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RETURN

The Swedish Approach

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a r b e t s r a p p o r t e r

W o r k i n g P a p e r s

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Foreword

This report has been commissioned by Swedish Statistics (SCB) on behalf of the European Migration Network (EMN). SCB is the Swedish contact point in the network. EMN was established in 2002 by the European Commission for the purpose of improving the collection and comparison of information on migration policies within the Member States of the European Union. This report is the third research study report commissioned by the EMN through its national contact points.

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Abbreviations

ERF	European Refugee Fund
IGC	Inter-Governmental Consultations on Asylum, Migration and Refugee Policies
IOM	International Organization for Migration
MARRI	Migration Asylum Refugees Return Initiative
MIV	Swedish Migration Board
MFA	Ministry of Foreign Affairs
NSHF	Nordic High Level Advisory Group on Refugee Matters
RPS	National Police Board
SCB	Statistics Sweden
SIS	Schengen Information System
SKR	Swedish kronor
SÄPO	Swedish Security Service
UNHRC	UN Human Rights Commissioner

Executive Summary

This study deals with the concept of return in Swedish migration policies. The aim is to contribute to the understanding of and information on return, and to place the Swedish experience within a wider European context. By doing so, both differences as well as similarities in state approaches towards return policies will be identified. This, in turn, will foster a better researched policymaking process in the European Union in this particular area. The methodology used in this study is explorative. It explains Swedish policies and laws pertaining to return. Where beneficial for the analysis references are made to EU and EC law, as well as to international law. In addition, the perspective of non-state actors active in Sweden is included in the report.

Swedish migration policy distinguishes between two forms of return. The first, called return migration, is a type of repatriation (*återvandring*). This type of return is only referable to persons legally residing in Sweden, who choose to return to their countries of origin or to a third country voluntarily. This implies that the authorities are not allowed to influence the migrants' decisions. However, the Swedish Migration Board (MIV) can be of assistance to the migrants if they decide to return. The other form of return pertains to persons who are issued with either rejection or expulsion decisions (*återvändande*). If a person, who was not granted a residence permit or if a permit was revoked, leaves voluntarily the decision is enforced independently by the concerned person. This is termed a voluntarily and independently executed return (*självmant återvändande*). Involuntary or forced return pertains to persons who have been issued either rejection or expulsion decisions, but who avoid the enforcement of such a decision. This group is not offered any assistance by the authorities. If returned, the removal order is carried out by a law enforcement agency. This implies less dignified conditions than in cases where the removal order is carried out by the MIV.

In Sweden, state-endorsed return programs vary depending on whether they are pertaining to return migration/repatriation or return as a result of rejection or expulsion. In the first case, they are systematic and carried out by the MIV in cooperation with NGOs. They offer counseling and information, but also certain financial assistance covering travel expenses and the initial settling-in period in the receiving country.

The Swedish MIV adopts a two track system when it comes to return as a result of a rejection or expulsion decision. This means that the applicant should be prepared both for being allowed to stay in Sweden and for being rejected. Hence, the process of return constitutes an integrated part of the asylum process, where integration is the keyword. The MIV is to inform and prepare the alien for two different scenarios. The first scenario is that the application is granted, and the MIV shall therefore help the alien to integrate into Swedish society. But also in case of the second scenario, i.e. a rejection of the alien's application, integration is important. The MIV staff handling the application is in charge of preparing the applicant for both eventualities. This approach has been criticized for putting too much pressure on the MIV staff and for its potentially negative physiological effect on the applicants. In order for the two track system to fulfill the goals set by the Swedish state the awaiting period has to be significantly shortened. A decision should be rendered within six months but that time period is hardly ever met. One explanation to the long waiting period is the fact that the merits of a case and potential obstacles to executing the decision are tried in one and the same process. Yet another explanation can be the sometimes difficult process of establishing an applicant's identity. In addition, as a main rule rejected applicants are not deported pending an appeal process.

Concerning asylum-seekers and others applying for a residence permit in Sweden the main rule is that should such an application be rejected the applicant herself or himself will have to cover the cost for the return trip. However, the Swedish MIV provides information and counseling to all migrants applying for residence permits. This is done in form of talks with the applicant concerning possible return, the situation in the country of origin and the applicant's perceived situation, how a potential journey back home should be carried out, etc. In addition, the MIV in cooperation with NGOs and private entrepreneurs provide activities during the waiting period. Initially, its main focus is on learning the Swedish language and self-administration. Over time it might shift to become more focused on preparing the concerned person for employment. Should an application be rejected, the rejectee is obliged to continue with these activities. However, focus should be shifted to prepare that person for return, for example by teaching a certain profession or providing information about the situation in the home country.

Traditionally, NGOs have been more active concerning voluntary return migration/repatriation and they have been hesitant to become involved in return assistance programs for rejected persons. This is however slowly changing and for example the Swedish Red Cross is providing counseling and information for applicants awaiting a decision and for rejected individuals.

In conclusion, the Swedish approach to return rests on the foundation that return should be voluntary. It is only considered truly voluntary if the concerned party actually can choose to stay in Sweden should he or she prefer that, hence only voluntary return migration/repatriation fulfills this criteria. As have been mentioned above the Swedish state does have and have had special state-sponsored return programs for refugees holding permanent and temporary residence permits. Besides the financial grants, these programs are carried out primarily by NGOs. They are chiefly aimed at providing information, counseling, reconnaissance trips, and teaching of professional skills. In cases of a rejection decision the Swedish state in cooperation with NGOs and private entrepreneurs provides return assistance in terms of counseling, information and training. The main groups of asylum-seekers in Sweden originate from Serbia and Montenegro, Iraq, and Russia. They also constitute the main groups of rejected asylum applications. The number of persons who have been issued rejection or expulsion decisions, but whose removal orders have not been executed, is on the increase in Sweden, either due to obstacles to execution of the decision that are beyond the influence of the applicant or because the rejected applicant goes into hiding. In addition, there are problems with identification and travel documents. Many migrants either intentionally refuse(s) to produce documents or are, for various reasons, unable to do so. This, in turn, results in lengthy asylum processes. The longer a person remains in Sweden the stronger the presumption for that person to be entitled to stay. In Sweden this view eventually led to the adoption of a temporary law between November 15 2005 and March 31 2006 that allowed persons who had been residing in Sweden for longer periods to have their cases retried. This law only applied to persons who registered with the MIV. As a result, persons who had gone into hiding stepped forward and registered their cases with the MIV.

In conclusion, and recognizing the effects of the ongoing reforms of the asylum procedure in Sweden, it is the experience of the authors of this report that further evaluations and more systematic follow ups concerning various return programs would greatly benefit the Swedish return policy and the assistance programs provided by the MIV, NGOs and private entrepreneurs. It is noteworthy that only a handful of evaluations have been made, none of them providing a holistic approach to return and only few made by external researchers. In most cases focus have *has* been on specific projects and therefore the activities taken by the actors just mentioned are not systematically evaluated in the light of the goals set up by the Government.

Finally, a note on the collection of statistical information: it is the MIV that has the overall responsibility for collecting statistics in asylum cases, while Sweden Statistics (SCB) is in charge of the overall migration statistics. However, information is also to be found at the National Police Board (RPS), which sometimes makes the information fragmented.

1. Introduction

The aim of this study is to compile information on the issue of return in Sweden; meaning both return migration as well as return. The concept of return is as sensitive as it is important to EU Member States and European institutions alike. Hence, there is a need to broaden the knowledge pertaining to this particular issue. This study will, together with similar studies from other Member States, create a better understanding of the return concept, as well as facilitate the exchange of information; hence providing for a better informed policy making process. The main objectives of this study are the following. Firstly, to present information concerning state approaches towards return and return migration in Sweden, such as data pertaining to different return measures and programs. Secondly, to provide policy and decision makers with the latest and detailed knowledge in this particular field, especially in view of the forthcoming European Directive on common standards in Member States for returning illegally residing third country nationals (COM(2005)391), and, thirdly, to point to areas where further research is necessary.

Data and knowledge on migration, especially return, is still rather scarce in Sweden. So called return migration, which is also referred to as repatriation, is more systematically registered than return. Hence, there is reliable data concerning the former. Unfortunately the same cannot be said about return. This is regrettable for various reasons. Firstly, it is imperative to learn how to encourage more returns. This is especially true when the growing numbers of undocumented migrants and un-enforced removal orders are considered. Secondly, research pertaining to return might result in better return programs being devised, which in turn might encourage more returns. This would also benefit the state, since the costs pertaining to forced return are substantial, and far greater than the expenses associated with return programs. Therefore, studies aiming to describe and analyze return from both a state and migrant perspective will be needed in the future. We need a deeper understanding of what factors are decisive for engaging in independent return. There is also a need for more accurate and efficient evaluation and assessment tools of available return programs. In addition, data need to be more systematically gathered and analyzed.

In Sweden, there are two official stances concerning the issue of return. Firstly, there is the so called *return migration*, also referred to as repatriation. This form of migration is per se voluntary. According to the MIV as well as the Ministry of Foreign Affairs (MFA) this form of return is only open to non-Swedish citizens that hold a residence permit. There are different state-endorsed programs that offer assistance to this particular group of migrants. Secondly, there is the so called *return*. There could be various reasons as to why one needs to return. An asylum claim or an application for a residence permit may be turned down, or a temporary residence permit might expire. The decision to return is in these cases made by the authorities, nevertheless a person can leave voluntarily, which is a desired condition. In certain instances, however, the authorities use some degree of force when executing a removal decision. These two forms of return will be thoroughly discussed in the following.

2. Methodology, Definitions and Return Categories

2.1 Methodology, Sources and Earlier Research

2.1.1 Methodology

Migration, especially return, forms a sensitive issue with certain political implications. Therefore, this report sets out to illustrate views of not just one, but several important actors. Consequently, the authors have regarded and depicted views of relevant authorities and NGOs, as well as national and international scholars, the media, and the general public debate. The employed method can best be described as explorative with certain comparative traits. Primarily, national laws and policies are discussed, but references are made to international law where beneficial for a comprehensive analysis.

State institutions consulted for the benefit of this study include the Swedish Migration Board (MIV), the National Police Board (RPS), Statistics Sweden (SCB), and the Ministry of Foreign Affairs (MFA). In addition, information originating from various NGOs has been included. The study has also consulted international sources, such as writings originating from the International Organization for Migration (IOM). This has

placed the issue of migration in an international context, thus shedding light on the Swedish policies on migration, which are greatly influenced by international law.

2.1.2 Sources

During the course of this study several government writings, statistics from relevant authorities, NGO reports, and media coverage, concerning the issue of return have been compiled and analyzed. Changes in Swedish laws up till October 2006 have been considered and statistical information from the beginning of 2006 included.

The statistical data originates mainly from the MIV, RPS and SCB. SCB and MIV offer access to compiled information on the overall yearly migration, meaning the total immigration to and emigration from Sweden per year (asylum-seekers not included). On the home page of the MIV one can also find information concerning programs on voluntary return migration, including information about available grants and application procedures. Moreover, the study includes statistics from SCB concerning asylum applicants as well as other migrants. Statistics from the SCB have been used in order to describe certain demographic characteristics of the returnees, as well as their age and nationality. The authors have had access to a handbook for employees of the MIV on how to deal with return migration and return.

During the course of this study the authors noted that it was far easier to obtain information about so called return migration/repatriation than about return. In addition, it is easier to keep track of return migration/repatriation, since this form of migration pertains to persons holding residence permits. When a person falling under this category chooses to return to his/her country of origin, or to migrate to a third country, this is properly documented by the SCB. Return, on the other hand, is not always adequately documented. Migrants sometimes decide to leave on their own without notifying the authorities. It has also been difficult to find reliable statistics on the enforcement operations carried out by the authorities. This circumstance has, moreover, been underlined in previous research, where it has been noted that statistics concerning this issue are sometimes inaccurate.¹

¹ ”Verkställighet vid oklar identitet”, SOU 2003:25, p. 31.

2.1.3 Earlier Research

Research on migration in Sweden is still scarce and there are gaps in academic research, policy analyses, and government intelligence on the size and character of return. For instance, to the knowledge of the authors of this report only a few evaluations have been made of Swedish return migration- and return programs. In addition, the MIV does not have any systematic follow up of the standard return migration program.

However, there are some exceptions.² In his report *While We are Waiting: Uncertainty and Empowerment among Asylum-Seekers in Sweden* Jan-Paul Brekke explores how asylum seekers experience the waiting period for a decision and what the consequences of this experience is *are* for integration or return after a decision has been taken.³ Brekke shows how sensitive the question of a rejection decision and a subsequent return is to most of the asylum-seekers. A majority of the individuals interviewed by Brekke sheds away from the question, which points to the difficulties with upholding the official Swedish line to include return assistance in the asylum decision making process.⁴ Brekke draws the conclusion that the two track system that characterizes the Swedish approach to asylum, integration, and return, i.e. that the waiting period should be used in manner so as to prepare the asylum-seeker for both a continued stay in Sweden and a potential return, leaves the asylum-seeker in an existential vacuum that does not benefit the asylum-seeker in any of the potential outcomes. This is especially the case when children and teenagers are involved since the handling period is so long in Sweden. Several of the asylum seekers themselves point to the inhumanness of having to wait for a long time.⁵ By the time the final decision is rendered children often have adapted well to the Swedish society at the same time as they potentially have forgotten their mother tongue, which creates a difficult situation for their parents - what are they to prioritize

² See for example, Erik Olsson, *Händelse eller process?*, Norrköping, nr 1/01, 2001. In addition, Gregor Noll has published extensively on migration and refugee law. See for example, "Flyktingstatus - en marginaliserad resurs i svensk asylrätt?" [Refugee status - a marginalised resource in Swedish asylum law?], co-authored with Aleksandra Popovic, 17 *Juridisk Tidskrift* (2006) 834-865, and "Asylsystemet, migrantnätverk och den informella arbetsmarknaden" ["The Asylum System, Migrant Networks and the Informal Labour Market"], in S. Gustafsson, L. Oxelheim och N. Wahl, *Europaperspektiv 2006. Årsbok för Europaforskning*, Santérus Förlag, Stockholm 2006, pp. 125-142.

³ Jan-Paul Brekke, *While We are Waiting: Uncertainty and Empowerment among Asylum-Seekers in Sweden*, Oslo, Institute for Social Research, Report 2004:10.

⁴ *Ibid.*, p. 30.

⁵ *Ibid.*, p. 40

and what are they to tell their children?⁶ It all boils down to the applicants having to adopt strategies to handle the situation. Some decide to live as if they will be allowed to stay and other as if they would be rejected.⁷ Both decisions will have consequences, both for the Swedish society and the asylum seekers. One conclusion to be drawn from the interviews in Brekke's study is that increased integration provides less incentives for return should the asylum application be rejected.⁸

In addition, the Swedish government has previously assigned Professor Robert E. B. Lucas of Boston University to conduct a study on migration and development. The study called *International Migration and Economic Development: Lessons from Low Income Countries* shows that there is an important connection between migration and development, namely the circumstance that an intent to, sooner or later, return to the country of origin can have positive effects on the development of the home country. According to Lucas, such intent strengthens the will to send remittances, as well as to maintain good contacts with, and an interest in, the home country. According to Professor Lucas' study, positive effects are to be expected if transaction-costs for sending remittances are lowered. Together with politics that encourage investments, the fruits of migration can be collected. The study also shows the disadvantageous position of the illegally residing migrants, as compared to those who are legal residents, when the possibilities of the first to contribute to a positive development of their home countries are concerned. The study also examines the motives behind migration, such as lacking employment opportunities. All of the above is said to constitute areas where Sweden is already involved and trying to promote positive developments in countries of origin.⁹

2.2 Clarification of Concepts and Definitions

This Section sets out to clarify concepts and definitions of relevance for this study. Taking its starting point in relevant definitions provided by the IOM, it explains various forms of return according to Swedish law. It is followed by a discussion to which degree

⁶ *Ibid.*, p. 37

⁷ *Ibid.*, p. 41.

⁸ *Ibid.*, p. 54.

⁹ *Migration och asylpolitik*, regeringens skrivelse 2005/06:18, p. 14.

various forms of return may be considered voluntary. Other concepts and definitions that are defined in this Section include return assistance, removal decisions, detention, non-admission, escort, transit zone, and accompanied return.

According to the dictionary of migration law prepared by the IOM, return refers to the act or process of going back, in broader terms. There are sub-categories which describe how the return process is carried out, and who is participating in the process. For example, repatriation is considered a sub-category, and it refers to the personal right of a refugee or a prisoner of war to return to his/her country of origin. Other sub-categories are voluntary, assisted, forced, and spontaneous return.¹⁰

In Sweden, a distinction is made between *repatriation*, which could also be described as *voluntary return migration* as defined by the IOM (*återvändring*) on the one hand, and *return* (*återvändande*) on the other. The term *repatriation/voluntary return migration* applies only to non-Swedish citizens holding residence permits, who make voluntary and autonomous decisions to return to their countries of origin or to a third country. Such decisions are considered voluntary in the sense that they are not the result of administrative or court decisions. While the term *return* applies to people who return to their country of origin because they did not initially or do not any longer, satisfy the requirements for residence permit in Sweden. In these cases the return is considered independently enforced if the migrant voluntarily complies with the return decision of the authorities (*självant återvändande*). Thus, in this context, the word voluntary is given a stricter interpretation than in the case of repatriation or voluntary return migration. This is due to the fact that the concerned party might not wish to return, but is offered no other alternatives. Hence, in these cases the return decision is not based on the free will of the returnee. If the migrant does not comply with a rejection or expulsion decision, the authorities are entitled to use coercive measures in order to carry out the removal order.

Thus, even though there are different degrees of voluntariness when it comes to return, only repatriation/return migration is considered as voluntary return in the sense that it is the result of an autonomous decision of an individual who is a legal resident in Sweden but who chooses to go back to his or her country of origin or to a third country. It

¹⁰ *International Migration Law: Glossary on Migration*, IOM, 2004. Available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/Glossary.pdf. Downloaded 2006-07-10.

is assumed that such a decision is taken without any pressure from the authorities and on the basis of correct and relevant information. The second degree pertains to the compliance of the migrant with a return decision issued by the authorities. There is a possibility of complying with the decision, which renders the execution of the return independent and voluntary, or to oppose it, which makes it *per se* involuntary, and more or less (depending on the circumstances) forced.¹¹

Thus far, the terminology referred to is the official Swedish terminology. Nevertheless, a more accurate terminology, in congruence with the common understanding of the procedure and the definition provided by the IOM, would be to describe all forms of return that are the result of administrative decisions as *forced return*, since they are against the wish of the applicant. However, forced return can be *executed* in various ways; either voluntarily or non-voluntarily, and with or without assistance.

Should there be a risk that the migrant abscond or go into hiding, the rejection or expulsion decision can be carried out immediately. In addition, if the MIV suspects that the migrant will try to avoid the enforcement of the decision it can delegate the execution of the removal order to a law enforcement authority. If the alien is kept in *preventive custody*, usually detention, due to risk of absconding, the police normally also carries out the removal order, which is regarded as forced return.¹²

In cases when the Police are responsible for enforcing the removal order, and where the identity of the migrant can be determined and adequate travel documents exist, rejection and expulsion decisions are normally carried out by the Swedish Prison and Probation Service's Transport Service, as assigned by the Police. If there are no adequate travel documents the migrant can be *escorted* to the country of destination. The *escort* accompanies the migrant in order to investigate whether there is a possibility for the country of destination to receive the migrant.¹³ In cases where national security is said to be at stake the enforcement of the rejection and expulsion decisions is carried out by the Swedish Security Service (SÄPO).¹⁴

¹¹ "Migration", Swedish Ministry of Foreign Affairs, 2002. Compare "Ordlista", MIV, www.migrationsverket.se.

¹² *Utlänningshandboken*, Kap 39.6 Transiteringsrutiner, MIV, 2002, p. 1-3.

¹³ SOU 2003:25, p. 86

¹⁴ SOU 2003:25, p. 23.

There is also a possibility to assist an unescorted migrant. In the cases of *assisted return* carried out by the MIV the migrant is assisted by a representative from MIV to the nearest point of transit. To date, there are two representatives at two Swedish airports, Arlanda and Sturup, which can assist the migrant. There are also agreements with immigration authorities in other countries concerning transit. There is, for instance, an agreement with the immigration authorities at the Heathrow airport in London concerning the transit of rejected or expelled returnees.¹⁵ A Swedish escort assists with the transit to London from where the migrant continues his/her journey to the country of destination. If the migrant succeeds in applying for asylum in London the Swedish authorities must, according to the agreement, take the migrant back.¹⁶

At a *transit zone*, however, migrants are normally not able to request asylum, due to the special rules that apply there. If a person's asylum application, for instance, has been denied in one Member State it is unlikely that s/he will receive asylum in another state. The purpose of transit zones is to avoid ungrounded applications, as well as applications from migrants whose asylum claims have already been dismissed or who have been found guilty of criminal offences punishable by at least one year's imprisonment. The procedure of screening migrants already at the transit zone¹⁷, normally at the border, is, thus, primarily aimed at migrants who do not fulfill the necessary criteria to enter Sweden, i.e. in cases of *non-admission*.

Return is regarded as voluntarily enforced if the migrant voluntarily reports to the authorities upon request of the latter, takes part in talks concerning return, consequently complies with the rejection or expulsion decision and leaves the country on his/her own. The latter should preferably be done of own accord, i.e. through *independent return* (*självmant återvändande*).

The Swedish state provides a wide range of *assistance* in order to facilitate all forms of return. For instance, in cases of voluntary return migration/repatriation the authorities can assist the migrant by paying for his/her trip home. They can also provide information on the situation in the home country. Under specific circumstances,

¹⁵ *Utlänningshandboken*, Kap 39.6 Transiteringsrutiner, MIV, 2002, p. 1-3.

¹⁶ *Ibid.*

¹⁷ For more information on the term see Article 16 of the Council Directive 2005/85/EC from 1 December 2005.

vocational training and assistance during the first period in the country of origin can be offered. In addition, migrants can be *accompanied* by a representative from a national agency or a member of an NGO during their trip to the home country. As will be further discussed below the assistance rendered by the state differs depending on the status of the returnee.

Return, as opposite to voluntary return migration or repatriation, is in general a result of a *removal order*. Removal orders, in turn, can assume two different forms – *rejection (avvisning)* or *expulsion (utvisning)* - depending on when and why a decision is issued. An applicant's request for a residence permit can be rejected, effectively denying him/her the right to stay in Sweden. Such a *rejection decision* is to be taken within three months from the date that the application for a residence permit was filed. *Expulsion* pertains to holders of residence permits, in cases where these permit have been withdrawn. As a result, the affected individuals are forced to leave the country. An expulsion decision can be rendered at any time, should the legal requirements be fulfilled, after the residence permit has been awarded.

If there are *obstacles to enforcement* of a rejection or expulsion decision the MIV should normally consider them at an early stage in the asylum process. If the obstacles are considered to be of a temporary nature, a rejection or expulsion is still possible under the condition that the enforcement will be carried out at a later stage.

If it is suspected that the applicant might try to avoid the execution of a removal decision, it is possible to place that person under temporary *supervision (uppsikt)* or in *detention (förvar)*. In addition, an asylum seeker can be placed in detention if his/her identity is not established when entering Sweden or at the time when an application for residence permit is filed. As a rule, children under 18 year of age are seldom taken into detention. The MIV is responsible for detained migrants, and is required to treat them with respect and to guarantee that their rights, such as their right to medical care, are respected.

An *asylum-seeker* is a person who upon entering Swedish territory declares himself/ herself in need of protection but whose application has not yet been decided. A person, who in his/her country of origin has a well-founded fear of persecution for reasons of race, nationality, membership of a particular social group, or on account of

religious or political beliefs, and is, due to this fear, unable or unwilling to return to that country is considered a *refugee*, if a permit to reside in Sweden has been obtained on that basis.

There are also other groups deemed *in need of protection (skyddsbehövande)*. This protection applies to persons, who upon return to their countries of origin risk capital or corporal punishment, torture or other inhumane treatment. Also persons whose countries are plagued by internal or external armed conflicts or environmental disasters are considered to be in need of protection. Finally, persons who have a well-founded fear of persecution due to their gender or sexual preference are found to be needing protection as well.

The main rule is that refugees and other individuals in need of protection should not, and cannot be, returned to their countries of origin if their safety and their rights cannot be guaranteed by the receiving country. This is called the principle of *non-refoulement*. However, there have been cases where people, who have been found at risk of persecution and torture, were returned to their country of origin after assurances on the part of the latter state that nothing would happen to them, i.e. as a result of *diplomatic assurances*.¹⁸

In Sweden there are various types of *residence permits*. There are the permits for refugees and persons otherwise in need of protection. If no grounds for affording a residence permit according to the main rule on asylum can be found the migrant can still receive a permit due to *particularly difficult circumstances (synnerligen ömmande omständigheter)*. This rule, however, is to be applied in a restrictive manner. The rule is also said to be difficult to define. It does not amount to one specific circumstance but often constitutes a combination of several, such as the circumstances that the migrant has adapted to Swedish conditions, has a serious illness, and has bad experiences from the home country.¹⁹

¹⁸ See for example the "Alternative Report to the Human Rights Committee", The Swedish NGO Foundation for Human Rights and The Swedish Helsinki Committee for Human Rights, 2002 and the decision of the UN Committee against Torture, as referred to below in section 3.2. See also, the views of the Human Rights Committee, CCPR/C/88/D/1416/2005.

¹⁹ "Ny instans- och processordning i utlännings- och medborgarskapsärenden", prop. 2004/05: 170, p. 185-188.

Residence permits may also be issued on the grounds of family ties and this is the most frequently appearing reason for providing a residence permit (22 578 cases in 2005), to be followed by work (5 243), studies (3 887), humanitarian grounds (3 724), and need of protection (3 137).²⁰ It is required that the migrant has close relatives residing in Sweden. The notion of close relatives includes: husband, wife and partner as well as adolescent and unmarried children of the migrant residing in Sweden if they are, or have at any point been, living with the latter and other relative of the same household as the migrant residing in Sweden.²¹ If the relative in question does not belong to the above mentioned category, there is still a chance for a residence permit. A permit can be obtained under the condition that a special relation of dependency between the relative and the migrant residing in Sweden, as well as a common household, had existed already in the country of origin.²² In special circumstances permits may be granted to migrants that have ties with Sweden, but who do not fulfill the above mentioned criteria.

There are both *permanent and temporary residence permits*. Permanent residence permits may also be awarded to aliens who have been offered permanent employment in Sweden and who have special qualifications, which are not provided by the national workforce and cannot be fulfilled by recruitment from other countries in the EES or Switzerland.²³ Temporary permits are often awarded for temporary visits, for work and studies. They are also issued when there are obstacles to return that are of a temporary nature. Moreover, they are awarded to migrants stating particularly difficult circumstances, in cases where the illness of the migrant or his/her need of medical care in Sweden is of a temporary nature.²⁴

2.3 Categorization of Returnees

2.3.1 Categories of Returnees

This Section starts with identifying two main categories and a number of sub-categories of returnees in Sweden. Sub-categories to the first main category are decided by the

²⁰ Migration 2005, SCB, p. 7.

²¹ *Ibid.*, p. 179.

²² *Ibid.*, p. 180.

²³ *Ibid.*, p. 212.

²⁴ *Ibid.*, p. 196.

reason for issuing a removal decision, since the forms of removal decisions will have an impact on the return assistance rendered by the Swedish state.

In Sweden, there are two main categories of returnees:

1. Those who are denied the right to stay in Sweden (*return*), and
2. those who have been awarded the right to stay in Sweden and subsequently choose to return to their country of origin or a third country (*repatriation/voluntary return migration*).

These main categories of returnees each have sub-categories. The first category, i.e. return, can be divided into, at least, six sub-categories of returnees, decided by the reasons for return. The amount of assistance rendered by the Swedish state depends on what sub-category the returnee belongs to. The different categories include:

- 1a) Asylum seekers whose application has been rejected
- 1b) Legal residents whose permits have been revoked
- 1c) Legal residents whose permits have expired²⁵
- 1d) Illegal immigrants/residents
- 1e) Undocumented migrants who have not requested asylum
- 1f) Victims of human trafficking and human smuggling, in some circumstances

The second category, i.e. the one referring to returnees involved in voluntary return migration, can be divided into, at least, three sub-categories. The starting point is that the decision to emigrate is voluntary; hence sub-categories are decided by the degree of assistance received, and the chosen country of the final destination:

- 2a) Those who return to their country of origin without any assistance of the sending state
- 2b) Those who return to their country of origin with assistance provided by the current country of residence
- 2c) Those who emigrate to a third country, with or without assistance

2.3.2 *Status and Rights of Returnees According to Category*

²⁵ It is possible to issue temporary residence permits to groups of persons who are in temporary need of temporary protection, most often used in cases of mass migration, as in 1999 due to the war in Kosovo. When the time limit has passed holders of such a permit are expected to leave Sweden.

There is no legal basis for financial assistance when *return* is concerned. If afforded, it is carried out on an ad hoc basis and aimed primarily at covering the alien's travel expenses.²⁶ In the following the statuses and rights of different returnees are described:

1a) Rejected asylum seekers

Rejected asylum seekers are treated as other types of aliens who are not granted, or who no longer satisfy the requirements for a residence permit. The main rule is that these migrants should return of own accord and at their own expense, but this is not always possible. If the alien lacks financial resources to pay for his/her trip home the MIV should arrange the trip. This is to be done in a way that is to the greatest advantage to both the alien as well as the sending state. The latter, however, only applies to voluntarily executed return.

1b) Legal residents whose permits have expired

This category is to be treated as the category above. This may, for instance, concern students or workers who are expected to return on their own. In the past there have been possibilities of certain financial assistance to persons holding temporary residence permits that had been granted due to temporary need of protection.²⁷

1c) Legal residents whose permits have been revoked

This group includes individuals who are expelled. This group is also expected to return of their own accord. If financial means are lacking, the state can help with the travel expenses. Again, this does not apply to persons who do not comply with the expulsion decision. An alien may also be expelled if s/he has committed a crime punishable by a prison sentence. This is under the condition that the sentence has amounted to more than fines and that it can, due to the nature of the act and other circumstances, be assumed that the alien will continue to commit crimes, or if the damage, danger or degradation inflicted by the offender on the victim or the public is of such a nature that the former should not be entitled to remain in Sweden.²⁸ The deportation is administered by the Police, but the practical enforcement is carried out by the Swedish Prison and Probation Service's Transport Service. This, in turn, implies that the return is carried out under far less dignified conditions than in cases where the MIV is the enforcing authority.

²⁶ SOU 2003:25.

²⁷ See more on this particular group below.

²⁸ Prop. 2004/05:170, p. 237-238.

1d) Illegal migrants

Illegal migrants are usually neither entitled to financial assistance nor return programs, such as information, counseling, etc., if not victims of human trafficking or human smuggling. If they intentionally do not cooperate with the authorities they are only entitled to the cheapest way of transportation, usually through the Swedish Prison and Probation Service's Transport Service.

1e) Undocumented migrants that have not requested asylum

The degree of help offered by the state depends on whether the alien is unable or unwilling to produce a document. If an alien contributes to the investigation of his/her identity so that valid travel documents can be acquired, and then complies with a rejection decision, the authorities can offer some assistance. They can, for instance, finance the trip to the home country. If the migrant, on the other hand, refuses to cooperate s/he is neither entitled to help with travel expenses nor is s/he eligible for possible return programs.

1f) Victims of trafficking and human smuggling

Victims of these grave offences are entitled to temporary residence permits, if they decide to cooperate with the authorities by helping them to convict the traffickers or smugglers. During the time of their stay they are entitled to medical care as well as other welfare benefits. Counseling as well as education may also be provided by NGOs. Victims are usually accompanied, to their home countries by both authorities' representatives and NGO personnel.

Voluntary return migration refers to people who make autonomous decisions to return to their home country. Voluntary returnees that hold a permanent residence permit can be assisted by the authorities upon return if requested by the returnee. Also, there is a possibility for some financial assistance. This is, however, only available to people who have gained their residence permit on the grounds of refugee status or due to humanitarian considerations.²⁹ The political and legal framework of Swedish return policies will be further discussed below as will the details of various state assistance programs.

²⁹ "Faktablad om frivillig återvandring", MIV, april 2005.

2.3.3 Various Defined Return Statuses

During the period that the authorities are processing a case, there can be no rejection or expulsion. If the migrant's claim is turned down, there is normally a possibility of appeal. During the time that the appeal is processed no rejection or expulsion can take place, i.e. the migrant is *awaiting a decision*. Even if the authorities have decided to turn down the migrant's claim, or to *dismiss his/her appeal*, there are circumstances under which a person cannot be sent to his or her country of origin. If the person, for instance, risks prosecution or torture, the execution of the decision must be postponed according to Swedish law.

Migrants who stay in the country, either intentionally or due to negligence, without a proper permit and who do not apply for such a permit can be sentenced to pay fines. Migrants who, on the other hand, intentionally give false information, or intentionally neglect to inform the authorities of matters of potential importance to their case, can be sentenced to pay fines or to a maximum of six months incarceration, if there are aggravating circumstances.³⁰

There are also people, who are considered a threat to *national security* and are, thus, forced to leave. According to the Aliens Control Act, a person can be expelled if deemed a danger to national security or if, considering what is prior known about him/her and his/hers previous conduct and other circumstances, there is a risk that he or she will commit or aid a terrorist act.

2.4 Demography and Geographical Differences Regarding Returnees

This Section provides an overview of migration to and from Sweden, although focus will be on emigration. By exploring available statistics it offers a picture of the size of the different categories of returnees as they have been defined above. It should be noted however that not all emigrants are returning refugees eligible for state sponsored return programs. Available official statistics provided by the SCB do not single out that category of returnees. In addition, available information differs for returnees who are holders of residence permits on the one hand, and returnees that are subjected to rejection or expulsion decisions on the other. Information concerning residents who are registered

³⁰ (SFS 2005:716) Ch. 20 § 2.

in Sweden is provided by SCB, while information and statistics regarding return as a result of an administrative or court decision is provided by the MIV and RPS. First, data and statistics regarding individuals engaging in voluntary return migration will be presented, to be followed by information concerning returnees who are not engaging in voluntary return migration, i.e. rejected asylum seekers.

2.4.1 Migration To and From Sweden

Immigration to Sweden decreased between 2002 and 2004, only to increase slightly in 2005, while emigration increased slightly between 2002 and 2005. Asylum-seekers awaiting a decision by the MIV are not included in this statistics - they are not considered as migrants in the terminology of the SCB.

Migration to and from Sweden, 2002-2005

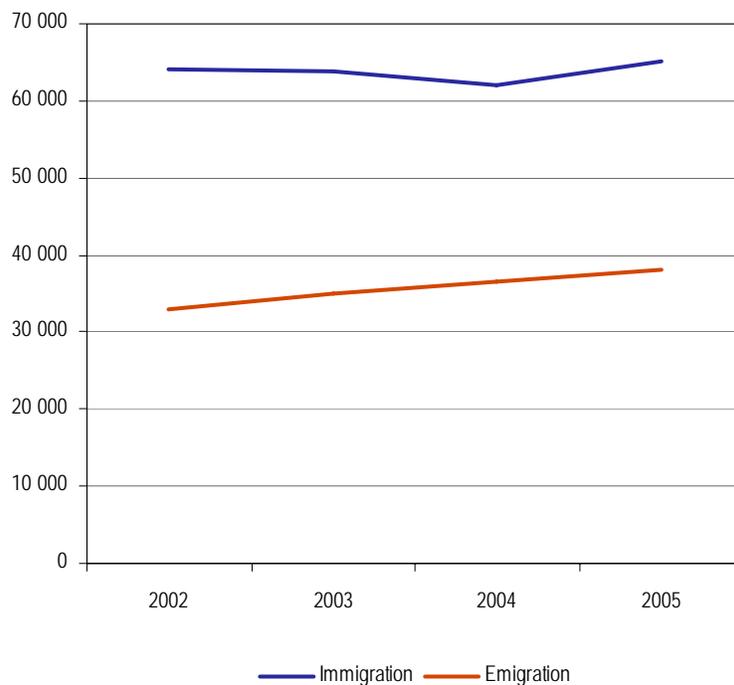


Fig. no. 1. Source: MIV.

As shown in the picture below (fig. no. 2), the majority of the individuals emigrating from Sweden is born in Sweden or the other Nordic States. The third largest group is EU25 (Nordic countries excluded), more or less on par with Asia. Thereafter follows North and South America. The Americas are followed by Africa and thereafter

comes Europe, which includes the non-EU Member States, *inter alia* Russia and Turkey. Emigrants born in Oceania, or with birth place unknown, constitute the smallest groups. Birthplace unknown includes the former Soviet Union. Amongst the refugee groups in Sweden, the largest emigration groups between 1998 and 2005 came from Iran, Somalia, former Yugoslavia, Iraq, Chile, and Bosnia-Herzegovina. In 2005, individuals who emigrated from Sweden originated from Iran, Iraq, Somalia, Former Yugoslavia, Chile, Lebanon, Ethiopia, and Bosnia-Herzegovina. It must be noted, however, that not all returnees in these groups have refugee status.

Emigrants according to Country of Birth

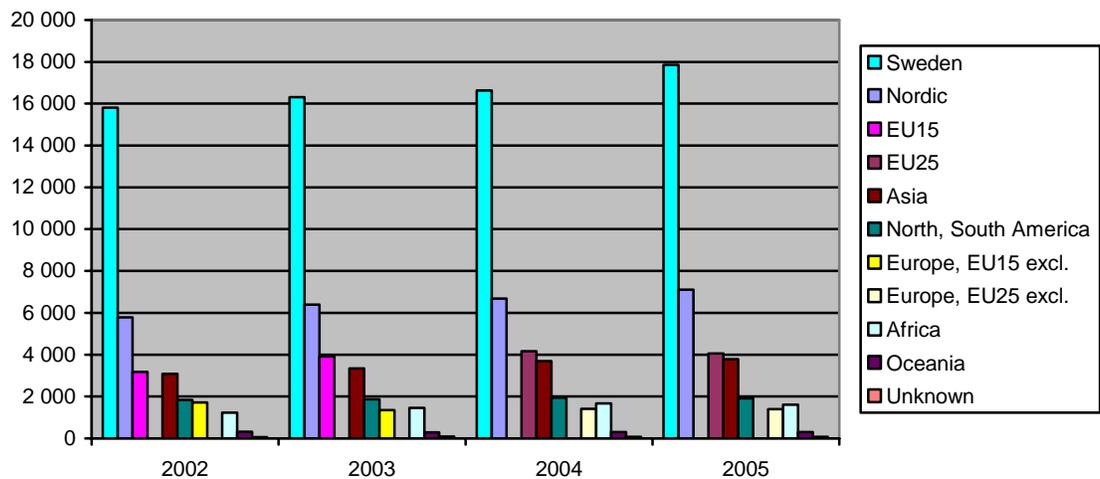


Fig. no. 2 Source: SCB.

Between 2002 and 2005 the majority of the migrants emigrated to some of the other Nordic countries, EU25 (Nordic States excluded), and the Americas, in that order. Destination unknown came in forth with 3 435 migrants. The general trend is that individuals born in the Nordic States, Germany, the U.S., and Great Britain move back to their countries of birth. This is not the case, however, concerning individuals born in Iran, Iraq and Somalia. Many of these individuals moved to countries other than their countries of birth, for example Great Britain and the U.S.³¹ Of those who left Sweden in 2005, 47

³¹ Statistics from SCB. Available at http://www.scb.se/templates/Publikation_162429.asp#BM3. 2006-07-10.

percent moved to non-European countries, 34 percent left for Europe and 19 percent for another Nordic country.

Indicated Destination Country

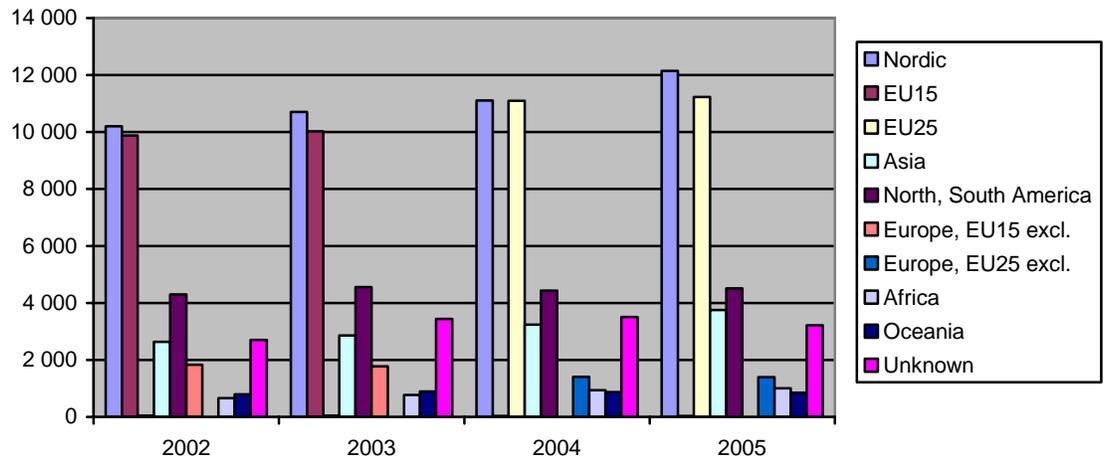


Fig. no. 3. Source: SCB.

Taking into consideration that migrants from Bosnia-Herzegovina, Iraq, Afghanistan and Somalia have been offered special return assistance, which is to be further discussed below, it is of interest to single out these countries in the statistics. The following tables show the number of individuals born in these states that have migrated from Sweden and the number of emigrants that have migrated to these countries.

Emigrants born in BH, Iraq, Afghanistan, or Somalia

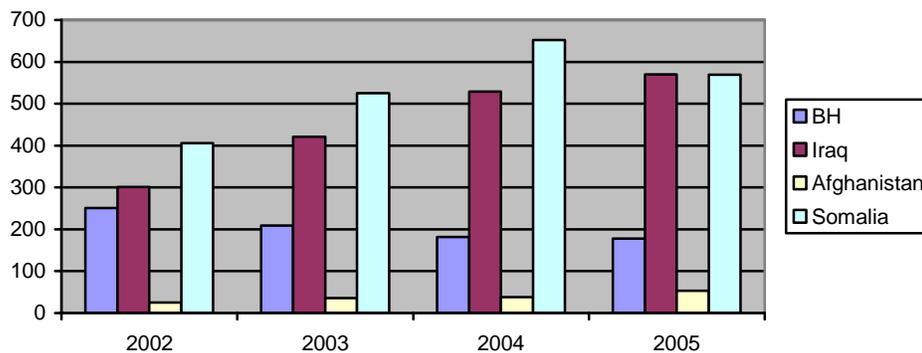


Fig. no. 4. Source: SCB.

Migrants Indicating BH, Iraq, Afghanistan, or Somalia as Country of Destination

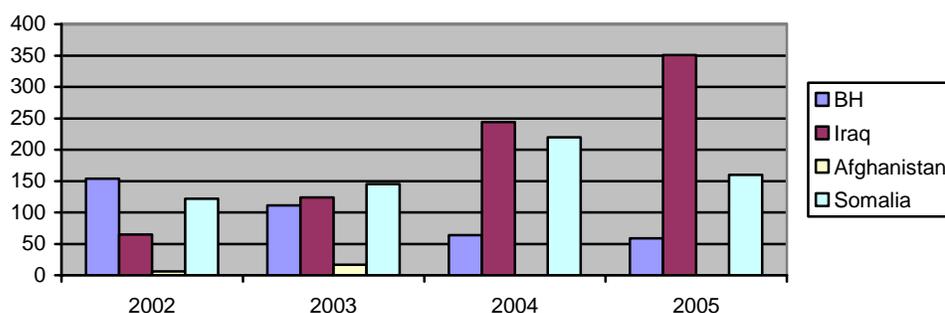


Fig. no. 5. Source: SCB

If comparing figure no. 4 and 5 we can see that in 2004 out of approximately 650 migrants indicating Somalia as country of birth, only approximately 215 indicated Somalia as country of destination. The same applies to individuals born in Iraq (520) and migrating from Sweden. Approximately half of them (250) indicated Iraq as the country of destination.

The level of education among the emigrants in Sweden varies depending on nationality. Among emigrants, born in 1988 and later, in 2005 the majority (605 persons) had an education corresponding to secondary education, followed by those with a higher education (graduate studies excluded). Groups with the lowest education level include Somalis, followed by Iraqis (63 and 50 out of a total of 277). Nationalities with the highest education level include Iran and Iraq (187 and 97 out of a total of 604).³² Migrants of Iraqi origin thus have among them both the highest and lowest educated groups.

Aliens are often concentrated to certain regions of Sweden. The most popular regions include the capital, the southern region (*Skåne*) and the western region (*Västra Götaland*), and the least popular region is the northern part of Sweden. Which of the above mentioned regions is most popular depends on the nationality of the alien. People from Bosnia-Herzegovina and Serbia and Montenegro prefer the western region,

³²“Emigranter 2005 efter utbildningsnivå och födelseland”, SCB.

followed by the southern region. Persons of Afghan heritage prefer Stockholm, as do persons originating from Chile, Russia, Somalia, Iran and Iraq.³³

2.4.2 Asylum-Seekers

Since 2002 the number of asylum-applications has decreased by 47 percent. However, in its 2006 prognosis the MIV estimates that the number of asylum applications will increase. In 2005, 17 530 persons applied for asylum in Sweden. Serbia and Montenegro tops the list of asylum seekers in Sweden, to be followed by Iraq, Russia, Bulgaria, Iran, Libya, Afghanistan, Azerbaijan, Burundi and Eritrea, in that order.³⁴

In 2005, 11 196 asylum seekers were men, compared to 6 334 women.³⁵ The most common age among both men and women was 25 to 34, followed by 21 to 24 for males, and 35 and 44 for females. An overwhelming minority, only eight persons, was constituted by asylum seekers aged 80 or older.³⁶

On January 31, 2006, the total number of asylum seekers registered with the MIV was 31 454 of whom 20 492 were male and 10 962 were female.³⁷ Again the most common age group was constituted by asylum seekers aged 25 to 34 (10 879 persons), and the least common by those aged 80 or older (16 persons).³⁸

In 2005, MIV decided 21 325 asylum cases, whereby it granted asylum in 2 838 cases and rejected 15 867 cases, in the rest of the cases the application was cancelled.³⁹

³³ "Folkmängden 31/12 2005 efter födelseland och boendelän", SCB.

³⁴ *Migration 2005. Immigration, emigration, and asylum-seekers*, SCB, p. 10.

³⁵ "Asylum seekers 2005 by age at application and sex", SCB.

³⁶ *Ibid.*

³⁷ "Asylum seekers registered with the Swedish Migration Board on Jan. 31 2006 by age and sex", SCB.

³⁸ *Ibid.*

³⁹ "Facts and Figures 2005", MIV, p. 8.

Asylum Claims Decided by the MIV in 2005

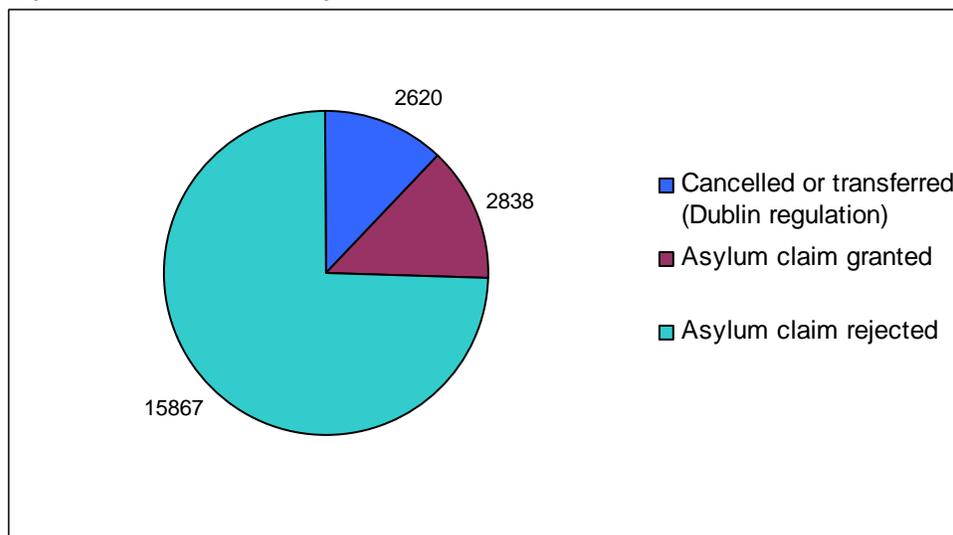


Fig. no. 6. Source: MIV, 2005

Removal orders are usually carried out to the migrant's country of origin, or to a third country. In some cases the Dublin Regulation applies, which means that the migrant is returned to a safe third country. In some instances the case is closed, for instance when the migrant leaves the country on his/her own. Other circumstances might, for instance, imply that the case has been appealed and is being processed by relevant authority other than MIV (see fig. no. 7).⁴⁰

⁴⁰ ”Avgjorda asylärenden hos Migrationsverket efter medborgarskap och världsdel”, *Tabell 2, 2005 Statistik*, MIV, 2006-02-03.

Asylum Claims Rejected by the MIV in 2005 and Subsequent Return

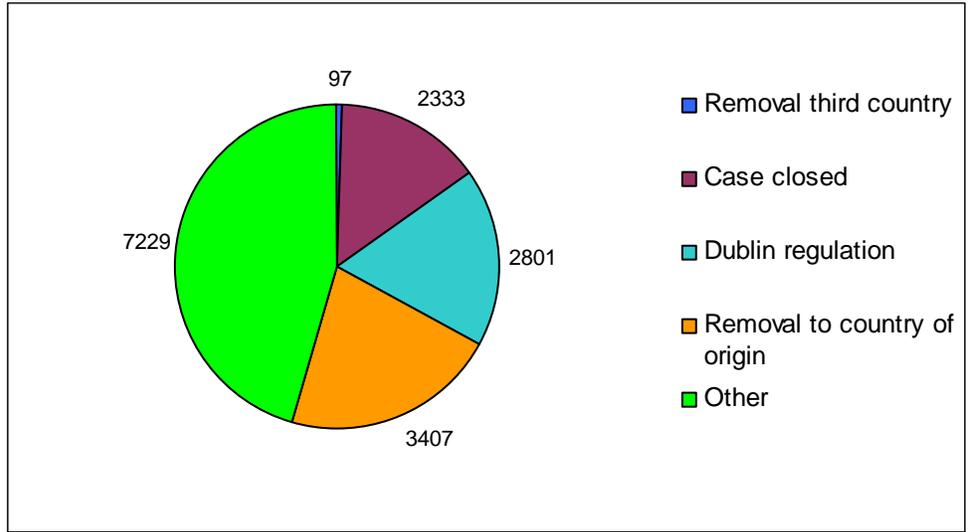


Fig. no. 7. Source: MIV, 2005

Rejected Asylum Claims in 2005, by region

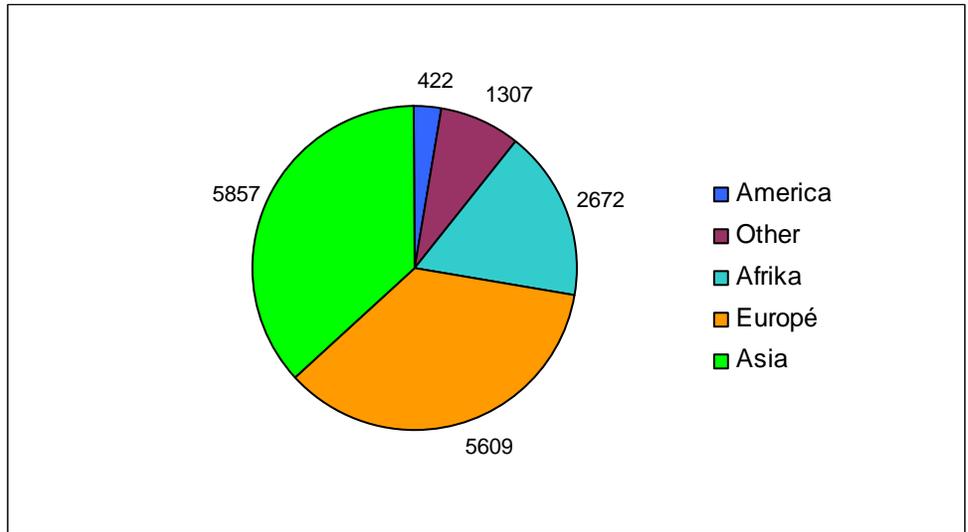


Fig. no. 8. Source: MIV

A majority of the rejected asylum-seekers originate from Asia and Europe. This can be explained by the fact that Iraq and Serbia and Montenegro are included in these two

groups. These two countries, in turn, constitute the states from which the majority of refused asylum seekers originate, to be followed by Russia.⁴¹

Rejected Asylum Claims in 2005, by citizenship

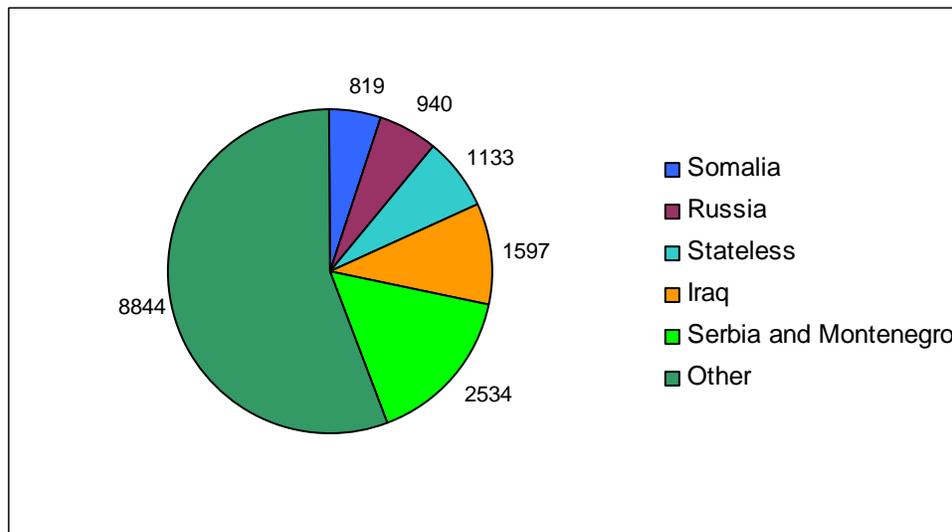


Fig. no. 9. Source: MIV

3. The Political and Legal Framework

3.1 Regional and National Legal and Political Frameworks

This Section sets out to discuss the Swedish political discourse and political principles regarding return policies. It thereafter accounts for the legal basis of return and return assistance. It concludes with a discussion on geographical differences regarding return policies and the protest and solidarity movements in Sweden.

3.1.1 Political Discourse and Political Principles of Return Policies

According to the official Swedish stance return is only voluntary when the concerned individual does have an actual choice of whether to stay or to return. Clearly, this is the case only for holders of permanent residence permits. For this policy to have the expected effect, i.e. to provide the most beneficial conditions for voluntary return migration, a

⁴¹ "Facts and Figures 2005", p. 4.

swift decision making procedure is required. Unfortunately, conditions are not sufficient for this ambition to be met. The decision making process can take years. Nevertheless, return following a rejection decision can be *executed* independently or voluntary (*självmant*), but it is not considered as voluntary return. Already in the mid-1990s the Swedish government declared that it is a human right to return to ones home country and that the Swedish migration policy therefore should have as one of its main goals to stimulate and assist return migration, also in cases of return as a result of rejection or expulsion decisions.⁴² Still, it is underlined that the return perspective on migration policy also requires that attention is paid to integration, since integration into the Swedish society is considered a precondition for a successful return.⁴³ This is especially the official stand point concerning migrants in need of temporary protection who have been granted temporary residence permits.

As a main rule, people should not be forced to return. However, if a return decision is issued by the authorities the migrant is forced to comply, or must otherwise stay away by hiding. Obviously, it is not recommended to stay outside the protection that the state offers its legal residents, such as health care, education, and employment. It is not only considered to pose a danger to the individual, but also to the society at large. Aliens that go into hiding do not only risk becoming segregated and discriminated against; if the group of individuals residing illegally in the destination country continues to grown there is a risk that the very fundament of a democratic and open society becomes threatened. In addition, the legitimacy of a democratic welfare state depends on the quality and extent of the care that is offered. Should a relatively large portion of the inhabitants of a country fall outside of such a protection, clearly that might cause social and political unrest. Furthermore, if people do not return, but choose to intentionally stay away in order to avoid a removal decision, it can in the long run undermine the respect for the migration policy of the EU and its member states.⁴⁴

⁴² "Flyktningpolitik i ett globalt perspektiv", SOU, 1995:75, s. 205, samt "Verkställighet och återvändande – en del av asylprocessen", prop. 1997/98:173, p. 47.

⁴³ Karin Skoglund, *Integration eller återvändande? Tillämpning av tidsbegränsade uppehållstillstånd på bosnienserbokratiska asylsökanden i Sverige*, Magisteruppsats, Internationell migration och etniska relationer, maj, 2003, s. 28.

⁴⁴ In 2004, for instance, 650,000 rejection decisions were made within the EU, but only 212,000 were executed due to migrants absconding. This is according to the EU a serious threat to European migration

The injustice and potential harm that such a situation can pose has been recognized by the Swedish state. In part, the temporary law on asylum that allowed for a renewed review of rejection decisions or injunction decisions was an acknowledgement of this.⁴⁵ This arrangement was aimed at rejected applicants who for various reasons have not left the country. The law entered into force on 15 November 2005 and remained in force until it was substituted by a new Aliens Act on 31 March 2006.

The temporary law was applicable to certain groups, who had been residing in Sweden for long periods of time and whose decisions of rejection or expulsion had not been enforced although they had entered into force. The law did not mean the same as an absolute right to stay, but it offered a new opportunity to apply for a residence permit. All cases were reviewed individually by the MIV. Each case was to be assessed as to the degree of humanitarian urgency. Several factors, such as a child's social situation, as well as its ties to Sweden and the risk of damage to its health if returned, were to be taken into consideration. One of the strongest prerequisites in favor of a positive decision was that the person had been residing in the country for a long period of time. The final decision of the Board was strongly influenced by the actual possibility of implementing a negative decision. The groups most affected by this temporary law were families with children, and persons whose removal orders have not been possible to implement for medical reasons or due to conditions in their country of origin.

There were also certain exemptions to this law. While processing the application the MIV was to consider whether the applicant had committed any crime. In addition, the MIV was able to deny a person residence permit for security reasons. Persons who were already registered with the MIV did not need to apply - the Board made its assessment *ex officio* - while rejected applicants, who had gone into hiding, were first required to register themselves with the Board in order for the temporary law to become applicable to their cases.⁴⁶

The temporary law merited great response. Already three days into its existence, 1 108 persons who were hiding to avoid enforcement of removal orders registered with the

politics. "EU-regler för återsändande av olagliga invandrare på förslag", www.eu-upplysningen.se, accessed 2006-05-23.

⁴⁵ See, (SFS 2005:762), and "Ny prövning av avvisnings- och utvisningsbeslut", 2005/06:SfU5.

⁴⁶ "Rejected applicants get new opportunity", *News*, www.migrationsverket.se, 2005-11-17.

MIV.⁴⁷ As a result of this amendment rejected individuals could have their applications retried and thus become legalized. 31 000 cases were tried and 17 000 residence permits granted, of which 13 000 were permanent and 4 000 temporary. The main reasons for granting temporary residence permits were that the identity of the applicant could not be established or that the grounds for not enforcing a rejection decision was only temporary. 8 000 individuals who at an earlier point had gone into hiding due to a rejection decision registered with the MIV. In December 2005, the number of immigrants awarded a residence permit were 33 percent higher than the same month in 2004. It is very likely that this increase is the result of the temporary law.⁴⁸ As a result, the number of holders of permanent residence permits increased. It is estimated that 1 500 of rejected applicants have absconded.⁴⁹ Taken together this is, from a return perspective in the Swedish context, a positive development: holders of residence permits are eligible for voluntary return migration programs that are more generous than return programs for asylum seekers or rejected individuals. This also means that more persons are likely to engage in voluntary return in the true sense of the word, which is the overall objective of the Swedish policy on return.

The execution of a rejection or removal decision should be carried out under dignified conditions, and independently executed return is by the Swedish state considered the most humane form of implementing such a decision. The overall aim of the Swedish State is that return should be carried out independently by the returnee under dignified conditions, and that coercive measures should under all circumstances be held to a minimum. At the end of the 1990s the Government set as a goal to increase cases of voluntary execution of removal or rejection decisions. One important aspect of this policy was the involvement of national and international NGOs in the process. Another was the establishment of well thought through assistance programs to returnees that did not hold Swedish residence permits. Such programs were to focus on counseling and support, including preparations before returning, such as vocational training, and assistance at the

⁴⁷ ”Mer än tusen gömda har kontaktat Migrationsverket”, *News*, www.migrationsverket.se, 2005-11-18.

⁴⁸ Migration 2005, SCB. Available at http://www.scb.se/templates/Publikation___162427.asp. 2006-07-20.

⁴⁹ ”Resultat av den tillfälliga lagen om prövning av beslut om av- och utvisning”, MIV, 2006, www.migrationsverket.se/swedish/tillfallig_lag/index.jsp, last visited, 2006-11-28.

arrival in the country of origin. The Government was reluctant to offer pure financial assistance; therefore assistance through NGOs was preferred.⁵⁰

3.1.2 Legal Basis and Standards for Return and Voluntary Return Migration

As has been discussed above, Swedish law distinguishes between *return* and *voluntary return migration/repatriation*. First, the legislative basis for assistance following return decisions by administrative authorities and courts will be accounted for. This will be followed by the legislative basis for assistance in cases of voluntary return migration. Thereafter the legislative framework for granting residence permits will be touched upon since this will have an affect on the returnee's access to return assistance programs. Only refugees with a Swedish residence permit are eligible for voluntary return migration assistance, as will be further discussed below.

3.1.2.1 Return

The first form of return concerns migrants whose applications for a residence permit have been denied or migrants whose temporary residence permit has expired, for instance students enrolled at the university, whose education is completed. This category also includes individuals residing in Sweden who have been expelled for various reasons. People can be forced to return due to reasons contained in *inter alia* the Aliens Act. If the return decision is not based on this particular law it could be based on another law on Special Control of Aliens Act (*lagen om särskild utlänningskontroll*). According to Section 1 of this law a migrant can be expelled if:

- 1) The nation's security depends on it, or
- 2) There is, due to what is prior known about the migrant and due to other circumstances, a danger of the migrant engaging, either as the perpetrator or accessory, in terrorist activities

The rule is, however, that in most cases the provisions on expulsion and rejection contained in the Aliens Act should be applied before the ones contained in the Aliens Control Act.⁵¹ According to the 2005 Aliens Act, in cases of rejection or removal the

⁵⁰ Prop. 1997/98:173, pp. 47-48.

⁵¹ "Särskild utlänningskontroll", Regeringskansliet, www.regeringen.se, accessed 2006-05-05.

returnee is as a main rule responsible for the cost of returning to the location assigned by the authorities.⁵² The financial responsibility of operators of for example vessels and air crafts is also regulated by the Aliens Act.⁵³

The experiences and knowledge of the NGOs in the area of return are seen as an important asset. Government writings in this area also mention the UN Refugee Commissioner's support for so called return programs for migrants who do not enjoy refugee status, but who should be encouraged to return to their countries of origin. Primarily, these returnees should be offered counseling and advice. The Swedish government, however, expresses some doubt as to the question of whether or not financial assistance in the form of grants should be possible to obtain. If the grant is substantial, there is a risk of individuals coming to Sweden only to take advantage of the system. Furthermore, some practical difficulties would likely arise when determining the amount of the grant. In some countries certain amounts would constitute a year's salary, while in others it would be more modest. Hence, some migrants could argue that they have been discriminated against would they receive a smaller grant than migrants originating from other, richer, countries. Also, a note was made to the comments of the UN Human Rights Commissioner (UNHRC), who has voiced a concern that persons returning to their countries of origin with, for the local circumstances, substantial means often encounter difficulties from fellow citizens.⁵⁴

An independent commission investigated the question of financial grants for return and reached the conclusion that purely financial grants should not be awarded.⁵⁵ This was due to the fact that people who have chosen to leave their countries of origin and move to Sweden often had a strong wish to stay here. This, in turn, implies that a financial grant in order to be effective must be substantial. It would thus be difficult to establish an adequate sum, one that would have the desired effect but still not lead to abuse of the system. The Swedish government seconded this conclusion.⁵⁶ It concluded that return programs should be initiated in cooperation with NGOs so that migrants are encouraged to return voluntarily and independently. Return programs should offer

⁵² (SFS 2005:716), Ch. 19, § 1.

⁵³ (SFS 2005:716), Ch. 19, §§ 2-6.

⁵⁴ SOU 1997:128, "Verkställighet och kontroll i utlänningsärenden".

⁵⁵ SOU 1997:128.

⁵⁶ Prop. 1997/98:173.

information, counseling, teaching of certain skills that would help the migrant integrate at the home country's labor market, etc., but no substantial financial grants.

Consequently, Sweden has a very limited experience of purely financial grants. However, in 1997 and 1998 time-limited regulations were issued.⁵⁷ These regulations pertained to grants covering travel expenses as well as costs associated with the initial settling-in period in the home country. The second Regulation expired in December 1998. The regulations were created mostly due to the large number of citizens from the former Yugoslavian Republic, who had remained in Sweden for long periods of time due to circumstances beyond their control. These regulations were also applicable to persons from Bosnia-Herzegovina and Somalia. Grants were awarded in cases where a decision could not be enforced within two years from the point of it gaining legal force, or if the alien had been awarded a temporary residence permit due to either his/her being part of a group that the government considered in need of temporary protection, or due to obstacles to enforcement. The grants amounted to a maximum of 5000 SKR per adult and 30 000 SKR per family. Almost all applications were granted. From April 1997 to December 1997 (the duration of the first regulation) 95 grants were awarded. Migrants who themselves were responsible for the fact that the removal orders could not be enforced, by, for instance, absconding or refusing to reveal their true identity, were not eligible for the grants.

From July 1999 till May 2000 there was another time-limited regulation in place.⁵⁸ This regulation was applicable to citizens of the Republic of Yugoslavia, originating from the Kosovo province. It pertained to persons who had been granted temporary residence permits as a result of the situation in Kosovo, who wished to return to their home country but due to lacking financial resources, were unable to do so. The same amounts as mentioned above applied plus an additional travel grant of 3000 SKR.

3.1.2.2 Voluntary Return Migration

Voluntary return migration is supported more extensively than return. The main principle of return migration is that it always must be voluntary. The government has declared that

⁵⁷ (SFS 1997:127 and 1998:230)

⁵⁸ (SFS 1999:707)

return migration should always be carefully planned and prepared, primarily by the migrant him/herself and his or her family. An important part in the preparation process is also played by individual organizations, such as NGOs. The Swedish authorities are responsible for, among other things, the distribution of relevant information concerning the countries of origin among the emigrant community. Also, the Swedish state can offer some support in the countries of origin. This support can involve vocational training, and measures aimed at the reintroduction of the migrant to the local labor market.

Individuals who are entitled to a Swedish residence permit according to the Aliens Act are eligible for state assistance in the form of allowances in cases of voluntary return/repatriation.⁵⁹ The MIV decides in these cases and such an allowance may be granted just once. The assistance referred to here is available to quota refugees, refugees according to definition in the Swedish Alien Act, and relatives to such persons. In all cases, it is required that the person in question does hold a residence permit. It does not have to be permanent.⁶⁰

Allowances will be provided only if the returnee cannot himself cover the cost and there is evidence that the returnee will be accepted in the preferred destination country. The size of the allowances should be determined by the number of family members that will be included in the return process. Spouses, cohabitants and children under 18 are considered family members. It must however be reasonable and may not exceed a total sum of 40 000 SKR per family.⁶¹ A decision by the MIV on this kind of allowances cannot be appealed.⁶²

In 1996, 600 000 SKR were reserved for return assistance projects for holders of residence permits. In 1998, the amount of money was increased to 23.3 million for projects and ten million for travel and cash grants. Project funding was mostly granted to immigration- and refugee organizations.⁶³ In 2005, financial support was awarded to ten projects with a total sum of 3 819 206 SKR, focusing on return migration to Afghanistan,

⁵⁹ (SFS 1984:890), ändring införd t.o.m. (SFS 1997:1225).

⁶⁰ (SFS 1984:890), ändring införd t.o.m. (SFS 1997:1225) §§ 1, 2. According to the civil servants responsible for travel grants and allowances, permanent residence permit is not required; although the home page of the Swedish Migration Board does indicate the opposite. The government regulation regulating state assistance does not stipulate any requirement that the residence permit must be permanent.

⁶¹ (SFS 1984:890) ändring införd t.o.m. (SFS 1997:1225), § 4.

⁶² (SFS 1984:890) ändring införd t.o.m. (SFS 1997:1225) § 5.

⁶³ Prop. 1997/98:173, p. 49.

Bosnia and Herzegovina, Iraq and Somalia. In addition 60 persons applied for travel and financial grants. The majority of the applications (41) were rejected: 18 were granted, one withdrawn and the rest was rejected or dropped. Indicated destination countries for those awarded assistance were Afghanistan, Armenia, Iraq, Bosnia and Herzegovina, Chile, Vietnam and Somalia

3.1.2.3 Grounds for Receiving Residence Permits

According to the 2005 Aliens Act there are several grounds for receiving a Swedish residence permit, for example asylum, working permit, studies, and marriage.⁶⁴ Residence permits can be issued both temporarily (temporary residence permit, TUT) and without a time limit (permanent residence permit, PUT).⁶⁵ In the following focus will be on permits granted for refugees, individuals in need of temporary protection, and others in need of protection. Asylum is a form of residence permit which is granted refugees.⁶⁶ According to Swedish law, asylum is granted to persons defined by the UN Refugee Convention as refugees. Convention refugees are those who have reason to fear persecution in their native country due to⁶⁷:

- race
- nationality
- affiliation to a particular social group
- religious or political opinions
- gender or sexual persuasion

Under Swedish law, persons who are not convention refugees may also qualify for asylum. This category is described in law as *persons in need of protection* (*skyddsbehövande*). Persons in need of protection are those who have left their native country and have good reason to fear capital punishment, torture, etc., or otherwise need protection due to an internal or external armed conflict or an environmental disaster in

⁶⁴ For an extensive list, see (SFS 2005:716) Ch. 5.

⁶⁵ (SFS 2005:716) Ch. 2 § 4.

⁶⁶ (SFS 2005:716) Ch. 1 § 2.

⁶⁷ See, (SFS 2005:716) Ch. 4, § 1.

their native country.⁶⁸ The protection also applies to stateless people. People who can show that there are particularly distressing circumstances may also be granted permission to stay in Sweden. This applies for instance to those suffering from a grave illness for which no treatment is available in their own country.⁶⁹

As a main rule residence permits are permanent, if not issued for studies or work to be performed under a fixed time period. However, in 1994, the term temporary protection was introduced by law. Temporary residence permits can be granted to persons who the Government has declared to be in special need of protection. According to the Aliens Act, migrants who according to the Council Directive 2001/55/EG are in need of temporary protection shall be granted a protection and a temporary residence permit.⁷⁰ The Swedish government can extend this protection to groups not mentioned by the Council if they are migrating from the same region or country and for the same reasons as the groups mentioned by the Council.⁷¹ Holders of temporary permits as a result of this procedure are not excluded from applying for asylum.⁷² The time limit for a temporary permit shall not exceed what has been decided by the Council of the European Union. If a voluntary return assistance program has been initiated at the time when the permit expires, the time limit can be prolonged with maximum two years. Should that be the case the permit is called *residence permit after temporary protection*.⁷³

Each year the government assigns grants to the MIV so that the Board should be able to receive some 1 700 quota refugees per annum. The way in which the groups are chosen, such as what nationalities and how many persons should be included, is decided by the Swedish government in cooperation and consultation with the UNHCR. In order to fall under the category of a quota refugee a person must be registered as a refugee with the UNHRC. The UNCHR submits a first statement concerning what persons should be affected by the measure, thereafter it is up to the receiving states to decide whether or not the persons recommended by the UNHRC should be granted residence permits. During

⁶⁸ See, (SFS 2005:716) Ch. 4 § 2.

⁶⁹ See for example, (SFS 2005:716) Ch. 5 §§ 1, 2.

⁷⁰ (SFS 2005:716) Ch. 2 §§1-2.

⁷¹ (SFS 2005:716) Ch. 21 § 3.

⁷² (SFS 2005:716) Ch. 21 §. 5.

⁷³ (SFS 2005:716) Ch. 21 § 6.

2005, Sweden received 1 242 quota refugees and undertook so called delegation trips to Iran, Syria and Lebanon, Costa Rica, Ecuador and Thailand.⁷⁴

3.1.3 Policy Variation with Regard to Return Policies Concerning Regions and Provinces

Although throughout Sweden, one set of rules pertains to return and return migration, there are some regional discrepancies concerning different return programs. The programs are not set in stone. Often carried out by NGOs, they can assume different forms. There are several pros and cons with this approach. One beneficial aspect being that the resources can be directed to where they are needed the most. However, since these projects are mainly managed by NGOs, the very existence of efficient and professional NGOs is a prerequisite. Not all cities of Sweden, particularly not the small ones, have a sufficiently developed civil society to meet the latent desire or need for return assistance projects, which *per se* calls for the state's modest attention. The state should not in cases of a vital civil society take over that function, since it is important for the concerned individuals to feel that they "own" the process. For example, in Gothenburg, the so called "Gothenburg Initiative" and the "Development-Partnership Arrival Gothenburg" have been fairly successful. These programs, among other things, offer vocational training for women who might be forced to return to Iraq.⁷⁵

Concerning, return migration, the projects financed by the MIV are not evenly spread across the country. In 2003 and 2004, for instance, there were 17 projects running during the period 2003-04-01 and 2004-06-30 pertaining to voluntary return migration. These projects were, however, unevenly distributed, with the city of Stockholm hosting nine projects, the mid, western, and southern regions having three projects each, and the northern region none.⁷⁶ On the other hand, most immigrants in Sweden are living in these parts of Sweden. There are, however, small migrant communities in other parts of Sweden as well. There is thus a slight possibility of these persons being interested in repatriation programs, but due to geographic reasons unable to take part in them. The MIV has however recently investigated whether there is a need and desire for cooperation and information on voluntary return migration in eight counties in which there currently

⁷⁴ "Flyktingkvoten", MIV, 2006, www.migrationsverket.se.

⁷⁵ For more information see, "Återvändande", Tema Asyl, www.temaasyl.se.

⁷⁶ "Utvärdering projektstöd för återvandring", Pacta Guideline på uppdrag av Migrationsverket, 2005-12-17, p. 6.

are no projects on voluntary return migration. The result showed that in 15 *kommuner* there is a need and wish for cooperation and information. The MIV therefore has started a lecture series in these regions.

3.1.4 Experiences with Regard to Protest and Solidarity Movements

During the last few years a phenomenon has become more common: apathetic, sometimes even suicidal, children showing symptoms of resignation, refusing food, and loosing all contact with the surrounding world. Recently, there was a rather heated debate on the subject whether or not some parents exploit the Swedish system, by intentionally making their children sick in order to gain residence permit. There have also been anecdotal reports of so called “travel agencies”, allegedly located on the territory of the former Soviet Union and specializing in asylum shopping to Sweden, recommending potential clients to drug their children. As a result the Government initiated an investigation concerning this phenomenon. The study was made up of three parts. The first part focused on the situations in the countries from where the majority of children with this syndrome originates. Part two dealt with asylum procedures of Sweden, Denmark and Norway. Finally, part three analyzed the children’s and their families’ view on how their problems were viewed by the societies of the destination countries.⁷⁷

The main findings of the investigation were that the majority of these children came from countries of the former Soviet Union and Yugoslavia. Some 58 percent of the children were between 8 and 15 years old, 8 percent were under 8 years of age, and 11 percent were over 16. In 69 percent of the cases the child was living with both its parents, while in 27 percent of the cases the child had moved to Sweden with its mother. The investigation did not find any connection between the specific culture of the countries of origin and the illness of the children. There has, to the investigation’s knowledge, not been any information registered on such illnesses in these countries. Also, the comparison of the asylum procedures at hand in the three above mentioned states has not shown any significant differences, in that the Swedish process cannot be deemed as either more restrictive or less generous than the processes of the other countries. It is noted, however, that the period that one must await a decision might be slightly longer in Sweden than in

⁷⁷ “Asylsökande barn med uppgivenhetssyndrom”, SOU 2006:49, p. 11.

the above mentioned countries. This is said to be the result of Sweden's more flexible possibilities for new applications, as well as other circumstances, such as missing identification documents, which prolong the process.⁷⁸

The investigation concluded that there is not one single reason or explanation to this specific syndrome. It is instead very complicated and demands an explanation model of several factors. Most importantly, more research in this area is necessary in order to be able to learn more about this syndrome.

This report caused a lot of stir in the public debate in Sweden, mainly because it devoted a lot of space to a discussion on whether some parents made their children sick in order to improve their chances to receive a residence permit. It has been criticized, especially by the treating medical doctors, for not taking earlier research into consideration, for not respecting the distress the concerned families are in, and for pointing out the problem as something new and particular to Sweden, which is, apparently not the case.⁷⁹

People who have been denied residence permits but refuse to leave the country often face difficulties. This is especially true concerning children. The solidarity movements in Sweden in this area are significant. Not only did, for instance, churches hide rejected asylum seekers, but there seem to have been a consensus among the general public that asylum procedures were too lengthy, and people who were residing in Sweden for long periods were, thus, unjustly forced to return. This development eventually led to the parliament adopting a temporary law, the aim of which to offer these people a second chance.⁸⁰

In general, the public debate in Sweden concerning returnees is very much guided by what the largest media outlets decide to focus on. There are several cases of the largest media outlets in Sweden providing attention to specific cases of removal. In some cases the outcome has been to successful in the sense that the authorities have lifted the removal decision or not proceeded to adopt such a decision, has it not already been done.

⁷⁸ SOU 2006:49, p. 12.

⁷⁹ See for example, Josef Milerad, *Läkartidningen*, nr 39, 2006, vol. 103, and Sveriges Television, Uppdrag granskning.

⁸⁰ See Section 3.1.1 above.

3.2 Influence of International Law and European Legislation

The main purpose of the European Union when cooperation in judicial and domestic issues is concerned is to develop a region of freedom, security and justice. The introduction of the Amsterdam Treaty in 1999 was one important step in this direction. It introduced asylum and migration policy issues into the common rights framework and set the Schengen regulatory framework into force within the EU.

The largest impact on Swedish legislation and migration policy is undoubtedly exerted by the Schengen agreement. Through the introduction of the agreement in March 2001, Sweden took yet another important step towards the European Community. Within the framework of the Nordic passport agreement free mobility without internal border controls already existed between the Nordic states, but was now widened.

The Schengen agreement has not only rendered border controls between the countries in question obsolete, but also strengthened cooperation when the combating of illegal migration is concerned. In addition, the agreement has introduced common rules for entry and residence in the Member States. This in turn implies that immigrants holding residence permits in the Member States now enjoy the same rights to travel within the common area as the citizens of these states. This is said to be something that both many immigrants as well as their employers have requested for a long time.

Sweden's Aliens Act forbids the expulsion or rejection of a person threatened by capital punishment, corporal punishment or torture or at risk of being subjected to other inhuman or degrading treatment or punishment in his or her country of origin. Persons risking such treatment are to be granted a residence permit in Sweden due to their need of protection. Cases referring to alleged torture are said to be somewhat difficult to investigate due to questions pertaining to evidence, which is often located in another country. However, due to recent events, namely a case concerning two Egyptian men who were extradited to Egypt after diplomatic assurances on behalf of the Egyptian state, this situation has changed. Sweden has been found in violation of Article 3 of the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment by the UN Committee against Torture.⁸¹

⁸¹ See CAT/C/34/D/233/2003.

On 29 April 2004 the Council decision 2004/573/EC on common flights for return of third country nationals, who have been issued with return decisions from two or more Member States, was adopted.⁸² The purpose of the decision was to rationalize return by initiating common flights. Sweden regarded it a good initiative, since it promoted a more effective cooperation between the Member States. Furthermore, it was said that such cooperation would imply economic advantages, since the resources of the Member States would be most effectively and advantageously used. It was noted, however, that due to Sweden's geographical location the country will take little interest in participating in common chartered flights.⁸³ In addition, Sweden does not have any specific facilities in which deportees are being gathered for subsequent removal. Although there has been some misunderstanding in the public debate as to the effect of the Council decisions on common flights, for example that it should open the door for collective rejections. This is not the case however. All cases are tried individually.

In June 2002, the Commission presented a revised proposal for a directive on asylum procedures (COM(2002)326final; ECT C291 E, 26.11.2002). The purpose of this proposal was to decide on minimum standards on the procedure of granting and revoking refugee status from the time when an application is first submitted till the final decision is made. The Directive states rights and guarantees that are to be respected while processing the asylum claim. Among other things, the right to a legal counsel and a personal interview are provided for in the directive. On 29 April 2004 the Council of European Union adopted the proposed Directive (2004/83/EC). The directive has two main purposes. The first is to establish common criteria for deciding which third country nationals or stateless persons are to be considered in need of protection. The second is to minimize asylum shopping, i.e. asylum seekers trying to move from one member state to

⁸² See for example, the Evian case, which did not attract much attention in Sweden, is an example of a common flight. On 27 July, the UK and France returned 40 irregular immigrants to Afghanistan in a joint chartered flight. The deportation was carried out less than a month after interior ministers from Britain, France, Germany, Italy and Spain agreed to cooperate in curbing illegal immigration. The migrants were removed to Afghanistan on a group flight co-organized by the French and British authorities and received there by the IOM. Communiqué from the French Minister of the Interior, 27/07/05.

⁸³ "Sammanträdesdokument inför EU-nämndens möte 2003/04:28", *Justitiedepartementet, Utrikesdepartementet* 2004-04-19, EU-upplysningen, <http://www3.riksdagen.se/default.asp?DocGUID=%7B02F4CDBF-88AC-48E7-9A49-4C28E5A620C8%7D>.

another in order to have a better chance at getting asylum.⁸⁴ The Directive also provides for a set of definitions, mainly what type of migrants that may be classified as refugees. The definition of refugee draws back on the concept to be found in the Geneva Convention.⁸⁵

The implementation of the Directive into Swedish legislation was analyzed in a government writing entitled “*Svensk rätt och skyddsdirektivet*”. The conclusions reached were that Swedish legislation already met the requirements established in the Directive. Concerning asylum seekers’ right to, for instance, health care it was noted that the Government had in a recent law already granted all the rights expressed in the Directive.⁸⁶ The Government did however conclude that implementing the Directive would cause additional expenses due to the duty posed on the MIV to investigate questions of unaccompanied children and their potential relatives in countries of origin.⁸⁷

Concerning the forthcoming European Directive on common standards in Member States for returning illegally residing third country nationals (COM(2005)391), the Swedish government has stated that it fears that the two step procedure suggested by the Directive will increase the administrative burden and the economic cost, at the same time as it might prolong the processing time. In Sweden, decisions on residence permits and potential obstacles against enforcing a removal decision are tried in one and the same process. According to the Directive, these decisions should be dealt with in two separate processes – something the Swedish government do not support. In addition, the Swedish government has raised concerns over the fact that the grounds for awarding a residence permit are regulated by the Directive.⁸⁸

MIV has also stated its view on the European Directive on common standards in Member States for returning illegally residing third country nationals (COM(2005)391) by highlighting where the Directive and current Swedish law and practice differs. First, concerning re-entry bans: the Directive suggests a common reentry ban for the whole European Union, while this is not the common practice for the MIV, which is somewhat

⁸⁴ Prop. 2004/05:170, p. 101.

⁸⁵ *Ibid.*

⁸⁶ “Skyddsgrundsdirektivet och svensk rätt”, SOU 2006:6, p. 26.

⁸⁷ *Ibid.*, p. 28-29.

⁸⁸ Faktapromemoria, förslag till direktiv om återvändande, 2005/06:FPM16.

restrictive to issue such reentry bans. Regarding the rules on termination of an illegal stay the MIV suggests that the Directive should make possible for swifter deportation in cases when the applicant refuses to cooperate, there is a risk that the applicant absconds, or when the applicant is taken into detention. In addition, the MIV refers to the unclear meaning of the rules on procedural safeguards and temporary custody for the purpose of removal, especially the deportees' right to legal advice and access to court.⁸⁹

4. Return Programs

4.1 Overview

Since 1999, the MIV has the overall responsibility for the returnees. In Sweden there are two main types of return, return migration/repatriation and return. As has been illustrated above each group has a number of sub-groups.⁹⁰ Firstly, return migration pertains to refugees and other people in need of protection holding permanent residence permits, who wish to repatriate to their countries of origin. The aim of the programs supporting voluntary return migration is to support individuals so that they will themselves be able to decide if and when they will return to their countries of origin. Individuals can be offered occupational training, investment opportunities, such as help with establishing their own companies in their countries of origin and assistance with finding employment. In this category, the decision to return must be autonomous, hence it is forbidden to influence the migrants' decisions by deterrent action. Consequently, Sweden does not practice welfare benefit deduction or similar practices in order to induce migrants to voluntary return migration.

In Sweden, currently there are only a few state sponsored programs for return following a rejection decision. The Swedish policy is that return should be an integrated part of the asylum process which means that the asylum process as such should include measures to support and strengthen the asylum-seeker by providing capacity enhancing

⁸⁹ Yttrande över Förslag till direktiv om gemensamma standarder vid verkställigheter av avvísings- och utvisningsbeslut, NRK-124-2005-17462, 10 oktober, 2005, MIV.

⁹⁰ See, Section 2.3.1.

activities and advice. Programs regarding voluntary return migration and voluntary adherence to rejection decisions are carried out by the MIV and national and international NGOs jointly.

4.1.1 Return Migration/Repatriation

Information is a key factor when the work with repatriation is concerned. The work can be orientated towards individual persons, but may also be aimed at enhancing the awareness of other actors who in various ways come into contact with foreign citizens in Sweden, for example public authorities, municipalities, county councils, NGOs and immigrants' own organizations and associations. The information concerns the opportunities available to facilitate voluntary return migration. These actors and the MIV distribute the information through conferences, seminars, study circles and web sites. On occasions they participate in radio and local TV programs and publish articles in newspapers.

In 2004, migrants from approximately 20 countries contacted MIV:s contact persons for individual information and consultation on repatriation. Exchanges of information and consultations have also been administered within the framework of projects partly financed by the MIV and guests invited by the project groups. Three dialogue conferences have taken place in Stockholm. These conferences have focused on northern Iraq, other parts of Iraq, and Bosnia-Herzegovina respectively.

The Nordic governments have a consultation group for refugees called the Nordic High Level Advisory Group on Refugee Matters (NSHF), which has a working group where the MIV is represented. In 2004, this working group continued its work on repatriation to countries such as Somalia, Afghanistan and Iraq. Among the MIV:s contacts with international organizations, the IOM and the UNHCR both play important roles.

Project operations form a large part of the work of the MIV when repatriation is concerned. Project support can be granted to municipalities, foundations, organizations,

associations and even businesses, subject to the condition that the project lacks commercial incentives. Individuals cannot apply for project support. The MIV can also finance projects that are granted funds from the European Refugee Fund (ERF) jointly with the latter. In 2004, 15 projects were granted support at a total sum of 5 549 582 SKR. Geographically, the projects were orientated towards Bosnia and Herzegovina (5 projects), Iraq, Liberia, Burundi and Somalia. The MIV financed ten projects during 2005 worth a total amount of 3 819 206 SKR. In conclusion, financial resources have mostly been spent on recognizance trips to countries of origin. There are also projects aiming to provide counseling, information, education and support for establishing own enterprises.

As a result of the war in Bosnia and Herzegovina over 60 000 Bosnians were granted permanent residence permits in Sweden, of whom according to data provided in 2002, 2 000 have returned by utilizing government funded return grants. A three year project operated by the IOM and commissioned by the Nordic governments aimed aid facilitating return of older Bosnians to Bosnia and Herzegovina. 60 Bosnians living in Sweden took part of this project.⁹¹ Still, between 2000 and 2002, 10 000 Bosnians applied for asylum in Sweden. However, in general, they are not considered to be in need of protection.⁹²

4.1.2 Follow-ups

There is no legal basis for evaluations and follow-ups concerning the individuals that benefit from available return migration programs, nor is there a concrete practice in place. These are conducted in an ad hoc manner. In November 2003, the ERF and the MIV made follow-ups in Bosnia-Herzegovina concerning projects jointly financed. And in June 2005, a journey was made to the Sarajevo canton in Bosnia-Herzegovina. The purpose was to make a follow-up on place of the work of Caritas Sweden and the Stockholm City Return Office, as well as to maintain contacts with the UNHCR, and through consultations with these parties get a view of how future efforts could be

⁹¹ Migration 2002, MFA, pp. 15-16.

⁹² *Ibid.*

designed.⁹³ Yet another trip was made to Bosnia-Herzegovina in August 2006 in order to evaluate earlier return migration and the current situation in the country.⁹⁴

4.1.3 Return

Concerning return as a result of a rejected application for asylum, an evaluation made in 2003 showed that return assistance in these cases mostly was provided by local operational migration authorities without any additional resources. Clearly, this did put an additional burden on a staff, already overburden. The Migration authorities therefore required additional resources and more cooperation with NGOs if the goals set up by the Government were to be met.⁹⁵

Thus far, assistance projects have mainly focused on Afghanistan, Bosnia-Herzegovina, Iraq and Somalia. For example, at the end of 2004 an agreement between the Swedish MIV and the IOM was entered with the aim to launch two assistance program for Somalis; one focused on return assistance for individuals whose asylum application was rejected, and the other on assistance for voluntary return migration of qualified nationals. One hundred returnees with rejection decisions were affected by the first program, and the second program involved a minor group of qualified nationals with the ability to assist reconstruction in Somalia.⁹⁶

In 1999, Sweden provided temporary protection to refugees staying in the Former Yugoslav Republic of Macedonia. 7 000 individuals were granted temporary residence permits in Sweden. Those who chose to return to their home country received a 5 000 SKR grant. 3 480 persons holding temporary residence permits received such grants. According to interviews with returnees the grant was decisive for the decision to return.⁹⁷

⁹³ "Frivillig återvandring", MIV, 2006. See also a report on the above mentioned follow ups: "Bosninen-Hercegovina, Sarajevokantonen 27-30 juni 2005", *Rapport Återvandring, Normalprocessen/Asyl*, Migrationsverket. (See more about the latter under section 4.2.2.)

⁹⁴ *Vad hände sen? Tema frivillig återvandring. Reseskildring från Bosnien-Hercegovina*, MIV, augusti 2006.

⁹⁵ Helena Åkerberg and Agneta Wassdahl Köhl, *Slutrapport, Sökandeundersökning*, MIV, 2003, p. 2.

⁹⁶ "Avtal för att underlätta återvändande till Somalia", Newsletter from the Swedish Migration Board, 2004-12-22.

⁹⁷ Åkerberg and Wassdahl Köhl, *Slutrapport, Sökandeundersökning*, p. 13.

4 036 applied for asylum in Sweden after the temporary residence permit had expired. Two thirds of the applications were accepted on humanitarian grounds. The other third was rejected.⁹⁸

Returnees from Kosovo whose application for asylum has been rejected receive special help, as requested by the UN. All rejection decisions must be communicated with the UN. If the UN does not recommend return, the rejection decision will not be executed. In addition, the Swedish government has a contact person in Kosovo who can assist the returnee upon arrival.⁹⁹

4.1.4 Forced Return

Return concerns cases where a rejection or expulsion decision has been issued by the authorities. The migrant can either comply with the decision, at which point the return is regarded as voluntarily executed (*självmant*), or try to avoid the execution of the decision. In the latter cases the authorities are allowed to use certain amount of force in order to carry out the decision and the return is then termed forced.

The general responsibility for enforcing removal orders rests with the MIV. However, in some cases the MIV can delegate the execution of a removal order to the police. This usually takes place when the alien refuses to show up for talks concerning return after repeated requests from the MIV. It is then assumed that the alien will try to avoid the execution of the removal order, and thus that certain degree of force will be needed in order to carry out the order.¹⁰⁰

According to statistics from the MIV the number of cases delegated to the Police due to the alien absconding has increased. Between 2000 and 2002, the number increased from 1 068 to 4 148 cases. In general, the overall number of cases concerning return

⁹⁸ Migration 2002, UD:s skriftserie, p. 15.

⁹⁹ ”Återvändande till Kosovo”, Newsletter from the Swedish Migration Board, 2005-04-28.

¹⁰⁰ SOU 2003:25, p. 70.

delegated to the Police by the MIV has increased, during the year 2002 by some 66 per cent.¹⁰¹

The costs of forced return are substantial. In 2002, the average daily cost per alien was 239 SKR. This cost includes room at special facilities, and special facilities for minors as well as costs for detention. According to a calculation by the MIV, based on the number of aliens registered in their system with appealed and subsequently deemed enforceable rejection and expulsion decisions in December 2001, which measured altogether 1 957 individuals, the monthly cost for this number of people who refuse to leave the country is 38.3 million SKR.¹⁰² These costs run relatively high as compared to the costs for repatriation and voluntary return.

4.2 Voluntary Return Migration

As has been discussed above, there is no official definition of the term voluntary return in Sweden. However, according to the terminology used by the MIV return (*återvändande*) refers to the situation when a returnee has to leave the country due to a decision of the authorities. According to the terminology suggested by the IOM this is not voluntary return. On the other hand, repatriation/voluntary return migration falls under the definition of voluntary return as suggested by the IOM. Available state assistance in cases of return has been discussed above, as have the state's perspective on voluntary return migration.¹⁰³ In this Section focus will be on the reasons for migrants to return voluntarily, obstacles to, procedures for, and the sustainability of voluntary return migration.

4.2.1 The Procedure for Voluntary Return Migration/Repatriation

The Swedish MIV has the main responsibility for voluntary return migration programs. Contact persons can be found in Malmö, Norrköping, Gothenburg and Stockholm. In 1993, programs for voluntary return migration of permanent residents were initiated. According to the Swedish government the possibility for voluntary return migration constitutes one of the main aspects of all migration and integration policies and programs.

¹⁰¹ *Ibid.*, p. 71.

¹⁰² *Ibid.*, p. 83.

¹⁰³ See, Section 3.1.

It should also have an impact on Swedish foreign aid and the main goal is to create as beneficial conditions as possible in countries of origin in order to facilitate return. Should the migrant wish to return, but lacks the sufficient means to do so, the state should provide means to support the return process. All return programs should be designed according to the circumstances in the country concerned.

Up till the adoption of the 2005 Aliens Act, the main rule was that the returnee lost his or her right to permanent residence in Sweden upon return. One or two weeks after the returnee left Sweden his or her residence permit would be cancelled. However, depending on how long the returnee has been outside of Sweden and if he or she is married in the country of origin or third country, it is still possible for the returnee to once again return to Sweden and receive a residence permit.¹⁰⁴ However, according to the Aliens Act that entered into force 2006, residence permits for refugees or others who have received residence permit due to their need of protection, must not be cancelled until two years have passed since the returnee left Sweden, if the returnee has returned to his or her country of origin due to changing political conditions.¹⁰⁵ From the returnee's perspective this is considered an improvement in the sense that the returnee does not cut the ties to Sweden directly. This in its turn creates a sense of security and therefore is by the Swedish government believed to increase the incentives to return.¹⁰⁶ This might especially be the case concerning regions and countries with recent political disturbances. From the perspective of the MIV-staff it is obvious that new rules require new routines, and there are still no new routines in place for handling these cases.

As the responsible state authority, the MIV should cooperate with other authorities and organizations in order to improve the quality and efficiency of available return programs. Besides, being responsible for travel grants and cash allowances, the Board should; collect and disseminate information to and from concerned individuals, organizations and local self government bodies. It should also provide education, and

¹⁰⁴ *Utvärdering: Projektstöd för återvandring*, Pacta Guideline på uppdrag av Migrationsverket, 2005-12-17, pp. 4, 6.

¹⁰⁵ SFS (2005:716), Ch. 7 § 7.

¹⁰⁶ Prop. 2004/05:170, p. 204.

help with reintegration in the country of origin.¹⁰⁷ Each of these tasks will be discussed in the following.

4.2.2 Sustainability of Return Migration

Experts often point out that return migration is not always the best option for migrants. Difficulties pertaining to return, that in the long run may render it unsustainable, include inability to return to the original place of residence or house or place of employment, as well as poor economic incentives, such as low salaries, problems with integration into the new community, lacking legal rights, and poor access to justice.¹⁰⁸

One way of defining sustainable return is to consider whether re-migration has occurred or not. Another way is to consider socio-economic factors, such as employment opportunities, salaries, housing, schooling, and medical care in the countries of origin. The above mentioned sporadic follow ups that have been utilized as a means of evaluating programs pertaining to voluntary return migration have shown that issues associated with poor housing, poor, or lacking access to, health care, small pensions or lacking employment opportunities are problems most commonly encountered while engaging in return.¹⁰⁹ Yet another is to consider the access to justice, corruption, and possibility of establishing enterprises and to make investments, i.e. political and legal factors. In addition, factors of more cultural nature, such as how one has changed during the stay abroad, and the ability to adapting to the new circumstances in the home country, might also need to be considered.¹¹⁰ Poverty reduction and enhanced support to state building processes in countries of origin are necessary measures in order to make return migration sustainable.

4.2.3 Information Campaigns

An important part of the work with voluntary return migration is information campaigns. These can be aimed at individual parties, but can also be aimed towards different actors

¹⁰⁷ *Ibid.*, p. 5.

¹⁰⁸ "Defining, Measuring and Influencing Sustainable Return", *Briefing no 3*, Development Research Centre on Migration, Globalization and Poverty, July 2005, p. 1-4.

¹⁰⁹ "Bosninen-Hercegovina, Sarajevokantonen 27-30 juni 2005", *Rapport Återvandring, Normalprocessen/Asyl*, MIV.

¹¹⁰ Åkerberg, Wassdahl Köhl, *Slutrapport, Sökandeundersökning*, p. 6.

or agencies that in different ways come into contact with foreign nationals in Sweden. Examples of such actors include state agencies, municipalities, NGOs, and different organizations and associations run by foreign nationals. The information pertains to various possibilities that promote and help with voluntary return migration. It is gathered by different means, for example by reconnaissance trips and gathering of facts on location. The information is then disseminated to various actors during meetings, and through internet and radio and satellite television transmissions. During 2005, individual refugees from approximately ten countries initiated contact with the Swedish MIV and asked for information and counselling on return migration.

4.2.4 Incentives to Voluntary Return Migration/Repatriation

Refugees or persons who for other humanitarian reasons have been granted a permanent or temporary residence permit in Sweden, and quota refugees, can apply for an allowance to move back to their native countries, or to third countries, provided that they cannot themselves pay for their trip. Certain family members can also receive an allowance if they received a residence permit because of the main returnee. Spouses, cohabitants and children under 18 are considered family members. Swedish citizens are not eligible for this support.¹¹¹

The allowance covers travel expenses from Sweden, plus a cash amount to help resettlement in the country of origin. The cash amount is 10 000 SEK for each adult and 5 000 SEK for each child under 18. The maximum for one family is 40 000 SEK. Travel expenses include plane, train, bus or car. It does not cover the cost for shipping of furniture. The allowance provided by the MIV does not cover traveling expenses for visiting the country of origin in order to decide whether to return or not.¹¹²

Additional requirement in order to receive the allowance include a valid passport for the country of origin and an address there, and possibly additional information if

¹¹¹ Factsheet on repatriation, MIV, 2006. Available at http://www.migrationsverket.se/infomaterial/atervandring/sokande/ater_en.pdf. Last visited, 2006-07-10.

¹¹² However, projects financed by the Board but operated by for example foundations and organizations do arrange such trips for individual returnees.

requested. If the destination is a third country a permission to live in that country must be presented, and if necessary, visas for countries that will be visited on the way. In addition, the returnee is required to list all debts in Sweden, as well as all assets in his or her native country or the third country. If there are any debts this must be paid of before an allowance will be granted.

Returnees that are awarded an allowance are requested to visit their local tax authorities in order to notify that they are leaving Sweden permanently (*flyttning till utlandet*). Once the returnee has send a confirmation to the MIV, stating that he or she has notified the tax authorities, the Board will make the travel arrangements, including making reservations and paying for the ticket.¹¹³

In 2004, 148 people applied for travel grants and cash support, of which 92 persons received grants. In 55 cases, the applications were rejected, or the applications were withdrawn. 23 countries were represented amongst the applicants: Iraq (89), Iran (17), Chile (5), the Democratic Republic of Congo (5), Afghanistan (4), Bosnia-Herzegovina (4) and Somalia (4). People returned to - among other countries - Iraq, Chile, Iran, Bosnia-Herzegovina, the Democratic Republic of Congo, Australia and Bolivia. In 2005, 60 persons applied for allowances. 41 had their application rejected or dismissed, and 18 did receive financial support. The applicants returned to Afghanistan, Armenia, Iran, Bosnia-Herzegovina, Chile, Iraq, Somalia and Vietnam.¹¹⁴ In July 2006, only fifteen applications for allowances were received by the MIV. The MIV does not have any follow up procedures. When the residence permit is cancelled, either after two weeks or after two years depending on the status of the returnee, the case is closed.

Besides from paying allowances to returnees the Swedish MIV supports projects that aim to facilitate voluntary return migration in both Sweden and countries of origin. Project support can be granted to municipalities, foundations, organizations, associations and even businesses, subject to the precondition that the project is not to be conducted commercially. The Board can also jointly finance projects that are granted funds from the ERF. Reconnaissance journeys to the countries of origin are a more advanced way of gathering information for the target groups. Other projects are directed towards

¹¹³ Information available at <http://www.migrationsverket.se/english.jsp>.

¹¹⁴ *Ibid.*

counseling, training and support for starting up private enterprises. Currently, there are several projects with support from the Board. They are spread through out the country and can be found in for example Stockholm, Växjö, Närke and Gothenburg. Their main target groups are holders of permanent residence permits from Iraq, Bosnia-Herzegovina, and to some extent Afghanistan, Burundi and Liberia.¹¹⁵

Projects that aim to facilitate for returnees to start a professional career in their home countries are rather expensive. On the other hand they attract devoted participants, half of whom already work in Sweden. According to one evaluation, most of the participants were men and all had visited their home countries several times. Other projects have involved investigating the possibility to start up farms and medical care units in countries of origin. Also these have been relatively successful. Still, the always overshadowing factor is political, economic and social stability.¹¹⁶ Concerning projects aiming to gather information about the country of origin by the project leaders traveling there, the conclusion of the evaluators is less straight forward. In these projects only the project leader travels to the country in question. Managers of these projects have experienced disbelief amongst their country men and they have had problems to communicate the information they have acquired.¹¹⁷

4.2.4.1 Motives and Obstacles for Voluntary Return Migration – The Migrant's Perspective

The experience of the migration authorities in respect to travel grants is that the size of the grant alone does not create an incentive to return, but that it constitutes an important support for migrants who consider return as a possibility, but who lack their own resources to carry it out. An evaluation made of voluntary return migration assistance programs in Sweden involving NGOs that arrange travels to countries of origin, show that the perception and expectations of project leaders and project participants differs slightly regarding the purpose and outcome. It is considered hard to find project

¹¹⁵ For an exemplifying list over the projects that are currently being financed by the Board visit <http://www.migrationsverket.se/pdf/atervandring/projekt.pdf>.

¹¹⁶ *Utvärdering: Projektstöd för återvandring*, p. 46.

¹¹⁷ *Ibid.*, p. 50.

participants. There are sentiments that trips to countries of origin have been considered social visiting trips rather than trips with the purpose to prepare return. Participants seem to have been less motivated than what the project leaders realized. A majority of the persons participating in the projects had visited their home country several times before. Spending time with country men was considered of great value, even though the trips per se did not always provide something new. The participants are less satisfied with the quality of the information provided. Participants express the need for continued support after return. Guarantees of the right to return to Sweden in combination with continued financial support in the home country is put forward as important incentives for voluntary return migration. Both the project leaders and the participants agree that the project per se does not determine whether return migration will take place or not. In most cases it did confirm an already taken decision not to return.¹¹⁸

A majority of the participants were aged 55 to 83. They had been living in Sweden for more than ten years. The fact that they have children and grand children in Sweden has had a negative impact on decisions to return. In addition, the fact that they are old also makes them more concerned over the lack of social and medical care in their home countries. In addition, often their houses and villages are not suitable for resettlement. Practical problems with getting their houses back and receiving of national IDs have also had a negative effect. They do not feel safe. The younger generation has in general no interest to leave Sweden.¹¹⁹ Of the projects that were covered by this evaluation, three to four families have returned. The project leaders are of the opinion that return assistance programs must start earlier before the settlement in Sweden has gone too far.¹²⁰

4.2.5 Obstacles to Voluntary Return Migration

Obstacles to voluntary return migration are of course difficult to identify and analyze since they concern individual decisions. Why do some people leave their countries, and then refuse to return? Obviously a dream of a better life for oneself and ones family is an

¹¹⁸ *Ibid.*, p. 43.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*, p. 44.

important factor. There can be economic reasons or political ones, even if the latter do not necessarily qualify as political asylum.

Persons who have returned to their countries of origin as a result of voluntary return migration depict certain practical difficulties in the home countries. The largest problem was finding a way to earn money, but many also mentioned problems associated with housing, medical care, and schooling. Several persons also mentioned the fact that they had changed mentally during their time abroad and thus had difficulties adapting to the new conditions in their home country. They were also not prepared for the how much their own countries had changed during their absence. This is often due to a lack of mental preparation of what is to be expected upon returning. Research in this area indicates that proper counseling and information aiming at preparation for what to expect in the home country, is of utmost importance for a successful return.¹²¹

There can also be other objective obstacles to voluntary return, such as people lacking financial resources to pay for transport and the initial settling-in period. Other reasons may be a shift in the political climate, or an environmental disaster that make it impossible to return a person to his or her country of origin, and that consequently postpone return. If someone upon return in his or her country of origin risks death, torture or other forms of degrading treatment, it is usually a reason for stopping, or at least postponing, the return decision.

An analysis of several projects in Sweden show that both project leaders and participants agree that there are four preconditions for voluntary return migration to take place. These are:

- the financial possibility to make a living
- social and medical care
- personal safety, and
- housing

In addition, family connections and the time spent in Sweden are considered to have a significant impact on the return decision.¹²²

¹²¹ *Ibid.*, p.8.

¹²² *Ibid.*, p. 48.

4.3 Return

4.3.1 Procedures of Return

The main rule is that if an application for residence permit is denied or a permit is revoked at the time of the foreigners stay in Sweden, such a decision should, if no special circumstances imply otherwise, be issued together with a rejection or expulsion order. There are two different types of removal orders in Sweden; rejection and expulsion decisions. The relevant provisions on these two types of decisions are stipulated in the Aliens Act and the Act on Aliens Control. In the Aliens Act the provisions on rejection are to be found in Chapter 8, Articles 1 to 6. The provisions pertaining to expulsion are stipulated in Articles 7 to 14 of the same Chapter. Article 15 contains a cross-reference to the Act on Aliens Control, and its provisions on expulsion due to threat on national security or due to risk for criminal acts as stated in the law on punishment for terrorist acts.

Both the MIV and the law enforcement agency can be involved throughout the process of a rejection decision. The MIV shall examine the application if the applicant has applied for asylum in Sweden; if the person has a close family member that has applied for asylum in Sweden; and if the applicant has been issued a rejection or expulsion decision in any other EU Member State or in Iceland, Norway, or Switzerland due to committing a crime or otherwise posing a threat to public safety, or if the applicant has violated the rules for entering and residing within that country. In other circumstances both the MIV and the law enforcement agency can adopt a rejection decision. However, should the police authorities hesitate as to whether someone should be rejected or not it is obliged to forward the case to the MIV.¹²³

There are guidelines as to the form of how a migrant should be notified in case of a rejection or an expulsion decision. If the migrant is residing at a special facility the decision is sent to this facility, where it is, together with a document verifying that the decision has been received, submitted to the migrant by the staff of the facility. The person forwarding the decision to the migrant should also inform him or her of the

¹²³ (SFS 2005:716) Ch. 8, § 4.

possibilities of appeal, and of voluntary executed return. Usually this requires the assistance of an interpreter. If the MIV-staff cannot find the migrant the decision is sent to a law-enforcement agency located in the area where the migrant was last residing. Thereafter it is the responsibility of this authority to notify the migrant. The same procedures apply when the decision is to be executed immediately, or if the migrant is held in detention.

Execution of rejection and expulsion decisions is to be carried out within a specific time period, for rejection it is normally two weeks and for expulsion four weeks. It is possible to state longer or shorter periods in the decision.¹²⁴ The main reasons for lack of enforcement of removal orders is said to be the lack of proper travel and/or identification documents and/or the migrant absconding. Should there be a risk that the migrant absconds, the migrant can be placed under preventive measures such as supervision or detention, out of which detention is the most far-reaching in terms of violating personal integrity. If a migrant refuses to cooperate by not stating his/her true identity the MIV may practice welfare deduction. The authorities may also decide to place the migrant under supervision or in detention.

4.3.2 Removal Orders

The MIV can decide on immediate execution of a rejection decision (*omedelbar verkställighet*), even before the decision has entered into force, if the decision concerns a rejected asylum claim. This procedure refers to cases when someone has applied for asylum but it is evident that no grounds for granting asylum exist, and there are no other grounds for issuing a residence permit. A rejection can also be executed immediately, prior to the decision gaining legal force, if the asylum-seeker has declared an acceptance of the decision (*nöjdförklaring*).¹²⁵

A person, who illegally resides in Sweden, can be expelled by a decision taken by the MIV.¹²⁶ In addition, a person can be expelled from Sweden if s/he has committed a crime that can result in a prison sentence. A foreigner can also be expelled if a court has

¹²⁴ (SFS 2005:716) Ch. 12 § 15 (2). Prop. 1997/98:173, p. 12

¹²⁵ (SFS 2005:716), Ch. 12 § 7.

¹²⁶ (SFS 2005:716), Ch 8 § 7.

ruled on a case and changed the punishment, from probation or parole to a more severe punishment. A person can, however, be expelled only if the sentence is more severe than payment of fines, and if the offence committed and other circumstances are of such character that it can be assumed that the person will continue to commit criminal offences in Sweden, or if the crime due to the damage, danger or violation it inflicted upon individuals or public interests, is so severe that the person should not be allowed to stay in Sweden. Matters concerning expulsion due to crime are decided by the court examining the case.¹²⁷

When a court is considering expulsion it is obliged to take into account the ties that the foreigner has to the Swedish society. The court shall especially consider the living circumstances of the foreigner, if the foreigner has children in Sweden, and if so his relations with the child in question, the need of the child to have contact with that person and how the child might be affected if the contact would be interrupted. The court shall also consider other living circumstances, and the time spent by the foreigner in Sweden. A foreigner that enjoys a refugee status and that is in need of safe haven in Sweden can only be expelled if he or she has committed a particularly grave offence and it would mean serious threat to public order and security if he or she was allowed to stay. Expulsion is also possible if the foreigner in Sweden or abroad has been involved in activities that have threatened national security and there is reason to assume that he or she will continue with such activities in Sweden.¹²⁸

The Swedish government can decide that a court's decision on expulsion due to crime should not be executed. Should it do so or if there are otherwise special reasons for the decision to become invalid, the Government can lift such a decision partially or in its entirety. In these instances the Government can concomitantly make a decision concerning residence and work permits. If the decision on expulsion is not lifted there is a possibility under the condition stipulated by law to issue temporary residence and work permits.¹²⁹

There is also a possibility of expulsion according to the Aliens Control Act. A person that has not been expelled according to the provisions of the Aliens Act can be can

¹²⁷ (SFS 2005:716), Ch 8 §§ 8-9.

¹²⁸ (SFS 2005:716), Ch. 8 § 11.

¹²⁹ (SFS 2005:716), Ch. 8 § 14.

expelled according to the Aliens Control Act if it is necessary for national security, or if it due to what is known about the previous activities of the alien and other circumstances there is a risk that he or she will commit or be accomplice in a terrorist act according to Article 2 Swedish Terrorist Act. An expulsion decision under this law is issued by the MIV, and the application for such a decision is made by the Swedish Security Service (SÄPO). If a law enforcement agency, the board of the county (*länsstyrelsen*), or the MIV finds reason to assume that a decision on expulsion according to Article 1 should be issued, the relevant authority should report this to the Security Service.¹³⁰

The above mentioned expulsion decision issued by the MIV can be appealed to the Government. Expulsion decisions by other state agencies may only be appealed according to procedure stipulated by the mentioned law.¹³¹ If the decision of the MIV is appealed the protocol of the case should be submitted to a special appeal court specialized in migration issues. This court should, in its turn, produce a statement over the case and pass the protocol to the Government. In its statement it shall especially state whether there are obstacles to the execution of the expulsion decision according to Article 1, 2 or 3 of Chapter 12 of the Aliens Act. If there are, according to the special appeal court, such obstacles and the Government decides that the alien should be expelled, the Government shall in accordance with Article 10 Section 1 of the Aliens Control Act rule that the decision is temporarily not to be executed. If there is no decision on inhibition the decision on expulsion should be carried out as soon as possible, and the Security Service is, as a rule, responsible for the execution of the decision. The authority responsible for issuing the expulsion decision can also decide that another state body than the Security Service should be responsible for executing the expulsion decision. A country or several possible countries of destination are fixed in the removal order, as well as time for its execution. There are decisions that are to be executed immediately, and this information must be stated in the decision.¹³²

4.3.3 Detention and Supervision

¹³⁰ (SFS 1991:572) §§ 1-2. For more information see, "Särskild utlänningskontroll", Regeringskansliet, www.regeringen.se, accessed 2006-05-05.

¹³¹ (SFS 1991:572) § 2 a.

¹³² (SFS 1991:572) §§ 3, 10, 13.

As a main rule asylum seekers awaiting a decision can choose if they want to stay with family and friends or in an apartment provided by the MIV. More than half of the applicants chose to live with relatives or friends. As a result of the temporary law on asylum the MIV is planning to cut down on the number of facilities provided by the MIV. This Section provides an overview of measures the MIV and law enforcement agencies are allowed to take in order to ensure the enforcement of a removal or rejection decision.

While entering Sweden a migrant has to present a passport. He or she shall give appropriate information to the law enforcement agents and present other relevant documents. A law enforcement agent is entitled to perform a body search, and examine the luggage, purses, etc of the migrant if this is considered necessary in order to discover the identity of the migrant. The body search is to be carried out only if strictly necessary and the only means of discovering the identity of the migrant, or traveling route.¹³³

After a person has arrived in Sweden and applied for a residence permit, the authorities, namely the MIV or the law enforcement agencies, can confiscate the passport or other documents stating the identity of the migrant. Also, when a rejection or expulsion decision is to be executed the authority responsible for carrying out the decision can confiscate the passport or other identity documents until the time that the decision can be executed. The authorities are allowed to confiscate the ticket only if it seems likely that the alien will not be granted a residence permit, and there is reason to assume that the alien will otherwise dispose of the ticket, and will not be able to pay for his or her trip from Sweden.¹³⁴ In addition, the MIV or relevant law enforcement agencies are allowed to photograph an alien and, if the alien is over 14 years of age, to take his or her fingerprints. This applies, for instance when the alien cannot prove his or her identity upon his or her arrival in Sweden; the alien applies for asylum; or there is reason to put the alien in detention.¹³⁵ There is also the possibility of control while in Sweden. For example, a migrant residing in Sweden can at any time be requested by a law enforcement officer to produce a passport or other documents stating his or her identity and his or her right to reside in Sweden.¹³⁶

¹³³ (SFS 2005:716) Ch. 9 § 2.

¹³⁴ (SFS 2005:716) Ch. 9 §§ 4-6.

¹³⁵ (SFS 2005:716) Ch. 9 § 8 Prop 2003/04: 50, p. 40-42.

¹³⁶ (SFS 2005:716) Ch. 9 § 9.

Aliens, both children and those over 18 years of age, may be put under supervision. To be put under supervision implies an obligation to, at designated times, report to the local law enforcement agency or to the MIV. If the migrant refuses to report to the authorities, s/he can be forced to attend and picked up by the law enforcement agency. If it is believed that due to personal circumstances or other circumstances the migrant will not show up, the law enforcement agency is entitled to pick him/her up without prior notice. A decision to put an alien under supervision may also include an obligation to surrender passports or other identification documents. A decision to put an alien under supervision shall be reviewed within six months from the issuance of the decision. If the alien is continuously put under supervision, a review of the decision must take place at least every six months. A decision to put the alien under supervision shall immediately be revoked if there are no longer any reasons to uphold such a decision. If a decision to put an alien under supervision is not reviewed within the prescribed time period, it automatically expires.¹³⁷

An alien can be put in detention if his or her identity cannot be proven upon entering Sweden or when an asylum claim is filed and the alien cannot make probable that the claimed identity is the correct one, or if necessary in order to assess the alien's right to travel to and reside in Sweden. Aliens older than 18 years can be put in detention: if necessary for the investigation to be concluded as to whether the alien has a right to stay in Sweden; if it is probable that the alien will be rejected or expelled; and in cases of the execution of a rejection or expulsion decision. In the latter case, detention is only to be used if it is probable that the alien due to personal or other circumstances may stay away or engage in criminal activity in Sweden.¹³⁸ A child is not to be separated from its parents or care takers due to detention. Unaccompanied children should be put in detention only if required due to special circumstances.¹³⁹ An alien detained in order to verify or establish his or her identity may not be held for more than 48 hours. Aliens detained for other purposes may not be held for more than 14 days. However, if a decision to expel or reject the alien has been taken, the alien may be held in detention for up to two months. A child may not be held in detention for more than 72 hours. A

¹³⁷ (SFS 2005:716) Ch. 10 §§ 6-9.

¹³⁸ (SFS 2005:716) Ch.10 § 1.

¹³⁹ (SFS 2005:716) Ch. 10 § 3.

decision to detain an alien must be reviewed within two weeks from the day of its execution. In cases of rejection or expulsion the decision to detain an alien shall be review within two months from it being issued.¹⁴⁰

Decisions to detain an alien or to put him or her under supervision are made by the authority that is processing the case, primarily by the MIV and law enforcement agencies. Concerning decisions that are to be executed immediately, and even if the decision in question is appealed, the MIV remains the processing authority until the special Migration Court decides on inhibition.¹⁴¹ In certain cases the Government might be competent to review the case. In such cases decisions concerning detention and supervision are made by the Minister in charge of the case. The Government itself is not allowed to decide to place someone in detention or under supervision. However, it has the right to lift such decisions.¹⁴² In cases concerning national security the special Migration Court of Appeal is the processing authority until the time when the case is received by the Government, most notably the Foreign Ministry.¹⁴³ In addition, a law enforcement agency, even if it is not processing the actual case, can decide to place an alien in detention or under supervision if there is no time to await the processing authority's decision. Such a decision is to be reported swiftly to the processing authority, and this authority shall then immediately consider whether the detention or supervision decision shall remain in order.¹⁴⁴

The MIV is responsible for implementing the decision to put someone in detention. The authority that took the decision to put someone in detention can request assistance from the law enforcement agencies.¹⁴⁵ A decision by the MIV or the law enforcement agencies to put someone in detention can be appealed to the Migration Court.¹⁴⁶

¹⁴⁰ (SFS 2005:716) Ch. 10 §§ 4-5, 9.

¹⁴¹ (SFS 2005:716) Ch. 10 §§ 13-14.

¹⁴² (SFS 2005:716) Ch. 10 § 15.

¹⁴³ (SFS 2005:716) Ch. 10 § 16. See also, "Särskild utlänningskontroll", Regeringskansliet, www.regeringen.se, accessed 2006-05-05.

¹⁴⁴ (SFS 2005:716) Ch. 10 § 17.

¹⁴⁵ (SFS 2005:716) Ch. 10 § 18-19.

¹⁴⁶ (SFS 2005:716) Ch. 14 § 9 (1).

Chapter Eleven of the 2005 Aliens Act¹⁴⁷ stipulates how an alien kept in detention should be treated. S/he should be treated humanely, and his/her dignity should be respected. The conditions surrounding detention should be formed in such a way as to constitute least possible violation of the alien's integrity and rights. An alien held in detention should be placed in facilities specially designed for this purpose. The MIV is responsible for these facilities and for the way the alien is treated while in detention. If an alien is placed in a criminal corrections facility or the like (this is possible for aliens who have committed crimes or are deemed threats to security), s/he should be offered certain privileges if possible taking the order and security within the correction facility into account.¹⁴⁸ An alien held in detention shall be offered a possibility of activities, recreation, and physical training. S/he shall also enjoy the possibility of receiving guests, except in cases where such contacts would make the upholding of the detention difficult. If it is necessary in order to uphold security a visit can be supervised. A visit from a lawyer can be supervised only if the lawyer demands so. An alien held in detention has the same right to medical care as an asylum seeker. He or she can be prohibited from leaving the premises. If the alien is over 18 years of age, s/he could be put in isolation, if s/he is deemed a danger to him or herself or others staying at the facility.

Concerning children the main rule is that they are normally not to be separated from their parents or legal guardians. If they are placed in detention, which seldom occurs, they are only allowed to be placed in facilities of the MIV, and, for instance, not in any criminal correction facilities.¹⁴⁹

4.3.3 Transport and Removal Measures

The reception units of the MIV have the main responsibility for facilitating and assisting return. Together with the migrant they search for appropriate ways of return. The main goal is to make the migrant return voluntarily in case of a rejection decision (*självmant återvändade*), even though s/he would rather stay in Sweden. If an execution of a rejection decision involves a family with children, it is imperative that the return is

¹⁴⁷ (SFS 2005:716) Ch. 11.

¹⁴⁸ (SFS 2005:716) Ch. 10 § 20, Ch. 11, § 2.

¹⁴⁹ (SFS 2005:716) Ch. 10 § 20.

carried out in a way that corresponds to the children's needs. This implies that the parents should be ready and willing to leave the country voluntarily.

There are certain guidelines for the execution of rejection decisions laid down in an instruction book available to the personnel at MIV. According to these guidelines rejection or expulsion decisions must be carried out under dignified circumstances. The process should be governed by a comprehensive approach, and constitute an integrated part of the asylum and integration processes.

When a rejection or expulsion decision has been made the trip home shall be planned by consulting the alien so that it can be undertaken within the stipulated time period, namely two weeks for rejection and four weeks for expulsion counting from the day that the decision gained legal force. When valid travel documents exist reservations are made for the trip. Travel routes are decided by what documents the alien holds, the type of transport available, the possible need of transit visa, and agreements with the authorities at transit points.

The trips can be carried out in four different ways:

- 1) Independent return (*självmant återvändande/enskild resa*), which means that the alien leaves voluntarily of his/her own accord.
- 2) Unescorted enforcement/DEPU (deportee unaccompanied).
- 3) Escorted enforcement/DEPA (deportee accompanied).
- 4) DEPA/DEPU, a combination of the two above mentioned forms.

In case of an independent return the migrant leaves the country on his/her own, at own expense, and without notifying anyone that the trip is actually a result of a rejection decision. In order to be able to undertake this form of return the migrant must hold necessary and valid travel documents, including a transit visa if passing through a transit state where s/he is required to produce a visa. In addition, it is required that the transit and/or destination countries do not demand prior notification of arrival, or that the returnee be escorted.

DEPU is the most common form of enforcing rejection decisions based on the Dublin Convention. It is also applied in cases where the alien lacks necessary travel documents, and these cannot be acquired in Sweden, yet there is information that the

country of destination will receive the alien and the carrier as well as transit countries do not require an escort.

In cases where the migrant lacks proper travel documents and these cannot be acquired in Sweden, or in cases where the alien only has an EU laissez-passer, or in cases where the transit or destination countries or the carrier requires escort, a representative from the MIV or the law enforcement agencies accompanies the migrant. In cases of a combination of DEPU and DEPA the migrant is accompanied during a part of the trip, usually to the last transit point.

4.3.4 Implementation of Rejection and Expulsion Decisions

The total sum of return cases registered with the MIV has increased from 13 567 in 2002 to 32 943 in 2005. Within the same time frame the number of rejectees returning voluntarily with the assistance of the MIV have decreased from 7 148 to 6 896. In the number of voluntarily enforced rejection decision peaked at 10 103.¹⁵⁰

In September 2006, the MIV reports that 2 327 rejected asylum-seekers have returned voluntarily. 2 285 have absconded and hence the enforcement of these decision have been handed over to the law enforcement agencies. An additional 583 cases have been handed over to the law enforcement agencies since these applicants refused to cooperate. 6 700 open return cases were noted out of which 1 100 had temporary residence permits. 31 percent of the individuals who have not been granted a temporary residence permit originate from Iran or Serbia. It is expected that there will be 10 500 return cases in the end of 2006.¹⁵¹ The Police had in September 2006, 13 000 return cases, out of which 8 500 are wanted for absconding a rejection decision by the MIV or there was a need to use force in order to enforce the rejection decision. It is however estimated that the temporary law on asylum caused fewer cases than usual to be handed over to the Police.¹⁵²

Rejection or expulsion to a country in which there are reasonable grounds for believing that the deportee risk being subjected to the death penalty, torture or other

¹⁵⁰ *Verksamhets- och utgiftsprognos, 2006-10-30, utfall januari-september 2006, MIV, 2006, p. 57*

¹⁵¹ *Ibid.*, p. 8.

¹⁵² *Ibid.*, p. 9.

inhumane treatment, or if the deportee risk being deported to a third country and there subjected to death penalty or torture, must not be enforced. Neither should anyone be deported to a country in which he or she is likely to be persecuted, or deported to a third country in which persecution is likely. In addition, decision to remove a rejectee to his or her country of origin will not be executed should that country suffer from an environmental disaster, armed conflict, or if the deportee feels a well founded fear of being exposed to torture or the death penalty.¹⁵³

Should a rejection decision be appealed the MIV should investigate whether the enforcement procedure should be inhibited (*inhibition*). In addition, international bodies such as the European Court of Human Rights can request that the enforcement procedure be halted.¹⁵⁴ Between November 2005 and July 2006, 25 603 asylum cases were decided, out of which approximately 6 000 could not be enforced due to the situation in the receiving country.¹⁵⁵

4.3.5 Sustainability of Return

According to the Aliens Act a re-entry ban can be invoked in three different cases. Firstly, if a migrant has committed a crime and due to this crime has been expelled, the court or the relevant authority must in the expulsion decision also issue a reentry ban, i.e. a prohibition for the migrant to return to Sweden during a certain time period or in some cases without a time limit. If the decision is to be valid under a certain period, the migrant is to be informed of the day on which the ban will be lifted. The decision should also contain information as to the repercussions that the foreigner would suffer if he or she would ignore the ban.¹⁵⁶ Secondly, the MIV can combine a rejection or expulsion decision with a reentry ban for a limited period of time, during which the foreigner cannot enter Sweden without the permission of the MIV, or in case of national security concerns, a permission from the Government.¹⁵⁷ Thirdly, there is also the possibility for a special migration court of first instance, or the special appeal court, or the Government,

¹⁵³ (SFS 2005:716) Ch. 12 §§ 1-3.

¹⁵⁴ (SFS 2005:716) Ch. 12 §§ 10, 12.

¹⁵⁵ *Rapportering enligt regleringsbrev angående den tillfälliga lagstiftningen om verkställighetshinder*, MIV, 2006.

¹⁵⁶ (SFS 2005:716) Ch. 8 § 13.

¹⁵⁷ (SFS 2005:716) Ch. 8 § 19.

when examining an appeal case concerning a return decision, to combine the return decision with a reentry-ban, even if the authority to first examine the case did not issue such a ban.¹⁵⁸ There is also a possibility of issuing a reentry ban under the Act on Alien Control.¹⁵⁹

There is a mutual list among the EU Member States where persons who, for various reasons, are not allowed to enter the EU are listed. The mutual computerized information-system Schengen Information System (SIS) contains this list, which makes it impossible for certain migrants to enter the Union. The information that, according to Article 96 of the Schengen Convention, can be registered on the list includes, *inter alia*, that an alien is considered a threat to national security and public order (for example when the alien has been found guilty of a crime which is punishable by a minimum of one year's imprisonment), or that the alien has been subject to a rejection or expulsion decision.

A migrant that returns to Sweden after a return decision with a re-entry ban has been executed can be sentenced to maximum one year's imprisonment or, if the offence is to be considered less severe, to pay fines.¹⁶⁰ This does, however, not apply to people who flee their country in order to escape persecution.

4.4 Return Assistance – Return Counseling

4.4.1 Return

The process of return should constitute an integrated part of the asylum process, which means that the migrant should be informed at an early stage of the possibility of return. The initial talks and counseling when the migrant first arrives in Sweden are undertaken at asylum and transit units.

If the MIV has decided to reject the migrant's application talks concerning return should be initiated. These talks may be seen as a form of counseling. The circumstances that must be discussed during the talks include questions such as how the migrant views

¹⁵⁸ (SFS 2005:716) Ch. 8 § 21.

¹⁵⁹ (SFS 1991:572) § 4.

¹⁶⁰ (SFS 2005:716) Ch. 20 § 2.

the return and to what country the return should be enforced.¹⁶¹ The trip to the country of destination should be planned together with the migrant.¹⁶²

Correct and realistic information concerning the situation in the countries of origin is important in order to reach a well educated decision on return. Often it is necessary to provide information and counseling on the situation in the country of origin. If persons issued with rejection and expulsion decisions receive comprehensive and accurate information it is easier to make well educated decisions to return voluntarily.¹⁶³ It is, however, sometimes difficult to provide correct information. The officials unfortunately sometimes lack adequate information on the situation in the countries of origin, or such information might be difficult to obtain. Prior, for instance, there have been complaints as to the information that was provided to individuals returning to Kosovo, Chile and Bosnia-Herzegovina. The information received from the MIV was considered inaccurate. Some migrants even felt betrayed. In their countries of origin they found themselves without anywhere to live, unemployed and generally insecure. In addition, cooperation between various relevant actors has been poor. Another difficulty is due to the fact that talks are often carried out with the help of an interpreter.¹⁶⁴

While waiting for a decision, or the enforcement of a decision, asylum-seekers whose case do not fall under the Dublin Regulation or are obviously unfounded, are offered what is called return-related education (*återvändanderelaterad utbildning (ÅVU)*). At the beginning of the waiting period courses in Swedish language are offered, but at a later stage focus will be shifted to return-related education. The general aim of the MIV is that individuals with a rejection decision should be offered ten hours activities per week. Return-related education is not available through out the country; hence there is no general right to such an education. In places where it is not available the rejected asylum-seeker is continuously offered courses in the Swedish language. However, in those places that return-related education is offered it is obligatory and participation is a prerequisite for receiving financial support while in Sweden. There is no national plan as to what return-related education should focus on. Its content is decided, within the overall

¹⁶¹ "Handläggningen av återvändandeärenden", MIV, 2006-03-30, p. 2.

¹⁶² SOU 2003:25, p. 79-80.

¹⁶³ Prop. 1997/1998:173, p. 51.

¹⁶⁴ Åkerberg H, Wassdahl Köhl A "Slutrapporten Sökandeundersökning", p. 6.

frames provided by the MIV, by the company that has won the contract in a public procurement process. Usually, courses in Swedish language, self administration, and computer skills are offered.¹⁶⁵ The MIV does not keep any statistical information over how many of the concerned individuals that participate in the activity and there has been no overall evaluation of the relatively new system which is administered by private companies. The system was changed in January 2006 when the procurement procedure was initiated.

Apart from the work of the MIV there are occasional return programs, carried out by NGOs, which the migrant can partake in. These, however, are of a sporadic nature and are mostly carried out in the major cities in Sweden. For example, the Swedish Red Cross provided return counseling to individuals returning to Bosnia-Herzegovina. Between August 2003 and July 2004 the Red Cross dealt with 292 cases involving 773 individuals.¹⁶⁶ IOM has provided return assistance to Somalis which to return. MIV has conducted interview with one hundred Somalis in Sweden awaiting decisions on whether they can stay in Sweden or not, in order to identify what they need in order to voluntarily leave Sweden in case of a rejection decision.¹⁶⁷

4.4.2 Return Migration/Repatriation

An important part of the work pertaining to voluntary repatriation is constituted by counseling, which in turn may be aimed at individuals as well as actors that come into contact with foreign citizens in Sweden.¹⁶⁸ There is also a checklist that one may consult on the MIV:s home page, containing a list of things that a potential returnee should consider before returning. The list includes issues such as education, health care and security in the home country.

A person might be eligible for assistance even if s/he decides to move somewhere else than his/her native country. If that person has been granted a residence permit on the grounds of him/her being viewed as a refugee or for other humanitarian reasons, or if that

¹⁶⁵ *Utredning om Kvalitets- och kvantitetsmål för sysselsättning för asylsökanden m.fl. mellan 18 och 64 år*, MIV, mars 2005.

¹⁶⁶ *Informationsnätverket för asylsökanden från Bosnien-Hercegovina, slutrapport ERF 314/2003*.

¹⁶⁷ *Verkställighetsarbete – en uppföljning*, MIV, 2006-09-21.

¹⁶⁸ "Frivillig återvandring", MIV, 2006.

person has been part of the refugee quota, s/he can apply for an allowance. In order to apply for the allowance the person is to use a specific application, which is available at refugee centers of municipalities, in migrant services bureaus or repatriation offices. If a person cannot for some reason pick the application up in person there is also a possibility of either ordering it from the MIV or downloading it from the Board's homepage. For questions on counseling, allowances, etc., a person can call a special number at the MIV created in order to answer these types of questions. Other places that can assist the migrant include: Swedish Red Cross (*Svenska Röda Korset*), Swera, och *Svensk flyktinghjälp*.

Apart from the travel grants and allowances for resettlement the MIV also finances projects that aim at facilitating voluntary return migration for refugees and other deemed in need of protection that hold residence permits but wish to return to their countries of origin or, in some cases, third countries. Project assistance might be granted for temporary rebuilding and development in the countries of origin. As has been mentioned before, this assistance cannot be provided to individuals but only to various organizations. In the latter case the project must lack commercial incentives. Prioritized areas for include:

1. Assistance and counseling prior to potential return. This concerns both issues of practical nature as well as circumstances of importance to the migrant.
2. Gathering of information about the situation in the countries of origin and disseminating this information among individuals and relevant organizations and to municipalities.
3. Educational measures both in Sweden as well as the countries of origin.
4. Measures aimed at a better chance of integration and establishment for the returnee in the country of destination during the initial resettlement period.
5. Cooperation with Swedish and foreign organizations concerning questions of repatriation.¹⁶⁹

Apart from the work carried out by the MIV there are programs initiated by private organizations. One of such organizations includes the Gothenburg Initiative. This organization has, for instance, arranged several programs aiming at teaching Bosnians

¹⁶⁹ ”Faktablad om projektstöd för år 2006, frivillig återvandring”, MIV, 2006.

and Somalis how to establish their own companies in both Sweden as well as in their home countries. The organization is also involved in aid and rebuilding in the countries from which the majority of refugees originate.¹⁷⁰

4.5 Identification and Acquisition of Travel Documents

According to the national Swedish debate, the Dublin Regulation has had some negative consequences for the identification process. It is considered to encourage asylum shopping. Some countries are said to have more generous asylum legislations than others, which certain migrants try to take advantage of. Hence, some migrants dispose of their documentation, making it harder for the authorities to trace their route to Sweden, and to determine which country according to the Dublin regulation has the responsibility to process the asylum claim. In 2003, government writings indicated that the number of undocumented asylum seekers was on the increase. The number had increased from 34 percent in 1996 to 88 percent in 2002.¹⁷¹

The identity of a person is one of the most important grounds for determining his or her need of protection - furthermore, the lack of relevant documents results in costly and time consuming investigations. Taken together this development results in lengthy asylum processes. This in turn is neither beneficial for the alien, who is forced to await a decision for unduly long periods, nor for the state that must bare the costs. There is a presumption that the longer the alien manages to linger in Sweden the more difficult it becomes for the authorities to decide on removal and for that person to actually leave the country. This presumption at times results in migrants going into hiding in order to avoid enforcement of removal orders.

The lack of identification documents affects not just those in need of protection, by prolonging the processing of their applications and thus forcing them to live in insecurity, but also those who are not refugees. The latter group is also affected by long processing periods and subsequent removal orders, which are difficult to accept with every passing day. It also takes a tremendous toll on the asylum system as a whole, since removal orders where identification documents are lacking are very difficult to

¹⁷⁰ ”Göteborgs Initiativet arbete med frivillig återvandring”, <http://www.initiativet.nu/doc/atervandring.htm>.

¹⁷¹ ”Åtgärder för att klarlägga asylsökandes identitet, m.m.”, prop. 2003/04:50, p. 15.

enforce.¹⁷² Lacking identification also means problems later on, when the alien decides to apply for Swedish citizenship. A person applying for Swedish citizenship, who is not able to prove the claimed identity, can only be granted citizenship after s/he has been residing in Sweden for at least eight years and makes it probable that the stated identity is true. The alien also risks the withdrawal of a permanent residence permit if it becomes known to the authorities that s/he had stated a false identity.¹⁷³

4.5.1 Diplomatic Measures

The 2002 commission encouraged the Swedish MIV to continue its work concerning return by using return programs and by cooperating with NGOs in order to convince aliens to return to their countries of origin voluntarily. Also, the readmission agreements play an important role in returning aliens to their home countries. It is very important that these countries are ready and willing to receive them. Sweden promotes the importance of these agreements and propagates for a close cooperation in this area among the member states of the EU. Moreover, the importance of bilateral contacts at a senior diplomatic level with receiving countries that fail to honor their responsibilities under international law to accept citizens of their own country should be underlined. Finally, there is the possibility of enforcing a rejection or expulsion decision even in cases when the alien lacks necessary travel documents.¹⁷⁴

4.5.2 Coercive Measures

Asylum seekers and others who have been granted residence permits with or after temporary protection are entitled to certain benefits, such as room, daily allowance and grants. Other aliens that have applied for residence permits, and due to special reasons have been granted the right to reside in Sweden while their applications are being processed, are also eligible for daily allowances and grants.

It is possible to lower the daily allowance and the grant covering the housing expenses, if the alien continues to sabotage the investigation concerning his or her identity. The authorities are allowed to cut off the daily allowance and the grants

¹⁷² Prop 2003/04:50, p. 38.

¹⁷³ *Ibid.*, p. 38-39.

¹⁷⁴ SOU 2003:25, p. 28.

covering housing expenses entirely. These measures may only be used on aliens who intentionally sabotage investigations by not disclosing their identities. The grants may therefore not be lowered for persons who due to certain circumstances in their countries of origin are not able to produce identification documents.¹⁷⁵ There is also a possibility of placing aliens who intentionally sabotage the investigations of their identities under supervision and even in detention, as has been discussed above.

4.5.3 Other Measures

In addition, the Swedish MIV can perform a search for information on the alien in national databases where fingerprints are contained or in the database for fingerprints that has been established through a Council Regulation (EC) nr 2725/2000 of December 11 2000 on the establishment of Eurodac for comparing fingerprints for an effective implementation of the Dublin Convention.

During the initial investigation the authorities can ask the alien questions aimed at determining his or her identity. The questions can pertain to the place of birth and residence, the alien's profession, his and her family relations and address in the country of origin. The question may also concern certain knowledge about the country, its regime, culture, religion, geography, newspapers, and local traditions.¹⁷⁶

Moreover, there is a possibility of a language analysis. The migrant is asked to speak in his own language about certain things, such as where s/he grew up and what traditions there are in his or her country of origin, for about 15 minutes. The alien's speech is recorded and sent to a company specialized in analyzing languages, which determines the geographical origin of the language.¹⁷⁷

There are also more informal means of determining an alien's identity. If, for instance, the alien informs the authorities that he or she has attended a certain school in his or hers home country or stayed at a specific place Swedish authorities abroad, such as embassies and consulates, can be asked to investigate if there is truth to these statements. The embassies sometimes use their own staff to carry out the investigation but they also

¹⁷⁵ Prop 2003/04: 50, p. 40-42.

¹⁷⁶ *Ibid.*

¹⁷⁷ SOU 2003:25, p. 144.

employ so called trust counsels, counsels whom the embassies have worked with in the past and whom they trust.¹⁷⁸

5. Bilateral and Multilateral Co-operation

Sweden has signed bilateral return-related treaties with Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, France, Croatia, Latvia, Lithuania, Poland, Rumania, Serbia and Montenegro, Switzerland, Slovakia, and Germany. There is also a protocol with Russia concerning cooperation in the field of the establishing of identity and citizenship and the issuing of travel documents. Sweden has also entered into readmission agreements with UNMIK in Bosnia. The Nordic passport-free agreement regulates issues of readmission among the Nordic States.

Furthermore Sweden is bound by the agreements it has entered into as a member of the EU. The Commission has signed readmission agreements with Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Albania, Algeria, China, and Turkey. So far the agreements with Hong Kong, Macao and Sri Lanka have entered into force, and the agreement with Albania was signed in April 2005. According to EC-law the regulations contained in the treaties take precedence over potential bilateral treaties that the individual Member States have entered into with other states.

There are different programs between Sweden and various countries of origin, and some of these programs deal with the issues of return. There is, for instance, a political cooperation between Albania, Bosnia and Herzegovina, Croatia, Macedonia and Serbia and Montenegro, which Sweden supports. This cooperation is carried out through the Migration Asylum Refugees Return Initiative (MARRI) Regional Forum, within the framework of the South East Europe Co-operation Process. The cooperation aims at strengthening the asylum and migration policies in the region. To this end, national action-programs have been developed, and Sweden has been responsible for helping Macedonia with the development of its program. In 2004, a regional center was set up in Skopje as a means of supporting the cooperation on migration policies in the region. The members of the staff come from all five countries, but during an initial period they will

¹⁷⁸ *Ibid.*, p. 147-149.

answer to a Swedish supervisor. One of the aims of MARRI is improving the conditions for refugees and internally displaced persons to make return migration to Western Balkan easier.

Sweden has through the years enjoyed a close cooperation with IOM, for instance concerning the issue of quota refugees. Also, Sweden has given financial support towards the organization's projects on human trafficking in the Balkans and return of internally displaced persons in Angola. Also, Sweden gives financial support to UNHCR.

Since 1986, the Nordic States collaborate on issues concerning asylum and migration. The cooperation is carried out through a yearly meeting of ministers, state secretaries and workgroups. Within the ambit of this collaboration questions pertaining to, among other things return and return migration are discussed. Together with UNHCR, UNMIK and IOM the Nordic Council has discussed problems concerning return to Kosovo.

Other discussions-forums include the Inter-Governmental Consultations on Asylum, Migration and Refugee Policies (IGC), a cooperation within the field of migration among 15 States, including Sweden. In short, the organization works as a platform, where the States can exchange ideas and experiences concerning migration issues, such as return migration.¹⁷⁹

There is also cooperation with transit countries. During 2004, Sweden was part of so called twinning projects with several Central and East European countries. One of the tasks was to assist Slovakia with the improvement of its administrative capacity within the asylum process. In 2001, the MIV together with the UNHCR invited Poland, Ukraine, Lithuania and Belarus to the Swedish city Söderköping for an inter-authorities discussion-meeting on asylum and irregular migration. As of now, eleven states, including Sweden, cooperate on both sides of the EU-border. The aim is to, in the long run, render the countries to the east of the EU-border unattractive as transit-states and make them secure enough to constitute asylum countries. To this end, a secretariat financed by the European Commission has been set up in Kiev, and a governing committee made up of representatives from the Swedish MIV, European Commission, UNHCR and IOM has been created.

¹⁷⁹ *Migration och asylpolitik*, regeringens skrivelse 2005/06:18.

Furthermore, Sweden cooperates with Russia, Belarus, Ukraine and Moldova, all countries of origin. During 2004, MIV in collaboration with UNHCR and the Russian federal migration authority gave seminars on, among other things, asylum related questions. The seminars' aim was to educate Russian officials in the field of migration. In Ukraine, Sweden has assisted the authorities in the field of asylum issues and migration legislation. In Moldova and Belarus, there are several projects aiming at improving both the legislation as well as the relevant institutions pertaining to migration.¹⁸⁰

Several countries do not have diplomatic representation in Sweden, which provides for difficulties in the identification process and for obtaining adequate traveling documents. In order to facilitate the return process, MIV in cooperation with RPS, have invited representatives from the Embassy of Mongolia in Brussels to Sweden. In addition, representatives from Ghana's Embassy in Denmark have visited Sweden for the same purpose. Swedish authorities are very satisfied with the result of this modus operandi and hence plan to invite other countries' representatives in order to facilitate the return procedure.¹⁸¹

6. Conclusions

This report has shown that the number of migrants hiding from removal orders is on the increase in Sweden. Asylum procedures are becoming lengthier due to the lack of identification and travel documents among the migrants, and migrants going into hiding. This takes a toll not only on the asylum system and the citizens that must bear the costs, but also on the affected individuals.

Over the years different measures has been taken by the Swedish state in order to facilitate voluntary return migration and return. A temporary law, allowing persons who have resided in Sweden for long periods of time to have their rejection and expulsion decisions retried, was adopted. There is not yet a holistic analysis and evaluation of the impact of this law. There are also various programs aiming at facilitating both voluntary return migration and voluntarily executed return. The former are a form of repatriation, but during the last years the interest among the migrant community for these programs

¹⁸⁰ *Ibid.*

¹⁸¹ *Verkställighetsarbete – en uppföljning*, MIV, 2006-09-21.

has decreased. This is said to be due partly to the fact that older migrants hesitate to return as a result of lacking health care and the like in the home country, but also as a result of their children living in Sweden. Younger people, who have adapted to the Swedish conditions and become more integrated into the Swedish society, are even more hesitant to leave Sweden for their countries of origin.

In cases of return as a result of a rejection of expulsion decisions, migrants are reluctant to leave since they have often risked much in order to come to Sweden. Moreover, programs pertaining to this type of return are not as extensive and generous as the one pertaining to voluntary return migration. There are for example no financial grants available for rejected asylum seekers. At the same time the cost for migrants registered with the MIV with un-enforced removal orders is extensive, and potentially greater than the costs associated with return programs.

The MIV has the overall responsibility for collecting data on return migration and return. MIV reports back to the MFA (nowadays to the Ministry of Justice since the Minister responsible for migration issues are placed at the latter). In order to develop an as efficient return policy as possible it is vital that the responsible Ministry receives adequate data and information. It is striking how fragmented the data is. It is provided by a large number of actors; national NGOs, IGO, the RPS, MIV, private entrepreneurs, local MIV and police offices, and *Regeringskansliet* itself. The evaluation process is made difficult due to the large amount of actors involved in the process and the lack of an overall evaluation of the Swedish approach to return is striking.

Future research is especially needed concerning return incentives from the migrant's perspective, what factors influence the choice of destination country, evaluations of various activities provided for asylum-seekers and their impact on return, effects on the Swedish two track system on both applicants and the MIV-staff, and finally the connection between Swedish migration policy and foreign aid in general and its impact on return in particular.

Annex 1

Institutions and Organizations Addressing the Issue of Return and Repatriation

Ministry of Foreign Affairs (MFA)

National Police Board (RPS)

Statistics Sweden (SCB)

Swedish Migration Board (MIV)

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Sida

Stockholm stads återvändningskontor

Sveriges Kommuner och Landsting

B-H Network

Göteborgsinitiativet

Svenska Röda Korset

Svensk flyktinghjälp

UNHCR

IOM

Annex 2

Annotated Bibliography

Government Writings

2005/06:SfU5, “Ny prövning av avvisnings- och utvisningsbeslut”

The document suggests that the Swedish Riksdag adopts a temporary law on asylum. The law was consequently adopted.

Prop. 2004/05: 170, “Ny instans- och processordning i utlännings- och medborgarskapsärenden”

This government writing describes the new procedures for dealing with migration cases, i.e. the new special migration courts and special migration courts of appeal.

Prop 2003/04:50, “Åtgärder för att klarlägga asylsökandes identitet, m.m.”

This government writing deals with the issue of identity of the migrants, and how to amend the legislation in order to increase the number of identified migrants.

Prop. 1997/98:173, “Verkställighet och återvändande – en del av asylprocessen”

This is a government writing concerning the issue of return. It addresses the issue of how to promote more returns, as well as the procedural questions pertaining to return, such as how to develop return procedures that are least violating to the migrants integrity.

SOU 2006:49, “Asylsökande barn med uppgivenhetssyndrom”

This government writing deals with the recent phenomenon in Sweden of migrant children issued with rejection orders who fall ill.

SOU 2006:6, “Skyddsgrundsdirektivet och svensk rätt”

This government writing deals with the implementation of Council Directive 2004/83/EC in Sweden. It discusses the issues of what type of third country nationals or stateless persons are considered in need of protection according to the Directive.

SOU 2003:25, "Verkställighet vid oklar identitet"

This government writing deals with the issue of enforcement of rejection or expulsion decisions when the identity of the migrant is unknown. It also addresses the question of how to identify migrants, or induce the latter to produce identification documents.

SOU, 1995:75, "Svensk flyktingpolitik i globalt perspektiv"

This government writing describes the Swedish migration policies from a global perspective.

SOU 1997:128, "Verkställighet och kontroll i utlänningsärenden"

"Migration och asylpolitik", Regeringens skrivelse 2005/06:18

This is a government writing addressing the issues of migration and asylum politics. It also discusses Swedish policies in this area, and how Swedish migration legislation has been affected by Sweden's membership in the European Union.

2005/06:FPM16, "Faktapromemoria, förslag till direktiv om återvändande"

In this memo the stance of the Swedish government on the Directive on common standards in Member States for returning illegally residing third country nationals (COM(2005)391) is stated. The Government does not see that the Directive will create any added value.

Books, Articles, and Reports

"Alternative Report to the Human Rights Committee", the Swedish NGO Foundation for Human Rights and the Swedish Helsinki Committee for Human Rights", 2002

This report deals with various human rights issues within different areas, such as migration. It examines whether or not Swedish legislation and policies are in accord with basic human rights principles.

”Bosninen-Hercegovina, Sarajevokantonen 27-30 juni 2005”, *Rapport Återvandring, Normalprocessen/Asyl*, MIV

In this report MIV and Caritas evaluate inter alia one specific assistance program for return migration to Sarajevo.

Brekke, Jan-Paul, *While We are Waiting: Uncertainty and Empowerment among Asylum-Seekers in Sweden*, Oslo, Institute for Social Research, Report 2004:10

The author explores how asylum seekers experience the waiting period for a decision and what the consequences of this experience is for integration or return after a decision has been taken. Brekke shows how sensitive the question of a rejection decision and a subsequent return is to most of the asylum-seekers.

CAT/C/34/D/233/2003

This is a case from the UN Commission against Torture where Sweden was declared in breach of Article 3 and 22 of the UN Convention against Torture for having returned two Egyptians, who risked torture, to their native country.

“Defining, Measuring and Influencing Sustainable Return”, *Briefing no 3*, Development Research Centre on Migration, Globalization and Poverty, July 2005

This is a study on return migration and obstacles to sustainable return. The latter term is defined in the study as well as policies on how to facilitate sustainable returns.

Informationsnätverket för asylsökanden från Bosnien-Hercegovina, slutrapport ERF 314/2003

Milerad, J, *Läkartidningen*, nr 39, 2006, vol. 103

This is an OP-ed on the governmental report on apathetic children written by the editor of a medical journal.

Noll, G and Popovic, A, "Flyktingstatus - en marginaliserad resurs i svensk asylrätt?" [Refugee status - a marginalised resource in Swedish asylum law?], *Juridisk Tidskrift* (2006) 834-865

Noll, G "Asylsystemet, migrantnätverk och den informella arbetsmarknaden" ["The Asylum System, Migrant Networks and the Informal Labour Market"], in S. Gustafsson, L. Oxelheim och N. Wahl, *Europaperspektiv 2006. Årsbok för Europaforskning*, Santérus Förlag, Stockholm 2006, pp. 125-142.

Olsson, E, *Händelse eller process?*, Norrköping, nr 1/01, 2001

Rapportering enligt regleringsbrev angående den tillfälliga lagstiftningen om verkställighetshinder, MIV, 2006

Skoglund K, *"Integration eller återvändande? Tillämpning av tidsbegränsade uppehållstillstånd på bosnienserbokratiska asylsökanden i Sverige"*, Magisteruppsats, Internationell migration och etniska relationer, maj, 2003
This is a masters thesis analyzing the Swedish migration policy towards Bosnian Croats and the use of temporary residence permits.

Åkerberg, H and Wassdahl Köhl, A, *Slutrapport, Sökandeundersökning*, MIV, 2003
This report is produced by the Swedish Migration Board. It provides an evaluation of Swedish measures to stimulate voluntary return.

"Utvärdering projektstöd för återvandring", Pacta Guideline på uppdrag av Migrationsverket, 2005-12-17

This is an evaluation of project support for voluntary repatriation. The effect that different projects have had on repatriation is examined.

"Utlänningshandboken", MIV, 2002

This is a handbook containing procedures on how to facilitate transit of migrants. It is to be used by the staff of the MIV.

Utredning om Kvalitets- och kvantitetsmål för sysselsättning för asylsökanden m.fl. mellan 18 och 64 år, MIV, mars 2005

Vad hände sen? Tema frivillig återvandring. Reseskildring från Bosnien-Hercegovina, MIV, augusti 2006

Verksamhets- och utgiftsprognos, 2006-10-30, utfall januari-september 2006, MIV, 2006

Verkställighetsarbete – en uppföljning, MIV, 2006-09-21

Yttrande över Förslag till direktiv om gemensamma standarder vid verkställigheter av avvisnings- och utvisningsbeslut, NRK-124-2005-17462, 10 oktober, 2005, MIV

Fact Sheets, News Letters and Other Sources

“Avtal för att underlätta återvändande till Somalia”, Newsletter from the MIV, 2004-12-22

This agreement deals with the issue of repatriation of Somalis. The aim of the agreement is to make voluntary repatriation easier to carry out.

Communiqué from the French Minister of the Interior, 27/07/05

This communiqué addresses the issue of common flights. A common flight to Afghanistan was initiated by the French and British government as a result of an agreement on common flights for returning migrants.

Factsheet on repatriation, MIV, 2006,

http://www.migrationsverket.se/infomaterial/atervandring/sokande/ater_en.pdf

”Faktablad om projektstöd för år 2006, frivillig återvandring”, MIV, 2006

This is a newsletter from the Migration Board concerning its projects pertaining to voluntary repatriation. It describes the different projects as well as the amount of money that each project received.

”Faktablad om frivillig återvandring”, MIV, april 2005

This is a newsletter from the Migration Board concerning the issue of voluntary repatriation. It is first and foremost a means of information for migrants contemplating repatriation.

“Flyktingkvoten”, MIV, 2006, www.migrationsverket.se

”Frivillig återvandring”, MIV, 2006.

”Göteborgs Initiativet arbete med frivillig återvandring”,
<http://www.initiativet.nu/doc/atervandring.htm>

This link contains information on a project called the “Gothenburg Initiative” pertaining to repatriation, which is carried out by an NGO.

”Handläggningen av återvändandeärenden”, MIV, 2006-03-30

This newsletter from the Migration Board contains information on the procedure pertaining to repatriation cases.

IOM, *International Migration Law: Glossary on Migration*, 2004. Available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/Glossary.pdf, downloaded 2006-07-10

”Migration”, Swedish Foreign Ministry, 2002

This fact sheet was prepared by the Swedish Foreign Ministry. It contains information pertaining to migration, and Sweden’s legislation and policies in this particular area.

”Mer än tusen gömda har kontaktat Migrationsverket”, *News*, www.migrationsverket.se, 2005-11-18.

This is a newsletter and an update on a temporary law that allowed migrants to have their applications for residence permits retried. Several thousand migrants that were gone into hiding are reported to have contacted the Board as a result of this law.

”Ordlista”, MIV, www.migrationsverket.se

This is the official glossary of the Migration Board concerning migration.

”Rejected applicants get new opportunity”, *News*, www.migrationsverket.se, 2005-11-17.

This is a newsletter from the MIV concerning the temporary law and the possibility of rejected applicants to have their cases retried.

”Resultat av den tillfälliga lagen om prövning av beslut om av- och utvisning”, MIV, 2006, www.migrationsverket.se/swedish/tillfallig_lag/index.jsp

Sammanträdesdokument inför EU-nämndens möte 2003/04:28, *Justitiedepartementet*

Utrikesdepartementet 2004-04-19, EU-upplysningen,
<http://www3.riksdagen.se/default.asp?DocGUID=%7B02F4CDBF-88AC-48E7-9A49-4C28E5A620C8%7D>

”Särskild utlänningskontroll”, Regeringskansliet, www.regeringen.se

This is a newsletter from the Swedish Government concerning alien control. It contains information on how cases that are said to have an effect on national security are to be decided by the government as the last instance.

”Återvändande”, Tema Asyl, www.temaasyl.se

This link contains information on the issue of repatriation, such as different projects on repatriation.

”Återvändande till Kosovo”, Newsletter from the Swedish MIV, 2005-04-28.

Statistics

“Asylum seekers 2005 by age at application and sex”, SCB.

This fact sheet includes statistics on the most common age and sex of migrants applying for asylum in Sweden in 2005.

”Asylum seekers registered with the Swedish Migration Board on Jan. 31 2006 by age and sex”, SCB.

This fact sheet includes information on the most common age and sex of migrants registered with the MIV on January 31 2006.

”Avgjorda asylärenden hos Migrationsverket efter medborgarskap och världsdel”, *Tabell 2, 2005 Statistik*, MIV, 2006-02-03.

This fact sheet includes information on the number of decided asylum cases by the MIV according to citizenship and part of the world.

“Emigranter 2005 efter utbildningsnivå och födelseland”, SCB

This fact sheet includes information on the number of emigrants in Sweden according to their level of education and country of birth.

”Facts and Figures 2005”, MIV

This fact sheet includes statistics and information on the overall yearly migration to and from Sweden.

“Folkmängden 31/12 2005 efter födelseland och boendelän”, SCB

This fact sheet includes information on migrants living in Sweden according to their country of birth and place of residence in Sweden.

Migration 2005. Immigration, emigration, and asylum-seekers, SCB

Annex 3

Statistics

The statistical data used in this study originates mainly from the MIV and SCB. The homepage of the MIV offers access to information on the overall yearly migration, meaning the total immigration to and emigration from Sweden per year. On the home page one can also find information concerning programs on voluntary return migration, including information about available grants and application procedures.

The study also draws on statistics from SCB concerning asylum applicants as well as other migrants. Statistics from the MIV, as well as from the SCB have been used in order to describe certain demographic characteristics of the returnees, as well as their age and nationality.

In addition, statistics stemming from various government writings, including sources of the RPS, have been included in this study. The authors have also had access to the handbook that guides MIV employees on how to deal with return migration and return.

Migration to and from Sweden, 2002-2005

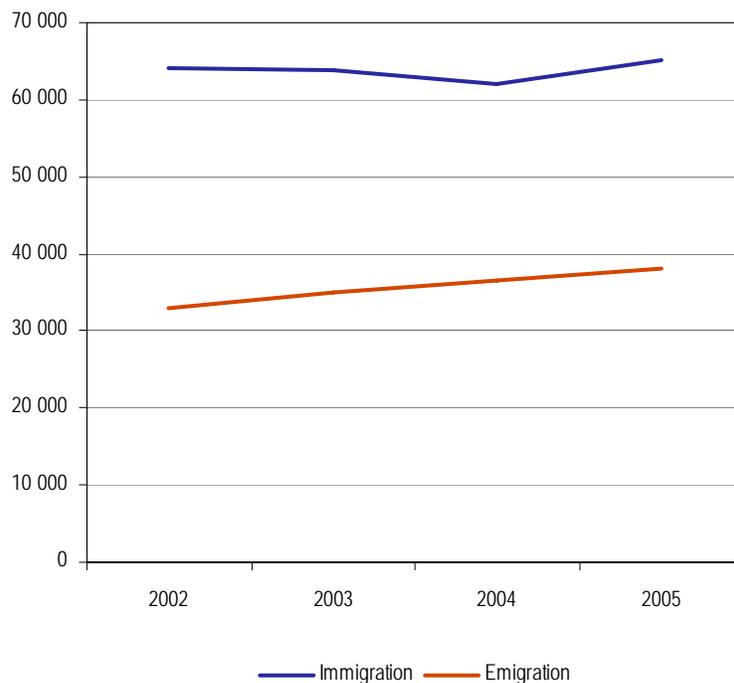


Fig. no. 1. Source: MIV.

Emigrants according to Country of Birth

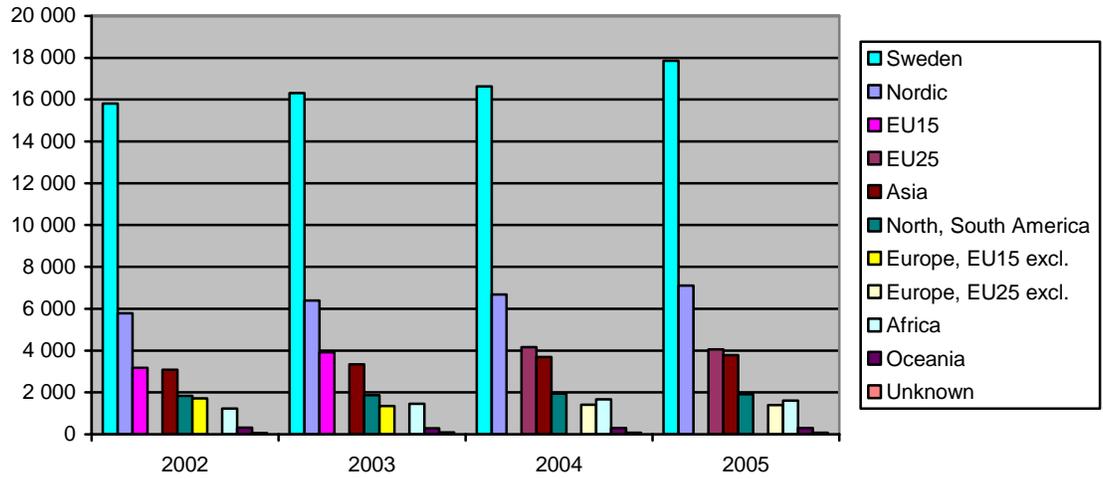


Fig. no. 2 Source: SCB.

Indicated Destination Country

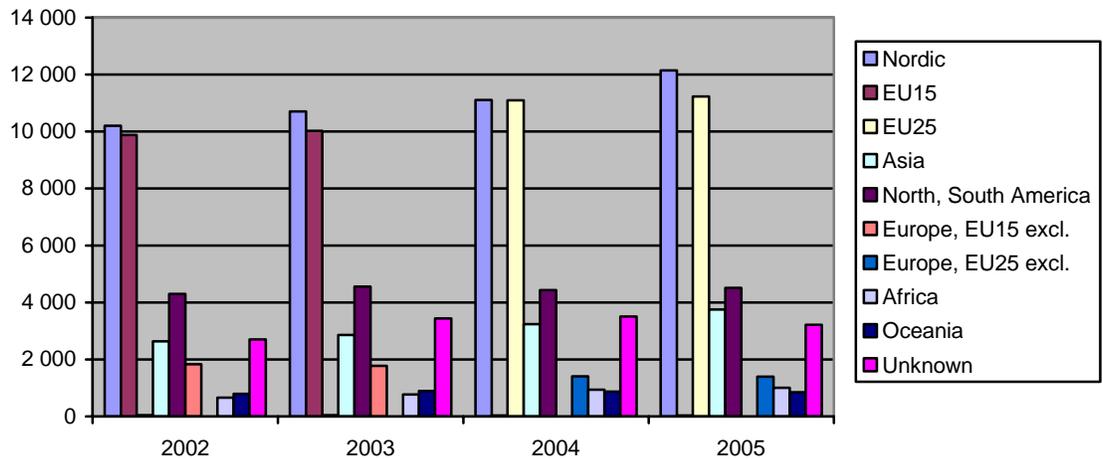


Fig. no. 3. Source: SCB.

Emigrants born in BH, Iraq, Afghanistan, or Somalia

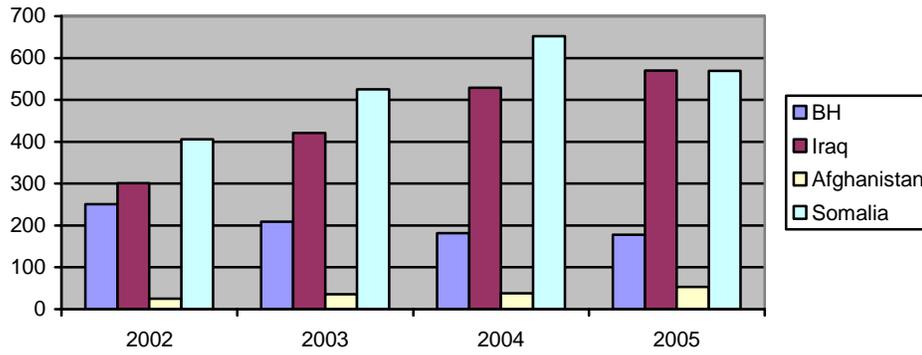


Fig. no. 4. Source: SCB.

Migrants Indicating BH, Iraq, Afghanistan, or Somalia as Country of Destination

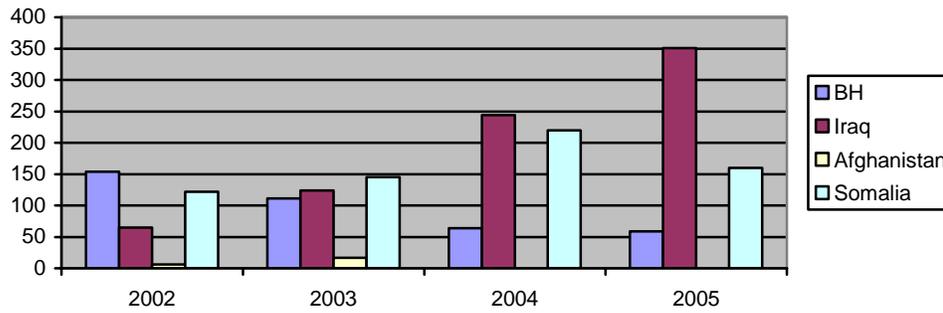


Fig. no. 5. Source: SCB

Asylum Claims Decided by the MIV in 2005

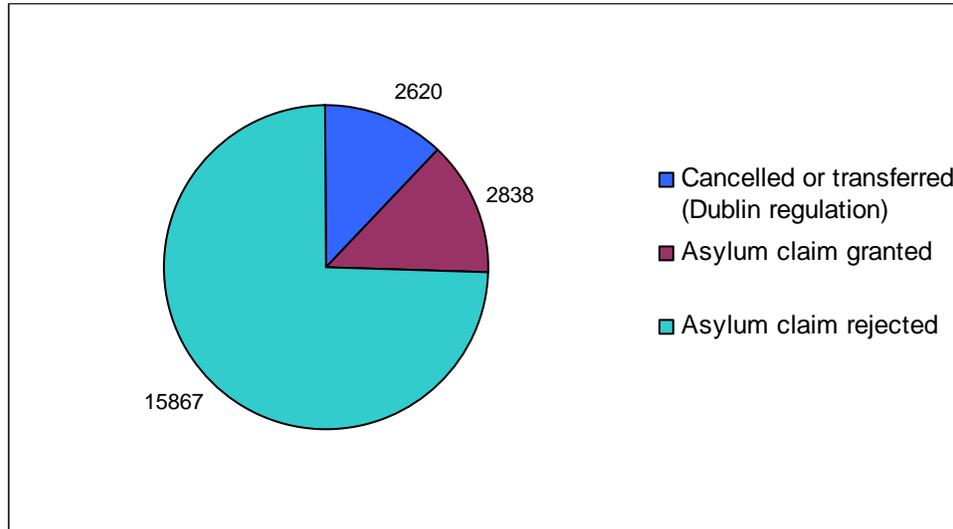


Fig. no. 6. Source: MIV, 2005

Asylum Claims Rejected by the MIV in 2005 and Subsequent Return

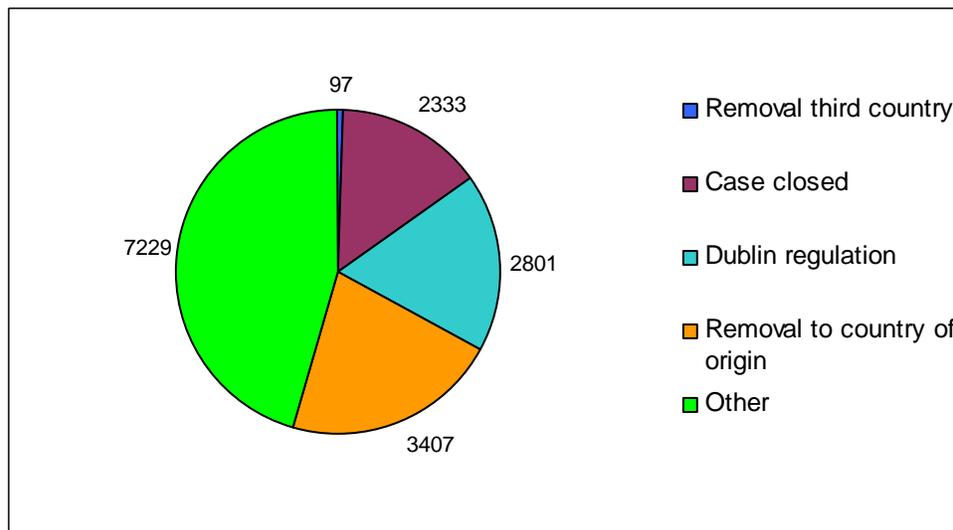


Fig. no. 7. Source: MIV, 2005

Rejected Asylum Claims in 2005, by region

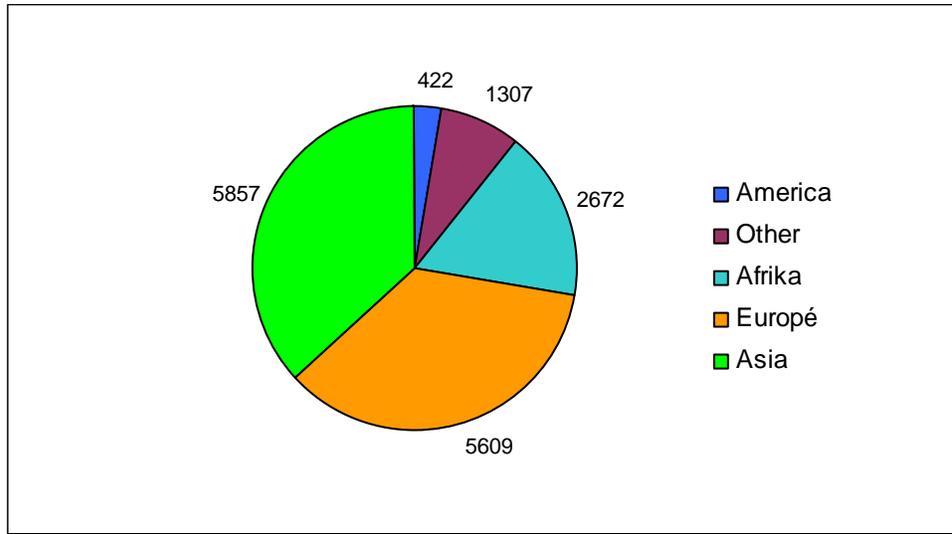


Fig. no. 8. Source: MIV

Rejected Asylum Claims in 2005, by citizenship

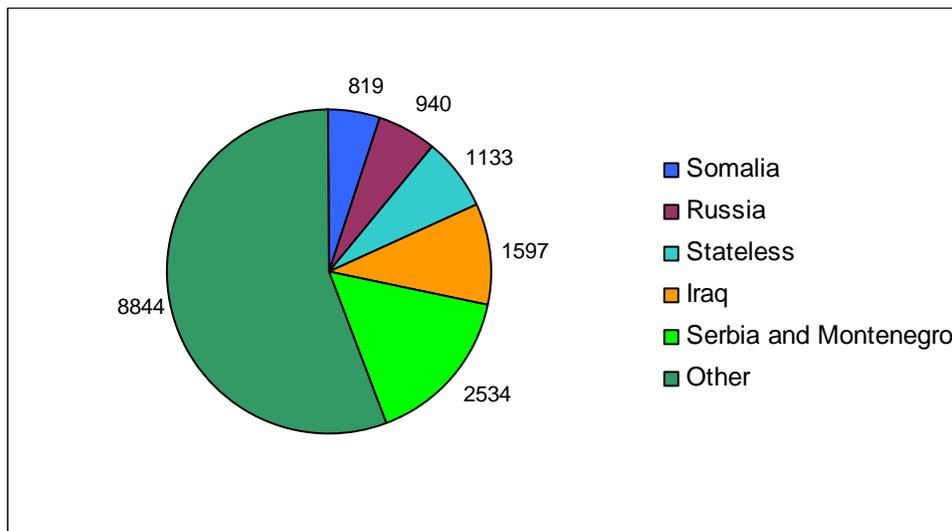


Fig. no. 9. Source: MIV

