. These factors are most probably a result of lack of priority, education and resources.  

---

234 Interview with Christina Heilborn.
6 SUGGESTED IMPROVEMENTS

The migration procedure of a child, accompanied or not, seems to be relatively well organized. However, when scratching the surface one can see that it does not give adequate protection to a migrating child. Although well organized, the fact remains that “[m]igrant children are one of the most vulnerable groups in Europe today.”235 Despite this, the level of knowledge in the society is poor and the society chooses to close their eyes to protect themselves from the horrible reality, where children do disappear and are victims of CSEC.

The greatest challenge is to accept that this is an issue in need of attention. The following chapter will discuss what the author believes to be possible improvements which might help to develop a more coherent framework for effective law enforcement.

To improve the following legal provisions implementation and to fulfil the proactive obligations, Sweden needs to place more efforts and resources into certain areas. The major areas of concern with room for improvements are:

1. The kinship investigation – hereunder the use of look-alike passports or similar misuse of the system, family placement and DNA usage in asylum cases (OPSC article 9(1), CRC article 2);
2. The individual interview with the child – hereunder the one conducted at an application unit in Sweden or at an embassy abroad and the education of the officers (CRC articles 3 & 12);
3. The cooperation between authorities in the preventative work and when a child disappears (OPSC article 10) and
4. The preventive work in regards to the perpetrators (OPSC article 9(2)).

6.1 Kinship investigations

The misuse of passports

Trafficked children registered as accompanied are identified as one of the risk groups.

Trafficking in children through look-alike passports or misuse of a parents’ passport became known to the organization ECPAT Sweden in 2004, where a Somali woman had been travelling between Sweden and Somalia 23 times during a period of ten months. It was suspected that at least 16 out of 23 times, the woman brought unaccompanied children back to Sweden. The woman misused the migration system by forcing the children to pretend to be her own, those who were registered in her passport. Unfortunately, this investigation was closed down due to lack of evidence, but it did make a difference in terms of highlighting a loophole.236

235 Hammarberg, supra note 2.
The fact that this kind of exploitation of children exists was also noticed in a public Governmental investigation on ‘Knowledge about sexual exploitation of children’ from 2004.\textsuperscript{237} The case with the Somali woman forced the authorities to admit that Sweden’s migration system, at the time, was not good enough to ensure the detection and protection of these children. Today, all Swedish children need to attain their own personal passport and cannot travel as registered in their mother’s passport. Hopefully, this will also be the case for all the world’s children in the next few years, but until then the problem still exists.

**Family placements**

What can be seen is that even though all children should be treated equal, there is a notable difference in how the authorities act in relation to an accompanied child as to an unaccompanied child. Significant to notice is also the even greater difference that can be seen between the investigation done for family placement for Swedish children and the one done for migrating children.\textsuperscript{238} The previously mentioned report from the National Board of Health and Welfare is a clear example of the existing discrimination of children in Sweden.\textsuperscript{239} To leave a Swedish child in a non-investigated family placement would not be accepted. Why should it then be accepted for a migrating child, accompanied or not?

According to the author, there is no answer that can justify the visible discrimination. Authorities as well as the Courts should never compare the situation of the child’s country of origin. When the child is in Sweden and in terms of care and fundamental rights is not treated equal to a Swedish child, the State is discriminating.

Once again, the author is arguing for incorporation of the CRC in the Swedish legislation to combat this issue. Incorporation would broaden the knowledge in the society and especially increase the migrating child’s right to be treated equally good as a Swedish child. A child’s background should not matter, as all children in Sweden should have the same possibility to enjoy their rights. The example of Zina, the Romanian girl who had been trafficked and forced to beg, but where the Court did not consider it to be a trafficking case, is one example of the decision makers’ discrimination.

**DNA for asylum seekers**

To allow DNA testing in asylum cases where the kinship is unsettled would strengthen the preventive work stated in article 9(2) of the OPSC. Unfortunately, this is not permitted according to the Aliens Act. Catharina Hast Markkula, coordinator for children’s rights at the Migration Board, does not see it as a major issue of concern. She argues that most of the time, the applicant can, (with some implication that more proof is needed to

\textsuperscript{237} SOU 2004:71, supra note 12, p. 85.

\textsuperscript{238} Rädda Barnen, ”Hur har det gått? Ensamkommande barn mottagandet sedan kommunerna tagit över boende och omvårdnad”, (2008).

\textsuperscript{239} Socialstyrelsen, supra note 233.
confirm the kinship), provide the authorities with the required information without a DNA test.\textsuperscript{240} Hence, she does not see that a change in the law would be necessary as most of the cases solve themselves anyway.

To allow DNA testing in asylum cases with doubtful family reunifications is one way to open up for an increased number of confirmative kinships. Naturally, the usage of DNA testing should in those cases only be used when necessary to establish a kinship. Hence, if the applicant can prove its kinship by other means, this should be preferred. However, the level of proof provided with other means should to be the same as for DNA.

To use DNA testing is costly for the State, but it has to be balanced against the positive effects a confirmative result might give. To rule out misuse of the system and to detect possible victims of CSEC is worth budgeting resources for. In the end, the important element is to secure a kinship to ensure the protection of a child. It can be a lifesaving turning point and this shall not be underestimated.

\section*{6.2 The individual interview}

The OPSC specifically oblige the State Parties to strengthen the administrative efforts in order to prevent the crimes stated in the provision. Lack of education is one of the main concerns described among the officials themselves. Without any specific introduction or education the officials are conducting interviews with children coming from war, abusive relations or other difficult backgrounds. These officials need training and education in how to conduct an interview to obtain reliable information. Furthermore, the officials knowledge of what signs to respond to and how to react should be improved. These are responsibilities of the State in relation to the OPSC and the core principles in articles 3, 6 and 12 of the CRC.

Hast Markkula states that the main reason for not conducting an individual interview with a child is the young age of the child.\textsuperscript{241} This argument is not profound as the internal handbook states that children as young as a 3-4 years old can express themselves through other types of tools, such as drawings or playing.\textsuperscript{242} I believe that with a better and more comprehensive education where the officials are informed of this possibility and offered more help from professionals, more children would be interviewed.

The second reason hindering an individual interview with a child has been described both by Hast Markkula and the officials to be an accompanying adult’s request of not conducting an interview with his or her child. These situations are difficult for the officials, especially if they are not trained properly in how to handle the situation. Today, most officials accept a ‘no’ from the accompanying adult and move on with the application. The reason

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{240} Interview with Catharina Hast Markkula.
\item\textsuperscript{241} Ibid.
\item\textsuperscript{242} Handbok i migrationsärenden, \textit{supra} note 195.
\end{itemize}
\end{footnotesize}
being the lack of confidence in explaining the importance of an individual interview to an accompanying adult. The officials do not have the right tools and support to correctly communicate the reason that it is in the best interest of the child and the child’s right as a human being. The focus is instead being placed on meeting the internal deadlines.

The Migration Board has improved the previously criticized slow handling process over the past years. Hast Markkula states that today the majority of cases are given a decision within 6 months.243 This is a good improvement as most applicants request a speedy process. However, Eva Nilsson, children’s rights lawyer, criticizes whether this process is actually in the best interest of the child.244 She believes that speedy migration process might “de-humanise the child to a human being who is only passive, dependent, adaptable and a spineless object, where the core principle is not considered at all.”245 Nilsson’s arguments might be too harsh in relation to the fine balance an official has to take between the right to a speedy process on one hand, and the rights of the individual on the other hand. However, the author does agree with Nilsson to some extent, as an individual’s rights should never be neglected in order to give a decision within a time limit.

Without adequate time to build up a relationship with the child, one might challenge the content of an investigation. Some asylum seekers might have a hard time to trust the authorities and in those cases it is extremely important not to rush the procedure. In the majority of trafficking cases involving a child, the child is targeted by the perpetrator already when in the country of origin. The perpetrator thus has time to prepare the child for the application procedure at the Migration Board’s application unit, by telling the child how to react, what to say and what not to say to the official conducting an interview. The perpetrators are also well aware of the fact that the officials most often place their trust in the core family, especially if the child gives light of having trust in the accompanying adult. The adult might also argue for the child not to be interviewed individually. When the interview is pushed towards a deadline and the time allocated to conduct a reliable interview is not adequate, the decision maker should be given a heads up. The decision maker can then pay extra attention to whether the principle of the best interest of the child and the child’s right to be heard has been considered correctly.

Although social workers as well as Migration Board officials have highlighted the consequences of trust from the speedy process, the Migration Board as an authority, claims that it has not led to neglect of any

243 Interview with Catharina Haast Markula.
245 Ibid. p. 91.
rights.\textsuperscript{246} The authority claims that the change is more of a structural change within the authority than a change in the procedure as such.\textsuperscript{247}

Positive efforts

During this spring, the Migration Board has initiated a new pilot project, offering the handling officers from different units a comprehensive course in children’s rights. The course involves both practical trainings and lectures and covers the basic rights of the child as well as information of how a child could react in certain situations, why the child might react in a certain way and how to approach the child in those situations. The course will be evaluated during the summer of 2012 and thus the specific outcomes of it cannot be discussed here. Nevertheless, it must have given some positive effects, as it is already decided that from this autumn all officers will be required to participate in this basic course on children’s rights. It will be offered twice during autumn and twice during spring. For those specifically working with children, there will be an additional specialized mandatory course for five days, also this offered twice per semester.\textsuperscript{248} This proactive effort by the authority and that they can already see the need for its continuance is warmly welcomed.

6.3 Cooperation between authorities

The necessary efficient cooperation between authorities has been criticized by many professionals and by the authorities themselves. The previous chief of the county Police in Stockholm, Carin Götblad, recently stated in a TV interview that no authority could do a good enough job while working alone.\textsuperscript{249} Both Götblad and Christina Heilborn (UNICEF) recognize what they call a stupröseffekt (effect like a downpipe), where the authorities are placing their focus on their working methods within their own sphere, instead of spreading their roots and involving other authorities to gain the best result.\textsuperscript{250}

The consequence of this lack of cooperation can be seen in UNICEF’s report from 2010. The report states that there is a worrying loophole in relation to the necessary cooperation between authorities when a child disappears. All authorities are consistent when answering that it has to be reported to the Police, but no one can answer, by whom.\textsuperscript{251} Some officials even said that they did not care to report it, as they claim that the Police will not search for the child anyway.

\textsuperscript{247} Ibid.
\textsuperscript{248} Interview with Catharina Hast Markkula.
\textsuperscript{249} Carin Götblad, Nyhetsmorgon, TV 4, 29 April 2012.
\textsuperscript{250} Interview with Christina Heilborn.
\textsuperscript{251} UNICEF, supra note 217, pp. 20-21.
This lack of trust and cooperation between the authorities is alarming and has been noticed as one of the major flaws in the proactive work against the crime of CSEC. Thus, all Migration Board officials are instructed to always report any suspicions to the Social Services. It is not enough to call the Social Services office, but the official has to report each case in writing to ensure that all cases are received and looked into. This is a good method of being able to better follow the process and better ensure that a case is not lost between the authorities. The Police has requested to be involved from an earlier stage, to be able to place its resources on the proactive work.

As mentioned, the same obligation applies to other authorities. In 2009 the National Methodology Support Team against Prostitution and Trafficking for sexual purposes (NMT) was created to develop and improve the cooperation between authorities, especially focusing on the counties with fewer resources. The NMT consists of representatives from the Police Authority (from local to national level), the Swedish Prosecution Authority, regional prostitution groups from the National Board of Health and Welfare and the Swedish Migration Board. Under the responsibility of the county in Stockholm, these representatives have developed a Plan of Action. The NMT Plan of Action emphasizes the need of cooperation between authorities in order to combat the problem of trafficking and prostitution. Furthermore, it states that even though we are well aware of this essential tool in the fight against the crime, cooperation is not something that is obvious. The specific roles and mandates given to each separate authority decrease the cooperation possibilities.

The NMT is one of the positive effects after the NPA and can be seen as one example of several efforts that have been done in the past years, most of them on a county level.

The strategies and NPAs laid down in the past years are all short-term. In order to get to the bottom of the core issue, i.e. the demand, there are no shortcuts. The issue of demand will not be solved within a short time. Without a long-term strategy or NPA we are losing valuable time, resources and energy by having to start from scratch when every short-term strategy or NPA is launched. Thus, the author is, just like the Committee, requesting a long-term strategy from the Government, which in turn would demand cooperation between the different departments as well as all relevant authorities. Many discussions result in blaming the lack of cooperation between relevant authorities, hence the best result might be reached if there was only one single entity in charge of the entire procedure.

---

252 Interview with Catharina Hast Markkula
253 Interview with Johan Ståhle.
255 Ibid., p. 9.
6.4 Prevention through the national law

The principle of the best interest of the child can be found in the Aliens Act and should be a primary consideration in all cases involving children. The principle is considered in the Courts and in the administrative decisions. Nevertheless, it should be better integrated in the overall handling of cases from the first instance to the last. With this the author wish to argue that when a kinship investigation is not properly looked into, when no individual interview is conducted and when the authorities are not cooperating properly, the child becomes a victim of their non-efficient handling procedure. The best interest of the child as a primary consideration has then lost its meaning.

The CRC’s non-discrimination principle (article 2) is another core principle, which through incorporation would gain a larger influence in the Swedish Courts, hence might make a difference in relation to treating migrating children with the same care and expertise as Swedish children. Although, Sweden is considered to be one of the leading countries in the world when it comes to equality and non-discrimination, the Committee has recommended Sweden to ensure better compliance with the non-discrimination principle, especially in regards to migrating children.256 This discrimination can be seen throughout the entire handling process and might also be explained by the society’s general fear of ‘others’.257 Ethnic and cultural discrimination cannot be accepted in Sweden year 2012.

The day when migrating children are given the same efforts and resources as Swedish children, we would probably detect more cases of irregular migration and thus save innocent children from becoming victims of CSEC.

When looking at the preventive work from a broader perspective within the legal sphere, the author can identify a couple of issues in need of improvements. Firstly, Sweden’s need to increase and improve its awareness-raising measures and strengthen the use of preventive measures, such as care and rehabilitation.

As previously stated, the author strongly believes that more perpetrators should be offered care and rehabilitation, even if not sanctioned with imprisonment. In order to strengthen and live up to the obligation of proper sanctions in relation to the gravity of the crime, the author encourages a more severe penalty than a fine, but even if sanctioned with a fine, this should preferably include compulsory rehabilitation. It is not fair that the perpetrator can walk away with a fine, and be free within a few days, while the child has to struggle for the rest of its life. The examples of today’s handling processes and lack of priority of the crime of purchasing sex from a child can be seen in the four cases listed in the newspaper series from

256 CRC Concluding, supra note 52, paras.25-26.
Hopefully, this can be seen as a first step towards tougher sanctions in relation to the gravity of the crime.

Secondly, the poor implementation of the current Swedish law on requesting criminal records for those who work with children. Someone, who is previously sentenced for any sexual offence against a child, should not be able to work with children, at all. Education and a safe environment are essential for a child’s development (article 6 of the CRC). Therefore, the society needs to act proactively to guarantee the safety for our children by offering a law that prohibits the employment of a former perpetrator. The provision needs to be improved to ensure that the purpose of the OPSC is upheld.

7 CONCLUSION
The obligations deriving from the CRC and the OPSC are minimum requirements. This means that the State should work proactively to comply with all obligations and preferably more. Sweden has fulfilled many of the obligations deriving from the UN provisions discussed in this paper, but flaws in the implementation are clear. In the Concluding Observations from 2005 one can read:

“The Committee recommends that the State party pursue its efforts in this area, in particular: to increase coordination between the different actors, in particular the police, the Social Services and Swedish Board of Migration, in order to react efficiently and in a timely manner when children disappear”.

The situation has not changed, children still disappear and the authorities are constantly pushing the responsibility to another authority, leaving the child in a limbo. The only difference is that today it is year 2012; hence seven years have passed by. Seven years where children continuously disappear. That the same issues are being brought up again and again by the Committee seems to be ignored by the Swedish State. There are still Government officials, specifically positioned to work for children’s rights, who post the question of whether CSEC exists in Sweden. This level of knowledge is not only embarrassing, but also scandalous. It can by no means be accepted that the perpetrators of CSEC have more knowledge of how to manipulate the Swedish migration system, than the State officials of how close the open gates.

After having established that the recommendations from the Committee in 2005 are just as accurate, one can conclude that the methods to implement the provisions need to be revised to better control the progress. Even though the core provisions of the CRC are per se implemented in the Aliens Act, there are significant flaws in the handling process, which in turn leads to an inadequate protection of the child.

The obligation to ensure the protection of all children, and especially those at risk, is the responsibility of the Swedish State. The State has through its ratification of the CRC, OPSC and regional framework agreed to work proactively in terms of prevention and awareness raising. Hence, the State’s proactive responsibility does not stop when having implemented the relevant obligations in the law.

The primary issue of concern is the Government’s lack of priority of the issue. When looking at it on a more detailed level, the lack of education of officials and the general society is reflected both in the preventive work and in the decisions from the Courts. The crime of purchasing sex from a child

259 Concluding Observation 2005, supra note 70, para. 40.
260 Riksdagens tvärpolitiska barngrupp, mötesreferat (May 2012).
barely ever results in a more severe sanction than a fine. This is probably not a result of the legislation but of its low priority in the Courts. When the perpetrator is not given proper care and rehabilitation, the risk of relapse is high. This results in that a sanction consisting of a fine, in relation to a sexual crime against a child, rarely makes a real difference on the market of demand. The sanction is not appropriate in relation to the gravity of the crime and it does not have the wished deterrent effect for the perpetrator nor for others.

Actions, which would increase the needed priority to the issue, would be incorporation of the CRC, implementation of a national monitoring mechanism and a better structure for the cooperation between relevant authorities. These actions would in turn generate an increased awareness among those working with children at risk as well as on the society at large.

It is essential to keep in mind that the above-mentioned areas of concern are minimum requirements to be met sooner or later, preferably sooner. The overall situation will require a more long-term focus and foremost a priority from the Government. The best result would probably be gained if the authorities were gathered around the child, instead of the child being thrown between the authorities and consequently neglected. NGOs and authorities share my conclusion and the question is when the Government will join and take action? In the meantime, we have to acknowledge that almost 65 per cent of the accompanied children arriving to Sweden disappear. It cannot be accepted that the perpetrators have better control of the market of demand than the State. If this trend continues, the perpetrators will win the race against the demand. The loser of the race will not be the State, but the children.
## Supplement A

<table>
<thead>
<tr>
<th>Statistics from the Migration Board</th>
<th>Children in family</th>
<th>Unaccompanied children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention refugee</td>
<td>560</td>
<td>160</td>
</tr>
<tr>
<td>In need of protection</td>
<td>926</td>
<td>1292</td>
</tr>
<tr>
<td>Particularly distressing circumstances</td>
<td>228</td>
<td>579</td>
</tr>
<tr>
<td>Other, for example temporary residence permit</td>
<td>85</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>1799</td>
<td>2036</td>
</tr>
</tbody>
</table>
## Supplement B

### Rubrik
Avstående 2008-01-01 och samma tid de som ligger upp 2007-01-01 och senare

### Rapportskapen
OVisA

### Sektionsrapporter
2013-09-15 08:37

### OBS
Några av tabellen är blank och de värdena som är blanka visas vilket att värdena räknas inte in i avrundning av tallaggar eller andelar. Inför avrundningen kan också skriver för att de underlagade tallaggar och andelar avrundas till en närmare tallåga.

### Tabell

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Avstående</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>vid</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>avvik</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ekant</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Anmärkningar

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Avstående</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>vid</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>avvik</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ekant</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Total

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Avstående</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>vid</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>avvik</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ekant</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Utgående

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Avstående</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>vid</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>avvik</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ekant</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Total

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Avstående</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>vid</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>avvik</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ekant</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

66
Bibliography

Legislation by date of issue

UN


Council of Europe


European Union


National

- Brotsbalken (1962:700), (Swedish Criminal Code).
- Socialtjänstlagen (2001:453), (Social Services Act).
- Skollagen (2010:800), (Education Act).

Official documents by date of issue

UN

- UN General Assembly, Declaration of the Rights of the Child, 20 November 1959, (Resolution 1386 (XIV).
- UN Committee on the Rights of the Child, General Comment No. 12 (2009): The right of the child to be heard, CRC/C/GC/12, (20 July 2009).
- UN Committee on the Rights of the Child, Consideration of the initial report of Sweden, CRC/C/OPSC/SWE/Q/1, (6 May 2011).
- UN Committee on the Rights of the Child, List of issues concerning additional and updated information related to the initial report of Sweden, CRC/C/OPSC/SWE/1, (6 July 2011).
- UN Committee on the Rights of the Child, Written replies by the Government of Sweden to the list of issues related to the
consideration of the initial report of Sweden, CRC/C/OPSC/SWE/Q/1/Add.1, (1 Sept 2011).

- UN Committee on the Rights of the Child, Concluding Observations, Sweden, CRC/C/OPSC/SWE/CO/1, (7 October 2011).

Council of Europe & European Union


National

- Utbildningsdepartementet, Handlingsplan mot prostitution och människohandel för sexuella ändamål, Skr. 2007/08:167, (16 juli 2008.)


**Litterature**


**Articles by date of issue**

- Press release by The European Council on Refugees and Exiles (ECRE), *The EU should stop sending asylum seekers to countries that do not guarantee their protection*, (22 October 2010).

Reports by date of issue
- Flyktinggruppernas och Asylkommittéernas riksråd (FARR), *Goda


Internet sources

Articles


Press releases

Other


Interviews

- Annelie Kungsman-Persson, Child rights’ expert at the Migration Board office in Malmö, 27 April 2012.
- Cecilia Malmström, Member of the European Commission, 28 January 2012.
- Johan Stähle, Crime Investigation Expert at EUBAM, (previously bordercontrol police at the Police Authority), 29 March 2012.
- Christopher Carlson, Lawyer at the Swedish Ombudsman for children’s office, 4 April 2012.
- Christina Heilborn, UNICEF Sweden, April 2012.
- Kajsa Wahlberg, Detective Inspector and National Rapporteur on Trafficking in Human Beings at the Police Authority, 5 March 2012.
- Madelaine Seidlitz, Amnesty Sweden, April 2012.
- Maria Hölcke, Ministry of Justice, 14 May 2012.
- Maria Nordin Skult, Ministry of Justice, 27 April 2012.
- Mikael Horn, Receptionunit at the Migration Board’s office in Malmö, 27 April 2012.
- Myria Vassiliadou, EU Commission’s Anti-Trafficking Coordinator, 4 April 2012.
● Nina Nordengren, Judge and investigator for Dir 2011:44, (meeting at ECPAT), April 2012.
● Anonymous Migration Board officer, April 2012.
## Table of Cases

- Asylprüvningensheten i Uppsala, Beslut 8 oktober 2009.
- Migrationsdomstolen, Mål nr. UM 10897-10, 18 januari 2012.
- Migrationsöverdomstolen, Mål nr UM 5200-11, 21 februari 2012.
- Migrationsdomstolen, Mål nr. UM 13896-10, 18 februari 2010.