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| **Memorandum**  |  |
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| 20 November 2015 |
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| **Ministry of Justice Sweden** |
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Office of the United Nations High Commissioner for Human Rights

Information from Sweden on migrants in transit

**Reference**

Human rights Council Resolution A/HRC/RES/29/2 on the protection of the human rights of migrants: migrants in transit.

Request for information from the Office of the High Commissioner for Human Rights in a letter dated 22 October 2015 to all permanent missions to the United Nations.

Questions in the letter are cited below in *italics*. The answers are summaries. For more information, see e.g. Swedish periodic reports to UN Committees and Universal Periodic Review.

**General comments on the present refugee situation in Sweden**

More refugees, asylum-seekers and migrants are arriving in Sweden than ever before. During 2015, up to 190 000 persons are estimated to seek asylum in Sweden. As of 15 November 2015, 133 276 persons have already applied for asylum this year. 28 759 of them are unaccompanied minors.

However, there are also numerous persons who have arrived in Sweden without seeking asylum and without presenting themselves to Swedish authorities. It is assumed that those persons are transiting to Norway and Finland, but it is difficult to get the exact numbers.

Comparative statistics from the European Asylum Office (EASO) on the number of asylum seekers in the neighbouring Nordic countries shows a dramatic increase in Sweden, Finland and Norway:

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|  | **2011** | **2012** | **2013** | **2014** | ***2015(September)*** |
| Sweden | 29 710 | 43 945 | 54270 | 81180 | *73 003* |
| Norway | 9 055 | 9 785 | 11930 | 13205 | *13 439* |
| Denmark | 3 985 | 6 075 | 7170 | 14680 | *9 540* |
| Finland | 2 975 | 3 115 | 3210 | 3620 | *17 851* |

Information on the Swedish Government´s work regarding the refugee situation: <http://www.government.se/government-policy/the-governments-work-regarding-the-refugee-situation/>

Sweden is a member of the European border-free Schengen Area.

On 12 November 2015 the Swedish Government decided to temporarily reintroduce internal border controls in accordance with the Schengen Border Code. The police will determine where and how border controls will be implemented. On 19 November 2015, the Swedish Government decided to prolong the border control at the internal borders until 11 December 2015.

The Government´s overall assessment is that internal border controls are necessary since the present situation poses acute challenges to vital functions in society. This assessment is based on analyses by the Swedish Migration Agency and the Swedish Police Authority, and on the national situational pictures produced by the Swedish Civil Contingencies Agency. The Police Authority considers that in the present situation, public order and internal security are under a serious threat. Several vital public services are under major strains.

It is important to stress that the right to seek asylum will not be denied as a result of the internal border controls. A person who arrives at the Swedish border and declares that he or she wants to seek asylum will probably be given easier and quicker access to the Swedish Migration Agency, as the border control officials can provide the relevant information. The border controls will present a better overview and more information about persons arriving in Sweden, what their intentions are and how Sweden best can provide for them. The authorities will have better conditions to maintain public order and internal security, and the municipalities will have better opportunities for planning the reception of asylum-seekers and refugees.

There are still persons who go off after passing the internal border controls without seeking asylum, presumably on their way to Finland or Norway.

The Government also proposes provisions in the Ship safety Ordinance. Under the proposal shipping companies will be required in certain cases to conduct identity checks to ensure that the information registered on the passenger lists is correct. A proposal is expected to be taken in the near future.

1. *Does your country have laws, public policies or programmes, action plans or other relevant measures in place to ensure protection of the human rights of all migrants in transit? For example, including the following areas:*

Sweden is committed to the promotion and protection of the human rights of migrants, in accordance with the principles of non-discrimination, proportionality, non-refoulement, access to justice and the best interests of the child. This is also reflected in Swedish standpoints within the EU as well as international fora.

The prerequisites for the following answers are that migrants in transit are foreigners staying in or travelling through Sweden without the necessary permits.

1. *Access to essential services in transit, such as health care and services, including sexual and reproductive health care;*

The Act on health and medical care for persons staying in Sweden without necessary permits (2013:407) entered into force on 1 July 2013.

According to the Act, the County Councils are obliged to offer adult persons of this category the same subsidised health and medical care as adult asylum seekers. This means one free health examination, health and dental care that cannot be deferred, maternity care, abortion care and contraceptive advice. Care that cannot be deferred means care offered in addition to the immediate care pursuant to the Health and Medical Services Act and the Dental Care Act, if it is deemed that such care is required to prevent serious illness. Care in accordance with the Swedish Communicable Diseases Act is for free. The County Councils are entitled to offer adults care up to the same level as residents in Sweden. Children and persons up to the age of 18 who lack the necessary permits are offered the same subsidised health care and dental care as children resident in Sweden. Healthcare personnel have a duty to care for and treat asylum seekers and people staying in the country without necessary permits in the same way they care for and treat people who are resident in Sweden.

1. *Protection from violence, including sexual and gender-based violence, as well as abuse and exploitation of migrants in transit by State and non-State actors;*

The Police shall investigate any crime committed against any person present in Sweden (and sometimes even when the crime is committed abroad). The protection provided under criminal law therefore applies equally to migrants in transit. The Police and the Social Services shall provide assistance, support and protection of all victims.

The task of the municipal Social Welfare Committee (Social Services) is to ensure that a person who is a victim of crime and his or her family receives necessary support and help. It is obliged to provide assistance to a person staying in the municipality if the need cannot be satisfied in any other way. An individual assessment is always made of the need.

To determine the need for an injured party of special protection measures during the preliminary investigation and the trial, the police shall, as soon as possible, perform an individual security assessment.

1. *Specific measures to protect and ensure the best interests of all migrant children in transit, whether they are travelling on their own or with their parents/guardians;*

The Action Plan for protecting children from human trafficking, exploitation and sexual abuse includes other forms and exploitation and abuse in addition to sexual exploitation, such as, for example, human trafficking and the use of children in begging or in criminal activities. The measures in the action plan are intended to increase knowledge about the exposure of children to human trafficking, exploitation and sexual abuse, to increase the effectiveness of work done by public authorities and other relevant actors to protect children against these violations and to improve the contribution made by public authorities in Sweden to international cooperation to protect children from human trafficking, exploitation and sexual abuse. The Government has announced an updated Action Plan against trafficking, exploitation and sexual abuse of children, for the years 2016-2018, containing renewed measures for the protection of children.

A guardian ad litem must be appointed for a minor who arrives in Sweden without a parent or another accompanying adult person comparable to a parent.

1. *Rescue of migrants in distress at land, sea and air borders, provision of immediate assistance and referral to adequate services;*

There have been no incidents requiring any rescue operations in Sweden. Sweden is a part of the border-free Schengen area. Therefore, migrants can normally cross the internal borders into Sweden without being submitted to any regular border controls. Migrants usually travel on ferries from Germany or over the bridge from Denmark to Sweden. In accordance with the Schengen Border Code, Sweden has recently temporarily reintroduced border controls at the internal borders. As to this date, it has not caused the migration routes to change and no incidents have been reported.

The Border Control officials shall refer asylum-seekers to the Swedish Migration Agency. This has not changed because of the temporarily reintroduced border controls at the internal borders.

Sweden actively participates in Frontex operations. In connection with such operations, there have been several incidents where Swedish personnel from the Swedish Police and Coast Guard have rescued migrants at sea attempting to reach the EU.

EU Member States decided in April 2015 to extend the support to Frontex and the joint Operations Triton and Poseidon due to the increase in the numbers of refugees traveling on the Mediterranean Sea trying to reach EU, and the following increase of serious accidents connected to the dangerous passage. Frontex requested operational resources in the form of small and large vessels, and aircrafts for surveillance, and search and rescue operations.

On the 30th of April 2015 the Swedish Government decided to give the Swedish Coast Guard the mandate to offer Frontex boats, vessels and aircrafts for the operational use in Triton and Poseidon. The Swedish Coast Guard Contributions (also in cooperation with the Swedish Police) has since June 2015 rescued well over 6 000 people in Search and rescue operations. A number that will increase since it is an on-going operation. The mandate to participate in Frontex joint operations in the Mediterranean Sea was recently extended to the 30th of April 2017. The Swedish Coast Guard has also previously participated in several Frontex operations with fixed wing surveillance aircraft. During 2015 the Swedish Police has contributed to different Frontex operations with more than 30 border guards and experts. The support from the Police to Frontex will continue also during 2016.

1. *Alternatives to immigration detention and protection against arbitrary detention;*

The provisions for using detention are carefully laid down in the Swedish Aliens Act. A detention order is executed only if other, less coercive measures cannot be applied. As a consequence, supervision shall be used instead of detention whenever possible. Detention may only continue as long as the public interest in enforcing a refusal of entry or expulsion order carries more weight than the individual’s interest of freedom. If the authorities do not exert themselves to enforce the order, the foreigner shall be released. The Aliens Act stipulates strict time limits regarding aliens held in detention. A person who has been served a refusal-of-entry or expulsion order cannot be held longer than twelve month in detention even though the grounds for the order still exist. Children may only be detained in preparation for enforcement of an expulsion order, in cases where supervision has proved inadequate in connection with earlier attempts to enforce the order. A child may not be detained for longer than 72 hours or, if there are exceptional grounds, for a further 72 hours.

A detention order is re-examined every two weeks or two months, depending on whether a refusal of entry or an expulsion order has been issued or not. Decisions on detention are taken by either the Police or the Migration Agency. Each decision on detention may be subject to appeal to a court.

1. *Measures to ensure that any returns of migrants in transit are carried out in accordance with international law and standards, including the principle of* ***non-refoulement*** *and the prohibition of collective expulsion.*

All refusal-of-entries or expulsion orders must be individually assessed and decided.

The Swedish Aliens Act (2005:716) is in accordance with Swedish international obligations. The principle of non-refoulement is reflected in several sections of the Aliens Act.

1. *Does your country (as a country of origin, transit and/or destination) have measures in place that ensure a human rights-based approach to the governance of transit migration? For example, including in the following areas:*
2. *Governance of irregular migration, including the non-criminalisation of migrants in an irregular situation;*

Preventing and countering irregular migration and in particular preventing more people from dying at sea while trying to reach Europe in irregular ways is a shared and immediate European priority.

See response by EU and its Member States to the report of the UN Special Rapporteur on the human rights of migrants: “Banking on mobility over a generation: A follow up on the regional study into the management of the external borders of the European Union and its impact on the human rights of migrants”. Statement:

<http://eeas.europa.eu/delegations/un_geneva/documents/eu_statments/human_right/id_sr_migrants_final.pdf>

Chapter 20 of the Swedish Aliens Act (2005:716) contains penalty provisions, e.g. regarding aliens staying in Sweden intentionally or through negligence without having the prescribed permits and without having applied for such permits, or aliens who intentionally passes an outer border under the Schengen Convention in an impermissible way.

Chapter 20, Section 1 in the Aliens Act (2005:716) declares that a fine shall be imposed on an alien who is staying in Sweden intentionally or through negligence without having the prescribed permit and without the alien having applied for such a permit or a person in charge of a preliminary investigation having applied for a temporary residence permit for the alien. In the case of minor offences, prosecution under this Section shall only be initiated if this is called for in the public interest.

A prosecution may be waived if it is manifest, by reason of special circumstances, that no sanction is required to prevent the suspect from engaging in further criminal activity and that, in view of the circumstances, the institution of a prosecution is not required for other reasons. A decision to waive prosecution may also be made even after the institution of a prosecution when circumstances emerge that, had they existed or been known at the time of the prosecution, would have led to waiver of prosecution. When it comes to young offenders the room for waiving prosecution is more extent. A preliminary investigation may be discontinued if it can be assumed that prosecution will not be instituted pursuant to the provision on waiver of prosecution.

In cases where a migrant in an irregular situation is identified as a victim of trafficking in human beings, the provisions described above may be used by the prosecutor. The Swedish legislation also provides for the possibility to consider the fact that victims have been involved in unlawful activities, to the extent that they have been compelled to do so. As an example there are general grounds for exemption from criminal responsibility. An act by a person, if committed out of necessity, constitutes a crime only if it is indefensible having regard to the nature of danger, the injury caused to another and to the circumstances in general. Necessity exists when danger threatens life, health, property or some other important interest protected by the law.

1. *Measures to prevent and combat all forms of xenophobia, racism and religious intolerance against migrants;*

Equal treatment and non-discrimination shall apply to all persons according to the Swedish constitution. The Discrimination Act (2008:567) prohibits discrimination on the grounds of sex, transgender identity or expression, ethnicity, disability, sexual orientation and age. The ground ethnicity includes national or ethnic origin, skin colour or other similar circumstance.

The Equality Ombudsman task is to combat discrimination and promote equal rights and opportunities for everyone. The Ombudsman registers and investigates complaints based on the law’s prohibition of discrimination and harassment, and can represent victims in court free of charge. The Ombudsman’s other duties include raising awareness and disseminating knowledge and information about discrimination and about the prohibitions against discrimination, both among those who risk discriminating against others and those who risk being subjected to discrimination. The Equality Ombudsman was given a special assignment to develop and intensify the work against xenophobia and racism by following up measures within this area in June 2014. The Ombudsman is to report to the Government every year and to submit a final report in April of 2018.

Funding is also granted to NGOs to support activities that prevent and combat racism and xenophobia. Furthermore the Government has a clear focus on dialogues with groups that are subjected to racism and xenophobia. This autumn the Minister for Culture and Democracy has launched an initiative to gather good forces in Sweden against racism. Together with Civil Society Organisations (CSOs) in different parts of Sweden she has invited local actors to various knowledge raising activities as well as dialogues with representatives of groups subject to racism. One aim of this initiative is to strengthen the already ongoing work against racism. Another aim is to gather information and recommendations for the national plan against racism and similar forms of hostility which will be presented by the Government.

1. *Human rights-based approaches to border governance, including counter-smuggling measures;*

Swedish border control personnel are, for example, educated in human rights. This is included in the Frontex Common Core Curriculum, which is also applied in Sweden. This includes human rights for victims of human smuggling and other vulnerable groups, such as for instance unaccompanied minors.

It is central that the right to seek asylum and the principle of non-refoulement is respected in all counter-smuggling measures. It is also important to address the root causes to migration, such as want of human rights, lack of opportunities for education and absence of future prospects.

1. *Data collection to monitor the situation of migrants in transit, including on the number of migrants killed, injured or victims of crime while attempting to cross international borders.*

According to the principle of free movement within the Schengen area, there are normally no border controls on the Swedish land border. It is too early to evaluate the effects of the temporarily reintroduced border controls at the internal border. There have been no reports regarding incidents causing harm to migrants while crossing the border into Sweden.

**Recently reported statistics for 2015 from Frontex on operations at sea where participating EU Member States have contributed**

Poseidon Sea: 2 012 sea-rescuing incidents and 78 791 persons saved.

Triton: 821 sea-rescuing incidents and 134 620 persons saved.

**Deceased migrants**

Sweden has no information on the total number of migrants who have lost their lives on the Mediterranean. The Swedish Coast Guard and the Swedish Police took care of about 60 deceased persons during one incident on the Mediterranean Sea at the end of August 2015.