

SWEDEN

SWEDISH ASYLUM POLICY IN GLOBAL HUMAN RIGHTS PERSPECTIVE

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SUMMARY AND RECOMMENDATIONS

Increasingly restrictive asylum policies and practices are the trend throughout Europe, and Sweden is no exception. In the early 1990s, Sweden experienced a dramatic increase in the number of asylum seekers. Largely due to the conflict in the former Yugoslavia, applications jumped from 27,000 in 1991 to 84,000 in 1992. These developments coincided with recession, high unemployment, and growing anti-foreigner sentiments in the population. In response, the government has, over the past four years, implemented a number of increasingly restrictive measures, which brought applications down to a ten-year low of 10,000 in 1995, and to only 2,715 in the first half of 1996. Most effective among these policies have been visa restrictions. These limits on entry, coupled with the practice of sending many asylum seekers back to "safe" countries through which they have travelled, a restrictive understanding of Sweden's obligations under the 1951 Geneva Convention Relating to the Status of Refugees (the "Refugee Convention"), and an increasing reluctance to go beyond commitments under the Refugee Convention to protect asylum-seekers on humanitarian grounds, have substantially undermined Sweden's humanitarian tradition.

A major reform of Swedish asylum policies is planned for the fall of 1996.¹ In anticipation of the debate over that reform, Human Rights Watch/Helsinki has analyzed Swedish asylum policies and practice in light of governing international human rights law. A number of prominent areas of concern have emerged from this work.²

First, Sweden's visa restrictions, imposed in concert with its European partners on the nationals of most of the refugee-producing countries in the world, create a substantial impediment to obtaining refugee protection in Europe. Nearly everyone interviewed by Human Rights Watch/Helsinki, both inside and outside of the government, pointed to visa policies as the cause for the drop in asylum applications. People who are perceived as being likely to apply for asylum in Sweden are systematically denied visas. Even if an asylum-seeker were deported from Sweden pending appeal of his application and the Appeals Board reversed the denial of his application, he would not subsequently receive a visa to return to Sweden. These visa restrictions, imposed, for example, on Bosnians at the height of the ethnic conflict in Bosnia and Herzegovina, have substantially undermined the right of genuine refugees to seek asylum.

For those asylum seekers who make it to Sweden notwithstanding its visa policies, the asylum procedure erects a number of additional barriers to protection. Of particular concern is the plight of asylum seekers submitting applications that are considered "manifestly unfounded" and those coming to Sweden through a "safe third country." Their claims are handled in an accelerated procedure with inadequate legal safeguards. They are not given any standard information about the procedure prior to their first interview with the police. Many are not entitled to a government-appointed lawyer and few obtain legal assistance on their own. Nor do they usually have an opportunity to seek assistance from nongovernmental organizations (NGOs) or the Office of the United Nations High Commissioner for Refugees (UNHCR). Most are whisked back to their country of origin or the safe third country from which they entered Sweden before any lawyer or organization even knows that they are in the country. Moreover, Sweden appears to apply "manifestly unfounded" and "safe third country" concepts rather loosely. Asylum applicants from the world's worst trouble spots have been deemed to have "manifestly unfounded" claims. Sweden has no requirement that, in order for a country to be considered a "safe third country," it must actually have an asylum procedure and that the applicant will be admitted to that procedure. Significantly, deportation orders are not automatically suspended pending appeal of applications which have been denied on the basis of the "safe third country" or "manifestly unfounded" principles. An applicant who files an appeal can request that his deportation be stayed, but such requests are rarely

¹ The title of this report is drawn from the title of the reform proposal, "Swedish Asylum Policy in Global Perspective," prepared by the government-appointed Refugee Policy Commission.

² It should be noted that Sweden is not alone in pursuing increasingly restrictive asylum policies that raise human rights concerns; nor has it been singled out for criticism by Human Rights Watch. Many of the policies and practices discussed in this report have been the subject of Human Rights Watch reports on other countries. See, e.g., Human Rights Watch and American Civil Liberties Union, *Human Rights Violations in the United States* (New York: Human Rights Watch, December 1993); Helsinki Watch (now Human Rights Watch/Helsinki), *Detained, Denied, Deported: Asylum Seekers in the United States*, (New York: Human Rights Watch, June 1989). In addition, Human Rights Watch/Helsinki is currently preparing reports on asylum policies and practices in Germany, the United Kingdom, and the Netherlands.

granted. Once deported, an applicant cannot benefit from a favorable appellate decision; so these applicants do not have an effective right of appeal. It would appear that the authorities are trying to handle more cases in these accelerated procedures--swiftly, at the border, without intervention by advocates and lawyers, and out of the public eye.

Human Rights Watch/Helsinki identified a third area of concern in Sweden's detention policies. Asylumseekers are most often detained upon arrival in Sweden as well as pending deportation after a negative decision. Most such detainees are released or deported within a week or two, but many are held for two or three months and some for more than a year. There is no effective limit on the length of detention of asylum seekers. There are four detention centers designated for asylum seekers in Sweden. Human Rights Watch/Helsinki heard no complaints about these clean, comfortable, and relatively unrestricted facilities. Unfortunately, not all detained asylum seekers are kept in these facilities. They are also detained in remand prisons, where they are fully integrated with common criminals. As the European Committee for the Prevention of Torture has noted, conditions in these facilities are wholly inappropriate for asylum seekers. Some government officials and advocates interviewed by Human Rights Watch/Helsinki attribute this practice to overcrowding in the facilities designated for asylum seekers, while others explain that placing asylum seekers in regular prisons is more convenient for the police. Still others allege that such detention is a means of penalizing trouble-makers and getting them to cooperate with the authorities. Rather than moving away from the practice of detaining asylum seekers in remand prisons, the government seemed to be contemplating relying on it more heavily earlier this year when it announced plans to close one of the facilities designated for asylum seekers. Those plans have been scrapped for the moment, but there remain concerns over the government's commitment to halting this practice and maintaining a separate detention regime for asylum seekers.

A final area of concern relates to Sweden's substantive asylum law. Human Rights Watch/Helsinki has identified problems with the authorities' approach to credibility assessments, as well as their analyses of the human rights situations in certain countries. Human Rights Watch/Helsinki is also concerned about Sweden's interpretation of the governing 1951 Geneva Convention relating to the Status of Refugees (the "Refugee Convention"). Sweden has employed an increasingly narrow interpretation of this convention, in recent years granting convention refugee status to only 2 percent of asylum seekers ultimately allowed to stay in Sweden. Sweden's strict reading of the Convention, which is contrary to the official UNHCR interpretation, has historically been counterbalanced by its generous provision of residence permits on other grounds, to "de facto refugees" (those who (according to Sweden) are not refugees but still have good reasons for refusing to return home due to the political situation there), war resisters, and those advancing other humanitarian reasons for protection. Lawyers and advocates report, however, that in recent years the Swedish authorities have been increasingly hesitant to grant residence permits on these non-convention grounds. The proposed reform due for parliamentary debate this fall would codify this trend, eliminating residence permits for "de facto" refugees and war resisters, and substantially reducing the humanitarian grounds for such permits. On the other hand, the proposed reform would expand the notion of convention refugees. On balance, the reform would reduce the number of applicants who will be allowed to stay in Sweden. Moreover, pressure from the European Union, which recently adopted a restrictive joint position on interpreting the Refugee Convention, may force Sweden to maintain its narrow concept of convention refugees, while simultaneously eliminating its other categories of protection.

On the basis of its analysis of Swedish asylum policies and practices, Human Rights Watch/Helsinki makes the following recommendations to the government, parliament, and immigration authorities:

- Asylum seekers should receive standard information regarding the asylum procedure and their rights and obligations, in a language they understand, before their initial interview with either the police or the Board of Immigration.
- In cases likely to result in deportation, the Board of Immigration should appoint lawyers as soon as possible and whenever possible before it interviews the asylum seeker. Prior to the interview with the Board of Immigration, all asylum seekers—regardless of whether they are entitled to a government-appointed lawyer or whether their case will be adjudicated according to accelerated procedures—should be given a list with names, addresses, and telephone numbers of lawyers and organizations available to assist them.

- In accordance with Swedish law, asylum seekers should not be detained in excess of three days without assistance of counsel.
- Accelerated procedures for cases deemed “manifestly unfounded” should apply only to cases involving asylum seekers from countries where there is no more than an insignificant risk of persecution or other threat to life and freedom. These procedures should not apply to applicants coming from countries afflicted by civil war or strife.
- The Aliens Act should be amended to designate as “safe third countries” to which asylum seekers can be returned only those countries that are signatories of the Refugee Convention and that maintain asylum procedures (comporting with UNHCR standards) to which the returned asylum seeker will have access.
- Before returning an asylum seeker to a “safe third country,” Sweden should ensure that he/she will have access to the asylum adjudication system in that third country by (a) contacting the relevant authorities in that country; and (b) providing the returnee with documentation indicating that the merits of his/her asylum case have not been adjudicated in Sweden.
- All appeals, including those in “manifestly unfounded” and “safe third country” cases, should result in automatic suspension of deportation until a decision on the appeal has been reached.
- Asylum seekers should be detained only when necessary, i.e., after alternatives have been determined to be ineffective and only for the minimal amount of time necessary to achieve the stated purpose of the detention. The Aliens Act should be amended to impose clear, enforceable limits on the length of time an asylum seeker may be detained during the procedure or pending deportation.
- Detention of asylum seekers should never be employed as a punitive or deterrent measure.
- Sweden should cease all detention of asylum seekers in non-segregated settings such as remand prisons and amend the Aliens Act to permit detention of asylum seekers only in segregated settings.
- The Aliens Act should be amended to prohibit detention of asylum seekers under the age of eighteen.
- The Aliens Act should be amended to incorporate explicitly a definition of a refugee that is consistent with that espoused by the UNHCR. Specifically, for purposes of identifying convention refugees, offensive acts committed by non-state agents should be considered persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable to offer effective protection.
- The Aliens Act should be amended to accord explicitly full convention refugee status to victims of persecution on the basis of gender or sexual orientation.
- In assessing claims for asylum, the authorities should interpret the definition of a refugee in accordance with the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the Conclusions of the Executive Committee of the UNHCR’s Programme.
- The authorities should not put undue emphasis on immaterial inconsistencies, which may themselves be symptoms of persecution. Wherever possible, credibility determinations should be made on the basis of an oral hearing.
- The authorities should carefully assess reforms in countries of origin and consider whether, notwithstanding such reforms, certain asylum seekers might have compelling reasons for asylum.

ASYLUM POLICIES, PROCEDURES, AND PRACTICES

General Overview: Institutions and Procedures

Under Swedish law, asylum is available to refugees, as defined by the 1951 Geneva Convention Relating to the Status of Refugees (the "Refugee Convention"), de facto refugees, and war resisters. The Aliens Act defines a convention refugee in the same terms used in the Refugee Convention, namely, "an alien who is outside the country of his nationality and owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country." Convention refugees also include "a stateless person who for the same reason is outside the country of his former habitual residence and who is unable or, owing to such fear, is unwilling to return to that country."³ Swedish law accords "de facto" refugee status to any alien who "without being a refugee, ... is unwilling to return to his country of origin on account of the political situation there and is able to plead very strong grounds in support of this."⁴ Finally, a "war-resister" is defined as one who has "deserted a theatre of war or fled from his country of origin or needs to remain in Sweden in order to escape imminent war service."⁵ In addition to these three bases for asylum in Sweden, an asylum seeker may obtain a residence permit on humanitarian grounds, e.g., severe illness or a state of war in his home country.⁶

Two agencies bear primary responsibility for asylum procedures in Sweden. The first is the Swedish Immigration Board (hereinafter "Immigration Board"), which is responsible for the initial investigation and decision on an asylum seeker's first asylum application. The second is the Aliens Appeals Board (hereinafter "Appeals Board"), which has jurisdiction over appeals from Immigration Board decisions and over an asylum seeker's second and subsequent applications for asylum. In addition, the Immigration and Appeals Boards may refer individual cases raising difficult policy questions to the government for a final decision. Prior to March 1996, responsibility for asylum policy rested with the Ministry of Labor. With the formation of a new government in March under Prime Minister Goran Persson, responsibility for asylum policy has shifted to the Ministry for Foreign Affairs.⁷

Like its European partners, in recent years Sweden has erected barriers making it increasingly difficult for asylum seekers to reach its shores. Most notably, it has imposed visa restrictions on travel from most of the refugee-producing countries in the world. Sweden, unlike most other European countries, does not impose fines on carriers who bring foreigners without visas to Sweden; but it does require that carriers responsible for bringing undocumented foreigners to Sweden pay for their return trip if they are denied permission to remain. This policy may have the same effect on carriers' behavior toward potential immigrants as would a formal penalty regime. In any event, Sweden's entry restrictions have been very effective in reducing the number of asylum applications it receives.

³ Aliens Act, Ch. 3, Sec. 2. See also 1951 Convention Relating to the Status of Refugees, art. 1(A)(2), 189 U.N.T.S. 137 (1951).

⁴ Aliens Act, Ch. 3, Sec. 1.

⁵ Ibid.

⁶ Ministry of Labour, *Immigrant and Refugee Policy* (1995), p. 7.

⁷ "Immigrant affairs split up," *News & Views*, April 3, 1996.

Applications for asylum in Sweden are initially filed with the police. There is no time restriction on asylum applications, but in practice the Immigration Board often questions the credibility of those who delay in making an application, reasoning that if the applicant really feared persecution, he would have sought protection immediately upon arrival in Sweden. According to the director of the Asylum Advisory Center in Stockholm, this reasoning has been used to discredit asylum seekers who applied for asylum three or four days after arriving, notwithstanding good explanations for the delay.⁸

Upon receipt of an asylum application, the police inquire into the applicant's identity, country of origin, and travel route.⁹ Pursuant to the Aliens Act, the police may hold applicants for questioning for up to six hours. If after six hours the police have not completed their investigation, they must obtain an Immigration Board decision to detain the applicant. The applicant may then be detained for an additional forty-eight-hour investigation period. In addition, an applicant may be detained for a longer period if his identity is unknown or it is determined that it is probable that he will be expelled and there is a risk that he will abscond or engage in criminal activity. For purposes of detention, the Aliens Act treats children aged sixteen or older as adults.¹⁰ Children under sixteen may be detained only if the Immigration Board concludes that they are likely to be expelled and that they might otherwise abscond. Even in those cases, children under sixteen may only be detained up to seventy-two hours, or if there are exceptional grounds, an additional seventy-two hours.¹¹ According to Immigration Board officials, roughly one third of the asylum seekers arriving at Stockholm's Arlanda Airport are detained.¹²

Once the police have completed their investigation of the applicant's identity and travel route, they hand the case over to the Immigration Board for further investigation and adjudication. When an application reaches the Immigration Board, the case is placed in either the accelerated or normal procedure and assigned to an investigating officer.

⁸ Human Rights Watch/Helsinki interview with Anders Sundqvist, Asylum Advisory Center, Stockholm, January 29, 1996.

⁹ Although the police typically conduct the initial inquiry, the Immigration Board is conducting a pilot project at Arlanda Airport outside of Stockholm, pursuant to which Immigration Board officers will work with the police on these investigations. This project is part of a larger effort to move the Immigration Board's decision-making process closer to the borders. Human Rights Watch/Helsinki interview with Veronika Lindstrand-Kant, Swedish Immigration Board, Arlanda Airport, January 26, 1996; Human Rights Watch/Helsinki Interview with Lars Fransén, Head of Asylum Unit, Swedish Immigration Board, Carlslund, January 26, 1996.

¹⁰ See, e.g., Aliens Act, Ch. 6, Sec. 2.

¹¹ Human Rights Watch/Helsinki interview with Veronika Lindstrand-Kant, Swedish Immigration Board, Arlanda Airport, January 26, 1996; see also Aliens Act, Ch. 6.

¹² *Ibid.*

Accelerated procedures are used in cases in which the applicant is found to have either a “manifestly unfounded” claim for asylum or an alternative country of asylum through which he/she traveled on his/her way to Sweden and to which he/she can be returned (“safe third country”). An application is deemed “manifestly unfounded” if (i) the applicant’s country of origin is considered “safe,” i.e., human rights violations do not typically occur there; or (ii) the government has previously concluded as a matter of policy that the grounds asserted for asylum are insufficient.¹³ An applicant is considered to have a “safe third country” if he/she, “before coming to Sweden, stayed in a country other than his country of origin and, if returned there, will be protected from persecution or, as the case may be, from being sent to another country where he/she does not have corresponding protection.”¹⁴ Although most applicants whose claims are deemed “manifestly unfounded” receive appointed legal counsel, those deemed to have travelled through “safe third countries” are usually not entitled to legal representation unless they are detained.¹⁵ In both types of cases, the Immigration Board may refuse entry and issue an order for immediate expulsion. Such orders may be appealed, but the filing of an appeal does not automatically suspend the expulsion order. The applicant may still request that the Immigration Board or Appeals Board enjoin expulsion pending the appeal, but such requests are rarely granted.¹⁶ In practice, therefore, those expelled pursuant to the accelerated procedure do not have an effective right of appeal.

An applicant whose application is subject to the normal procedure is requested to complete a questionnaire in his/her own language regarding his/her asylum claim. He/she is then interviewed by the Immigration Board officer assigned to his case. In most cases, the interview is the only opportunity that an asylum seeker has to present his/her case in person to the authorities.¹⁷ A lawyer may accompany the applicant to his interview, and the lawyer may intervene to pose additional questions or clarify the applicant’s story. Under Swedish law, the government is only required to appoint a lawyer to assist an asylum applicant if he/she is detained in excess of three days or if it is likely that his/her application will be denied. This latter determination is often made only after the Immigration Board has conducted its interview. Even if a lawyer has been appointed before the interview, he/she will not necessarily attend it. The Immigration Board informs appointed counsel of scheduled interviews, but it does not insist on their presence.¹⁸ As a practical matter, many asylum seekers do not enjoy the assistance of counsel at their interview with the Immigration Board.¹⁹

¹³ Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, *Summary Description of Asylum Procedures in States in Europe, North America and Australia*, (1995), p. 225.

¹⁴ Aliens Act, Ch. 3, Sec. 4(4).

¹⁵ Human Rights Watch/Helsinki interview with Lars Fransén, Head of Asylum Unit, Swedish Immigration Board, Carlslund, January 26, 1996.

¹⁶ Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, *Summary Description of Asylum Procedures in States in Europe, North America and Australia*, (1995), p. 224.

¹⁷ Hearings are available on appeal and asylum seekers often request them, but the Appeals Board rarely grants such requests. Human Rights Watch/Helsinki telephone interview with Sten De Geer, lawyer, August 16, 1996; Human Rights Watch/Helsinki interview with Johan Fischerström, Director General, Aliens Appeals Board, January 31, 1996.

¹⁸ Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Board, Norrköping, February 1, 1996.

¹⁹ Human Rights Watch/Helsinki interview with Lars Fransén, Head of Asylum Unit, Swedish Immigration Board, Carlslund, January 26, 1996.

After the interview, the Immigration Board investigates the case and reaches a decision. As part of its investigation, the Board sometimes asks the Swedish embassy in the applicant's country of origin to verify some aspect of the applicant's story. Upon completion of its investigation, the Immigration Board issues a written decision in Swedish. The applicant is entitled to an oral, but not written, translation of the decision. The Immigration Board has set a goal of reaching decisions on asylum applications within two months. This goal is reached, however, in less than 50 percent of cases. For the rest, the process typically takes from two to six months.²⁰ There is, however, a backlog of approximately 7,600 pending asylum cases in which the Immigration Board has deferred decisions indefinitely pending a guideline decision from the government, additional information about the country of origin, or anticipated changes in the country of origin.²¹

While waiting for a decision, asylum seekers who are not in detention may stay at refugee camps or, since 1994, arrange their own accommodations in rented flats, or with family or friends. Approximately one half of all asylum seekers take advantage of this latter option, which, according to the Immigration Board, has saved money and been popular with asylum seekers without weakening their contacts with the asylum adjudication system.²² Nonetheless, a commission appointed to assess Swedish policies regarding immigrant integration recently proposed that social benefits paid to new arrivals be made contingent on living in government-assigned housing.²³

Upon receipt of a negative decision, an asylum seeker has three weeks in which to file an appeal with the Appeals Board. If he/she does not appeal, a deportation order will be issued. Nearly all negative decisions are appealed,²⁴ although the Appeals Board generally affirms the Immigration Board decision.²⁵ The law provides that the Appeals Board may conduct a hearing regarding an appeal, but in practice hearings are almost never held on appeal.²⁶

²⁰ Ibid.

²¹ "Too Many Asylum Applications Are Deferred," *Migration News Sheet* (August 1996).

²² Human Rights Watch/Helsinki interview with Erik Stenström, Swedish Immigration Board, Norrköping, February 1, 1996.

²³ "New arrivals may no longer live wherever they wish," *News & Views*, April 24, 1996.

²⁴ Human Rights Watch/Helsinki interview with Lars Fransén, head of asylum unit, Swedish Immigration Board, Carlslund, January 26, 1996 (estimating appeals of 80 to 90 percent of negative decisions); Human Rights Watch/Helsinki interview with Johan Fischerström, Director General, Aliens Appeals Board, Stockholm, January 31, 1996 (estimating appeals of at least 95 percent of negative decisions).

²⁵ Human Rights Watch/Helsinki interview with Lars Fransén, head of asylum unit, Swedish Immigration Board, Carlslund, January 26, 1996. Appeals Board Director General Johan Fischerström explained to Human Rights Watch/Helsinki that in recent years the rate of affirmance has been artificially deflated by the government's decisions to grant "amnesties" to certain categories of asylum seekers. He asserted that "under normal circumstances, when we are applying only the Aliens Act, there should be about 10 percent reversed and the rest upheld." Human Rights Watch/Helsinki interview with Johan Fischerström, Director-General, Aliens Appeals Board, Stockholm, January 31, 1996.

²⁶ Human Rights Watch/Helsinki interview with Johan Fischerström, Director-General, Aliens Appeals Board, Stockholm, January 31, 1996.

A negative decision from the Appeals Board results in automatic deportation. The asylum seeker then has two weeks in which to leave voluntarily, after which it falls to the police to deport him/her forcibly.²⁷ Until the deportation is affected, the applicant can file new applications for a residence permit based on new grounds for asylum or on an assertion that deportation would be inconsistent with humanitarian principles. There is no limit on the number of such applications that can be filed. Second and all subsequent applications are made directly to the Appeals Board.

The police may detain rejected asylum seekers pending deportation. The Aliens Act specifies that “[i]f a refusal-of-entry or expulsion order has been made . . . an alien may be detained for up to two months, unless there are exceptional grounds for a longer period.”²⁸ If the detention is extended beyond the initial two months, it must be reconsidered every two months thereafter.²⁹ Notwithstanding these safeguards, Human Rights Watch/Helsinki received reports of rejected asylum seekers being detained for more than a year. Although Sweden maintains four detention centers designated for asylum seekers, some asylum seekers are held in remand prisons along with common criminals.

Various aspects of Swedish asylum policy and practice summarized above raise human rights concerns. A number of these concerns are elaborated in the discussion that follows.

Access to Asylum Procedures

Article 14 of the Universal Declaration of Human Rights provides that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.” Sweden and its European partners interpret this rule to require only that refugees have access to asylum *somewhere*, not necessarily in Europe. Accordingly, in recent years, they have enacted increasingly strict rules requiring visas for travel to Europe, particularly for those traveling from refugee-producing countries. In September 1995, the European Union adopted Council Regulation (EC) No. 2317/95 establishing who must possess a visa in order to cross the external borders of the member states. The regulation creates visa requirements for the nationals of ninety-eight countries, including several countries with records of well-documented human rights abuses such as China, Burma, Sudan, and Rwanda.³⁰ In some countries, visa requirements are paired with steep fines imposed on airlines and other carriers that bring foreigners to Europe without the required visas.

²⁷ The two weeks are counted from the date of the negative decision, not the date the asylum seeker receives notice of it. We received numerous accounts of asylum seekers learning of a negative decision from the Appeals Board only when the police arrived to deport them. The strain on asylum seekers of constantly fearing immediate deportation is considerable, and many reported that they sleep during the day in order to be alert during the night when the police are more likely to come to deport them. Human Rights Watch/Helsinki interviews, Stockholm, January 28, 1996.

²⁸ Aliens Act, Ch. 6, Sec. 4.

²⁹ Aliens Act, Ch. 6, Sec. 6.

³⁰ Council Regulation (EC) No 2317/95 of September 25, 1995, 38 O.J. 1 (Oct. 3, 1995).

Notably, Sweden has declined to impose carrier sanctions other than the requirement that carriers foot the bill for returning rejected asylum seekers and any escorts who accompany them.³¹ Nonetheless, its visa policies have proven very effective in stemming the flow of asylum seekers to its borders. According to Immigration Board guidelines, to obtain a visa it is "incumbent on the applicant to establish the likelihood or the purpose of his journey to Sweden being a visit and nothing else."³² A visa application that stated that the applicant wanted to seek asylum in Sweden would therefore be rejected. Even in the event that a rejected asylum seeker is deported during the pendency of his appeal and the Appeals Board overrules the denial of his asylum application, he will not be given a visa to return to Sweden.³³ Sweden has recently posted special police officers in Damascus and Nairobi to assist local authorities with, among other matters, the screening of visas and passports. It is expected that in the future, such officers will be posted in many countries.³⁴

Sweden's visa policies have had a substantial effect on the ability of refugees to seek asylum in Sweden, as evidenced by trends in the number of asylum applications. In 1992 Sweden registered 84,000 asylum applications. Largely due to entry restrictions, applications fell to 10,000 in 1995 and to only 2,715 in the first six months of 1996.³⁵ The effect of Swedish visa requirements can be seen clearly in the case of Bosnia and Herzegovina. Following the outbreak of hostilities in Bosnia and Herzegovina, Sweden experienced a large influx of asylum seekers from that region. In 1992 and the first half of 1993, nearly 40,000 Bosnian asylum seekers came to Sweden. In June 1993, notwithstanding continued hostilities and violations of human rights in Bosnia and Herzegovina, the Swedish government decided to reintroduce visa requirements for Bosnian citizens. The number of Bosnian asylum seekers immediately plummeted to 1,500 per month, compared with 7,000 per month a year earlier.³⁶ Whereas Sweden received 25,110 asylum applications from citizens of Bosnia and Herzegovina in 1993, the number fell to 2,649 in 1994.³⁷ The government has explained its decision to require visas from Bosnians as motivated by the fact that many of the Bosnian asylum seekers were found to be coming from refugee camps in Croatia where they "enjoyed a certain measure of protection already."³⁸ Citing humanitarian considerations, Sweden granted permanent residence permits to most of the Bosnians who had already arrived. And it promised to increase the number of Bosnian refugees resettled in Sweden under the UNHCR's quota program. Nonetheless, its visa policy toward Bosnians substantially restricted their access to asylum procedures in Sweden.

³¹ Some officials maintain that Sweden will be required to impose carrier sanctions if, as is anticipated, it accedes to the Schengen Convention, or the European Union's Convention on the Crossing of External Frontiers enters into effect. Human Rights Watch/Helsinki interview with Eva Ulfvebrand, Jurist/Policy Advisor, Swedish Red Cross, Stockholm, January 30, 1996.

³² Swedish Ministry of Culture, *Immigrant and Refugee Policy* (1994), p. 24.

³³ Human Rights Watch/Helsinki interview with Lars Fransén, head of asylum unit, Swedish Immigration Board, Carlslund, January 26, 1996; Human Rights Watch/Helsinki interview with Lennart Kotsalainen, Eva Singer, office of the UNHCR, Stockholm, January 23, 1996.

³⁴ Human Rights Watch/Helsinki interview with Per Almqvist, Assistant Under-Secretary, Division for Migration Policy, Ministry of Labor, Stockholm, January 31, 1996.

³⁵ Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, "Asylum Applications in IGC Participating States 1983-1996," July 23, 1996, p. 1.

³⁶ Swedish Ministry of Labour, *Immigrant and Refugee Policy* (1995), p. 23.

³⁷ *Ibid.*, p. 24.

³⁸ Swedish Ministry of Culture, *Immigrant and Refugee Policy* (1994), p. 15.

Government officials insist that such policies do not violate the right of access to asylum under the Universal Declaration of Human Rights because an asylum seeker who somehow gets to the Swedish border and requests asylum will be admitted to the Swedish asylum procedure. Asked by Human Rights Watch/Helsinki about the relationship between Swedish visa policies and the right to seek asylum, Immigration Minister Leif Blomberg answered, "Of course there is a relationship between the possibility to seek asylum and visa policy. But for those who come to the border, there is no such relationship."³⁹ This statement ignores the fact that Swedish visa policies make it very difficult for many asylum seekers to reach Sweden's border. Many of those who do make it to the border must do so illegally, without proper travel documents. Sixty percent of asylum seekers in Sweden lack passports, travel documents, and identity papers.⁴⁰

Mr. Blomberg explained that notwithstanding its visa policies, Sweden works to ensure the right of access to asylum through the UNHCR's refugee resettlement programs. Sweden's generosity toward these programs is indeed commendable. But that does not obviate the significant impediment created by its visa policies—implemented in concert with its European partners—to genuine refugees' right to seek and obtain asylum.⁴¹

Access to Information, Legal Representation and Other Assistance

The Executive Committee of the UNHCR's program, at its twenty-eighth session in October 1977, adopted a number of recommendations for asylum procedures, including that applicants "should receive the necessary guidance as to the procedure to be followed" and they "should be given the necessary facilities, including the services of a competent interpreter, for submitting [their] case[s] to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR."⁴² Regarding accelerated procedures, the UNHCR has advised that "all applicants should receive preliminary counselling in the appropriate language provided by NGOs, the Government, UNHCR or some combination of these and should be assisted in submitting a written statement."⁴³ In the same vein, the member states of the EU have adopted a resolution on minimum guarantees for asylum procedures, specifying that "[asylum seekers] must be informed of the procedure to be followed and of their rights and obligations during the procedure, in a language which they can understand," namely the right to receive the services of an interpreter, the opportunity to call in a legal advisor (in accordance with the rules of the member state concerned), the opportunity to communicate with UNHCR and other refugee organizations, and the opportunity for the office of the UNHCR to be informed of proceedings and decisions and to submit its observations.⁴⁴

³⁹ Human Rights Watch/Helsinki interview with Leif Blomberg, Immigration Minister, Ministry of Labour, Stockholm, January 31, 1996. In the new Swedish government, the post of "Immigration Minister" has been eliminated and Mr. Blomberg's duties have been divided between him and Deputy Foreign Minister Pierre Schori. Under the new scheme, Mr. Blomberg is Deputy Minister for Home Affairs and has responsibility for, among other things, immigrant integration; and Mr. Schori is responsible for asylum and migration affairs. See, "Immigrant Affairs Split Up," *News & Views*, April 3, 1996.

⁴⁰ "False identities to be tracked down," *News & Views*, January 24, 1996.

⁴¹ Human Rights Watch/Helsinki recognizes the right of state sovereigns to regulate entry into their territory through visa policy. We also understand that as a matter of international law, this right is not qualified by states' human rights and humanitarian commitments. Nonetheless, we believe that the very restrictive visa policies currently being implemented by western states like Sweden do undermine the right to seek asylum and impose a disproportionate and unfair burden on states located closest to refugee-producing countries. Accordingly, in the spirit of humanitarianism and international burden-sharing, we urge all states, in the exercise of their sovereign discretion in this area, to pursue flexible visa policies that do not unduly restrict genuine refugees' access to their asylum procedures.

⁴² Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* (1992), p. 46.

⁴³ UNHCR Regional Bureau for Europe, "An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR," *European Series*, Vol. 1, No. 3 September 1995, p. 11.

⁴⁴ Resolution on Minimum Guarantees for Asylum Procedure, para. 13 (1995).

Human Rights Watch/Helsinki notes a number of deficiencies in the Swedish asylum process in connection with these commitments.

First, information given to asylum seekers upon filing an application for asylum is insufficient. According to a police officer responsible for intake of asylum applications at Arlanda airport, at the initial interview asylum seekers are not given any standard information or document describing the asylum procedure and detailing an asylum seeker's rights and obligations. He assured Human Rights Watch/Helsinki, however, that the interviewers typically inform applicants that they may speak freely, that anything they say will be treated confidentially, and that they may seek legal assistance if they wish.⁴⁵ Only when the case is transferred to the Immigration Board, after the initial police interview, do applicants receive a standard packet of information about the asylum procedure. Some asylum seekers interviewed by Human Rights Watch/Helsinki stated that even at that stage they did not receive any information about the asylum procedure or the possibility of obtaining legal assistance. Many indicated that they did not understand various aspects of the procedure; particularly troubling were those who did not understand why they were being detained, how long it would last, and what recourse they had.⁴⁶

The inadequacy of information is especially prejudicial to applicants whose claims are handled in the accelerated procedure. Many of them are placed in detention facilities, to which family, friends, and assistance organizations have limited access. Few obtain legal counsel or other forms of assistance from NGOs or UNHCR on their own. Whether they are entitled to government-appointed counsel is largely left to the discretion of the authorities, depending on the circumstances in the country to which they are going to be sent. In practice, few applicants categorized as coming from "safe third countries" receive government-appointed counsel. Although applicants with "manifestly unfounded" claims benefit from government-appointed counsel more often, in many such cases this assistance is not available.⁴⁷ For example, in recent years Sweden received a large influx of Croatian asylum seekers who—according to the Immigration Board—had only economic reasons for asylum. The Immigration Board declared these cases "manifestly unfounded" and appointed no lawyers in order to send a "strong signal" to other prospective Croatian asylum seekers.⁴⁸

⁴⁵ Human Rights Watch/Helsinki interview with Jan Sjöblöm, Arlanda airport, January 26, 1996.

⁴⁶ Human Rights Watch/Helsinki interview, Stockholm, January 28, 1996; Human Rights Watch/Helsinki interview, Stockholm, January 29, 1996; Human Rights Watch/Helsinki interview, Stockholm, January 31, 1996.

⁴⁷ Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Board, Norrköping, February 1, 1996. Mr. Carlstedt explained that in "manifestly unfounded" cases, the Immigration Board decides whether to appoint a lawyer depending on the situation in the country of origin and the applicant's stated reasons for requesting asylum. For example, if economic reasons are cited, the applicant will probably not get legal assistance. Moreover, applicants from Poland and Estonia, for example, generally do not receive legal assistance, while Kosovo Albanians and Russians typically do.

⁴⁸ Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Board, Norrköping, February 1, 1996.

If detained for more than three days, asylum seekers are entitled to a government-appointed lawyer, but many in the accelerated procedures are expelled before the three days pass.⁴⁹ Moreover, the authorities do not always abide by the three-day rule. An Immigration Board official told Human Rights Watch/Helsinki that detained asylum seekers typically receive legal counsel within four or five days.⁵⁰ One asylum seeker we interviewed had been in detention for a week and had not yet been assigned a lawyer.⁵¹ NGO and UNHCR representatives all told Human Rights Watch/Helsinki that they have little or no contact with applicants in the accelerated procedure. As one advocate explained, "It used to be that it took more time to expel a person. There was time for the person to get information to relatives, etc. Now we are getting a call from a relative saying 'My brother was here three days ago. Can you do anything?'"⁵² Significantly, Human Rights Watch/Helsinki interviews with various officials suggest that the Immigration Board is moving toward processing more applications in this manner—swiftly, at the border, without intervention by advocates and lawyers, and out of the public eye. As one official candidly explained the Board's policies, "If you appoint a lawyer and take decisions inside the country, it is more difficult. And if there is no smell of asylum reasons, it is better to get them at the border and send them right back."⁵³ Such policies, while perhaps more efficient from the perspective of Immigration Board efforts to reduce immigration, may compromise the ability of legitimate refugees to make their case for asylum.

While the lack of adequate information and counselling is particularly harmful to those in the accelerated procedure, it is also prejudicial to those in the normal procedure. This is particularly the case since the Immigration Board often delays in appointing lawyers to assist these asylum seekers. According to Immigration Board policy and a decision by the Judicial Ombudsman of the parliament, the board is supposed to try to appoint lawyers before conducting its interview, typically an applicant's only opportunity for an oral hearing.⁵⁴ In practice, however, this does not usually happen.⁵⁵ One official explained the board's rationale as follows:

⁴⁹ Ibid. (noting that asylum seekers sent to "safe third countries" are often expelled in a matter of hours or within one day). Analyzing the Swedish detention regime for asylum seekers, the UNHCR noted that "[i]t would appear that asylum seekers are often unaware of their right to contact a lawyer before the expiration of three days. As far as UNHCR is aware, they are not provided with information giving the names and telephone numbers of organizations who could be contacted. There have been no reports, however, of persons being prevented from contacting UNHCR." UNHCR Regional Bureau for Europe, "Detention of Asylum-Seekers in Europe," *European Series*, vol. 1, no. 4, October 1995, p. 195.

⁵⁰ Human Rights Watch/Helsinki interview with Veronika Lindstrand-Kant, Swedish Immigration Board, Arlanda airport, January 26, 1996.

⁵¹ Human Rights Watch/Helsinki interview, Kronoberg Remand Prison, Stockholm, February 2, 1996. This fact was confirmed in a Human Rights Watch/Helsinki telephone conversation with an Immigration Board official on February 5, 1996.

⁵² Human Rights Watch/Helsinki interview with Anders Sundqvist, Asylum Advisory Center, Stockholm, January 29, 1996. The head of the Immigration Board Asylum Unit at the Carlslund reception facility, Lars Fransén, told Human Rights Watch/Helsinki that applicants with "safe third country" cases are informed of their right to obtain private legal assistance, but that he did not think they are given lists of organizations or lawyers who can help them. Human Rights Watch/Helsinki interview, Carlslund, January 26, 1996.

⁵³ Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Board, Norrköping, February 1, 1996.

⁵⁴ Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Board, Norrköping, February 1, 1996; Application of Kjell Jonsson, Dnr 1723-1993 (Nov. 15, 1994).

⁵⁵ Human Rights Watch/Helsinki interview with Lars Fransén, head of asylum unit, Swedish Immigration Board, Carlslund, January 26, 1996.

Perhaps we think it is not necessary that the lawyer be present at the investigation. There are advantages and disadvantages. One point is that we want to make the asylum investigation as soon as possible at the border. It could be difficult to wait for a lawyer; we lose time. Of course we think it necessary to have a lawyer, but if we have to wait, we lose time. Normally they are just listening; they are rather passive. There aren't any rules requiring them to be passive, but they are. And of course, having a lawyer at the investigation is expensive. An investigation can take four to five hours. One year, the lawyers cost more than the [Immigration Board investigators].⁵⁶

⁵⁶ Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Board, Norrköping, February 1, 1996. For their part, some lawyers allege that some Immigration Board officials prevent lawyers from playing an active role in interviews and permit them to inject questions only at the end of the proceedings. Human Rights Watch/Helsinki telephone interview with Sten De Geer, lawyer, August 16, 1996.

Lawyers interviewed by Human Rights Watch/Helsinki complained that they are often appointed after the interview has been conducted; and that if their subsequent written submissions augment or deviate from the story presented by the asylum seeker at the interview, their submissions may be considered by the Immigration Board and Appeals Board to undermine the asylum seeker's credibility rather than advance his case. In an interview with Human Rights Watch/Helsinki, the Director-General of the Aliens Appeals Board, Johan Fischerström, was critical of lawyers who assert claims and arguments late in the asylum procedure. "[Lawyers] must interrogate [their] clients and must know their whole case, from the beginning and be determining how best to represent [their] client," he said. "When are they doing this? On appeal or in the administrative court. If these claims are correct, why are they not presenting them there at the Immigration Board? It makes a difference for their clients."⁵⁷ He agreed, however, that the problem may be that lawyers are being appointed too late in the procedure and asserted, "I have suggested to the government and the Immigration Board that a lawyer should be appointed from the beginning. . . . Legal assistance should be available from the beginning and unlimited. But it should be good legal assistance."⁵⁸

Many asylum seekers interviewed by Human Rights Watch/Helsinki complained about the quality of their government-appointed lawyers. They complained that their lawyers did not help them decide the best way to navigate their way through the Swedish asylum procedure. Rather, their lawyers merely prepared written submissions, reciting the asylum seeker's story and failing to cite any law or introduce legal arguments. Problems with legal assistance are likely to be exacerbated if a current proposal is adopted to cap compensation for government-appointed lawyers at four hours' worth of fees.⁵⁹

The UNHCR has advised that "an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own."⁶⁰ By placing many applicants in detention, handling their applications in accelerated procedures, and limiting their timely access to information, the UNHCR, NGOs and well-qualified lawyers, Sweden is taking advantage of applicants' vulnerabilities and threatening their right to seek asylum.

Practice Regarding "Manifestly Unfounded" and "Safe Third Country" Cases

As previously noted, Sweden maintains accelerated procedures for adjudication of "manifestly unfounded" and "safe third country" cases. These procedures raise a number of human rights concerns. First, as discussed in the foregoing section, there is evidence that applicants whose claims are handled in the accelerated procedures are particularly prejudiced by the lack of adequate information and assistance provided to asylum seekers. Second, applicants subject to accelerated procedures are often detained, raising issues discussed in greater detail below. In addition, Human Rights Watch/Helsinki is concerned about a number of Swedish practices specifically relating to these types of cases.

"Manifestly Unfounded" Cases

⁵⁷ Human Rights Watch/Helsinki interview with Johan Fischerström, Director-General, Aliens Appeals Board, Stockholm, January 31, 1996.

⁵⁸ Ibid.

⁵⁹ Human Rights Watch/Helsinki interview with Johan Fischerström, Director General, Aliens Appeals Board, Stockholm, January 31, 1996 ("Of course the lawyer should be paid for the work he is doing. Of course if there is a cap it will only hurt asylum seekers.").

⁶⁰ Office of the UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1992), p. 45.

Swedish law characterizes as “manifestly unfounded” applications from asylum seekers whose countries of origin are deemed safe, or who otherwise fall in a category of persons whom the government has determined to be free from a threat of persecution.⁶¹ According to statistics provided to Human Rights Watch/Helsinki by the Immigration Board, in 1994 Sweden expelled 3,165 asylum seekers whose applications it found to be “manifestly unfounded.” Over two thousand of these deportees were returned to Croatia. While many of the rest were sent to countries in which there were not significant risks of persecution, others were returned to countries in which intergovernmental and nongovernmental organizations, including Human Rights Watch, have documented extensive violations of international human rights and humanitarian law. Among those found to have “manifestly unfounded” applications in 1994 were 109 asylum seekers from Bosnia, nineteen from Turkey, ten from Algeria, and seven from Nigeria. In 1995, as the overall number of asylum applications declined from 18,600 to 10,000, the number of asylum seekers expelled due to their assertion of “manifestly unfounded” claims dropped to 815. Among those expelled were 21 asylum seekers from Peru, 8 from Algeria, 7 from Iran, and 9 from Israel.

Without information about the specific circumstances of these cases, Human Rights Watch/Helsinki cannot conclude that any of these expulsions constituted refoulement in contravention of the Refugee Convention. Nonetheless, the use of accelerated procedures for asylum seekers coming from such trouble spots raises serious risks that asylum seekers with legitimate claims will be refouled. By definition, determinations that applications are “manifestly unfounded” are based on general conclusions about the condition of a whole category of asylum seekers. As such, they undermine asylum seekers’ right to individualized adjudication of their claims.⁶² Characterization of asylum cases as “manifestly unfounded” should only be used in rare cases in which the situation in the country of origin makes the risk of persecution extremely low. In this connection, the UNHCR has advised that “[c]ountries where there is more than an insignificant risk of persecution or other threats to life and freedom should not be considered ‘safe’. Therefore, countries where there is a civil war/strife should not be included in such lists.”⁶³ The Swedish law relating to “manifestly unfounded” cases is not so limited, however. It gives substantial discretion to the government to categorize groups of cases as “manifestly unfounded.” And in practice, it would appear that the authorities have done so in cases where the situation in the country of origin warranted more careful scrutiny.

“Safe Third Country” Cases

In the event that an asylum seeker is found to have travelled through a “safe third country” on his way to Sweden, the Swedish authorities will deport him to that country without considering the merits of his asylum claim.⁶⁴ Human Rights Watch/Helsinki has identified two particular problems with Sweden’s “safe third country” policy. The first relates to Sweden’s criteria for identifying “safe third countries;” the second involves the procedure for affecting deportation to a “safe third country.”

⁶¹ Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, *Summary Description of Asylum Procedures in the States in Europe, North America and Australia*, (1995), p. 224.

⁶² Regarding the individualized nature of asylum determinations generally, see Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* (1992), pp. 13-14.

⁶³ UNHCR Regional Bureau for Europe, “An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR,” *European Series*, vol. 1, no. 3, September 1995, p. 14.

⁶⁴ Similar practices are employed by most other European countries. The Dublin Convention, concluded among all European Union member states, and the Schengen Convention, concluded among ten member states, create a “safe third country” regime among the signatories. Moreover, in the 1992 Resolution on a Harmonized Approach to Questions Concerning Host Third Countries, European Union member states resolved to send asylum applicants to “safe third countries” outside of the Union whenever possible.

The criteria by which Sweden identifies “safe third countries” are set forth in the Aliens Act. The law describes a “safe third country” as one in which the asylum seeker “will be protected from persecution or, as the case may be, from being sent to a theatre of war or to his country of origin and also from being sent to another country where he does not have corresponding protection.”⁶⁵ Significantly, in applying this provision the Swedish authorities do not consider relevant whether the “safe third country” will allow the asylum seeker into its territory, whether it maintains an asylum adjudication system or whether the asylum seeker will have access to any such system. In at least one case, the Immigration Board even designated a country that was not a signatory to the Refugee Convention as a “safe third country.”⁶⁶

As a result, some asylum seekers are deported to “safe third countries” only to be returned to Sweden when those countries do not accept them.⁶⁷ Others are permitted to enter the “safe third country,” but are unable to have their asylum claims adjudicated there. For example, Sweden will return Iraqi asylum seekers to Jordan if they have passed through Jordan en route to Sweden—notwithstanding the fact that Jordan does not have an asylum adjudication system—because the Appeals Board has concluded that Jordan will not send the returnees back to Iraq.⁶⁸ Even if the Appeals Board is right, this policy denies these asylum seekers their right to seek and enjoy asylum and leaves them in a state of legal limbo. Jordan may tolerate these asylum seekers at present, but they have no guarantee of future protection and other benefits they would enjoy were they formally recognized as convention refugees pursuant to an asylum adjudication procedure. Sweden’s “safe third country” policy therefore contravenes the spirit of the Refugee Convention, construed by the UNHCR to require that an asylum seeker’s application “be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant’s particular difficulties and needs.”⁶⁹ It is not enough for Sweden to conclude that the third country will tolerate the asylum seeker’s presence. The third country must have a functioning asylum system (satisfying the minimum standards established by the UNHCR for asylum adjudication⁷⁰), to which the asylum seeker will be admitted. The Office of the UNHCR has criticized Sweden for this aspect of its “safe third country” policy.⁷¹ Nonetheless, Sweden has persisted in its view that a country need not have an asylum system in order to be safe for asylum seekers.

⁶⁵ Aliens Act, Ch. 3, Sec. 4(4).

⁶⁶ The country in question was Latvia. The Appeals Board subsequently overruled the Immigration Board decision in the case. Human Rights Watch/Helsinki interview with Johan Fischerström, Director General, Aliens Appeals Board, Stockholm, January 31, 1996.

⁶⁷ Human Rights Watch/Helsinki interview with Veronika Lindstrand-Kant, Swedish Immigration Board, Arlanda airport, January 26, 1996 (estimating between twenty and thirty asylum seekers deported to third countries bounced back to Sweden in 1995).

⁶⁸ Human Rights Watch/Helsinki interview with Johan Fischerström, Director General, Aliens Appeals Board, Stockholm, January 31, 1996.

⁶⁹ Office of the UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1992), p. 45.

⁷⁰ *Ibid.*, p. 46.

⁷¹ Human Rights Watch/Helsinki interview with Lennart Kotsalainen, Eva Singer, office of the UNHCR, Stockholm, January 23, 1996.

The procedure by which Sweden deports asylum seekers to “safe third countries” is similarly flawed. More specifically, Sweden does not systematically make contact with authorities in the third country, inform them that Sweden has not considered the merits of the returnee’s application, or otherwise ensure that the third country will admit the asylum seeker to its asylum process and consider the merits of his or her claim. Accordingly, even where the third country maintains an asylum adjudication system, there is no guarantee that the returning asylum seeker will have access to that system. Instances in which “safe third countries,” including several members states of the European Union, have expelled asylum seekers without first adjudicating their asylum claim are well documented.⁷² As one Immigration Board official noted in an interview with Human Rights Watch/Helsinki, “there are some countries in Europe that are sending them back.”⁷³ Yet Sweden refuses to implement any systematic procedure for safeguarding against such indirect refoulement. The only documentation that asylum seekers in Sweden receive concerning their expulsion on “safe third country” grounds is a copy of the Immigration Board decision on their case, written in Swedish. One police officer who regularly accompanies asylum seekers deported to “safe third countries” said that he had never seen an asylum seeker present his Swedish asylum decision to the third country authorities.⁷⁴ It usually falls to the Swedish police escorts to explain the case to the third country authorities upon arrival there and to persuade them to accept the returning asylum seeker. Sweden does not systematically monitor the fate of asylum seekers returned to “safe third countries.” According to an official of the UNHCR, Swedish authorities “just presume that if this person has been returned to a country that they think is safe, they have done what they have to do.”⁷⁵

Again, the Office of the UNHCR has been critical of Swedish practice in this area.⁷⁶ As a result of this criticism, the authorities have established a practice of informing UNHCR of pending “safe third country” expulsions to Romania and Bulgaria. UNHCR authorities in those countries can then follow these cases and ensure that the returnees make contact with the asylum adjudication system there.⁷⁷ While this practice is salutary, it highlights the absence of similar arrangements in connection with expulsions to other third countries in which the returned asylum seeker’s situation may be equally perilous.

Right to Appeal

⁷² See generally, European Council on Refugees and Exiles, *Safe Third Country* (1995).

⁷³ Human Rights Watch/Helsinki interview with Lars Fransén, head of asylum unit, Swedish Board of Immigration, Carlslund, January 26, 1996.

⁷⁴ Human Rights Watch/Helsinki interview with Jan Sjöblöm, officer, Swedish Police, Arlanda airport, January 26, 1996.

⁷⁵ Human Rights Watch/Helsinki interview with Lennart Kotsalainen, UNHCR, Stockholm, January 23, 1996.

⁷⁶ Human Rights Watch/Helsinki interview with Lennart Kotsalainen, UNHCR, Stockholm, January 23, 1996.

⁷⁷ Human Rights Watch/Helsinki interview with Johan Fischerström, Director-General, Aliens Appeals Board, Stockholm, January 31, 1996; Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Boards, Norrköping, February 1, 1996.

The flaws in Sweden's policies regarding "manifestly unfounded" and "safe third country" cases are exacerbated by the limited right of appeal in these cases. Applicants can appeal these decisions, but they generally do not do so. Asked about the low rate of appeal in "safe third country" cases, one Immigration Board official cited the lack of legal representation in such cases as an important factor.⁷⁸ As noted, even if an asylum seeker appeals, in "manifestly unfounded" or "safe third country" cases, appeal does not automatically suspend deportation. The Appeals Board can halt deportation while it considers the case, but in practice it rarely does so. Once an asylum seeker is deported, he/she cannot benefit from a favorable Appeals Board decision. Even if the Appeals Board determines that the Immigration Board erred in deporting an asylum seeker, he/she cannot obtain a visa to return to Sweden. As a result, asylum seekers with "manifestly unfounded" or "safe third country" cases do not have an effective right of appeal. A substantial number of asylum seekers are affected by this policy. In 1994, Sweden expelled 4,657 asylum seekers on "safe third country" and "manifestly unfounded" grounds. In 1993, the number affected was 2,521; in 1992, 8,197.

In an interview with Human Rights Watch/Helsinki, the Director-General of the Appeals Board downplayed the extent to which this actually harms asylum seekers. Asked if he was aware of any errors resulting from the automatic expulsion in "safe third country" cases, he said,

In a few cases, we have examined the case and they have already gone. I stress that they are few. The [Immigration Board] decision was not correct on the law; but we have found that the person did not have the right to stay. So it was incorrect to [expel the applicant], but on the other hand, conditions for staying were not present. In one case we found that not only the process was wrong, but also the merits were. We left it to [the Immigration Board] to decide how to deal with the case. I think that he did come back. I think there was only this one case in these four years.⁷⁹

Nonetheless, Sweden's policy toward appeals in "manifestly unfounded" and "safe third country" cases contravenes the basic requirements for asylum procedures recommended by the Executive Committee of the UNHCR's Programme in 1977. These recommendations provided that:

(vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.

(vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority . . . , unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.⁸⁰

⁷⁸ Human Rights Watch/Helsinki interview with Olof Carlstedt, asylum counselor, Swedish Immigration Board, Norrköping, February 1, 1996.

⁷⁹ Human Rights Watch/Helsinki interview with Johan Fischerström, Director-General, Aliens Appeals Board, Stockholm, January 31, 1996.

⁸⁰ Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 46 (1992), quoting Official Record of the General Assembly, 32nd Sess., Supp. No. 12 (A/32/12/Add.1), paragraph 53(6)(e). Similarly, with respect to "manifestly unfounded" cases, the Executive Committee concluded:

(iii) an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory. Where arrangements for such a review do not exist, governments should give favourable consideration to their establishment. This review possibility can be more simplified than that available in the case of rejected applications which are not considered "manifestly unfounded" or abusive.

Executive Committee of the High Commissioner's Programme, Conclusion No. 30 (XXXIV) (1983). More recently, the Office of

As has been previously discussed, Sweden applies its “manifestly unfounded” and “safe third country” rules in more cases than those that could be justifiably characterized as clearly abusive. In light of this practice, and the frequent lack of adequate assistance for applicants with “manifestly unfounded” and “safe third country” cases, Sweden should afford these applicants an effective right of appeal by permitting them to remain in the country while their appeals are considered.

Detention

the UNHCR has specifically advised that appeals in cases subject to accelerated procedures should have suspensive effect. UNHCR Regional Bureau for Europe, “An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR,” *European Series*, vol. 1, no. 3, September 1995, p. 11.

Under Swedish law, asylum seekers may be detained for purposes of investigation for up to six hours without a formal detention order. Thereafter, upon order of the Immigration Board, they may be detained for up to forty-eight hours if it is necessary for investigation of their right to remain in Sweden. In addition, if asylum seekers' identities are unclear, or it is likely both that they will be expelled and that they will abscond or engage in criminal activity, they may be detained for up to two weeks, and longer if there are exceptional grounds. Finally, if a refusal of entry or expulsion order has been made, the asylum seeker may be detained for up to two months, and longer if there are exceptional grounds.⁸¹

Children under sixteen may be detained only if the Immigration Board concludes that they are likely to be expelled and that they might otherwise abscond. Even in those cases, children may only be detained for up to seventy-two hours, or if there are exceptional grounds, an additional seventy-two hours. Swedish law treats children aged sixteen and older as adults, subject to the regular detention regime described above.⁸² In the course of 1995, Sweden placed fifty-seven teenagers aged sixteen and seventeen in detention.⁸³ The detention of asylum seekers under age eighteen in Sweden is contrary to the UNHCR's detention guidelines, which specify that "[i]n accordance with the General Rule [that asylum seekers should not be detained] and the UNHCR Guidelines on Refugee Children, minors who are asylum seekers should not be detained."⁸⁴

In practice, asylum seekers are most often detained in Sweden upon arrival in the country and pending expulsion. For those in accelerated procedures for "safe third country" and "manifestly unfounded" cases, detention may last the entire length of their stay in Sweden. Although the law imposes time limits on detention, they may be skirted in exceptional circumstances. Most of those detained are released within the time limits. But particularly for those against whom expulsion orders have been entered and whose identities and countries of origin are uncertain, detention can be extended indefinitely. This fact has led the United Nations Human Rights Committee to conclude that in Sweden "[t]he length of detention of illegal immigrants, asylum seekers and persons ordered to be expelled is a cause of concern."⁸⁵

⁸¹ Aliens Act, Ch. 6, Sec. 4.

⁸² Human Rights Watch/Helsinki interview with Veronika Lindstrand-Kant, Swedish Immigration Board, Arlanda airport, January 26, 1996.

⁸³ "Swedish Refugee Policy in Global Perspective," (August 29, 1996), p. 221.

⁸⁴ "UNHCR Guidelines on Detention of Asylum Seekers," reprinted in UNHCR Regional Bureau for Europe, "Detention of Asylum-Seekers in Europe," *European Series*, vol. 1, no. 4, October 1995, p. 12.

⁸⁵ United Nations Human Rights Committee, Summary Record, para. 15, U.N. Doc. CCPR/C/SR.1456, October 26, 1995.
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Most of those detained are held in facilities maintained exclusively for asylum seekers. Sweden has four such detention centers, located at Malmö, Göteborg, Flen, and Upplands Väsby (“Carlslund”) near Stockholm’s Arlanda airport.⁸⁶ A representative of Human Rights Watch/Helsinki visited the Carlslund facility, known as “X House,” and found conditions there acceptable. Although confined to the facility, detainees are free to move within it and enjoy common television and recreation rooms. We did not receive any complaints about conditions at the facility from lawyers, advocates or asylum seekers who had been held there. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also toured the facility and concluded that “conditions of detention in the unit were excellent.”⁸⁷

Unfortunately, not all detained asylum seekers are held in these specially designated facilities. They are also held in remand prisons, where they are not generally segregated from the regular prison population and are subject to the same restrictive regime. Human Rights Watch/Helsinki toured Stockholm’s Kronoberg Remand Prison where asylum seekers are frequently held. Conditions in this facility are wholly inappropriate for asylum seekers. Touring the facility in 1991, the CPT noted:

[O]n looking beyond the apparent comfort offered by good-sized and clean cells usually equipped with radio and television, the CPT’s delegation found at Stockholm Remand Prison a series of factors—inadequate regime activities resulting in very limited out-of-cell time; poor ventilation and unsatisfactory window screening arrangements within the cells; frequent application of restrictions on contacts with others, which reinforced the isolation inherent in the excessive in-cell time; the fact that the many foreign prisoners would often, because of language difficulties, not even be able to make use of the limited possibilities for contacts with the staff; poor outdoor exercise facilities, making the principal out-of-cell activity on offer a very unattractive option; lengthy stays—which when accumulated led to wholly unacceptable conditions of detention for many of the prisoners held in the establishment.⁸⁸

⁸⁶ Human Rights Watch/Helsinki interview with Lars Fransén, head of asylum unit, Swedish Immigration Board, Carlslund, January 26, 1996.

⁸⁷ Report to the Swedish Government on the Visit to Sweden Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 14 May 1991, CPT/Inf (92) 4, March 12, 1992, p. 44.

⁸⁸ Report to the Swedish Government on the Visit to Sweden Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 5 to 14 May 1991, 24, CPT/Inf (92) 4, 12 March 1992.
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Many of these conditions persist today.⁸⁹ Asylum seekers are held in solitary cells, approximately eight square meters in size. Prison officials told Human Rights Watch/Helsinki that they try to keep all of the asylum seekers on one hall, but they are nonetheless interspersed with the regular prison population on that hall.⁹⁰ They are confined to their cells except for one hour per day, which they are permitted to spend—two or three at a time—in a small caged exercise area on the roof of the building. Because it is so cold, many forego even this short break from sitting alone in their cells. Each cell is equipped with a television, bed, desk, and sink. Detainees share common showers and toilets; to use them, they must summon a guard to let them out of their cells. There are five private visitation rooms available to asylum seekers. According to prison officials, asylum seekers are permitted as many visitors, as often as they like.⁹¹ But one asylum seeker who had been held at Kronoberg told Human Rights Watch/Helsinki that he had been permitted visits only from his lawyer; and another indicated that he could be visited there only by his lawyer and a representative of the Red Cross. There is a separate “hospital” wing of the prison in which the rooms are larger and equipped with private toilets and the staff is specially trained. Prison officials noted that asylum seekers are often held in this wing, because they frequently try to harm themselves and therefore need special attention. Officials also use the hospital wing to house asylum seekers who have been victims of torture, because, in light of their past experiences, these asylum seekers find the conditions in the regular cells particularly oppressive.⁹²

According to refugee lawyers, asylum seekers have been being held at the Kronoberg facility for over two decades. Generally ten to fifteen asylum seekers are held there at a time. On the two days Human Rights Watch/Helsinki visited the facility, there were, respectively, eight and ten such detainees in residence. Most stay for only about a week, but some are held at Kronoberg and other remand prisons for a year or more.⁹³ The staff of the Kronoberg facility interviewed by Human Rights Watch/Helsinki were universally critical of the practice of detaining asylum seekers in remand prisons. As one staff person explained, “We are not satisfied with the situation. . . . They shouldn’t be here. The biggest problem is that they all feel that they are treated like criminals. And that makes them feel bad.”⁹⁴ These views were echoed by the prison warden, who asserted that the practice “is a shame for the Swedish system. There is no excuse for it.” He also noted that detaining asylum seekers in the remand prison does not make economic sense: “To put a person here is very expensive. I don’t think this is very important; the human aspects of the practice are number one. But it is important. One night here costs between 1,600 and 1,700 Kroner [\$239 - \$254]; one night at Carlslund’s X House costs at most 800 Kroner [\$119].”⁹⁵

⁸⁹ Touring the facility again in 1994, the CPT noted some improvement in ventilation, but remained critical of limited out-of-cell time, particularly with respect to those held under the Aliens Act. Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 26 August 1994, April 3, 1995, pp. 6-14.

⁹⁰ Female asylum seekers and those under the age of twenty are held in separate areas of the prison reserved for female and juvenile offenders. According to prison officials, asylum seekers under the age of eighteen are not held at the Kronoberg facility.

⁹¹ Human Rights Watch/Helsinki interview with Marianne Salomon-Borg, Kronoberg Remand Prison, Stockholm, January 31, 1996.

⁹² Ibid.

⁹³ Human Rights Watch/Helsinki interview with Lars-Åke Pettersson, prison warden, Kronoberg Remand Prison, Stockholm, January 31, 1996.

⁹⁴ Human Rights Watch/Helsinki interview with Marianne Salomon-Borg, Kronoberg Remand Prison, Stockholm, January 31, 1996.

⁹⁵ Human Rights Watch/Helsinki interview with Lars-Åke Pettersson, prison warden, Kronoberg Remand Prison, Stockholm, January 31, 1996.

According to prison officials, the main reason for holding asylum seekers in remand prisons is overcrowding at the asylum seeker detention facilities at Flen, Carlslund, and Göteborg. This winter the problem was exacerbated by government plans to close the Flen facility due to budgetary cutbacks. When interviewed by Human Rights Watch/Helsinki in January 1996, the Kronoberg prison warden noted that the population at the Flen facility had been reduced from forty-seven to fourteen. He complained, "This is not acceptable. As they decrease the number there, we will increase about 50 percent, to fifteen or twenty asylum seekers."⁹⁶ Although plans to close the Flen facility have been scrapped for the moment, Human Rights Watch/Helsinki remains concerned that the Swedish authorities are not committed to maintaining a segregated detention regime for asylum seekers.

⁹⁶

Ibid.

According to the Kronoberg warden, asylum seekers find themselves in remand prisons for reasons other than overcrowding. For one, it is more convenient for the police to take asylum seekers to the Kronoberg facility located in downtown Stockholm than to take them to X House located near Arlanda airport, a forty-five-minute drive out of town. The warden also observed that the police think that asylum seekers detained at the remand prison will be more cooperative than if they are held in a less restrictive facility designated for asylum seekers. In this connection, he noted that lawyers are not always present when the police interview asylum seekers detained at the prison.⁹⁷

The hardship caused by these practices is evidenced by the story of T.N.⁹⁸, an asylum-seeker interviewed by Human Rights Watch/Helsinki at the Kronoberg facility. When a representative of Human Rights Watch/Helsinki met T.N. in January 1996, he had already spent thirteen months in detention, being bounced from prison to prison throughout Sweden. A Christian Algerian claiming persecution at the hands of Moslem insurgents, he came to Sweden in December 1993 and immediately applied for asylum. He stayed at an asylum seeker camp for one year and then, when in January 1995 he received a negative appellate decision and a deportation order, he was placed in detention. He has been detained ever since, while the authorities attempt to confirm his identity and country of origin in order to deport him. He explained that he does not have any papers nor any way to prove that he is from Algeria. He was first detained for seven months at the Flen detention center for asylum seekers. After an altercation with one of the guards at that facility, he was transferred to a remand prison in Norrköping for one month. Thereafter he was moved to the Malmö detention center for asylum seekers. After he attempted suicide in November 1995, he was transferred to the Kronoberg facility, where he remained in January 1996 without any hope of release.⁹⁹

The treatment of T.N. and other asylum seekers held in Swedish remand prisons is contrary to UNHCR detention guidelines derived from principles of international human rights. The UNHCR guidelines stipulate that as a general rule, asylum seekers should not be detained. The guidelines provide permissible exceptions to this general rule where detention is necessary to verify identity, to determine the elements on which a claim for refugee status is based, to deal with cases involving destroyed travel and identity documents, and to protect national security or public order. Nonetheless, the guidelines provide that such detention

should only be imposed where it is reasonable to do so and without discrimination. It should be proportional to the ends to be achieved . . . and for a minimal period Detention of asylum seekers which is applied for any other purpose, for example, as part of a policy to deter future asylum seekers, is contrary to the principles of international protection. Under no circumstances should detention be used as a punitive or disciplinary measure for failure to comply with administrative requirements or breach of reception centre, refugee camp or other institutional restrictions.¹⁰⁰

Sweden has been criticized by the European Committee for the Prevention of Torture for its detention of asylum seekers in remand prisons. After touring the Kronoberg facility in 1994, the Committee noted that

⁹⁷ Ibid. Father Jean-Luc Martin, who ministers to asylum seekers detained at X House also voiced his belief that asylum seekers are sometimes moved from X House to the Kronoberg facility in order “to wear them down.” Human Rights Watch/Helsinki interview with Fr. Jean-Luc Martin, Carlslund, January 26, 1996.

⁹⁸ His initials have been altered to protect his anonymity.

⁹⁹ Human Rights Watch/Helsinki interview, Kronoberg Remand Prison, Stockholm, January 31, 1996.

¹⁰⁰ “UNHCR Guidelines on Detention of Asylum Seekers,” reprinted in UNHCR Regional Bureau for Europe, “Detention of Asylum-Seekers in Europe,” *European Series*, vol. 1, no. 4, October 1995, pp. 9, 11.

a prison is by definition not an appropriate place in which to detain someone who is neither suspected nor convicted of a criminal offence—this is all the more so when the prison in question is not in a position to provide them with a regime. In those cases where it is considered necessary to deprive persons of their liberty under aliens legislation, they should be accommodated in centres specifically designed for that purpose, which offer material conditions of detention and a regime appropriate to their legal status. The CPT recommends that steps be taken as a matter of urgency to ensure that persons detained under the aliens legislation are not held on prison premises.¹⁰¹

Two government-appointed advisory committees on asylum policies have also called for an end to this practice.¹⁰² Nonetheless, this form of detention for asylum seekers continues. Human Rights Watch/Helsinki calls on Sweden to cease this practice, and to detain asylum seekers in facilities specially designated for that purpose, only when alternative restraints would be ineffective, and for the minimal amount of time necessary.

Criteria for Asylum

In addition to problems with the asylum procedure and the conditions of detention noted above, Human Rights Watch/Helsinki is critical of several aspects of Sweden's substantive asylum law. In the recent past, Sweden has interpreted the Refugee Convention very narrowly, granting an average of only 2 percent of applicants convention refugee status.¹⁰³ At the same time, Sweden has built a reputation of generosity toward asylum seekers on its willingness to admit them on humanitarian grounds and as de facto refugees. In light of reform proposals to eliminate or substantially restrict these latter categories of protection, Sweden's approach to the convention now requires closer scrutiny.¹⁰⁴ Human Rights Watch/Helsinki's concerns in this regard are discussed below.

Agents of Persecution

The Refugee Convention states that signatories should provide protection to any person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." Nothing in this language indicates whether the feared persecution must be at the hands of the government. On this question, the UNHCR has stated:

Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.¹⁰⁵

¹⁰¹ Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 26 August 1994, April 3, 1995, p.14.

¹⁰² Ministry of Foreign Affairs, Statement Concerning the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, September 21, 1995, p. 11.

¹⁰³ Ministry of Labour, *Immigrant and Refugee Policy* (1995), p. 15.

¹⁰⁴ For a discussion of the proposed reform, see Section III below

¹⁰⁵ Office of the UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1992) p. 17.

Notwithstanding this guidance from the UNHCR, jurisprudence has emerged in a number of states, stipulating that persecution for purposes of the convention must be committed or knowingly tolerated by the authorities.¹⁰⁶ Sweden is among the states that have taken this position, citing it, for example, to deny asylum to Algerians persecuted by the insurgent Armed Islamic Group and Peruvians targeted by Shining Path guerrillas.¹⁰⁷ Similarly, the absence of state-sanctioned persecution was cited as a reason that asylum seekers fleeing the conflict in Bosnia and Herzegovina might not deserve convention refugee status.¹⁰⁸ Not insignificantly, Sweden has generously granted permanent resident permits on humanitarian grounds to many Bosnian asylum seekers. But protection on humanitarian grounds is under siege in Sweden and may be whittled away in the next round of reforms. And Sweden's generosity toward the Bosnians does not obviate the fact that its jurisprudence contravenes the Refugee Convention.

In apparent recognition of this fact, the Refugee Policy Commission appointed to propose reform of Sweden's asylum policies has recommended a broader interpretation of the convention to provide protection for refugees, regardless of whether state authorities are complicit in their persecution. In the same vein, when the European Union recently took the joint position that the Refugee Convention applies only when state agents carry out persecution, Sweden made a declaration, stating its belief that persecution by non-state agents may fall within the scope of the Refugee Convention when the authorities prove unable to offer protection, as well as when they are actively complicit. It remains to be seen whether Sweden will stand by this declaration and follow the recommendation of the Refugee Policy Commission to expand its interpretation of the Refugee Convention. Human Rights Watch/Helsinki maintains that it must do so in order to satisfy its obligations under international law.

Credibility

In numerous interviews with Human Rights Watch/Helsinki, asylum seekers and lawyers noted Swedish immigration authorities' reluctance to find their claims credible. An assessment of the asylum seeker's credibility is necessarily at the center of nearly every asylum case. Nonetheless, Human Rights Watch/Helsinki believes that in this regard the Swedish authorities often place an unfair burden on asylum seekers. More specifically, in light of Swedish visa policies, which make it nearly impossible for asylum seekers to come to Sweden legally, Human Rights Watch/Helsinki is concerned by jurisprudence questioning the credibility of asylum seekers who lack proper travel documents. We are also concerned about the authorities' propensity to discredit asylum seekers who alter or amend their stories in even minor ways after the initial interview. This is particularly troubling given that these credibility assessments are generally made without the benefit of an oral hearing other than the initial interview.

When asked about credibility determinations, the Director-General of the Appeals Board stated his belief that "a person who has a real story can, when asked at any time again, give the same story."¹⁰⁹ Inconsistencies in an asylum seeker's story are, of course, relevant to an assessment of credibility. However, too much emphasis on inconsistencies, particularly those relating to immaterial facts, reflects an insensitivity to the difficulties faced by a traumatized asylum seeker in a foreign land, trying to present his or her case for asylum, often, in the first instance, without the assistance of a lawyer and through a translator.

According to asylum seekers and lawyers interviewed by Human Rights Watch/Helsinki, their attempts to clarify misunderstandings and mistranslations emerging from interviews with the Immigration Board, as well as efforts to provide additional documentation in support of their claims, are often met with skepticism from the authorities. The following excerpt from an Appeals Board decision is illustrative of the Board's approach:

¹⁰⁶ See generally, UNHCR Regional Bureau for Europe, "An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR," *European Series*, vol. 1, no. 3, September 1995, pp. 27-30.

¹⁰⁷ Human Rights Watch/Helsinki interview with Anders Sundqvist, Asylum Advisory Center, Stockholm, January 29, 1996.

¹⁰⁸ UNHCR Regional Bureau for Europe, "An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR," *European Series*, vol. 1, no. 3, September 1995, pp. 27-28.

¹⁰⁹ Human Rights Watch/Helsinki interview with Johan Fischerström, Director-General, Swedish Alien Appeals Board, Stockholm, January 31, 1996.

As to the [Center for Torture and Trauma Survivors] investigation made, it actually indicates that G's injuries might have come about in the way he claims. The Board notes, however, that, on various occasions, G has given contradictory information as to the cause of some of the injuries. In a petition of April 26, 1991, G states that, during one particular interrogation, he was forced to lie down on his stomach and that he then felt a hot metal object burning his thighs, after which he lost consciousness. In a doctor's certificate of August 19, 1991, Dr. Lajos Kovacsics states that, on one occasion, G was tortured with a gas burner and that, on another occasion, one of the guards cut open the outside of G's right shoulder using a key. The medico-legal expert, Dr. Erik Edston, notes in his case book of April 1995 that, on one occasion, G was badly injured on the backside of his legs as a result of being burnt with a gas burner or an object of a similar kind. Dr. Edston also mentions that, on one occasion, G was stabbed with a knife resulting in a cut on one shoulder. The same day, Dr. Edston notes in a medico-legal report on G that, on the outside of his right shoulder, a thin scar is to be seen, and adds within brackets that he was "cut with a knife during interrogation." In a statement of May 2, 1995, Dr. Edston notes that the scar on the outside of the right shoulder might have been caused by a sharp weapon, for example a knife. Surveying the injuries found, Dr. Edston also notes that G has scars on the backside of his thighs, putting within brackets "burnt with unknown object, infected wounds, hospital care." Finally Mr. Marcello-Ferada-Noli, Licentiate of Medical Science and Psychology, states as follows in a report on G under the heading "trauma anamnesis": "According to information received, the patient was put in prison, where he was subjected to torture resulting in injuries. The patient, however, cannot specify what kind of object caused these injuries. He describes the object in question as being hot and says that it was used on him once for at least 30 seconds. The patient also adds that, during this time, he became unconscious.

Considering the fact that G on several occasions has given very detailed and specified information as to the torture to which he claims to have been subjected, the contradictory information may, according to the Board, indicate that the injuries have other causes. Despite the fact that the injuries as such actually exist, they are not necessarily a result of torture in prison.¹¹⁰

The authorities refuse to recognize that such inconsistencies are themselves often a symptom of severe torture. Such analyses run a high risk of resulting in refolement, contrary to Sweden's commitments under international law.

This problem is also evidenced in a Swedish asylum case recently considered by the U.N. Committee Against Torture, charged with administering the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. The asylum seeker, Pauline Muzonzo Paku Kisoki, requested asylum in Sweden after fleeing her country of origin, Zaire, where she claimed to have been arbitrarily arrested for her political activities and detained in inhumane conditions in a prison where she was regularly raped and tortured. The Swedish Immigration Board denied her request for asylum, finding that due to improved conditions in Zaire she need not fear persecution upon return. The Appeals Board affirmed the Immigration Board decision and denied two subsequent applications filed by Mrs. Muzonzo. With one of these applications, she presented new forensic medical evidence, prepared by the Center for Torture and Trauma Survivors in Stockholm, supporting her claim of torture. In a common line of reasoning, the Appeals Board concluded that this evidence could have been submitted earlier, so its delinquent presentation actually undermined Mrs. Muzonzo's claim.

In a similar vein, when Mrs. Muzonzo took her case to the Committee Against Torture, in support of its decision to deny her asylum the Swedish government cited contradictions and inconsistencies in her story. The government's argument, summarized by the Committee Against Torture, is illustrative of its general approach to such questions:

¹¹⁰ Case No. UN9508-0324 (Aliens Appeals Board, 25 August 1995)(unofficial translation).

The State party further points to inconsistencies in the author's story, in relation to the rape of which she was allegedly a victim. The author, according to the medical statement of May 1995, had said that she was raped more than ten times during the time she spent in detention, whereas in her interview with the Swedish police in February 1992, she mentioned being beaten, but not raped, and in her account of 21 January 1993, she mentions having been raped twice. According to the State party, these inconsistencies impact significantly on the veracity of the author's story. Further, the State party recalls that the medical evidence was only submitted in 1995, that is, after the procedure for the establishment of the refugee claim was terminated, thus weakening further the author's credibility.¹¹¹

Contrary to these arguments, the Committee found substantial grounds for believing that Mrs. Muzonzo would be in danger of being subjected to torture if Sweden returned her to Zaire as planned. In reaching this conclusion, the Committee noted that "complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in [Muzonzo's] presentation of facts are not material and do not raise doubts about the general veracity of [her] claim."¹¹²

Regarding factfinding in asylum cases, the UNHCR has advised the following:

A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.

While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.

. . . [B]asic information is generally given, in the first instance, by completing a standard questionnaire. Such basic information will normally not be sufficient to enable the examiner to reach a decision, and one or more personal interviews will be required. It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings.¹¹³

As the UNHCR's directive suggests, Human Rights Watch/Helsinki urges the Swedish authorities to consider carefully additional information presented by asylum seekers, not looking for technical inconsistencies that can be used to justify denying asylum, but rather considering any such inconsistencies in light of the difficulties the asylum-seeker may be facing and balancing them against the extent to which the additional information supports the asylum-seeker's story. Whenever possible, such assessments should be made on the basis of an oral hearing.

Threat of Continued Persecution

A third area of concern regarding Sweden's substantive asylum law involves the authorities' assessments of the threat of continued persecution faced by asylum seekers in their countries of origin. In a number of noteworthy cases, the authorities have acknowledged the persecution suffered by the asylum seeker in the past, but concluded—based on either generally improved human rights conditions in the country of origin or the particular experience of the asylum-

¹¹¹ Committee Against Torture, 16th Sess., Views of the Committee Against Torture concerning Communication No. 41/1996, Annex, U.N. Doc. CAT/C/16/D/41/1996, p. 5.

¹¹² Committee Against Torture, 16th Sess., Views of the Committee Against Torture concerning Communication No. 41/1996, Annex, U.N. Doc. CAT/C/16/D/41/1996, p. 7.

¹¹³ Office of the UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1992), pp. 47-48.

seeker, or both—that the asylum seeker would not face renewed persecution upon return. Too often such decisions reflect naivete or wishful thinking about the actual conditions in the country of origin.

For example, in the Muzonzo case discussed above, the Swedish authorities found that conditions in Zaire had improved and that, in general, asylum seekers do not face political persecution upon return to Zaire. They concluded therefore that Mrs. Muzonzo could be returned without risking further persecution. By contrast, the Committee Against Torture noted that according to the UNHCR “deportees who are discovered to have sought asylum abroad undergo interrogation upon arrival at Kinshasa airport, following which those who are believed to have a political profile are at risk of detention and consequently ill-treatment.”¹¹⁴ The committee also noted that members of the opposition party UDPS such as Mrs. Muzonzo “continue to be targeted for political persecution in Zaire.”¹¹⁵ The committee concluded therefore that “substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Zaire.”¹¹⁶

Sweden’s asylum jurisprudence regarding the situation in Peru is similarly troubling. Sweden has denied a number of credible asylum applications submitted in the past few years by Peruvians. In many of these cases, the Swedish authorities have recognized that the applicant was once the victim of persecution in Peru. Nonetheless, citing recent reforms in Peru, the applicants’ acquittal by a Peruvian court, or their ability to obtain travel documents, the Swedish authorities have concluded that they would not face continued persecution if returned. But, as Human Rights Watch/Helsinki and other human rights organizations have documented, recent reforms in Peru have been minor; an acquittal does not protect Peruvians from harassment, arrest, and retrial; and Peruvian travel documents may be easily obtained by bribing the relevant officials.¹¹⁷ Peru’s congress has voted to extend the regime of “faceless courts” until October 1996, meaning that these courts are continuing to prosecute civilians. Several cases in which the Swedish authorities have ignored these conditions and placed Peruvian asylum seekers at serious risk of refoulement are detailed below.

Napoleon Aponte Inga

¹¹⁴ Committee Against Torture, 16th Sess., Views of the Committee against Torture concerning Communication No. 41/1996, U.N. Doc. CAT/C/16/D/41/1996, p. 7.

¹¹⁵ Ibid.

¹¹⁶ Ibid., p. 8.

¹¹⁷ See generally, Human Rights Watch/Americas, “Peru: Presumption of Guilt: Human Rights Violations and the Faceless Courts in Peru,” *A Human Rights Watch Short Report*, vol. 8, no. 5(B), August 1996; Human Rights Watch/Americas, “The Two Faces of Justice in Peru,” *A Human Rights Watch Short Report*, vol. 7, no. 9, July 1995; Office of the UNHCR, “UNHCR Comments on Applications for Refugee Status of Peruvian Asylum-seekers in Sweden,” March 18, 1994.

Aponte, a native of Huanuco, left Peru to begin his studies in the Soviet Union in 1984, where he remained until 1994. During this time, several of his family members took part in public political activities in Peru. A brother, Ricardo, took part in protests against police abuses. His activities resulted in his arrest and severe torture, followed by the arrest and torture of two younger brothers, Horacio and Raul. Aponte's sister, Rosa, was accused of belonging to the Communist Party of Peru-Shining Path and was killed while incarcerated in 1992. His other siblings, including Ricardo, Horacio and Raul, as well as his parents, fled Peru for Sweden, where they sought asylum and received permission to stay, some as de facto refugees and others on family reunification grounds. While in Europe, Aponte was accused by the Peruvian government of being a member of a Shining Path support network, a charge Aponte denies. For this crime, Aponte was tried in absentia by one of Peru's "faceless courts," along with sixty-seven other people. Meanwhile, in 1994 Aponte travelled to Sweden to join his family and was subsequently arrested there for being an illegal resident. At that time he applied for asylum, arguing that he would face persecution if returned to Peru. His asylum application was denied, and he was forcibly returned to Peru in September 1994. Upon arrival at the airport in Lima, he was arrested and charged with having been sympathetic to terrorist activities. He was imprisoned for four months, during which he withstood beatings, torture, shortages of food and medical care, and substandard living conditions. He was eventually tried by a "faceless court" and finally acquitted and released on January 18, 1995. Nonetheless, he continued to suffer harassment in Lima. The police paid frequent visits to his home, and he had the impression of constantly being followed. Fearing renewed persecution, he left Peru in March 1995, returned to Sweden, and reapplied for asylum. In November 1995, the Immigration Board once again denied Aponte asylum, reasoning that because he had ultimately been acquitted, he had nothing more to fear in Peru. In support of this conclusion, the Immigration Board also noted that Aponte had been able to obtain travel documents in order to return to Sweden. In July 1996, the Appeals Board reversed the decision of the Immigration Board and granted Aponte permission to remain in Sweden, albeit with the status of a "de facto refugee," not a convention refugee.¹¹⁸

S.P.¹¹⁹

¹¹⁸ This account is based on a Human Rights Watch/Helsinki interview with Aponte in Stockholm, January 29, 1996; an account provided by his lawyer; and documentation previously on file with Human Rights Watch/Americas.

¹¹⁹ His initials have been changed to preserve his anonymity.

S.P. went to Sweden in October 1991 and immediately applied for asylum. He based his asylum claim on his fear that, if he returns to Peru, he risks wrongful arrest on terrorism-related charges and the torture that accompanies most such arrests in Peru. S.P. belongs to a group that once formed part of the United Left coalition. Far from being sympathetic to guerrilla groups, members of his group have been the targets of guerrillas. At the same time, the Peruvian government has used the anti-terrorism laws to target opponents on the left, including United Left members. In S.P.'s home state, dozens of United Left members, including S.P. and members of his family, have been threatened, harassed, wrongfully arrested and prosecuted, despite a complete lack of credible evidence against them. Notwithstanding these circumstances, the Swedish authorities have denied three consecutive applications for asylum filed by S.P. In initially denying him asylum, the authorities discredited his claims of harassment by the Peruvian security police, noting that the police had not given him any trouble going through passport control on his way to Sweden. Just before the Appeals Board affirmed that decision, S.P. had forwarded to the board new information about the arrest of two family-members, but the board's decision made no mention of these arrests. Assuming that the board had reached its decision before receiving this new information, S.P. made the arrests the basis for a new application. The board denied the application, however, indicating that it had already considered the arrests. His third application was denied, in part, because the Appeals Board believes that Peru's "faceless courts" no longer prosecute civilians. As previously noted, this decision reflects a serious error regarding the current state of justice in Peru.¹²⁰

Monica Castillo Paez

Castillo went to Sweden in December 1990. Her brother, Ernesto Rafael Castillo Paez had "disappeared" in October of that year and is presumed dead. One of her cousins was killed in 1989. Security forces are suspected in both cases. Her parents, still living in Peru, have received numerous threats from people thought to be connected to the security forces. In the months following her brother's disappearance, the police went to Castillo's home on several occasions. Fearing the same fate as her brother, Castillo fled to Sweden and sought asylum. The Swedish authorities denied her application, finding insufficient grounds for asylum. In August 1993, she was deported from Sweden. While changing planes in Amsterdam, she applied for asylum there. The Dutch government subsequently recognized her as a refugee under the Refugee Convention.¹²¹

The Swedish authorities' decisions in the cases discussed here suggest a result-oriented approach with a primary aim of limiting immigration. This approach involves a high risk of refoulement and places Sweden in danger of breaching its commitments under international law.

PROPOSED REFORM

In late 1994, the Swedish government appointed two commissions to consider Swedish immigration policy and propose reforms. One commission, the Refugee Policy Commission, was directed to "urgently revise Swedish immigration and refugee policies;" the other, the Immigrant Policy Commission was assigned responsibility for "reassess[ing] policies with respect to the long-term integration of immigrants and refugees in Sweden."¹²² The Refugee Policy Commission's terms of reference suggested six reasons for reform:

¹²⁰ This account is based on Human Rights Watch/Helsinki interview with S.P. on January 28, 1996, and on documentation previously on file with Human Rights Watch/Americas.

¹²¹ This account is based on information supplied by Castillo's lawyer and on documentation prepared by Amnesty International (AI Index: EUR 42/WU 01/93).

¹²² Refugee Policy Commission, "Swedish Refugee Policy in a Global Perspective: Summary of a Report to the Swedish Government by the Parliamentary Refugee Policy Commission," June 1995, (hereinafter "Summary Report"), p.1.

- There has been a change in migration pressures. Annual immigration into Western European countries has increased, and the number of persons applying for residence permits in Sweden has expanded dramatically.
- Changing migration pressures provide a clear demonstration of the need to ascertain ways in which the underlying causes of refugee and migratory movements can be tackled in the countries of origin.
- Immigration into Sweden is determined to a growing extent by circumstances in other countries.
- The immigration and refugee policy which has been applied has involved strains on the national budget which must be evaluated in conjunction with other important demands on our joint resources.
- The internationally accepted view is that the most desirable solution is return to country of origin after a period of forced exile. In Sweden, responsibility for developing and implementing a clear policy for return to country of origin is split between various authorities, and there is a need to establish a cohesive policy.
- The need for a clearer policy has become increasingly obvious. The fact that people have been allowed to stay in Sweden without strong grounds for asylum may have attracted new immigrants. In the long run, there could be a risk that this will diminish public sympathy for immigration policy and will weaken the position of those who have, in fact, strong reasons for seeking protection.¹²³

In light of these observations, the Refugee Policy Commission was directed to:

- Consider how Sweden, in cooperation with other countries, is to be able to actively participate in eliminating or alleviating the underlying causes of refugee movements and forced migration,
- Submit proposals for ways of improving the coordination of immigration and refugee policy measures with development cooperation policy and foreign policy,
- Review the regulatory systems for the granting of residence permits in Sweden and submit proposals, on the one hand, as regards who is to be entitled to protection in Sweden and for how long a period and, on the other hand, how other grounds for Swedish residence are to be drawn up,
- Submit proposals regarding possible ways of regulating the immigration of people who are not, in principle, entitled to a residence permit by introducing planning frameworks determined, for example, on the basis of the economic situation,
- Propose ways in which the examination of applications for residence permits can be speeded up and rationalized,
- Review the extent to which the application of Swedish law by public authorities takes into account commitments made by Sweden in the U.N. Convention on the Rights of the Child and in connection with this convention,
- Make proposals for the formulation of a comprehensive policy for return to country of origin,
- Consider the extent to which proposals for the formulation of immigration and refugee policy should result in organizational changes and a re-allocation of responsibility between different authorities and, where necessary, propose such changes, and

¹²³ Ibid., p.2.

- Submit proposals for the statutory changes called for in light of the Commission's work.¹²⁴

¹²⁴ *Ibid.*, pp. 2-3.

The commission's report was submitted to the government on June 30, 1995. The government was due to table a parliamentary bill based on the report in March 1996. Introduction of the government's bill has been postponed until this fall, however, allowing time for a special commission to consider the relationship between Swedish law and the U.N. Convention on the Rights of the Child. This new commission was appointed last winter in response to a public outcry over the deportation to Turkey of two Kurdish families with several young children who had been resident in Sweden since 1991.¹²⁵ This commission published its report in June, clearing the way for the government to proceed with its reform legislation this fall. In anticipation of the upcoming parliamentary debate, Human Rights Watch/Helsinki has the following observations regarding the Refugee Policy Commission's report.

Access to Asylum Procedures

According to a summary of its report, the Commission puts considerable emphasis on measures to find protection for refugees in their countries of origin or as close to their home countries as possible. In this connection, Human Rights Watch/Helsinki agrees that "[i]t is important to create conditions regarding security, respect for human rights, physical survival and health care in first countries of asylum which will counter the tendency for refugees to move on to another country."¹²⁶ On the other hand, we emphasize that the goal of reducing dislocation does not justify increasingly stringent restrictions on entry to Sweden. Regarding visa requirements, the Refugee Policy Commission concluded that "visa policy will be drawn up jointly by European Union member states."¹²⁷ Human Rights Watch/Helsinki calls on Sweden to press for European Union visa policies that preserve—in actuality as well as in principle—the right to seek asylum for refugees and others in need of protection. Human Rights Watch/Helsinki welcomes the commission's conclusion that Sweden should not impose fines on carriers who bring undocumented asylum seekers to Sweden; and we urge the parliament to abide by this recommendation in the legislation adopted.

Criteria for Asylum

The commission proposes a major reform of the grounds for asylum in Sweden. On the one hand, it calls for an expanded definition of convention refugees to include those persecuted by non-state agents. It also recommends that protection be accorded "those who risk suffering inhuman or degrading treatment or punishment, who are escaping from armed conflict or an environmental disaster or who risk severe punishment or very serious persecution on the grounds of their sex or of homosexuality."¹²⁸ On the other hand, the commission would eliminate the currently protected categories of "de facto refugees" and war resisters, and it would limit residence permits on humanitarian grounds to those suffering from "a particularly serious disease, serious disablement or other distressing circumstances of an unusual nature."¹²⁹ On balance, these changes would result in fewer people obtaining protection in Sweden. The commission estimated that whereas out of 15,000 applicants, 6,000 would obtain residence permits under the current law, only 3,000 would be allowed to stay in Sweden under the proposed regime. Similarly, the number of asylum applications categorized as "manifestly unfounded" would increase from 20 percent to 30 percent of all applications.¹³⁰

Human Rights Watch/Helsinki welcomes Sweden's effort to clarify the grounds for protection, especially the proposal to expand the definition of persecution to include abuse by non-state agents. The commission's proposal predated the restrictive European Union joint position on the refugee definition, however. As previously noted, Sweden expressed a declaration to the joint position, noting that persecution may occur, not only where encouraged or permitted by the authorities, but also where the authorities are unable to provide protection. Swedish officials interviewed by Human Rights Watch/Helsinki insisted that they would abide by that declaration and back legislation to

¹²⁵ "Furious reactions," *News & Views*, January 24, 1996; "Sincari case aftermath: Rethink on child expulsions," *News & Views*, January 31, 1996; "Refugee law postponed," *News & Views*, May 2, 1996.

¹²⁶ Summary Report, p.8.

¹²⁷ *Ibid.*, p.11.

¹²⁸ *Ibid.*, p.10.

¹²⁹ *Ibid.*, pp.10-11.

¹³⁰ Refugee Policy Commission, *Swedish Refugee Policy in Global Perspective*, SOU 1995:75 (1995), pp. 254-55.

expand the refugee definition to include those persecuted by non-state agents, regardless of government complicity. Human Rights Watch/Helsinki applauds these commitments and calls on Sweden to stand by them. Sweden must not use the European Union joint position as an excuse for continuing to apply a narrow interpretation of the Refugee Convention, particularly in light of the proposal to eliminate its generous approach to “de facto refugees” and those obtaining residence permits on humanitarian grounds.

While supporting plans to expand Sweden’s interpretation of the Refugee Convention as it relates to agents of persecution, we are concerned about the proposal to carve out a special category of protection for those “who risk severe punishment or very serious persecution on the grounds of their sex or of homosexuality.” It is the view of Human Rights Watch, and a growing number of states, that persecution on the basis of gender or sexual orientation constitutes persecution for reasons of “membership of a particular social group,” warranting full protection under the Refugee Convention.¹³¹ Rather than providing for some secondary, non-convention status, the Aliens Act should be amended to explicitly accord these victims of persecution full protection as convention refugees.

Asylum Procedures

The commission has recommended two important improvements in asylum procedures. First, it proposes:

Oral processing should be employed to a greater extent. Investigations should be recorded on tape in order to eliminate doubt as to what ground has been covered. Where necessary, applicants for asylum should be questioned by an official of the same sex.¹³²

Second, the commission advises that “[t]here should be greater possibilities of obtaining legal aid in connection with rejection of applications for asylum at the border.” These recommendations address a number of Human Rights Watch/Helsinki concerns, namely, delays in providing (and in some cases denial of) legal assistance; credibility determinations based on minor amendments to applications, made without the benefit of oral hearings; and methods of fact-finding and analysis that are generally insensitive to the difficulty that many refugees may have in telling a complete and coherent story of their persecution. Accordingly, we underscore the need for these important reforms and call on the parliament to provide for them explicitly in the new legislation.

¹³¹ See “Immigration and Naturalization Service Gender Guidelines Considerations for Asylum Officers Adjudicating Asylum Claims from Women,” Memorandum of 26 May 1995 from Phyllis Coven, Office of International Affairs, to all INS Asylum Officers and Headquarters Coordinators, reprinted in *Int’l J. of Refugee L.*, vol. 7, (1995), p. 700; “Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution,” Immigration and Refugee Board, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution, 9 March 1993, reprinted in *Int’l J. of Refugee Law*, vol. 5, (1993), p.278; Executive Committee of the UNHCR’s Programme, Conclusion No. 39 (XXXVI) (1985) (“States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a ‘particular social group’ within the meaning of Article 1(A)(2) of the 1951 United Nations Refugee Convention”). By contrast, earlier this year, in a case involving an asylum seeker from Cameroon who feared circumcision if she were returned to her country, the Swedish Appeals Board noted that such acts do not generally warrant protection under the Refugee Convention because women do not constitute a social group and therefore female victims of circumcision cannot be said to be targeted by virtue of their membership in a particular social group. *Migration News Sheet*, March 1996; Human Rights Watch/Helsinki telephone interview with Sten De Geer, lawyer, August 28, 1996.

¹³² Summary Report, p.12.

Return Orientation for Reception Policies

In a potentially troubling development, the commission has made the following recommendation:

To return to one's own country is a human right. As a result, the promotion of voluntary return should be an important element in refugee policy. In principle, the reception of refugees should be characterized by this approach from the very beginning.¹³³

Human Rights Watch/Helsinki recognizes that the opportunity to return to one's country of origin should figure in any refugee policy. Nonetheless, we are concerned that orienting reception policies toward return may undermine Sweden's efforts to integrate refugees into its society. A number of Swedish policies—most notably the opportunity for asylum seekers to find their own accommodation—have a very positive effect on integration. At the same time, however, Sweden has witnessed a rise in xenophobia and racist violence. To combat these alarming trends, Swedish authorities must redouble their efforts to integrate refugees and other immigrants. Policies aimed at facilitating refugee repatriation should be designed in such a way that they do not compromise the competing priorities of adequate protection and successful integration for refugees.

CONCLUSION

Sweden has a long tradition of humanitarian generosity. In recent years, under pressure of unprecedentedly large flows of asylum seekers and other migrants, that tradition has begun to erode. While Sweden is entitled to control its immigration, it must do so in ways that do not impinge upon the rights of asylum seekers and refugees under international law. As detailed in this report, Human Rights Watch/Helsinki believes that a number of restrictive aspects of Sweden's asylum policy and practice contravene its commitments to uphold international human rights. The upcoming debate surrounding reform of Sweden's asylum law offers an important opportunity to redress these wrongs. To do so, Sweden must put an end to its impermissible detention practices and adjust its procedural and substantive asylum law to comport with governing international standards. Human Rights Watch/Helsinki calls on the Swedish government, parliament, and immigration authorities to take the specific steps it recommends to address the problems identified in this report.

¹³³ *Ibid.*, p.13.

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Human Rights Watch/Helsinki

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