“We left everything behind”

Voices of children and young people on the move

The Ombudsman for Children in Sweden
Annual Report 2017
The Ombudsman for Children in Sweden is a government agency charged with defending children’s and young people’s rights as enshrined in the UN Convention on the Rights of the Child (the CRC). We maintain a regular dialogue with children and young people in order to learn about their living conditions and their opinions on current issues. We monitor and promote the implementation of the CRC in municipalities, county councils/regions and public authorities. The Ombudsman for Children provides information, raises issues and proposes changes in legislation regarding children’s and young people’s rights.

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FOREWORD

Human rights apply to all children

'It feels good. It's a relief to be able to share some of the things you're feeling.' Dabir summarises what many children and young people on the move have conveyed to us: how important it is to have someone who listens to you.

Since the autumn of 2015, the Ombudsman for Children has met and listened to 600 children and young people who have arrived in Sweden unaccompanied or as part of a family.

Children have told us about their dreams. 'I want to live a life filled with joy,' Abdelkader tells us. Other children no longer have the energy to dream. Here is one voice: ‘I’ve dreamt a lot, but none of it has happened so I’m tired of dreaming.’

Sahid describes a dangerous and difficult flight to Sweden: 'I was with my parents, but the Iranian police arrested them on the Turkish border with Iran.' Some children have walked long distances; others have been forced to take unspeakable risks such as travelling in dangerous boats or hanging from the undercarriages of lorries.

The asylum procedure and the long wait is described as difficult and painful. Kaden didn’t understand what the procedure was about: 'I had no idea about asylum when I was placed here...' Wabiba describes how scared she was at the first meeting with the Migration Agency. She thought she was going to be sent to prison.

Some children have positive things to say about their asylum procedure, while others feel that the interviews weren’t adapted to the fact that they are children. They describe how they couldn’t understand the questions, became exhausted by meetings that went on for hours, and didn’t feel safe enough to talk about difficult experiences. Children from families were not asked questions to do with the asylum procedure. Zeinab has this to say: ‘No, they only asked me “what do you want to do when you grow up?” and I answered that I wanted to be a bus driver.’ Another recurring theme is the reception, with frequent moves and not feeling safe. In Tamir’s case it affected his school attendance: ‘That move actually made me feel unwell. You get used to one place, you make friends, and then suddenly you get moved to another place.’ Children have also told us about accommodation that doesn’t feel safe. Doing leisure activities and attending school make many of the children feel better, and sometimes they manage to forget their anxiety for a while. Edom and Saidah tell us what makes a difference for them: ‘The teachers. We really love the teachers a lot.’

The children's accounts have helped us identify which areas to examine on the basis of the rights that children have under the UN Convention on the Rights of the Child (CRC). Our examination shows that there are serious shortcomings. In the report we make four proposals to the government aimed at guaranteeing children on the move their human rights.

I would like to offer my warm thanks to all the children and young people who have shared their suggestions and experiences with us. The discussion about children on the move needs your voices.

Fredrik Malmberg,
Ombudsman for Children
FACTS

The fundamental principles of the CRC
Article 2 is about the equal rights and worth of all children. No one may be discriminated against. The CRC applies to all children present in a country that has ratified it. 3 states that the child’s best interests must be a primary consideration in all actions concerning children. The expression ‘the best interests of the child’ is one of the CRC’s pillars, and has been analysed more than any other expression used in it. What constitutes the best interests of the child must be determined in each individual case, and the child’s own opinion and experience must be considered.
6 underlines every child’s inherent right to life and to survival and development. This is not just about the child’s physical health, but about his or her spiritual, moral, mental and social development.
12 highlights the child’s right to form and express his or her own views and to have these views heard in all matters concerning the child. Due consideration must be paid to the child’s age and maturity when hearing his or her views.

Article 22 about the rights of child refugees
All countries must take the necessary measures in order to ensure that children seeking asylum (as a refugee or a person eligible for subsidiary protection) receives protection and humanitarian assistance. Child refugees have the same rights as all other children in the country, regardless of whether the child has a residence permit or not.

Articles of particular significance for child refugees
Article 7 about the right to acquiring a nationality. 9, about how a child who has been separated from his or her parents must be treated. 10 regulates the right to family reunification for a child who has been separated from his or her parents. 18 about the right to be raised by one’s parents. 19 guarantees the child’s right to protection against all forms of violence and abuse by his or her guardians as well as by the community. 20 about support for children who have been deprived of their family environment. 24 about the right to health and medical care. 25 about the right to correct treatment once the child has been taken into care. 26 about the right to social security. 27 about an adequate standard of living. 31 about the right to play, rest and leisure time. 32-35 about being protected against various forms of economic exploitation and abuse. 37 about being subjected to unlawful or arbitrary deprivation of liberty. 39 about the right to rehabilitation.
WHAT WE DID

Young Speakers: Where the child is the expert

When meeting with children and young people, the Ombudsman for Children uses a method we call Young Speakers. This method works for individual interviews as well as group discussions. The premise is that the children talk about things that they themselves have experienced. We regard children as experts on their own situation, and in this capacity they can share with us their experiences and views. The moderator asks mainly open questions and then listens to the child’s account, without interrupting or influencing by means of his/her own value judgements and views.¹

We reported throughout the course of our work on our annual theme of children on the move recently arrived in Sweden. In the autumn of 2015 we met with around 450 unaccompanied children in accommodation on arrival. These meetings led to a report that we published in January 2016.² We also published a report about the right to health and medical care for children on the move.³

In 2016 we held 65 interviews with a total of 146 children and young people aged between 5 and 18 – individually and in groups. In 2017 we have so far held two interviews. Of all the children involved, 80 had arrived with their families, 60 were unaccompanied, and eight were in Sweden without the necessary permits ⁴ (these are also referred to as ‘undocumented’).⁵ We tried to achieve a gender and age spread in all these groups, but within the unaccompanied group a majority are boys in their upper teens. This is reflected in our interviews. Overall, about a third of those interviewed were girls. The unaccompanied children we met were all teenagers. Of those who arrived in Sweden with their families or who are living in hiding here, about half (42 out of 88) were under the age of 12. A total of five individuals had recently turned 18 or had had their age revised to 18 by the Migration Agency.


⁴ Act (2013:407) on health and medical care for certain aliens residing in Sweden without the necessary permits. The act specifies which aliens are comprehended.

⁵ The Swedish term is ‘papperslösa’, which is a direct translation of the French ‘sans papiers’, meaning ‘without identity documents’. In Swedish the term is used figuratively and refers to such documents as a person needs to legally reside in Sweden. In other words a person may be undocumented although s/he has identity documents. See Socialrapport 2010 (in Swedish), p 265, the National Board of Health and Welfare; and Vård till papperslösa – en uppföljning av lagen om vård till personer som vistas i Sverige utan tillstånd. (‘Forms of care for undocumented people – a follow-up of the Act on care for persons residing in Sweden without permission [2015:10]’), p 15.

⁶ The Ombudsman for Children will soon be releasing a publication about the situation of undocumented children and children living on the street.
We met children in all parts of Sweden. Interviews were held at asylum accommodation facilities, community homes, institutions run by the National Board of Institutional Care⁷ and at the offices of the Ombudsman for Children. Some of the children we met lived in the street or spent a large amount of time in the street, but slept in an institution. All the names used in the report are fictitious. When we met children in groups we refer to them by a single name since it was hard in the transcription of our recorded interviews to discern who had said what. The reason for this is that most interviews were carried out with the help of interpreters.

The children lead the conversation and bring up the issues that they consider important. From a child rights perspective, however, we are particularly interested in talking to the children about specific subjects where we can ask pointed but open questions. Still, all subjects do not have to be dealt with in each individual interview, and for this reason we did not ask specific questions about e.g., the asylum procedure or accommodation in each interview.

We transcribed all the interviews and made thematic analyses. These themes were based on matters concerning the human rights of children as well as on matters the children themselves had chosen to raise. Our analyses look at whether there are any patterns in the material which can be attributed e.g., to gender. Since the accounts are so varied, however, and since the child leads the conversation, it can sometimes be difficult to draw any conclusions of this nature.

The quotes included in the report were selected because they highlight various aspects of the children’s accounts. Sometimes they represent patterns we have identified in our analyses, and sometimes they represent individual children who have raised important aspects of the theme. The children’s accounts provide examples of what it is like to be a newly arrived child and of how they perceive their situation, but they cannot be generalised as applying to all children in the group. Each child represents only him or herself.

This report examines how the human rights of children are provided for in three key areas: the right to an asylum procedure in compliance with the rule of law, the right to safety and protection – by means of contacts with a guardian and the social services regarding accommodation, leisure and finances –, and the right to education.

‘I want to live a life filled with joy. I want to learn
Swedish. My dream is to stay here with my family, in
peace. And I want to have lots of friends.’

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⁷ The National Board of Institutional Care (Statens institutionsstyrelse, or SIS, in Swedish) is a government agency providing individualized adapted compulsory care, which includes running 24 special treatment homes for young people.
SWEDEN AND THE WORLD

Major challenges as the number of children on the move increase

In 2015 the number of asylum seekers increased in the EU as well as in Sweden. In total, more than a million people sought asylum in the EU, which was more than twice the number in 2014. The trend in Sweden was the same: 160,000 people sought asylum here in 2015, compared with 80,000 in 2014. A large share (part?) of these people were children – in the EU as well as in Sweden. The share of unaccompanied children grew markedly throughout the EU. In Sweden half of all children who arrived in 2015 had no custodial guardian.

The European Network of Ombudsmen for Children (ENOC) had already drawn attention in 2013 to the situation that children on the move did not have their rights provided for. In connection with the increase in the number of refugees arriving in Europe in 2015, ENOC urged European states to ensure that children on the move had their rights under the CRC provided for.

In collaboration with the network, the Ombudsman for Children published a report in January 2016 showing that children are exposed to numerous risks on their journeys to and through Europe. They risk becoming victims of human trafficking, exploitation and other crimes, and are also vulnerable to diseases and, in the worst case, death. Children’s rights are not provided for if and when they arrive in Europe either. They are not given sufficient information and are not given the chance to participate to the extent they are entitled to under the CRC. Neither is the best interest of the child defined and considered in a satisfactory way. The EU’s list of measures for managing the refugee situation in 2015 only mentions the situation of children in a footnote.

Reception deficiencies

During the autumn of 2015 the Ombudsman for Children met around 450 unaccompanied children and young people staying in accommodation on arrival in various parts of Sweden. Children who arrive in Sweden without an adult who is responsible for them are in a particularly vulnerable situation. In the course of our meetings with the children it became clear

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8 Eurostat News release 44/2016: Asylum in the EU Member States Record number of over 1.2 million first time asylum seekers registered in 2015. 4 March 2016.
10 From 23,000 in 2014 to 90,000 in 2015. Eurostat Press release 87/2016: Asylum applicants considered to be unaccompanied minors Almost 90,000 unaccompanied minors among asylum seekers registered in the EU in 2015. 2 May 2016.
11 In the EU 30% of all asylum seekers were children; in Sweden the share was larger: 43%, or 70,000 of the 160,000 people who sought asylum were under 18 years of age. http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Distribution_by_age_of_(non-EU)_first_time_asylum_applicants_in_the_EU_and_EFTA_Member_States,_2015_(%C2%B0)_(%25)_Y_B16.png Retrieved 13 Feb 2017 and the Migration Agency: Inkomna ansökningar om asyl, 2015 (Applications for asylum received in 2015). Page 1.
that their initial reception had been deficient in a number of ways. The children told us that
that they did not have their fundamental rights provided for.

These deficiencies included denying the children medical care, even in emergency situations,
and not appointing a guardian until the children had been in Sweden for several months. The
children spent weeks and months in accommodation intended for maximum stays of 48 hours,
they did not receive winter clothes and shoes, and had only limited opportunities for activity.
Children who belonged to a minority group or spoke another language than the other children
did were in a particularly vulnerable situation. The same was true for the comparatively small
number of girls who arrived on their own and who were placed in accommodation together
with boys.\(^{16}\)

**FACTS**

**Criticism of Sweden by the UN child rights committee**
The UN Committee on the Rights of the Child regularly reviews how Sweden is living up to its
commitments under the CRC. Regarding children on the move, Sweden was given the following
recommendations in the latest such review (2015):

- Ensure that the principle of the best interest of the child underlies and guides all decision
  making processes, particularly in asylum applications that include children. Offer regular
  further training courses to staff at the Migration Agency.\(^{17}\)

- Abolish the exception of inappropriateness\(^{18}\) in the Aliens Act, which limits the child’s right to
  be heard.\(^{19}\)

- Increase the daily allowance for asylum seekers\(^{20}\) and ensure that the allowance is not
  reduced for families with more than two children.\(^{21}\)

- Amend the Aliens Act to explicitly include child-specific forms of persecution as grounds for
  obtaining asylum. E.g., the risk of becoming a victim of forced labour, child marriage, trafficking,
  female genital mutilation or being recruited as a child soldier.\(^{22}\)

- Require by law that each unaccompanied child is immediately appointed a guardian who is
  adequately trained and receives regular ongoing training. The child must have regular meetings
  with his or her guardian, together with an interpreter if necessary.\(^{23}\)

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\(^{16}\) The Ombudsman for Children: Barn på flykt, barns och ungas röster om mottagande, 2016.
(‘Refugee children – children and young people speak of their reception’; the Ombudsman for
Children, 2016).

\(^{17}\) UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report
of Sweden. CRC/CSWE/CO/5. Item 18b.

\(^{18}\) Under the Ch 1, Section 11 of the Aliens Act, children must be heard unless this is inappropriate.

\(^{19}\) UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report
of Sweden. CRC/CSWE/CO/5. Item 20.

\(^{20}\) The daily allowance has remained unchanged since 1994.

\(^{21}\) UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report
of Sweden. CRC/CSWE/CO/5. Item 48b.

\(^{22}\) UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report
of Sweden. CRC/CSWE/CO/5. Item 50b.

\(^{23}\) UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report
of Sweden. CRC/CSWE/CO/5. Item 50d.
• Expedite the processing of asylum applications and ensure that all asylum-seeking children are fully provided with basic necessities, in particular adequate clothing and toiletries, as well as all the necessary school materials.\textsuperscript{24}

The impression we got from our meetings with children was that the reception system did not function properly.\textsuperscript{25} Some of the deficiencies we identified through these interviews are consequences of deficiencies we identified already in 2015. These include the absence of a joint emergency plan and insufficient collaboration between national, regional and local authorities.

On the basis of the deficiencies we identified in 2015, we decided to analyse the situation of children on the move in greater depth. In 2016 we examined how children’s human rights are provided for in the next step of reception, when the child has received a placement in what is known as a designation municipality and the asylum procedure has begun. We chose to meet with unaccompanied children, with children who had arrived with their families, and with children who are in Sweden without the requisite permits. It soon became evident in our interviews that the children’s health was a major worrying factor. We therefore chose to highlight children’s right to health and medical care in a separate report, which was published in February 2017.\textsuperscript{26}

Restrictive policies
Over the past year much has changed in Europe and in Sweden as a result of a series of policy decisions. The Swedish parliament (Riksdag) decided at the end of 2015 to introduce ID checks for everyone entering the country. This has led to a drastic reduction in the number of asylum seekers, in particular the number of unaccompanied children. A total of 28,939 persons applied for asylum in Sweden in 2016. Of these, 10,909 were children, of which 2,199 unaccompanied.\textsuperscript{27}

On 20 July 2016 a Temporary Aliens Act came into force which means that refugees and persons eligible for subsidiary protection can only be granted temporary residence permit/ Additionally, the act severely limits the possibility of family reunification\textsuperscript{28} (see fact box on page 25). The act includes ‘safety valves’ allowing for checking against the CRC, and is thus not in direct contravention of the CRC.\textsuperscript{29} However, the Ombudsman for Children fears that the application of the law may come to conflict with the CRC and its spirit.

In Europe, more and more countries closed their borders. This made it more difficult for refugees arriving in Greece to move on towards northern Europe, which is the final destination

\textsuperscript{24} UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report of Sweden. CRC/CSWE/CO/5. Item 50e.
\textsuperscript{25} The Ombudsman for Children: Barn på flykt, barns och ungas röster om mottagande, 2016. (‘Refugee children – children and young people speak of their reception’; the Ombudsman for Children, 2016).
\textsuperscript{26} The Ombudsman for Children: Nyanlända barns hälsa delrapport i Barnombudsmannens års tema 2017 – Barn på flykt. 2017. (‘The health of recently arrived children – interim report of the 2017 theme of the Ombudsman for Children, Refugee Children. 2017).\textsuperscript{27} 28,939 persons sought asylum in Sweden in 2016. 10,909 of these were children, of which 2,199 were unaccompanied. The Migration Agency: Inkomna ansökningsar om asyl, 2016 (Applications for asylum received in 2016). Page 1.
\textsuperscript{28} Act (2016:752) on temporary limitations to the possibilities of being granted a residence permit in Sweden.
\textsuperscript{29} The government’s first draft of the act did not include these safety valves. In that version the proposal contravened the CRC, as it would have meant that the right to family reunification was denied all those who were granted residence permits because they were eligible for subsidiary protection. The Ombudsman for Children described the proposal as ‘hostile to children’. See the opinion of the Ombudsman for Children (in Swedish): Barnombudsmannens yttrande över Utkast till lagrådsremiss Begränsningar av möjligheten att få uppehållstillstånd i Sverige. 2016.
for most asylum seekers.\textsuperscript{30} Many countries also changed their legislation, making it more restrictive.\textsuperscript{31} In the winter of 2016 the EU reached an agreement with Turkey for the purpose of reducing the number of refugees making their way from Turkey to Greece.\textsuperscript{32} This has led to more refugees choosing to make their way to Italy from North Africa, a much longer and more dangerous journey.\textsuperscript{33}

Also in 2016, the European Commission presented proposals for a number of new legal instruments for a new joint EU asylum system. These proposals undermine children’s rights in some areas of the asylum procedure while strengthening them in other respects.\textsuperscript{34} On the positive side are the proposed common rules for a guardian system for unaccompanied children, as are the time limits for how quickly an application must be processed and the obligation to consider children’s specific grounds for asylum. But at the same time the possibility of getting a permanent residence permit has been removed. Children can furthermore be kept in custody, for as long as four weeks in some cases, despite the CRC’s clear declaration that no child may be deprived of his or her liberty due to his or her migration status.\textsuperscript{35}

These policy measures, together with the harsher rhetoric against refugees from politicians, among the public and in the media, mean that the rights of the child are even more challenged now than they were when ENOC published its report.

FACTS

On 20 July 2016 a Temporary Aliens Act came into force which means that refugees and persons eligible for subsidiary protection can only be granted temporary residence permits. The act also severely limits the possibility of family reunification.


\textsuperscript{31} ENOC. Safety and Fundamental Rights at stake for Children on the Move. 2016. Page 33 ff


\textsuperscript{34} European Commission. Communication from the Commission to the European Parliament and the Council. Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe.

CHILDREN’S VOICES ABOUT FLEEING TO SWEDEN

The road to Sweden

When children and young people describe their journeys to Sweden, their accounts differ. Some have arrived by plane, others have crossed the Mediterranean by boat. Some have hung from the undercarriages of lorries to cross borders in Europe, others have gone by train, and some have walked very long distances. Their journeys have sometimes taken them through many countries, across deserts and seas, and many have lasted months or even years.

Fleeing on your own, without your parents, is hard, the children say. There is no one to turn to when you’re uncertain. Aasim tells us that ‘I’ve helped myself because I have no one who can take care of me. I’m by myself, like, alone. Six years ago I left my mother, my country. I have no one to take care of me or to tell me: Do this, don’t do that, take this route, don’t take that route.’ Some children describe how family members have disappeared along the way. Sahid’s story: ‘I was with my parents, but the Iranian police arrested them on the Iranian border with Turkey.’

Children and young people are aware that their flight involves great risk, and that they may not survive. Pascal tells us that ‘I knew that it could lead to me losing my life even, and that very nearly happened twice, on the border between Iran and Turkey and then between Turkey and Greece as well […] Out at sea between Turkey and Greece the Turkish police shot at us, saying that we had to turn back – and if we’d turned back then the smugglers would have shot at us.’

Some of the children and young people have experienced people smuggling during their flight. Dabir recounts how ‘this smuggler, he was very nasty to us. As we began to get close to the mainland, he destroyed this rubber boat. It was cut open against the rocks. […] we almost drowned. We lost all our clothes in the sea, and everything disappeared. […] it was lucky for us that there was a small lifeboat. There were some strong and brave boys there who helped us get across to the beach. Otherwise we would have drowned.’

Fahim tells us that he was forced to work for smugglers in order to finance his flight: ‘I had no money to continue travelling, so I worked together with a smuggler. And in return the smuggler helped me continue my journey towards Austria, where I then spent two weeks. And then I continued travelling north to Germany, Denmark and eventually to Sweden.’

The reason children and young people have made their way specifically to Sweden is that they ‘have heard’ that it’s safe, secure, democratic and that you’re allowed to go to school. Abdelkader sums up his wish thus: ‘I want to live a life filled with joy. I want to learn Swedish. My dream is to stay here with my family, in peace. And I want to have lots of friends.’

‘Out at sea between Turkey and Greece the Turkish police shot at us, saying that we had to turn back – and if we’d turned back then the smugglers would have shot at us.’
CHILDREN’S VOICES ABOUT THE ASYLUM PROCESS

‘The problem is that it feels like you’re hanging from a rope or something. And you don’t know if it’s going to hold, or if it’s going to, you know, snap. And everything, you know, be lost.’

The asylum procedure involves several steps: an application, examination, a decision, perhaps an appeal – and then leaving the country if you don’t have the right to stay. The examination process is intended to determine whether a person is in need of protection because s/he would be at risk of suffering serious violations of his/her human rights in the event s/he went back.

The Migration Agency is the authority of first instance in the processing of an asylum application. This means that the main judicial examination of the case should be carried out here. How well the child’s rights under the CRC are provided for in the Migration Agency’s examination is thus of central concern.

Every asylum applicant is entitled to asylum procedure in compliance with the rule of law. The rules for how the examination is to be carried out, and whether these are followed in practice, are to do with rule of law.\textsuperscript{36}

When children and young people describe what they know about the asylum procedure, the issue is often that they have not understood from the outset what it means to apply for asylum. Kaden has this to say: ‘No. I had no idea about asylum when I was placed here, and it was when I spoke to the staff here that I learned what asylum is.’ Children and young people also describe how they have received written information in Swedish from the Migration Agency, which they have then translated using internet translation services.

Children and young people also recount how they have had to have their fingerprints taken on arrival in Sweden, but they have different ideas as to why. Saqib tells us that ‘then they took our fingerprints in order to find out our identities and to check that we hadn’t been anywhere else first.’ Others have a different explanation: ‘And there [at the Migration Agency] they took our fingerprints for criminal investigation purposes,’ Ibhar says.

For some children it has not been clear what the initial interview with the Migration Agency is for. Yassin tells us that ‘I don’t know if it was at the Migration Agency or wherever it was, just someplace in Gothenburg, ten minutes, in which they asked me why I’m here, why I’m applying, that was it. Took ten minutes.’

Wabibah describes that she was scared in the first meeting at the Migration Agency: ‘It was hard, I was really scared, couldn’t breathe. Horrible things that have happened [...]. I forgot what my name is, what clan I belong to, I was so scared.’ Wabibah thought she would be sent to prison after the meeting.

Children and young people describe how things were in their homeland. One boy describes how tragedies in his family and bad finances influenced his decision to flee: ‘Of course, I also lost my older brother, my father died. My mother was in a helpless state. I was very sad. Then my little brother too, he fell ill. And our resources were spent, I had very little money. I was even injured myself in a bombing, and spent three weeks in treatment in a hospital.’

Other children describe persecution by the authorities in their home country. Pascal says that ‘I had problems in Iran, because I’m originally from Afghanistan. My parents are from Afghanistan, but I was born in Iran and speak Persian much better than I speak Dari. [...] but it’s been eight years that Daddy is gone and he’s not alive, and everything just turned really bad. Lately it hasn’t mattered if you’re an adult or a child, they go after everyone, the Iranian police,

\textsuperscript{36} Asylrätt, en praktiskt introduktion (‘The right to asylum – a practical introduction’), by Madelaine Seidlitz. 2014. Page 46.
and at the same time they accept bribes, money. And you need a lot of money to be released by
the police [...] twice we paid an enormous amount of money so that they’d release me.’

Children and young people also tell us how circumstances have changed to make it more
difficult for them to live in their homeland. Maajida describes this: ‘For example even the
smallest thing, like being able to draw. I like to draw, I like to play musical instruments. In my
homeland I’m not allowed to draw, not allowed to play musical instruments. Because now
they’re suddenly starting to say that drawing or playing an instrument is forbidden by our
religion. And I’ve had my life threatened. They closed down all the schools there. I have no
future there.’

A boy describes how a death in the family forced them to flee: ‘Mummy is a widow now, and
it’s almost impossible for a widow to live in Iraq [...] We had to interrupt our studies. We left
everything and came here.’

Some children also describe a fear of returning to their homeland. Tareq tells us that he risks
being forced to become a child soldier if he returns: ‘And the future for us in Afghanistan, what
was the future we had? It was to carry guns and go out harassing people. [...] And especially in
my specific case. The mullahs showed us and told us that there are heathens who have come
here, there are Americans who have come here. You have to carry your guns and you must fight
them and do battle with them. [...] I don’t want to become a murderer, I don’t want to murder
anyone, I don’t want to become a criminal. I want to study, study and have a good future and be
a good person in the future.’

Long wait
Children and young people describe waiting a long time to be called to an asylum examination.
Ibhar tells us what waiting was like for him: ‘I think in general, I mean it’s a human trait, this
thing that normally ... if there’s one thing you hate, it’s having to wait. I mean waiting is
something awful to have to do. Above all, waiting and living with uncertainty in combination,
that’s a nightmare. I mean, just sitting at the doctor’s office and waiting for him to come, even
though he will come, that’s tough in itself. You get completely restless and to be waiting then,
at the same time, to hear about something fateful, you don’t know what’s going to happen
later. Your whole future is at stake, that’s much worse. And in my opinion it’s like this, that a
verdict on this issue means either death or being allowed to live.’ Maajida describes what it’s
like to wait: ‘The problem is that it feels like you’re hanging from a rope or something. And you
don’t know if it’s going to hold, or if it’s going to, you know, snap. And everything, you know, be
lost.’

Children and young people also find that the waiting time is longer for some than for others.
Raakin tells us how ‘there are children who have been in Sweden for more than one and a half
years], and who have been waiting to hear the decision for seven months, since the
examination, and haven’t heard yet. [...] And then again there are guys who get a decision after
a month.’

‘And when I left Afghanistan I was just saving my own
life, so I wasn’t thinking that “if one day I should arrive
in Europe, then I need to carry this or that document”’

Those children and young people who have been through the asylum examination describe it in
different ways. Some are positive, others negative. Turki’s experience is that ‘they’ve been nice.
And they think humanely.’ Ibhar’s experience is completely different: ‘But what I did experience
was that when I sat in that interview or examination, then I wasn’t trusted much. It felt as if
their questions were very suspicious and critical of me and, I don’t know, it just didn’t feel right
that way.’ Other children and young people have felt that the interview wasn’t child-appropriate: questions have been difficult to understand and interviews have gone on for very long. A child with a functional impairment describes how it was difficult to understand and answer the interviewer’s questions, and therefore difficult to produce reasons for seeking asylum.

Tareq talks about the requirement for documents: ‘And when I left Afghanistan I was just saving my own life, so I wasn’t thinking that “if one day I should arrive in Europe, then I need to carry this or that document” [...] So I wasn’t thinking then about taking documents. [...] Even if a person knows that documents can strengthen one’s reasons and make it easier to prove what one is claiming. But you understand, it’s not like I can turn to the person threatening me and ask “would you mind writing on this paper that you want to kill me?”’

Wabiba tells us that she asked to be interviewed by a woman since she’s afraid of men, but that wasn’t possible. Wabiba also tells us that she was not asked during the asylum examination about the genital mutilation she had suffered. Only following an initial rejection and subsequent complications caused by the genital mutilation did her counsel ask her about the genital mutilation. During the asylum examination, however, she had described how she had fled when she was around 13 years old because she was going to be forced into a marriage. Asked how the Migration Agency dealt with this, Wabiba replies: ‘The Migration Agency said that they didn’t think it was important.’

Fowzia, who also fled because she was going to be married off, tells us that it was difficult for her during the asylum examination to answer detailed questions about the clan she belongs to, since her family did not consider that important and therefore had not told her very much. Fowzia says that because of that she was not regarded as credible. She also felt uncomfortable during the asylum examination because there were so many adults in the room. Other children have had similar experiences. In some cases, professionals who are not with the Migration Agency have helped the child get a more child-appropriate meeting with fewer participants, in order for the child to cope with bringing up sensitive and difficult experiences from his/her home country, such as sexual abuse. One child tells us that several meetings with the Migration Agency were necessary before s/he was able to speak about serious abuse.

Insufficient support
Children and young people also tell us about the support they received from their public counsel. Tareq describes how he doesn’t think he got enough time to prepare with his counsel: ‘I don’t understand – why do you have this meeting with your counsel such a short time before the examination that there isn’t time to tell the full story to the counsel, so that he or she will be able to help, if necessary, during the examination? And you don’t get an opportunity to present your grounds for seeking asylum in a satisfactory way to your counsel before the examination.’

Inadequate interpreting during the examination is something else that children and young people describe. One boy tells us how his identity was questioned, and since it wasn’t possible to find an interpreter into his native language, he was unable to corroborate his language, which is specific to the region he is from: ‘It’s difficult to get an interpreter for that language. They [the Migration Agency] had arranged an Arabic interpreter, and I was forced to do the interview in Arabic. After I had done it in Arabic, they questioned my statement that I was from Eritrea. And then they said: “We’re going to do a language test with you, or a language analysis.” And that “we’re going to carry out this analysis in Arabic.” I said “that’s not my language, Arabic.” And now they’re sort of making things harder for me.’ Another child describes how it was difficult to talk about sexual abuse when the interpreter was present in the room.

Children who have arrived with their families also tell us about the asylum examination. Some of them have been asked relevant questions. Kheira tells us that ‘yes, they asked questions to each one of us separately. [...] Yes, I was nervous at first, or scared. Because she was there at the computer, writing and asking questions, writing and asking questions.’ Other children were
not asked any questions to do with the asylum examination. Zeinab tells us: ‘No, they only asked me “what would you like to be when you grow up?” and I said I wanted to be a bus driver.’

Children and young people also have experiences of appealing refused asylum applications. One boy tells us what it was like during the appeals hearing in the Migration Court: ‘But the Migration Agency’s litigation officer looked at me in a way that made me think that if I moved he would attack me and eat me up, just about, that’s what it felt like. And I had never been in these kinds of situations in my life […] and it was my first experience. And that felt tough, and I felt under a lot of pressure and just wanted to get out of there as quickly as possible.’

Others tell us about why their applications were refused. Abdelkader’s story: ‘I was planning a new life, future and that. But then they tell me I have to go home: “There is no war or conflict in your homeland”. It’s correct that there is no war going on, but there’s a war between the people who live there.’

A number of children also describe how their age is revised upwards in connection with the refusal. One boy tells us: “Yes. I got that. […] when I was called to go there they said “your application has been refused” and what they had done was to revise my age upwards and then I got that [refusal].’

We have also met children who are unable to return following a refusal because their home countries are unwilling to receive them. Isla tells us: ‘I know many Moroccans who have not received a residence permit. And Sweden wants to send them [home]. But there are no papers or anything that say that they’re from Morocco. And in Morocco hardly anyone needs to have an ID card. And so they can’t do anything. They take them to Märsta [the detention centre], they stay there, I don’t know, maybe three months, six months or eight months. And then they release them onto the street.’
OUR ANALYSIS

Major deficiencies in the asylum procedure

The children and young people we have met describe a scarcity of information. This applies to both unaccompanied children and children in families. Far from all children know what asylum is. Sometimes it’s not clear to the child whether the interview at the Migration Agency is about registration or whether it’s part of an asylum examination. Children and young people mention having their fingerprints taken, but not all of them understand why. Some children think their fingerprints are being taken for criminal investigation purposes. All of this suggests that they have not received the information they need in order to understand how the procedure works and what is expected of them in different situations.

The child’s right to be heard is regulated in Article 12 of the CRC. The UN Committee on the Rights of the Child has emphasised that children going through the asylum procedure are in a particularly vulnerable situation. For that reason, it is important that they be allowed to express their views. In order for children and young people to be able to make themselves heard and have their views considered they have to be given relevant, child-appropriate information about their rights and the asylum procedure, in their own language.37

The Swedish Aliens Act38 states that the child must be heard unless this is inappropriate. The CRC contains no equivalent to this ‘exception of inappropriateness’ which implies that the child’s right to be heard is severely compromised. In its most recent report on Sweden, the UN child rights committee recommends that the exception of inappropriateness in the Aliens Act be abolished.39

The decisive factor in providing for the child’s right to be heard is that it is done in a meaningful way. A child should not be heard for the sake of being heard, but with the aim of fulfilling the child’s rights under the CRC. The UN child rights committee underlines that an essential element of states’ measures to fulfil children’s rights is to ensure that they are heard.40

All children, irrespective of their age, have the right to be heard. However, the way in which the child’s views are taken into consideration when a decision is made must relate to the child’s age and maturity. According the UN child rights committee, maturity is a measure of the ability to understand and assess the consequences of a particular issue. This involves the child’s capacity to express his/her views on various issues in a reasonable and independent manner. It is also important to consider how the issue or decision will affect the child. The more an outcome affects a child’s life, the more important it is that a correct assessment is made.41 This means that the child’s ability to understand the matter that s/he is to express his/her view on must be assessed in each individual case. It follows that the information given to the child must be adapted accordingly.42

37 UN Committee on the Rights of the Child, General Comment No 12 (2009): The right of the child to be heard. CRC/C/GC/12. Expressed generally and included specifically in para 123 f.
38 The Aliens Act, Ch 1, Section 11. The Ordinance (2007:996) with instructions for the Migration Board also states that in taking decisions or other measures affecting children, the consequences for children must be analysed.
41 UN Committee on the Rights of the Child, General Comment No 12 (2009): The right of the child to be heard. CRC/C/GC/12. Expressed generally and included specifically in para 30.
Our interviews with children who have arrived with their families indicate that children have little or no knowledge about the asylum examination. Some of the younger children told us that the Migration Agency only speaks to adults, or that the questions directed at children are not about asylum but about completely different things. On the basis of the children’s accounts, we question to what extent children have been heard in a meaningful way.

Children’s asylum grounds are not examined
It has emerged from our interviews with children who have arrived with their families that they have not been asked about their grounds for seeking asylum. When they have been asked questions by the Migration Agency, these have not been relevant to the examination. With respect to children who arrive with their families, it is clear in our view that their asylum grounds are not examined in a way that satisfies the rights they have under the CRC.

According to the UN child rights committee every child must have the right to present their own grounds for an asylum application. Every child has the right to submit his/her own, separate asylum application, regardless of whether s/he is accompanied by a guardian or other adult, or is unaccompanied. Even a younger child can be the main applicant on an asylum application. Just as a child can receive refugee status when their parent is formally recognised as a refugee, a parent can receive refugee status based on their child’s status as a refugee. If both child and parent/s have their own grounds for fleeing, it is preferable that each one’s grounds be assessed separately.

It is nevertheless true that the definition of a refugee has always been formulated in the light of adults’ experiences. This has meant that many children who have sought protection have been wrongly assessed or that their grounds for asylum have been completely overlooked. A recurring criticism of the right to asylum is that it is based on a notion of the refugee as a heterosexual, politically active man. This implies that women, children, LBGT persons and others may find it harder to be granted asylum. The Migration Agency has highlighted the fact that in most cases it is the man in a family who is registered as the main applicant, and that the man’s grounds for asylum are assessed in greater detail than those of the other family members.

43 UN Committee on the Rights of the Child, General Comment No 12 (2009): The right of the child to be heard. CRC/C/GC/12. Expressed generally and included specifically in para 123 f.
47 See e.g Bexellus, Maria: Asylrätt, kön och politik – en handbok för jämställdhet och kvinnors rättigheter (‘Right to asylum, gender and politics – a handbook for equality and women’s rights’). Rådgivningsbyrån för asylsökande och flyktingar (The advice bureau for asylum seekers and refugees), 2008.
FACTS

What the Aliens Act says

Refugees, persons eligible for subsidiary protection and persons otherwise in need of protection who are in Sweden are entitled to a residence permit as a person in need of protection.\textsuperscript{50}

A refugee is an alien who is currently outside the country of his/her nationality, because s/he has a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and is unable, or because of his/her fear unwilling, to avail him or herself of the protection of that country.\textsuperscript{50}

A person eligible for subsidiary protection is an alien who is unable to return to the country of origin because s/he would be at considerable risk of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment. This also applies if the person is a civilian who risks being injured due to indiscriminate violence as a result of external or internal armed conflict. This, too, is conditional on the alien being unable, or because of the circumstances cited above unwilling, to avail him or herself of the protection of that country.\textsuperscript{51}

A person otherwise in need of protection is an alien who needs protection because of external or internal armed conflict, or other severe conflicts in the country of origin. This status can also apply if the person feels a well-founded fear of being subjected to serious abuses or is unable to return to the country of origin because of an environmental disaster.\textsuperscript{52}

The above sections of the law also comprehend stateless persons who are outside the country in which s/he has previously had his/her habitual place of residence.

There are other grounds for granting a residence permit. These include:

Exceptionally distressing circumstances: A person who does not fulfil any of the grounds for protection described above may still be granted a residence permit. This applies e.g if a child is seriously ill and treatment in the country of origin is not available.\textsuperscript{53}

Ties to Sweden\textsuperscript{54} confer the right to a residence permit to persons with (close) ties to the person in need of protection. This might be the parents or children of the person in need of protection, but can also be other persons to whom the person in need of protection is considered to have a relationship of dependence, e.g persons with whom s/he has shared a household.

Impediments to enforcement: There are situations in which a decision on refusal of entry or deportation cannot be enforced.\textsuperscript{55} Under the principle of non-refoulement, a state cannot return an asylum seeker to a country where s/he risks suffering capital or corporal punishment, torture or other inhuman or degrading treatment or punishment.\textsuperscript{56}

\textsuperscript{50} The Aliens Act, Ch 4, Sections 1, 2 and 2a.
\textsuperscript{51} The Aliens Act, Ch 4, Section 2a.
\textsuperscript{52} The Aliens Act, Ch 4, Section 2a.
\textsuperscript{53} The Aliens Act, Ch 5, Section 6.
\textsuperscript{54} The Aliens Act, Ch 5, Sections 3 and 3a.
\textsuperscript{55} Ch 12 of the Aliens Act contains provisions on this.
\textsuperscript{56} The Aliens Act, Ch 12, Sections 1-3a.
An unaccompanied child may not be sent back without first obtaining guarantees that the child will be received by a family member, an appointed guardian or reception facility for children.\textsuperscript{57} If a decision on refusal of entry or deportation has gained legal force, but new circumstances emerge that give grounds for protection, the decision may not be enforced.\textsuperscript{58} The same applies if there is reason to assume that the country will not receive the person, or if there are medical risks involved. If an impediment is of a lasting nature, the Migration Agency may issue a permanent residence permit.\textsuperscript{59}

**Two laws apply at present**

For children and families with children who have sought asylum in Sweden, two parallel items of legislation currently apply: the Aliens Act and the Temporary Aliens Act.\textsuperscript{60} Which one of these is applied depends on when a child or family with children registered their application.

For children and families with children who had their application registered until 24 November 2015, the Aliens Act in its original wording applies, while the Temporary Aliens Act applies for those whose applications were registered on or after 25 November 2015. The temporary act limits the possibilities of permanent residence permits and family reunification.\textsuperscript{61}

**New rules in the Temporary Aliens Act**

The Temporary Aliens Act came into force on 20 July 2016. This act will be in force for three years, and will be evaluated after two years. The act applies retroactively, which means that it also covers applications that were registered before it came into force.

These are some of the changes in the Temporary Aliens Act:

- Refugees will be granted temporary residence permits for three years.

- Persons eligible for subsidiary protection will be granted temporary residence permits for 13 months, with the possibility of a two-year extension.

- The possibility of family reunification only applies to refugees. For persons eligible for subsidiary protection there is no possibility of family reunification until they have received a permanent residence permit, unless in the individual case this is regarded as contravening conventions that Sweden has ratified.

- Children can be issued permanent residence permits if this is ‘absolutely required’ due to the child’s health.

- Protection grounds for persons otherwise in need of protection have been removed.

- The provision on exceptionally distressing circumstances has been removed, and has been replaced by a provision stipulating that a person will be eligible for a temporary residence permit if his/her deportation would contravene Sweden’s international commitments.

\textsuperscript{57} The Aliens Act, Ch 12, Section 3a.
\textsuperscript{58} The Aliens Act, Ch 12, Sections 1, 2 or 3.
\textsuperscript{59} The Aliens Act, Ch 12, Section 18.
\textsuperscript{60} The Act (2016:752) on temporary limits to the possibility of receiving residence permits in Sweden, and the Aliens Act (2005:716).
\textsuperscript{61} The Act (2016:752) on temporary limits to the possibility of receiving residence permits in Sweden.
During our interviews we did not ask children and young people specific questions about their grounds for asylum. Both unaccompanied children and children arriving with their families nevertheless told us about experiences that could be grounds for asylum. These include the situation in the homeland, fear of returning because of persecution, relatives who have murdered, the risk of being drafted as a child soldier or of being subjected to genital mutilation or child marriages, and the fear of being killed.

With respect to the type of vulnerability described, there are gender aspects to the children’s stories. Boys may have been or may have risked becoming child soldiers. Additionally, they often bear a heavy obligation to flee in order to save the rest of the family. Girls may have been subjected to or risked being subjected to serious sexual violence, genital mutilation or child marriage.

Despite this, the children we spoke to who had arrived with their families had not been asked relevant questions about their grounds for asylum, which is an observation supported by other studies. This contravenes the child’s right to receive an individual examination.

Our meetings also show that unaccompanied children, unlike children in families, have their own grounds for asylum examined. But it is not clear if the Migration Agency has taken into account the types of persecution that children in particular suffer. It is also unclear whether any consideration was paid to the child’s unique experience of persecution and to how s/he had been affected on the basis of age, maturity, development and dependence on adults.

It is the asylum-seeking child who has to prove that s/he has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. According to the UN child rights committee, however, the definition of a refugee must be interpreted in an age and gender-sensitive way. Persecution directed at children may take on other forms and expressions than that directed at adults. Persecution of family members, recruitment of minors in armed conflicts, trafficking in children for exploitation, sexual abuse, child marriage and female genital mutilation are some examples of persecution directed at children and which may constitute grounds for asylum.

The assessment of the child’s grounds for asylum must be made on the basis of the child’s unique experiences of persecution and how s/he has been affected on the basis of age, maturity, development and dependence on adults. In order to be able to obtain information about these grounds, it is important that the authorities that examine applications for international protection possess the knowledge required to identify the child’s own grounds for asylum, persecution particularly directed at children, and violence linked to gender.

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64 UN Convention Relating to the Status of Refugees, Article 1.
65 UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 74.
67 UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 74.
Unaccompanied children from some countries have told us that their applications were rejected because there is no ongoing war in their homeland, even though the children described possible grounds for asylum.

The investigators at the Migration Agency must possess knowledge of the situation of children in various countries, and of the risks children there are subjected to. In Somalia, for example, from where 691 children arrived in Sweden in 2016,68 98 per cent of all girls and women have been subjected to genital mutilation.69 In Afghanistan, the country that most children arriving in Sweden come from,70 the risk for children of being recruited in armed conflicts has doubled between 2014 and 2015.71 In Eritrea, another common country of origin among asylum-seeking children, 41 per cent of girls are forced to marry before the age of 18.72

A report73 by the Oxford Research Group, a think tank, points out that children from Syria are not only caught in the crossfire of the conflict — they are also targets. According to the report, most children are killed by bombs or artillery fire. But children are also killed by snipers, executed and tortured. Twice as many boys as girls have lost their lives in Syria. Many boys aged between 13 and 17 are the victims of targeted killings, the study shows.74 Despite this, children from Syria are almost always granted residence permits as persons eligible for subsidiary protection and not as convention refugees.75 Unaccompanied children from some countries have told us that their applications were rejected because there is no ongoing war in their homeland, even though the children described possible grounds for asylum. This indicates that examinations of children’s grounds for asylum are summary, which contravenes the child’s right to an individual examination.

The UN child rights committee has recommended that Sweden introduce child-specific grounds for asylum into the law.76 Child-specific grounds for asylum are currently included in the persecution category ‘membership of a particular social group’, which is cited in the refugee convention as well as in Swedish legislation.77 Judging from our interviews with children and young people, and with reference to earlier studies in the area, it seems apparent that child-specific grounds must be made explicit in the text of the law. This has long been accepted with respect to persecution for reasons of gender and sexual orientation. Legislators have highlighted these groups included in the term ‘membership of a particular social group’ and explicitly specified these reasons for persecution in the law.78 It is the view of the Ombudsman for Children that the same must be done regarding child-specific grounds.

76 UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report of Sweden. CRC/C/SWE/CO/5. Item 50b.
78 Refugee status and persecution on grounds of gender or sexual orientation (Govt bill 2005/06:6).
Children are not heard

In order for children’s own asylum grounds to be examined, children have to be heard in a way that is appropriate to the individual child’s circumstances. It emerges from our interviews with children and young people that children in families are not heard to the extent prescribed by the CRC. The Ombudsman’s view is that the current wording of the Aliens Act gives authorities loopholes that prevent children from being heard. The goal must not be to protect the child from participating, but to protect the child in his/her participation.\(^79\)

The unaccompanied children we met have different experiences of the asylum examination. When the children describe it in positive terms, they describe their reception and treatment as good. Those children who are critical describe a distrustful attitude, and how it can be difficult to remember all the details they feel they are required to provide. Children who have experienced sexual abuse describe difficulties in talking about these events during the examination. Our interviews with functional impaired children indicate that they have particular difficulties in presenting their grounds for asylum during the examination at the Migration Agency. Girls describe how they requested a female investigator because they were afraid of men, but were refused this.

The Ombudsman for Children regards this as a case where an adaptation to the child, to its vulnerability and development level, was not made in line with the statements by the UN child rights committee.\(^80\) This may be due to several factors: a lack of competence on the part of Migration Agency staff, interpreters not having knowledge about children, or that existing country information is insufficient. Children also need to be given information that is appropriate to them. It is difficult for the child to express his/her views if s/he does not understand the context or what is expected of him/her.

Children must be heard

The legislative history of the Aliens Act makes it clear that children must be heard. With reference to the child’s age and maturity, the asylum examination must make an assessment of whether, and if so how, the individual child is to be heard. Whether the child’s parents are to be present or not when the child is heard must be determined according to the circumstances of each individual case. The appointed counsel must always be present. The legislative history also emphasises the advantages of staff having experience and knowledge of children – and that it is worth making use of available competence from outside the agency (the Migration Agency).\(^81\)

The EU asylum procedures directive also states that children are to be offered a personal interview. Interviews with children are to be carried out in a child-appropriate manner, and under normal circumstances should take place without family members present.\(^82\)

The Child Rights Commission (Barnrättighetsutredningen)\(^83\) shows that the Migration Agency rarely reports the content of interviews where children have been heard. Neither does it report what significance the child’s account has had in the deliberations which have led to the

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\(^79\) This is also clear from the Child Rights Commission’s reasoning on the issue. See Barnkonventionen blir svensk lag (‘The CRC becomes Swedish law’), (SOU 2016:19), pages 170-713.

\(^80\) UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6. Expressed generally in the comment and more specifically in paras 68-75.


\(^83\) Barnkonventionen blir svensk lag (‘The CRC becomes Swedish law’), (SOU 2016:19), page 171.
decision. The Commission’s view is that this contravenes both the provisions in the Aliens Act and the CRC. Save the Children arrived at a similar conclusion in its survey.

Children also tell us that they feel they were not given enough time to prepare together with their public counsel. There is currently no requirement that persons appointed public counsel to children in asylum matters have specific child competence. The Migration Agency always vets appointees, but beyond that there are no guarantees that the counsel will have specific knowledge of children’s rights, of their special vulnerability or of how they recount events and experiences.

Some children describe how their interpreters were good, while others have experiences of getting interpreters for the wrong language or of the interpreter misunderstanding their stories.

In order for children’s own grounds for asylum to be considered, the child must be given the opportunity to be heard on its own terms. Special competence is required above all of the case officers who are to speak to the children. Flexibility and sensitivity are particularly important in the interview with the child. A child who has been subjected to serious abuse, for instance, may need to have fewer people in the room during the examination, or several meetings with the same case officer. It may also be necessary to call in experts from other professions. The significance of the child’s account must furthermore be described in the decision.

The UN child rights committee has recommended that Sweden undertake measures to strengthen the child’s right to be heard, and that legislation recognising this right be implemented effectively. This means that Sweden must ensure that the child’s right to be heard is provided for in practice, e.g. that decisions indicate that the child was heard and how the child’s views were taken into account.

Reports from the Migration Agency signal that the processing of many cases is not carried out in accordance with the laws, ordinances, legal positions and other regulations that exist.

A recent report by the Migration Agency indicates that children in families have difficulties being heard during the asylum procedure. There are children who have not been given a chance to speak to an investigator at all. The overall decision that the family receives rarely discusses or assesses the child’s own grounds for asylum. As a rule, there is no country-specific information on living conditions for children. The same is true for assessments of whether the child has been subjected to or risks persecution in the event of returning. The child-focused interviews that have to be held with the parents are not always documented. Many decisions are difficult to understand, mainly because the justification for the decision is unclear. This is particularly unfortunate when the decision concerns a child.

In our meetings with children in their accommodation on arrival, during the autumn of 2015, it emerged that children and young people spent a long time in such accommodation without being registered. In our meetings with children for the present report we have seen that children wait a long time even to be interviewed in the asylum examination. The children also describe considerable differences in waiting times.

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84 Barnkonventionen blir svensk lag (‘The CRC becomes Swedish law’), (SOU 2016:19), pages 163-165 and 175-176.
86 UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report of Sweden. CRC/C/SWE/CO/5. Item 20.
87 The Migration Agency: Analysrapport Tematisk kvalitetsuppföljning av initial åldersregistrering (‘Analysis report, thematic quality review of initial age registration’), reg no 1.3.4-2016-36465, 2016.
88 The Migration Agency: Nationell kvalitetsuppföljning med regionalt fokus (‘National quality review with a regional focus’), reg no 1.3.4-2016-181383, 2016, page 26 ff.
Once the child’s examination process does begin, we find that there are processing deficiencies in several respects. Our interviews and studies of the processing of these types of cases show that children in families are not examined to the extent prescribed in laws and international conventions. Unaccompanied children as well as children arriving with their families have told us how they were not asked relevant questions, and how any child-specific grounds for asylum were not accorded significance. The children also describe deficient interpretation and distrustful attitudes during the examination. The Ombudsman for Children considers these to be serious and worrying deficiencies. Overall, the Ombudsman finds that the deficiencies reported on in the above studies, as well as in our documentation, are so pervasive and troubling that there is reason to institute a supervisory authority which would monitor that regulatory frameworks and procedures are applied in the intended manner. This would not involve supervision of cases at the individual level; instead the authority’s task could be likened to the role the Swedish Social Insurance Inspectorate has vis-à-vis Försäkringskassan. A first step towards instituting a supervisory regime might be to commission the Swedish Agency for Public Management to carry out a systematic analysis of the Migration Agency’s application of regulatory frameworks and procedures.

Legally uncertain age revisions
Children and young people describe upward age revisions in connection with refused applications. Over the past year, the Ombudsman for Children has also seen information from other stakeholders regarding discretionary upward age revisions. The Ombudsman’s view is that there is considerable legal uncertainty in the current regulation concerning age revisions—a view that is shared by the Swedish Bar Association. This is also clear from the Migration Agency’s own internal report on age assessments.

A subsequent report shows that when the Migration Agency examines an applicant’s identity, this includes assessing whether the applicant has corroborated his/her date of birth and status as a minor. Of 145 cases reviewed there were only 26 on which the asylum seeker had submitted some form of identity document. In other words, the child’s account was the only evidence in most cases. This makes it crucial that the investigator has the knowledge and ability to help the applicant give an account of his/her age.

But the investigators’ questions are often generic and unconnected with the applicant or the context. Neither are questions appropriate to the applicant’s age or maturity. And the decision does not take the oral information into account; this is despite the Migration Court of Appeal’s rulings that all the evidence in a case must be evaluated according to the same requirements. The review shows that the evidence requirement was incorrectly applied in 38 cases of age assessments related to a decision on residence permit. Sometimes the evidence requirement was too strictly applied, and sometimes not strictly enough.

The Migration Agency’s legal standards state that the applicant’s alleged age is to apply during the asylum examination unless it is manifestly evident that the person is over 18 years of

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51 From children and young people, private citizens, guardians and public counsel.
52 The Swedish Bar Association: Remissvar Åldersbedömning tidigare i asylprocessen (Statement re Age assessment at an earlier stage of the asylum procedure) (DS 2016:237) R-2016/1811.
53 The Migration Agency: Analysrapport Tematisk kvalitetsuppfoljning av initial åldersregistrering (Analysis report, thematic quality review of initial age registration), reg no 1.3.4-2016-36465, 2016.
54 The Migration Agency: Analysrapport Tematisk kvalitetsuppfoljning av åldersbedömning i samband med beslut om uppehållstillstånd (Analysis report, thematic quality review of age assessments in connection with decisions on residence permits), reg no 1.3.4-2016-178414, 2016, page 9 f.
55 See e.g MIG 2014:1
56 The Migration Agency: Analysrapport Tematisk kvalitetsuppfoljning av åldersbedömning i samband med beslut om uppehållstillstånd (Analysis report, thematic quality review of age assessments in connection with decisions on residence permits), reg no 1.3.4-2016-178414, 2016, page 11.
According to the Migration Agency’s own analysis, it is clear that this ‘manifestness exception’ is difficult to apply, and that different case officers make different assessments of the same person.\textsuperscript{97} A decision with such far-ranging consequences for an individual as an age assessment must not be made on a discretionary basis, but requires an objective assessment with clearly defined criteria. The decision must furthermore be possible to appeal, and the principle of the benefit of the doubt\textsuperscript{99} must always apply. The importance of giving the applicant the benefit of the doubt is clearly expressed in the UN child rights committee’s statements on age assessment.\textsuperscript{100}

In our view, age assessments must be done in a holistic and multidisciplinary way, in line with the recommendations of the UN child rights committee.\textsuperscript{100} The Ombudsman for Children is also of the view that the ‘manifestness exception’ needs to be defined and clarified so that case officers use it correctly. The current situation is very problematic, in the Ombudsman’s view. Bearing in mind the deficiencies that have been noted, our view is that when a person requests a supplementary medical age assessment, the Migration Agency’s upward age revision should not be allowed to apply until such a medical assessment has been completed.

Even though their applications have been refused, some unaccompanied children have no possibility of returning to their home country. The feeling of being in limbo that these children and young people describe is very damaging for them, in our opinion.

The Ombudsman for Children takes a broadly positive view of the presented proposal for making age assessments at an earlier stage of the asylum procedure.\textsuperscript{102} If the assessment is made at an early stage, this ensures that the child will have his/her rights and special protection needs provided for throughout the procedure. It would also prevent manifestly adult persons from living together with children. An early assessment is something the UN child rights committee supports as well.\textsuperscript{103}

However, the Ombudsman for Children believes that the negative consequences of an incorrect age assessment must be considered. For that reason, such a decision should not apply immediately but only following a judicial review, should the applicant request one. The Ombudsman regrets that the government has not taken this into account in its proposal.

The Migration Agency is responsible for examining and deciding on children’s asylum applications. It is therefore important that cases be remanded there in the event that an appeal reveals that a child has not been heard, for example, or that a child’s best interests have not been considered. It is the court’s responsibility to ensure that each case has been sufficiently examined, and the court should therefore have greater scope for remanding cases which have not. It is the view of the Ombudsman for Children that special rules covering the examining of child cases and the handling of cases in the migration courts need to be introduced into the Aliens Act.

\textsuperscript{97} The Migration Agency: Rättsslig kommentar angående bedömning av ålder i asylärenden (‘Legal comment regarding the assessment of age in asylum cases’), 2015, page 4.

\textsuperscript{98} The Migration Agency: Analysrapport Tematisk kvalitetsuppföljning av initial åldersregistrering (‘Analysis report, thematic quality review of initial age registration’), reg no 1.3.4-2016-36465, 2016, pages 8 and 12.


\textsuperscript{100} UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 31.1.

\textsuperscript{101} UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 31.1.

\textsuperscript{102} Referral to the Council on Legislation: Åldersbedömning tidigare i asylprocessen (‘Age assessment at an earlier stage of the asylum procedure’), 2 Feb 2017.

\textsuperscript{103} UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 31.1.
Unreasonable situation

Even though their applications have been refused, some unaccompanied children have no possibility of returning to their home country. The feeling of being in limbo that these children and young people describe is very damaging for them, in our opinion. It means that they don’t stand a chance, and that their future prospects are nil. First of all, of course, all children are entitled to an individual examination. But the Ombudsman for Children also finds it unreasonable in view of their rights that children be forced to live in a situation where they can neither return to their home country nor be allowed to stay in Sweden. Under the Aliens Act’s provisions on impediments of a lasting nature, these children are eligible for residence permits.\(^{104}\)

It is the view of the Ombudsman for Children that children with enforcement impediments of a lasting nature should be granted residence permits, provided they have not obstructed a refusal of entry or a deportation.

In conclusion, the Ombudsman would like to highlight the situation of stateless children who seek asylum. Children have a right to citizenship under the CRC.\(^{105}\) International organisations report that many children from Syria are stateless. This is because Syrian children receive their father’s citizenship — but many children born in Syria, during the flight from Syria, or in Sweden, do not have fathers who can confirm parenthood. These children therefore become stateless.\(^{106}\)

In order for the child to receive Swedish citizenship, s/he must have a permanent residence permit.\(^{107}\) As a result of the Temporary Aliens Act, these children are now granted only temporary residence permits and are forced to live as stateless persons here as well. This contravenes the child’s right to an identity.\(^{108}\) The Ombudsman for Children therefore takes the view that Sweden has to change its legislation so that stateless children with temporary residence permits have a possibility of receiving Swedish citizenship.

As a result of the Temporary Aliens Act, children are now granted only temporary residence permits and are forced to live as stateless persons here as well. This contravenes the child’s right to an identity.

\(^{104}\) The Aliens Act, Ch 12, Section 1, para 1, item 2. The Migration Agency must also consider practical impediments to enforcement. One such impediment is that the alien’s home country has declared that it will not receive him/her, and that renewed contacts prove fruitless. The bill states generally that a prerequisite for granting a residence permit in such cases is that the enforcement difficulties are not in any way related to a refusal by the individual to collaborate (new court hierarchy and procedural rules in aliens and citizenship matters [Govt bill 2004/05:170], page 299).

\(^{105}\) CRC, Article 7.

\(^{106}\) UNHCR. I am here, I belong: The urgent need to end childhood statelessness, 2015, page 23.

\(^{107}\) Swedish Citizenship Act (2001:81), Sections 6-7.

\(^{108}\) CRC, Article 8.
INTERVIEW

‘Transparency and predictability are important in a state governed by the rule of law’

Anne Ramberg, Secretary General of the Swedish Bar Association, is a defender of human rights. She is well known on social media for standing up for the principle of the rule of law and the values it embodies. Even if her positions raise hackles.

Every person is entitled to a asylum procedure in compliance with rule of law. Children, just like adults, are entitled to an individual examination of their grounds for asylum. They must be heard during the procedure, and the best interests of the child must be considered when making the decision. In its work with child refugees, however, the Ombudsman for Children has shown that the reality looks quite different.

Most asylum seekers are appointed a public counsel – in that sense the system is legally secure. But parts of the asylum procedure are problematic. For example, that children are placed in accommodation which is not safe and secure.

Anne Ramberg is worried.

‘Asylum seekers are extremely vulnerable. Currently I am not convinced that the case officers who meet these children live up to the special demands that must be made on them,’ she says.

The closure of the child units that existed at the Migration Agency concerns Anne Ramberg. When a child seeks asylum, the examination must be appropriate to the child’s circumstances. There is real risk that the child competence that the child case officers represented will now disappear.

She expresses understanding that the Migration Agency is currently under a great deal of pressure as a result of the large number of asylum seekers in 2015. At the same time, however, she is worried about the legal uncertainty of the asylum procedure:

‘Demands on its staff are very high, and much of the staff is made up of recently employed, inexperienced case officers who have to make many decisions quickly.’

Fundamental requirements for legal certainty must not be disregarded, Anne Ramberg says. The focus must be on deciding asylum cases in a legally secure manner. The demand for short processing times must not be met at the expense of quality. It is enormously important, therefore, that the agency has adequate decision guidance.

‘Arbitrary upward age revisions are a dreadful practice and require a change in the mindset of Migration Agency staff,’ Anne Ramberg asserts, and emphasises that case officers need training about children’s rights and information about how legal positions are to be interpreted.

Lack of a child perspective

There are also good reasons to be critical of some of the legislation, in Anne Ramberg’s view. She is not happy with the temporary asylum law that was introduced in the summer of 2016. One reason is its lack of a child perspective:

‘It’s outrageous that those children who are assessed to be eligible for subsidiary protection will not be able to be reunited with their parents in Sweden – which is essentially what the consequence of this law will be.’

That contravenes the CRC, despite Sweden’s commitment to honouring international conventions.

Another consequence of the temporary asylum law is to give the public counsel an extremely important role in the asylum procedure. Anne Ramberg has met more and more lawyers who feel that they are unable to counsel their clients in a legally secure way. They find the temporary law difficult to grasp and to apply.
‘One of the main principles of a state governed by the rule of law is that processing be predictable and transparent. Cases must be handled in the same way regardless of whether they are in Boden or in Malmö,’ she observes.

‘It’s outrageous that those children who are assessed to be eligible for subsidiary protection will not be able to be reunited with their parents in Sweden – which is essentially what the consequence of this law will be.’

INTERVIEW

‘Legal guidance must be very clear’

Children are not being heard. And the examinations are not up to standard. These are some of the results of the Migration Agency’s own review of 400 decisions made in 2016.

In the autumn of 2015 there was a lot of pressure on the application units. Now this pressure has shifted to the examination units at the Migration Agency.

‘It’s been an enormous challenge for the agency, which we’ve come through better in some respects and worse in others,’ Anna Lindblad, who works with migration law at the Migration Agency’s legal department, admits.

Children must be heard in the asylum examination, the Migration Agency’s guidelines state. But this is not always what happens, according to a new report in which the Migration Agency has analysed its own examinations and decisions.

‘Examinations are hard. Examinations of people from other countries are even harder. And hardest of all are examinations of children,’ Anna Lindblad says.

Children are often afraid of saying the wrong things. One reason why children’s grounds for asylum do not come to light, she thinks, is due to misguided kindness. The investigators want to be nice, and so hesitate to ask questions. But of course you can question a child’s account, Anna Lindblad asserts.

‘All children are treated as if they were very young. But you can make certain demands about what an older child is able to recall. The important thing is to have a professional approach. And we also need to remember that this is an examination situation – not an interrogation.’

Proving persecution is difficult

Many children suffer discrimination and have their rights violated, but it is difficult to prove that this is also a matter of persecution. Examining children’s grounds for asylum requires knowledge about children’s situation in the home country, and what they risk being subjected to there.

Anna Lindblad stresses that the public counsel really can make a difference in a case by obtaining country information, taking up evidence and asking questions of experts.

It is her wish, therefore, that the Migration Court of Appeal would clarify what is to be regarded as child-specific persecution.

‘That would provide guidance for how we should interpret the law with respect to children’s own grounds for asylum,’ she points out.

Previously there were special teams and units at the Migration Agency where examinations of children and young people were carried out. Now, however, most units have to hold examinations with children, and those who haven’t worked on child cases before have to be trained. This puts legal certainty to the test.

When the Migration Agency reviewed the quality of decisions made during 2016, a number of deficiencies came to light. Employees did not use legal positions and judgements when making a decision. Age assessments, for instance, were carried out on erroneous grounds.

‘Legal guidance must be very clear in order to have an effect. We also need to return to a culture of learning,’ Anna Lindblad continues.
Most of a person’s asylum account is made up of oral information. Just as many do not have an identity document showing their age, there are rarely any documents showing in what province of the home country a particular person lived. The investigator has to ask personal questions in order to establish a thread: how did you live at home? How old were you then?

Anna Lindblad’s view is that a lack of formal documents need not be an obstacle to the procedure:

‘It is perfectly possible to corroborate your age using only oral information,’ she points out.

‘Examinations are hard. Examinations of people from other countries are even harder. And hardest of all are examinations of children.’

INTERVIEW

‘The eye of the needle has become tiny’

During 2016 more than 25,000 asylum decisions were appealed to Sweden’s four Migration Courts. This year more than twice that number of appeals are expected. Many cases are about children – unaccompanied and in families.

Kirsti Laakso Utvik is a senior judge at the Administrative Court in Stockholm, which is also a Migration Court. It reviews decisions by the Migration Agency that asylum seekers have appealed. The process is the same irrespective of whether the appellant is a child or an adult.

‘Still, the court’s requirements are less strict when it assesses whether the child’s account is credible. Neither does a child need to have been as long in Sweden as an adult in order to be granted a residence permit on grounds of adaptation to the circumstances here,’ she explains.

But the Temporary Aliens Act has limited this possibility.

‘The eye of the needle has become really tiny,’ Kirsti Laakso Utvik says.

As a rule, the court does not summon children under 15 years of age to oral proceedings. It is up to the parents to decide whether the children are going to take part. This can be problematic when the parents’ interests do not coincide with Swedish society’s view of the best interests of the child – on genital mutilation, for example. One solution would be for children to be appointed their own public counsel, Kirsti Laakso Utvik suggests.

If the appellant is an unaccompanied child, the guardian takes the parents’ place. The guardian has no formal role at the oral proceedings, and instead serves mainly as support to the appellant.

‘A proactive guardian can offer input to the public counsel and help the child formulate a plea.’

Difficulties conveying the threat situation

The public counsel has an important role in an appeal. Young people do not always understand the judicial process, and therefore talk about things that are less significant for the outcome of the case. Many have difficulties conveying the threat situation they face in concrete terms. It would therefore be good idea to have lawyers who were engaged in child rights issues, Kirsti Laakso Utvik points out:

‘You get a focus on adaptation to Sweden instead of on the grounds for asylum – that they were poor and miserable in their home countries and that they will become good citizens here. But that is not enough to get them a residence permit, even if what the child is telling the court is true.’

The Migration Courts do not alter many decisions. During the first six months of 2016, only six per cent of cases in Stockholm led to a changed decision. This fact is often regarded as an indication that the Migration Agency does a good job. And yet a recent internal review showed that there are serious deficiencies in both examinations and decisions.
'Regardless of the number of cases and the workload involved, a public authority has to stick to the regulatory framework,' Kirs Laakso Utvik says.

The Migration Agency is not a supervisory authority; in other words, it does look for mistakes of its own accord. Normally the appellant has to cite deficiencies in processing in order for the court to look into them, determine whether they have influenced the decision and if they need to be remedied. In such cases the matter may be sent back to the Migration Agency for renewed processing. This is known as remanding the case.

A high level of competence is an important element of an effective justice system. But despite the fact that more children than ever before have sought asylum in Sweden over the last few years, the Judicial Training Academy is not offering any training programmes on children in the asylum procedure during 2017.

'You get a focus on adaptation to Sweden instead of on the grounds for asylum – that they were poor and miserable in their home countries and that they will become good citizens here. But that is not enough to get them a residence permit, even if what the child is telling the court is true.'
CHILDREN ON GUARDIANS

‘My guardian is a very good woman. She is kind. I call her when I don’t feel well, when I need something, and she listens to me, she is kind and good and I am very happy with her.’

The guardian is an extremely important person for an unaccompanied child. Children are minors and lack legal competence, and the guardian is the person charged with protecting the child’s rights, e.g. when it comes to schooling. But many children have to wait a long time before they are appointed a guardian, as is clear from the children’s accounts.

Yago is one of those who had to wait a long time. He tells us that ‘during the first four months I only saw my lawyer, and the lawyer used to say “you have a guardian”, but in those four months I never met the guardian. Then, after those four months, the social services said “you’re going to get a new guardian”. I told her that I had never seen my first guardian. So, after six months a man turned up and said: “I’m your guardian, where have you come from? What’s your name?”’, and I asked him “if you don’t know that, how have you been made my guardian?”. And he became cross and just left. During the past two months I’ve had a guardian. Before that I didn’t. For seven months I did not have a guardian.”

Not having a guardian affects the child’s situation. Isa describes how he had to wait to start school since he didn’t have a guardian: ‘I had to wait a bit, almost two months. I didn’t know, and I couldn’t enrol in an upper secondary school because I didn’t have a guardian.’

The children have both positive and negative experiences of their guardians. Some describe a lack of contact between them and their guardian. Hydar tells us that ‘I don’t contact him and the guardian doesn’t contact me.’ Others have lost faith. Assim describes the following: ‘[...] There was a guardian for me, and the guardian was a big liar. He showed me no respect. He didn’t explain the law, he didn’t appreciate me, and I was with him for more than five months. He never called me. He did nothing, nothing for me. [...] So it was his fault that I didn’t have an interview with the Migration Agency. Now I don’t want him to be my guardian any more [...]’

Nora describes her guardian in very positive terms: ‘My guardian is a very good woman. She is kind. I call her when I don’t feel well, when I need something, and she listens to me, she is kind and good and I am very happy with her.’ Kaden is also positive, and describes what his guardian has done: ‘Everything. The Migration Agency didn’t want to buy clothes for me, so she sorted it out. I went out together with her daughter and the daughter’s boyfriend. They bought clothes for me, we went around town, we ate. She wants to help me a lot. She knows my problems. I’ve talked to her a lot.’

FACTS

The right to a representative
Under the CRC, a child who has been deprived of his/her family environment is entitled to special protection and assistance from the state. For unaccompanied children, the UN child rights committee has specified that the child is entitled to a suitable representative to protect his/her best interests. As soon as a child has been identified as unaccompanied, a legal representative or adviser must be appointed. The representative should be consulted and

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109 A person’s right to act on their own behalf with legally binding effect, e.g. enter into contracts. Children, defined as persons under 18 years of age, have limited or no legal competence.

110 CRC, Article 20.
informed about all measures concerning the child, and should participate in all planning and
decision-making processes.111

The representative should possess the knowledge necessary to be able to ensure that the child’s
best interests and needs are met in a number of areas: legally, socially, in terms of health,
mentally, materially and in terms of education. The representative is to serve as a link between
the child and the various authorities and institutions responsible for his/her care. In order to
ensure that the child is being represented appropriately, the appointee must be reviewed
systematically, and the child must be informed of this.112

What is a guardian?
When a child arrives in Sweden without a custodial guardian, a guardian must be appointed for
the child.113 The guardian is appointed by the chief guardian in the municipality where the child
is in accommodation.114 The guardian takes both the custodial guardian’s and the
administrator’s places, and becomes responsible for the child’s private, financial and legal
affairs. This includes the right of decision regarding the child’s accommodation, use of the
child’s assets, and what school the child is to attend. The guardian is not responsible for daily
care and supervision of the child, and is not to represent the child during the legal examination
of the child’s grounds for asylum. However, the guardian should be present at the asylum
examination.115

When a child turns 18 years of age, his/her guardian’s appointment ceases automatically.116

111 UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of
unaccompanied and separated children outside their country of origin. CRC/C/GC/6, paras 33-37.
112 UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of
unaccompanied and separated children outside their country of origin. CRC/C/GC/6, paras 33-37.
113 Act (2005:429) on guardians for unaccompanied children, Section 2.
114 Act (2005:429) on guardians for unaccompanied children, Section 3.
115 The Migration Agency, the Swedish Association of Local Authorities and Regions, the National
Agency for Education, the county administrative boards and the National Board of Health and
Welfare: Ett gemensamt ansvar för ensamkommande barn och ungdomar (‘Shared responsibility for
116 Act (2005:429) on guardians for unaccompanied children, Section 5. It may also be terminated if
the child’s parent, or another adult who has taken the parent’s place, arrives in Sweden, if the child
leaves Sweden permanently, if a specially appointed guardian is named, or if for any other reason it
becomes apparent that the guardian is no longer needed.
OUR ANALYSIS

The regulatory framework needs to be made more stringent

The interviews we have held with children and young people indicate that they have had to wait a long time to have a guardian appointed for them. This was not a matter of weeks, but rather of months – sometimes as long as seven months after arriving in Sweden.

Since the guardian’s tasks include enrolling the child in school, helping the child get winter clothes and ensuring that the child gets the money s/he is entitled to, the consequences for the child of not having a guardian are serious. Children and young people that we have met have told us how this affects them.

The Ombudsman for Children considers it unacceptable, and a breach of the CRC, that a child is left without a guardian in Sweden for several months. The UN child rights committee has also raised this in its most recent recommendation, urging Sweden to appoint representatives for unaccompanied children immediately on arrival. Similar formulations can be found in the EU directives that raise the issue of guardianship of unaccompanied children.

The Act (2005:429) on guardians for unaccompanied children stipulates that a guardian must be appointed as soon as possible. The legal history of the act indicates that the legislators did not think that an explicit time limit was appropriate as there are situations in which it is necessary to be able to make exceptions. The legislators thus found that the aim of appointing a guardian promptly could be equally satisfied by means of a general rule. Our view, however, is that this is not enough – instead a time limit must be introduced within which a guardian has to be appointed. We suggest that this time limit be five working days after the child’s arrival in Sweden.

Not everyone understands

The children and young people we have met also tell us that they haven’t really understood what a guardian is. Some equate the guardian with a parent or custodial guardian, others tell us that the guardian is the person who has to arrange things. The children have often got the information about what a guardian is from their friends. In some cases the child has not been informed that s/he has a guardian – this despite the fact that the law clearly prescribes that the chief guardian immediately has to inform the child about who has been appointed his/her guardian.

There is no provision in the law stipulating that the child be informed about what are the responsibilities of the guardian. It is furthermore not clear who should give this information.

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117 UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report of Sweden. CRC/CSWE/CO/5. Item 50d. In its recommendation to Sweden in 2009, however, the UN child rights committee urged Sweden to introduce a 24-hour time limit after a child’s arrival in Sweden within which a guardian had to be appointed, see UN Committee on the Rights of the Child: Concluding observations on the fourth periodic report of Sweden. CRC/CSWE/CO/4. Item 63.
121 This is also the suggestion in Article 22 of European Commission’s draft asylum procedure regulation - Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. COM (2016) 467 final.
122 Act (2005:429) on guardians for unaccompanied children, Section 3.
to the child. The Migration Agency has information about what a guardian is and what his/her responsibilities are in an information brochure directed at unaccompanied children and translated into a number of languages. But we understand from our interviews with children that they have not been given this information.

Against this background the Ombudsman for Children finds that it needs to be made clear whose job it is to inform the child that a guardian will be appointed for him/her, as well as what the tasks of the guardian are. It should also be clear from this information what responsibilities the guardian has and what responsibilities the social services or authorities have.

Children we have met have told us about good as well as less good treatment by their guardians, including how easy access to the guardian has been for the child. Good examples are of guardians that are there for the child, who offer support and help with all sorts of things – from practicalities to various types of support when the child does not know what to do or is not feeling well.

Among the children and young people we have met, particularly those placed in SIS institutions have negative experiences of their guardians. Several of these children told us how their contacts with the guardian had ceased once the child had been placed in an SIS institution, while others described unpleasant treatment by the guardian.

In order to be appointed guardian of an unaccompanied child, a person has to meet certain requirements. These include being ‘upright, experienced and otherwise fit for the task’. The person appointed as guardian must have the ability to protect the child’s best interests vis-à-vis the authorities and organisations that the child comes into contact with, and to assist the child in the best way possible. Neither the law nor its legislative history contains any requirement that a person must have received specific training before being eligible for an appointment as guardian of an unaccompanied child, which we find problematic.

Some of the children we met told us that they were unhappy with their guardians. Some expressed a wish to change guardians, and some have been helped to do so. According to the Act on guardians for unaccompanied children, a guardian can be dismissed from his/her appointment at his/her own request or if s/he is found for various reasons to be unfit for the task. The child him or herself cannot demand to have his/her guardian replaced. If a child is not satisfied with his/her guardian, s/he can submit a complaint to the Committee of the Chief Guardian in the municipality. The complaint can then lead to the Chief Guardian deciding to examine the issue of dismissal.

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123 For example, it is not at all clear from the publication Ett gemensamt ansvar för ensamkommande barn och ungdomar (‘Shared responsibility for unaccompanied children and young people’), produced jointly by the Migration Agency, the Swedish Association of Local Authorities and Regions, the National Agency for Education, whose responsibility this is.
124 The Migration Agency: How to apply for asylum. For people applying for asylum without a parent, parents or other custodial guardian.
125 Statens institutionssstyrelse, or the National Board of Institutional Care, is a government agency providing individually adapted compulsory care, which includes running special treatment homes for young people.
126 Fördörrabalken (Code regulating parenthood and guardianship), Ch 11, Section 12.
128 However, the Swedish Association of Local Authorities and Regions has produced a special web-based course for guardians of unaccompanied children, see skl.se/integrationsocialomsorg/socialomsorg/barnochunga/placeradebarnochunga/ensamkommandebarnochunga/webbutbildningaforesamkommandebarn.3968.html, retrieved 13 Feb 2017.
Children must be allowed to change guardians
It is the view of the Ombudsman for Children that the child must be informed that s/he can make a complaint about his/her guardian to the Chief Guardian. It is further our view that a child should have the right to request the replacement of his/her guardian – which was also a suggestion of the inquiry that provided the basis for the Act on guardians for unaccompanied children.\textsuperscript{330}

During the past year the Ombudsman for Children has seen information that there are guardians who have systematically taken on many appointments.\textsuperscript{330} Guardians with too many appointments do not benefit the children in question – the opposite is in fact more likely.

It is clear from our meetings with unaccompanied children and young people who are in SIS institutions that guardians do not really serve their purpose when the child is in a vulnerable situation. These children are often in need of more support, which is not something all guardians can offer in their role as volunteer. The Ombudsman for Children therefore proposes that professional guardians be available for children in particularly vulnerable situations, and that these guardians possess special competence to defend the children’s rights.

The Ombudsman’s overall conclusion is that the Act on guardians for unaccompanied children needs to be changed to bring it line with the CRC. These changes include the possibility of receiving information and of making complaints, as well as a clarification of the child’s right to be heard and the introduction of a provision on the best interests of the child.

Guardians with too many appointments do not benefit the children in question – the opposite is in fact more likely.

\textbf{INTERVIEW}

‘I wish we could show a bit more humanity’

When PETER MARINKO retired five years ago, he decided he wanted to make a social contribution. He had worked as an upper secondary school teacher, and thought that his experience with young people might make him useful in the role as guardian of unaccompanied refugee children.

Peter Marinko is currently guardian of four unaccompanied boys in their upper teens, from the Middle East. He describes it as a learning process, while also emphasising that every child is different. They may have lived in poverty, under an oppressive regime or under abhorrent circumstances in the family. It takes time to build mutual confidence.

‘Children who come here, regardless of which country they’re from, carry a load on their backs. It can be a real challenge transforming that load when they encounter our society. That makes me wish we could show a bit more humanity,’ Peter Marinko says.

As guardian of unaccompanied children he has to deal with many different issues. It is particularly important to know what the legislation says. Peter soon realised that there was a need for a forum in which guardians could ask each other’s advice and offer support. Today he is active in a network of guardians in Uppsala. Besides exchanging experiences on the internet, those who want to meet once a month to discuss important issues.

\textsuperscript{330} God man för ensamkommande flyttingbarn (‘Guardians for unaccompanied refugee children’, SOU 2003:51), page 126.
‘We talk about everything that has to do with the asylum procedure, the children’s adaptation to Sweden and their everyday concerns here. We’re also able to speak to psychologists at the Red Cross trauma unit about our experiences as guardians.’

**Fantastic engagement**

Peter Marinko does not recognise the picture conveyed by the media, of a Swedish refugee crisis and collapsing social services. Instead he stresses that there are many people who have become engaged – people active within everything from educational associations to churches and sports associations.

‘The children have been vaccinated and given dental care. The accommodation facilities have had proper procedures and staff that speak different languages, so that the children have been able to communicate with those around them.’

Still, he was left wondering at how badly prepared the social services were initially. Sometimes it took months before the children were given access to a social worker:

‘And then, when the children had been living there for several months, had been given a place in school and were in good hands, with a safe everyday life, the social services suddenly told them they had to move back “home”’

That sort of action brings a real risk that the children become traumatised again.

None of ‘his’ children have had to move. But during the spring of 2016 Peter Marinko helped several guardians appeal the social services’ decisions on moves.

In the spring of 2016 schools ran out of places for unaccompanied children, which led to some of them starting to roam around the centre of town for lack of anything to do. The shortage of interpreters has been a problem, and not all existing interpreters are up to scratch. This also goes for some legal counsel. Overall, though, Peter Marinko’s impression is still that reception has worked.

Schooling needs to be radically rethought in future, Peter Marinko suggests. Education needs to be based on practical learning – training for work is important.

‘Schools need to look more at these young people’s own experiences, and build on them.’

‘And then, when the children had been living there for several months, had been given a place in school and were in good hands, with a safe everyday life, the social services suddenly told them they had to move back “home”. That sort of action brings a real risk that the children become traumatised again.’

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122 e.g. to the municipality where the child was originally placed that had to move the child to another municipality due to lack of accommodation
But moving all the time, that doesn’t feel right. I just feel scared of moving all the time.’

Under the CRC, all children are entitled to a standard of living adequate for their physical, mental, spiritual, moral and social development (Article 27). Fundamental for the lives of children and young people are a home, safety, and the opportunity to be heard on important issues that concern them, and to receive relevant support when they need it.

The Ombudsman for Children has met children and young people staying in various types of accommodation – the Migration Agency’s facilities, own accommodation (EBO, which often means lodging with a relative), foster homes, community homes (HVB) or SIS institutions.133 Some children describe a good reception. Baghel tells us that ‘so far it’s been good, I mean we’ve been treated well, I mean treated very well by people living here [in Sweden] and people staying there [at the institution]. We really enjoy it here, despite the fact that there have been lots of problems all along.’

Experiences vary, but a recurring theme in the stories of both unaccompanied children and those in families is repeated moves. Children and young people describe how they have stayed in many different places since they arrived in Sweden.

Sabira, who has moved many times, tells us: ‘I don’t think it’s good, because you arrive in one place, you make friends and acquaintances, and then you learn to go to school, and then as soon as you’ve got to know some people you move to another place. And then it’s the same thing there. And then when you’ve got to know some people there and you’re moved to a third place, that’s not good. And then when you are at school and reading your books, you’re always wondering where you’re going to be moving to next week.’

Aamil summarises the feeling of being moved between different accommodation facilities and places: ‘It felt like we are animals, and they have built one stable after another for us’. Tamir has a similar feeling: ‘It’s not much of a life, you might say. Where I am from we’d say that it’s a dog’s life. Dogs are outside. That’s the dog’s life.’ Saaim tells us that she is scared of moving: ‘But moving all the time, that doesn’t feel right. I just feel scared of moving all the time.’

Children in accommodation facilities also describe problems and deficiencies at the facility. This sometimes involves cramped living conditions, with no place where they can do their homework. Aden tells us: ‘I mean it’s so cramped. […] There is ten of us, and the small children scream and so on. And you can’t sleep in peace because one of the little kids screams. And the trouble is you have to sort of squeeze together in the rooms.’

At accommodation facilities, SIS institutions and many community homes, food is regarded as a problem. Dabir says: ‘It was beef. It was lamb. But it hadn’t been slaughtered in the Islamic way, which is halal. All the families here chose to eat only bread and fruit when it’s not halal meat.’ Badru tells us that he wasn’t allowed to save food to eat after the daytime fasting during Ramadan: ‘For example, I fast [during] Ramadan, but they don’t respect that. And I ask them to leave the food [so i can eat it later], but hey don’t leave any food for us.’ Other children tell us they’ve been given mouldy bread or half-cooked food.

Another problem the children tell us about is that they feel unsafe in their accommodation. This is in accommodation facilities, community homes and SIS institutions, although the reasons for feeling unsafe vary. Arguments and conflicts between residents create fear and make many children avoid certain areas and spaces, limiting their freedom. Majd tells us: ‘And

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133 Statens institutionssstyrelse, or the National Board of Institutional Care, is a government agency providing individually adapted compulsory care, which includes running special treatment homes for young people.
all the single [men] fight a lot, but not families. They have tattoos and they drink and then they come here and start fighting with people.' Lucy tells us how afraid she is at her accommodation facility: 'Really scared. When we're asleep [the fire] alarms go off and there's lots of shouting.'

**Girls and minorities particularly exposed**

Girls and children who constitute some form of minority at the accommodation, such as speaking a different language, can be particularly exposed. Nora tells us that 'at first it was very hard for us. We're Afghans, and there's a lot of prejudice against Afghan girls.' Nora sometimes chooses not to eat in the dining room in order to avoid prejudiced comments.

Other girls describe how they avoid places and activities where there are men, and that this means that they spend a lot of time in their rooms. Other minorities also describe violence, prejudice and suspicion from other residents at the accommodation. This often leads them to isolate themselves in their rooms, and this isolation is reinforced when, as often, they don't have anyone to talk to.

Children and young people also tell us about the staff at the various forms of accommodation. Some children describe nice and supportive staff. But others do not have positive experiences of the staff. Dagan and Leen tell us: 'So you know, this guy who worked here in the dining room, he used to push kids and was really nasty to the kids.' Abdubakr has this to say: 'One of the staff here, the person who treated us really badly, he said a bunch of bad words, swear words and he said many, many bad words to me and swears at my brother and my cousins.'

Children and young people also tell us about everyday life at the accommodation facilities. Leisure activities they describe as something that makes them feel good, and some use leisure activities as a clear strategy to forget difficult memories. Dabir has this to say: '[...] when you play football with your friends, for example, then you forget the things that hurt.' When other children talk about their leisure time it has more to do with a lack of options. Dagan and Leen tell us that 'it feels really boring. We haven't got a lot to do here. The only thing we do is play a bit of football. Then adults and children get together in the yard. There's nothing else we do.' Passivity is especially marked at the SiS institutions, where watching TV often seems to be the only thing to do.

The children mention money mainly when it is short. Finances are tied to leisure time. Nora tells us that the financial assistance they get is not enough for any sports activity: 'We have to pay with our own money, our own pocket money, for those sports that cost money, and we have so little money that not much is left over for sports. We get SEK 700 into one of those, what do you call them, accounts. And for those 700 we have to buy clothes, we have to buy shampoo, things like that, so there isn't much left over.'

**Difficult to get help**

For children without a custodial guardian, the social services are responsible for placement and other forms of support the child may need. Huraira describes her contact with the social services thus: 'The first time [we meet] we get to know each other, then [they] ask how your situation is. But then after that [...] they monitor you, they get reports from the staff, and they ask you if you are ever ill, how things are going at school and so on.'

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134 Several children mention this sum, which we take to be the daily allowance from the Migration Agency. The daily allowance for a single adult is SEK 24/day, which in a month of 30 days comes to 720 SEK. The daily allowance for children is to be increased by SEK 12/day. The daily allowance is intended to cover costs for food, clothes and shoes, leisure activities, toiletries and other consumables, plus expenses for health and medical care, dental care and medication. www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Medan-du-vantar/Ekonomskt-stod.html. Retrieved 13 Feb 2017.
Others tell us that they have asked for help from their guardian as well as the social services, but haven’t got it from anywhere. Fahim, who tried to take his own life, tells us that ‘I may have stated my needs via a representative and to the social services, that yes I do need support... I even said to my guardian and to the social services “I need support”. The social services have not replied, but my guardian said “wait and see”.

Pascal tells us it is difficult to know what kind of help he can get: ‘Really, I don’t know who to turn to. I talk to anyone, and they say “you have to speak to the social services”. And when I speak to the social services they say “that hasn’t got anything to do with us”. I’m really starting to go nuts; I only stare at the wall and think and think.

Another theme of the children’s accounts is the cooperation between the guardian and social services. Isaiah tells us: ‘Yes, exactly, because my guardian is in contact with my case worker at the social services, and if there’s anything I need they can usually talk to each other about it. My guardian said “as soon as you need anything, please tell us and we’ll see if you’re entitled, if you have the right to having the needs met or not.” [...]’

Children and young people also tell us how the support disappears once they turn 18 or have their age revised to 18. One boy tells us: ‘And in fact this is really a problem as well, that when they revise your age upwards, then you no longer have a guardian and you no longer have the same social worker, and then even the public counsel, the legal counsel, when you try to phone them, they don’t even answer the phone when you’re trying to get in touch with them. Things are so different among them as well. And when you have this person who is your legal counsel, who is supposed to represent you, and they don’t even answer the phone, where are you supposed to turn? Who’s going to help you when you don’t know the language either?’
OUR ANALYSIS

Major shortcomings in terms of children’s protection

The experiences of children and young people of accommodation and other aspects of everyday life show a number of common themes. Repeated moves is one recurring theme. Children who have had to move one or more times are clear about how this affects them. According to the UN child rights committee, unaccompanied children should not have to move, in order to guarantee continuity of care and out of concern for the child’s best interests – unless this is the best solution for an individual child. The UN child rights committee also talks about the importance of durable solutions that address all their protection needs. This is of course important for children who arrive with their families as well.

Both unaccompanied children and children in families describe a vulnerability due to ethnic origin or membership of a certain language group or gender. Not feeling safe in one’s home due to one’s gender, nationality, language, religion or similar constitutes a form of discrimination that violates the CRC’s Article 2. Boys and girls describe such feelings of not being safe at accommodation facilities, where men for example ‘take over’ certain areas and activities, and where children feel afraid because of adults that drink alcohol and fight.

Under the CRC, children have the right to feel safe, particularly in their home. What children and young people have told us about feeling unsafe is in our view very serious. This applies to unaccompanied children as well as to children who are with their families.

Children and young people also describe various shortcomings in their accommodation. Cramped living conditions are a problem for many children in families. Unaccompanied children living in community homes mention their reception by the staff and that no consideration is paid to special food-related needs, such as halal meat or different eating times during fasting periods. The environment in which they live affects the health and development of children.

What children and young people have told us about their situation in accommodation of various types may be an indication that their right under the CRC to an adequate standard of living as well as their right to having their survival and development ensured are not being provided for.

135 UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 40.
136 UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 79.
137 The Migration Agency’s accommodation facilities are home to both families with children and single adults. Families with children live in their own apartments or rooms, while single adults share theirs. Other than that there are no regulations e.g to prevent families with children from living together with single asylum seekers. www.migrationsverket.se/Privatpersoner/Skydd-och-asyll-Sverige/Medan-du-vantar/Boende.html. Retrieved 13 Feb 2017.
138 CRC, Article 19. UN Committee on the Rights of the Child, General Comment No 13 (2011): The child’s right to freedom from all forms of violence, paras 34-35.
140 CRC, Article 27.
141 CRC, Article 6. According to Article 6 of the CRC, States Parties must ensure to the maximum extent possible the survival and development of the child. The UN child rights committee has emphasised that ‘development’ should be regarded as a holistic term that encompasses the entire convention, see UNICEF: Implementation Handbook for the Convention on the Rights of the Child, 2008 and UN Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, Section II.
Both unaccompanied children and children in families describe repeated moves. Placements of families with children are made by the Migration Agency, and currently there is no special regulation to prevent families from having to move. However, the Ombudsman for Children considers it unreasonable that children should have to go through what we have heard in their accounts of moving. Our view is that in order to live up to the CRC, a clarification is needed on the child’s right to continuity in accommodation.

Children in families describe how other adults at the accommodation frighten them with their behaviour. The Ombudsman finds this unacceptable. In order to guarantee the child’s right to safety and protection, families with children should in our view never be placed together with single adult men seeking asylum. The Ombudsman further thinks that staff employed at these accommodation facilities, regardless of what their job is, should be obliged to present their criminal record prior to employment. It must also be made clear that the staff at all types of accommodation have a duty to notify the social welfare committee if they suspect that a child is coming to harm.

The Ombudsman for Children has drawn attention to serious deficiencies in the protection of unaccompanied asylum-seeking children who state that they are married when they arrive in Sweden. In several cases the social services, when placing the child, have allowed the child to live — initially as well — with the person s/he claims to be married to. All of this without acceptable protection investigations having been carried out. Furthermore, in several cases the marriage has been accepted by the Migration Agency as well as the social services only based on oral information from the child and/or the accompanying adult, without any written documents to support the claim. One identified reason for this state of affairs is that Sweden has different criteria for recognising a marriage depending on whether the child has his/her habitual residence in Sweden or has arrived as an asylum-seeker.

A long term view is needed

Unaccompanied children describe repeated moves, feeling unsafe and not knowing who to turn to for support. The big increase in unaccompanied children during 2015 put increased pressure on the social services. This situation was exacerbated by the fact that the social

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143 According to information from the Migration Agency, no such obligation exists today.
144 The Social Services Act, Ch 14, Section 1, and the National Board of Health and Welfare: Duty of notification regarding potentially harmful conditions for children, 2004, page 27.
145 The Ombudsman for Children: Skyddet mot barnäktenskap måste stärkas (‘Protections against child marriages must be strengthened’), letter to the Justice Minister, Morgan Johansson, 8 Jul 2015, page 1.
147 The Ombudsman for Children: Skyddet mot barnäktenskap måste stärkas (‘Protections against child marriages must be strengthened’), letter to the Justice Minister, Morgan Johansson, 8 Jul 2016, page 5.
148 One reason why the children have moved so much is the absence of a plan for how the comparatively large number of unaccompanied children that arrived in the autumn of 2015 were going to be placed. This led municipalities to place children in another municipality than the one they had been designated. These children were then brought ‘home’ once places became available again. In 2015 34% of all asylum-seeking unaccompanied children were placed in a different municipality than the one the Migration Agency had designated. But this is not the whole story; many unaccompanied children have also been moved within their municipalities. See also Ds 2016:21 Ändringar i fråga om sysselsättning för asylsökande och kommunplacering av ensamkommande barn (‘Changes relating to employment for asylum-seekers and municipal placement of unaccompanied children’), page 13.
services in many municipalities had long been in a state of crisis, and that previously identified system failings in social childcare had not been addressed.\textsuperscript{349}

The social services have a considerable responsibility with respect to the placement of unaccompanied children. Long term placements should always be the aim. In this context the proposals from the LVU review\textsuperscript{350} and the government bill on strengthening safety and security in the care of placed children\textsuperscript{351} can be applied to some extent. The review states that care must be safe, secure, appropriate to the individual’s needs and characterised by continuity. Care must be provided with consideration. It must be based on respect for the child’s or young person’s human dignity and integrity, as well as for his/her person and individuality.\textsuperscript{352} When an unaccompanied child is placed, this must always be done on the basis of the individual child’s needs, so that the best solution for the individual child is obtained. The child must also have the opportunity to express his/her views.\textsuperscript{353}

**Forms of support are not explored**

The perception of the Ombudsman for Children is that children and young people arriving without custodial guardians are regarded as a homogeneous group. This means that proper examinations of what specific support each child needs in relation to his or her placement are not done. This was also one of the Ombudsman’s observations in the autumn of 2015, when we met children and young people in accommodation on arrival.\textsuperscript{154} It is the Ombudsman’s view that an examination prior to placement must be done promptly – preferably in connection with the child’s registration as asylum seeker. In our 2016 report on the situation in accommodation on arrival facilities we proposed that the state should have the responsibility for children on arrival, and not municipalities as is currently the case.

Our view is that all unaccompanied children should be placed in special arrival facilities that live up to the standards set by the CRC. These facilities must have teams of various professionals, including social workers, doctors and psychologists, who jointly examine the child’s needs. The purpose of this examination is to determine what kind of accommodation is suited to the child’s needs – and also if the child is in need of any special support, such as a professional guardian.

Within two weeks a municipality must be designated for the child, and the municipality must consider the information in the social services’ examination when the child’s care plan is drawn up. Depending on gender, age, sexual orientation, functional impairments, the experience of severe trauma or a vulnerable situation, a child will have different needs. It is therefore necessary to have more types of community homes where the staff is trained in a way that is pertinent to the target group.\textsuperscript{355}

\textsuperscript{349} See e.g. Dagens Samhälle Debbatt 16 Mar 2015: ‘Nu stärker regeringen barnens rättigheter’ (‘Now the government is strengthening children’s rights’) by Åsa Regnér and Cecilia Greve; and SvD Debbatt 27 Mar 2016: ‘Socialtjänstens kris kräver lösningar’ (‘The social services’ crisis requires solutions’) by Arnesson, K, Börjesson, M, Denvall, V, Johansson, K, Skillmark, M, Wallinder, M.

\textsuperscript{350} Barn och ungas rätt vid tvångsvård (‘The rights of children and young people in compulsory care’), proposal for a new LVU (Care of Young Persons [special provisions] Act) (SOU 2015:71), page 220 ff.

\textsuperscript{351} Trygg och säker vård för barn och unga som vårdas utanför det egna hemmet (‘Safe and secure care for children cared for outside their own home’), Govt bill 2016/17:59, page 28 ff.

\textsuperscript{352} Barn och ungas rätt vid tvångsvård (‘The rights of children and young people in compulsory care’), proposal for a new LVU (Care of Young Persons [special provisions] Act) (SOU 2015:71), Chapter 5, in particular 5.8.2.

\textsuperscript{353} CRC, Article 12.

\textsuperscript{354} The Ombudsman for Children: Barn på flykt, barns och ungas röster om mottagande (‘Refugee children – children and young people speak of their reception’), 2016, page 23.

\textsuperscript{355} The UN child rights committee has also emphasised that in the case of unaccompanied children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child’s physical and psychosocial health. UN Committee on the Rights of the Child, General
Both unaccompanied children and children who arrived with their families describe how important it is for them to have meaningful leisure time in order to be well in the difficult situation they find themselves. Girls as well as boys describe a lack of things to do. Girls also tell us that they aren’t always able to take part in the activities that actually exist. This may indicate that the activities on offer are not available to girls.

Under the CRC children have a right to meaningful leisure, play and recreational activities appropriate to their age. Children are also entitled to participate in cultural and artistic life. For children who have experienced war and disasters, play, recreational and cultural activities can have an important therapeutic and rehabilitative role, and help the child regain a sense of normalcy and joy. It can help children who seek refuge to overcome emotional pain and take control of their lives again. Based on children’s accounts as well as our own observations at accommodation facilities, the Ombudsman’s view is that more needs to be done to guarantee the child’s right to meaningful activity.

Some of the young people we have met describe how all support is withdrawn when they turn 18 years old, or have their age revised upwards to 18 by the Migration Agency.

Children we have met also tell us about being short of money. Asylum seekers in Sweden are paid a daily allowance set by the government. This allowance is intended to cover costs for food, clothes and shoes, leisure activities, toiletries and other consumables. It is also intended to cover costs for health and medical care, dental care and medication. For families with children, the allowance is halved for each child after the second.

In 2015 Sweden was criticised by the UN child rights committee for not having adjusted the daily allowance since 1994, and an increase was recommended. The UN child rights committee also urged Sweden to take prompt action to ensure that the allowance was not reduced for families with more than two children.

Some of the young people we have met describe how all support is withdrawn when they turn 18 years old, or have their age revised upwards to 18 by the Migration Agency. In many cases we can see how this places the young people we have met in a very difficult situation, and we have to wonder how this has been handled. The Ombudsman for Children notes that there are procedures and guidelines for what support young people receive as they approach their 18th year, but it seems unclear what effect these have in practice.

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Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 40.


CRC, Article 31.

General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, para 53.

Act (1994:137) on reception of asylum seekers and others, Section 4. This section states that the Migration Agency must ensure that asylum seekers have a meaningful stay in their accommodation facilities. With respect to unaccompanied children, however, the right to play, recreation and leisure time is not mentioned in the instructions and general guidelines issued by the National Board of Health and Welfare for community homes (HSFL-FS 2016:55.7, Ch 1). They state that the premises must be appropriate for the activity to be carried out there, but there is nothing specific about a meaningful stay, as emphasised by the Migration Agency.

Ordinance (1994:361) on reception of asylum seekers and others, Section 5.


INTERVIEW

'It is important that municipalities assume their responsibilities'

During 2016 the Health and Social Care Inspectorate (Inspektionen för vård och omsorg, or IVO, in Swedish) visited all 1100 accommodation facilities for unaccompanied children. The focus of these inspections was to look at the children’s safety and security.

‘On the whole, these facilities function well. The children say they are happy there and feel safe, that they get help with the things they need and that the staff cares about them,’ says Annika Algebård, who heads a unit at IVO in Örebro.

But the inspection also showed that there are deficiencies. The most common one is that community homes (HVB) employ staff without checking whether they have a criminal record.

Staff must have special competence to meet the needs of unaccompanied children. Many accommodation facilities have hired trained social workers and also train their staff in trauma-conscious care so that they will be able to treat the children appropriately, understand their situation and notice if any child needs to contact the child and adolescent psychiatry services (barn- och ungdomspyskiatri, or BUP, in Swedish).

‘At the same time, we saw that the staff at many facilities do not have sufficient training,’ Annika Algebård notes.

Municipalities have to follow up all children that they place, regardless of whether they live in a community or a foster home. In 2017 IVO will be looking at how municipalities have managed the task of following up children placed in community homes.

‘Our inspection provides a snapshot of the situation at the time of our visit. It is therefore important that municipalities assume their responsibilities before as well as during placements and that they know what they have to do and have the resources to do it,’ Annika Algebård continues.

Moves under scrutiny

The Social Services Act states clearly that care of placed children must be characterised by a long-term view, safety and security. But recently many unaccompanied children have been uprooted from a safe existence and forced to move to the municipality that is formally responsible for them.

Possibilities for appealing such decisions have varied, Annika Algebård observes, and she welcomes the ongoing audit by the Parliamentary Ombudsmen (Justitieombudsmän, or JO, in Swedish) of municipalities’ processing of unaccompanied children:

‘JO’s report carries a certain weight, and provides guidance for us when we make decisions later on.’

One important task for IVO is to inform children of their rights, and what the possibilities are of appealing a decision that they are not happy with.

‘You can’t always get your way, but everyone is entitled to having their case examined by the social welfare committee and to appeal the decision if they’re not happy with it.’

In many cases, young people who have turned 18 are forced to leave their home municipality and move to one of the Migration Agency’s accommodation facilities for adults – sometimes located in another part of Sweden. But according to Annika Algebård, anyone in need of continued support can apply to be allowed to stay at his/her facility. It is important that young people know about this, she points out.

och unga (‘A new allowance system for the reception of unaccompanied children and young people’). If these are implemented, municipalities will only be entitled to compensation for care after the age of 18 if it is provided under LVU or due to a similar care need that can be provided for under the Social Services Act, Ch 29, Section 3.
IVO’s inspections indicate that there is a great deal of anxiety at the accommodation facilities, both among the young people and the staff. Children who are mentally and psychosocially unwell have difficulties getting help from BUP, the child and adolescent psychiatry services.

'There are long queues, and treatment isn’t always available for some of the traumas the children have and the anxiety many feel about the future,' Annika Algeblad notes.
CHILDREN ON EDUCATION

All children who are in Sweden, unless it is only temporarily, are entitled to an education on the same terms. The observation of this human right in the reception of children on the move is fundamental for the child’s possibilities of integrating in society and exercising his/her human rights now and in future.

A common theme of the children’s accounts is that they have had to wait a long time before starting school. Raakin tells us: ‘Yes, I’ve lived in Sweden for six months. [...] And then I haven’t started going to school yet either.’ One group of children describes how some of them have had to wait longer than others. One of them got to start school after a month, another after four months, and a third is still waiting after six months. Shahdi, who is the one still waiting to start school, describes his wait: ‘I just sit around at home ... That’s not so good. I need to go to school.’ In another group of children, a girl, Farida, tells us that she hasn’t been allowed to start school either, even though she’s already spent several months in Sweden and the boys in the same group have been allowed to start school. Farida says that this ‘isn’t good’ and then begins to cry.

Another common theme of the children’s accounts is how happy they are once they have started school. Saidah tells us: ‘The teachers. We really love the teachers a lot.’ Others describe how school has allowed them to make friends. Kaif tells us that ‘I was alone and had no friends. But then after I started in my class I got to know friends.’ Makin, who is in a preschool class, says he loves playing in the school yard: ‘I love playing outdoors.’

The children tell us how important they think it is to learn Swedish. Maha and Abdesalam say: ‘Most of all I would like to learn this language, actually. [...]’ Other children describe how it is important to be in a mixed class. Baghel says: ‘It’s better if you end up in classes with different children, and not just immigrants in the same class, because then they almost all speak the same language.’

Some children have not been allowed to start normal school, and instead attend a tutored group at the accommodation facility. Abubakr tells us that ‘Yes, for us what happened is that we haven’t been in an ordinary class at school. We’ve been in the one that’s only for new arrivals, it’s all refugees there. It’s not a real school. It’s just something they start out with, the new arrivals.’ Another child in the group also tells us that they did not spend very long days at school: ‘I only used to go in the afternoons.’

For some children it is the first time they have ever been to school. Kaden tells us: ‘I do not have a favourite [subject] in Sweden, because I have not studied, haven’t been at school before. If I had done, I would be able to say that this is my favourite subject, but as it is I just want to know everything, I want learn everything. First, I am going to learn Swedish, and then start to learn some profession. I have an opportunity now, I have two years to do this, and I’m going to do it.’

Children and young people describe how things work in school. Some children tell us that the initial preparatory class was not adapted to their knowledge. Milena describes how ‘it was really difficult for me, because at school you have to stay in the preparatory class for one year. But different people need different amounts of time. You cannot just say “one year, then you have to begin a normal class.”’ [...].

Dabir tells us that there are sometimes interpreters at school who can help: ‘We have different lessons and there’s an interpreter from Iraq who works at the school, and who helps us translate certain things. He helps us. If there’s some homework or something we don’t understand, he usually helps us understand it.’

The children tell us about different things that affect them at school. Saaim describes the uncertainty surrounding the asylum procedure: ‘There’s this anxiety and I think about it and then because I can’t sleep at night I’m really tired during the day. I can’t sleep when there’s so many things spinning around in my head.’ The children also describe insults and vulnerability at

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363 The Education Act (2010:800), Ch 7, Sections 2-3 and Ch 29, Sections 2-3.
school. Milena tells us: ‘Because there was this nasty guy, a really nasty guy he was. He said bad things. He hassled me. He said “bloody Arab, bloody Syrian, bloody Christian”. And he hit my brother. And the worst thing was that the teacher didn’t say anything.’

Other children describe how constant moves affect their schooling. Tamir tells us: ‘That move actually made me feel unwell. You get used to one place, you make friends, and then suddenly you get moved to another place. And you start all over, so to speak.’ Cramped living conditions are another thing that affects schoolwork, since it can be difficult to find a quiet place to do homework. Turki says: ‘We can’t live in one room. My mum is ill and we only have one room. And there’s no chance for us to study.’

FACTS

Child refugees must not be subject to discrimination
The right to education is laid down in Articles 28 and 29 of the CRC. Child refugees must have full access to education in the country they have arrived in, which is something the UN child rights committee has emphasised. Such access should be granted without discrimination, and the education offered should be of good quality, including for children with special needs.\textsuperscript{164} Children should be registered at school as soon as possible, and be given assistance in maximising their learning opportunities. They should be given support in maintaining and developing their native language, and should be allowed to enrol in regular education programmes. Early learning programmes should also be made available to younger children.\textsuperscript{165}

The UN child rights committee has recommended that Sweden ensure that children ‘in transit’ be given full access to education. It also recommends that Sweden take measures to reduce school dropout rates among child refugees, and provide opportunities for those who have dropped out of school to return to their studies.\textsuperscript{166}

What does the law say?
Asylum-seeking children are entitled to education from the age of 6.\textsuperscript{167} Asylum-seeking children are entitled to attend preschool on the same terms as all other children in Sweden.\textsuperscript{168} In order to be entitled to upper secondary schooling, the young person must begin such schooling before turning 18.\textsuperscript{169} The right to education continues to apply after a child has received a refusal of entry or deportation decision.\textsuperscript{170} Responsibility for providing schooling lies with the municipality where the child is resident, and schooling should be provided within one month of the child’s arrival.\textsuperscript{171} Pupils must be given support in assimilating the education and achieving its goals to the best of their ability.\textsuperscript{172} Schools must examine and assess each pupil’s previous knowledge and needs. All children who need it must be offered special support,\textsuperscript{193} e.g., study guidance in their native language.\textsuperscript{174}

\textsuperscript{164} UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 41.
\textsuperscript{165} UN Committee on the Rights of the Child, General Comment No 6 (2005): Treatment of unaccompanied and separated children outside their country of origin. CRC/C/GC/6, para 42.
\textsuperscript{166} UN Committee on the Rights of the Child: Concluding observations on the fifth periodic report of Sweden. CRC/C/SWE/CO/5. Item 52.
\textsuperscript{167} The Education Act, Ch 9, Section 5.
\textsuperscript{168} The Education Act, Ch 8, Sections 3-4 and Ch 29, Sections 2-3.
\textsuperscript{169} The Education Act, Ch 29, Section 3.
\textsuperscript{170} The Education Act, Ch 29, Section 4.
\textsuperscript{171} The Education Ordinance, Ch 4, Sect 1a.
\textsuperscript{172} The Education Act, Ch 3, Section 3.
\textsuperscript{173} The Education Act, Ch 3, Sections 8-10.
\textsuperscript{174} The Education Ordinance, Ch 5, Section 4; the Upper Secondary Education Ordinance, Ch 9, Section 9.
OUR ANALYSIS

The importance of school in an uncertain existence

Children and young people describe how they have had to wait a long time to start school, which frustrates them. Children at the same accommodation facility, even siblings, have had waiting times of varying length. In several of these cases, the girls have had to wait the longest. Some of the children had not yet started school when we met them, despite having been in Sweden for up to six months, and they told us that they have nothing to do and that they become sad when they ‘just sit around at home’.

Asylum-seeking children have the right to attend school on the same terms as other children in Sweden. But they are not comprehended by compulsory school attendance, which the Ombudsman for Children finds problematic. This means that the municipalities have no outreach responsibility and that instead it is the child’s custodial guardian or guardian who determines whether they want the child to make use of the right to education. The child’s home municipality is responsible for providing for the child’s right to an education. In our dialogue with National Agency for Education about making enquiries regarding children who go missing, it also emerged that schools do not follow up school absenteeism among asylum-seeking children in the same systematic way as they do for children who have compulsory school attendance.

Asylum-seeking children are to be received into comprehensive education or be offered a place in upper secondary education as soon as this is appropriate in view of their personal circumstances. According to the Education Ordinance, this should be no later than one month after the child’s arrival. But if this is not possible, that period may be extended. This might be when a large number of recent arrivals have come to a municipality in a short space of time, for example, or when a child has received a place in a designated municipality more than a month after arriving. The Ombudsman for Children is of the view that the lack of clarity in the current regulations has led in some cases to unreasonably long waiting times for asylum-seeking children to begin attending school.

A place for social interaction

What children and young people have described to us shows that schools fulfil many different functions. Among other things, school is a place to learn Swedish, meet friends and have something to do. Some children see school as something they want to go in for – an opportunity to get an education and a better life. On the basis of our interviews with children, we draw the conclusion that school is very important indeed. It is therefore easy to understand the frustration that having to wait to start school arouses in the children.

The Ombudsman’s view is that this waiting time may constitute an obstacle to the children’s right to education. From the children’s accounts we see how important time gets wasted and that the children sometimes lose their motivation and will to learn.

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175 See the Education Act, Ch 7, Section 2. Asylum-seeking children are entitled to education from preschool class until final upper secondary school, provided upper secondary school studies are begun before the child turns 18.

176 ‘Home municipality’ refers to the municipality where the child is registered for purposes of population registration, but under Ch 29, Section 2 and 6 of the Education Act it is the municipality of habitual residence that is the child’s home municipality.


178 The Education Ordinance, Ch 4, Section 1a and the Upper Secondary Education Ordinance, Ch 12, Section 14.
Some children have initially been taught outside of the ordinary school system, and to a lesser degree than in ordinary scheduled teaching. Once the children have started school, most of them describe how they start out in preparatory class. Children tell us that it is easier and quicker to learn Swedish when they attend a class that also includes children born in Sweden.

Under the Education Act, learning in preparatory classes must be carried out in close connection with other learning at school, to the greatest extent possible. The premise must be that the pupil should begin to participate fully in ordinary classes, in all subjects, as soon as possible.\(^{179}\) The Education Act also specifies that in terms of learning time, a recently arrived pupil’s schooling must correspond at least to the time that other pupils in that year are entitled to.\(^{180}\)

Children and young people we have spoken to tell us that they receive help from interpreters or use online translation services to facilitate learning. It is not clear from the children’s accounts whether they receive study guidance in their native language.\(^{181}\) In an audit, the Schools Inspectorate has shown that many of the audited schools have serious shortcomings in the way they handle this guidance, despite the fact that it is clear that language development benefits from it.\(^{182}\)

According to the Ombudsman for Children the right to education is fundamental for the children, now and in their future lives. It is therefore very important for the child’s learning and integration into society that s/he participates in the school’s ordinary classes and receives appropriate support.

Many departures

The children and young people we have met tell us that once they get to start school it is not certain that they will be staying there for an extended period. Constant moves are a recurring feature of the children’s accounts, and mean that many have to change schools several times. This hinders the child’s opportunities to fully assimilate the education, to settle and to feel safe.

Some children and young people have also told us about insults and vulnerability at school, which is something the Ombudsman for Children regards as serious as well as an obstacle to the children’s right to education. It is clear from the Education Act that schools must have a policy of zero tolerance against rights violations, and that schools must act promptly if they occur. The ultimate responsibility lies with the municipality or the owner of private school.\(^{183}\)

Children’s and young people’s schooling is affected by their being in an asylum procedure. Difficulties sleeping and anxiety affect children’s ability to concentrate and learn. At the same time, children describe school as something that helps make them feel good, as it gets them to think about something else for a while. Procedures and activities that schools offer are thus important also from the perspective of the child’s well-being and rehabilitation.

School health services take on a considerable responsibility for recently arrived pupils’ health, from a broad perspective. That is one of the conclusions of the Ombudsman’s report on recently arrived children’s health.\(^{184}\) In order to strengthen the possibilities for action when

\(^{179}\) The Education Act, Ch 3, Section 5e.

\(^{180}\) The Education Act, Ch 10, Section 5, Ch 11 Section 7, Ch 12, Section 5 and Ch 13, Section 5.

\(^{181}\) Study guidance in a child’s native language is regulated in Ch 5, Section 4 of the Education Ordinance.


\(^{183}\) The Education Act, Ch 6, Sections 5-10.

children and young people need support and care in the event of mental ill health, the school health services should be given increased responsibility for promoting health.

Children and young people we have met talk a lot about school, regardless of whether they have started there or not. Only a few of the younger children voice the same feelings about preschool. They do not say that they miss or long for school in the same way that the older children do. Neither do the younger children talk about lacking leisure activities in the way the older children sometimes do, but they do say that they ‘are bored’, just ‘sit around at home’ or just ‘hang out’ at the accommodation facility.

During our meetings with children at accommodation facilities we could also observe how many of the youngest children were at the facility during the daytime, and not in preschool. In some cases, we also spoke to parents who told us that their children are not in preschool. In our interviews with nurses working in child welfare centres, included in the Ombudsman’s report on the health of recently arrived children, the nurses tell us about how the youngest children are underestimated.\(^{185}\) They say that it takes time for children to get a preschool place, particularly for those under 3 years of age, and that this contributes further to a lack of stimulation.

THE OMBUDSMAN FOR CHILDREN PROPOSES

Strengthen the child rights perspective of the Aliens Act

The child rights perspective of the Aliens Act must be strengthened. That is one of the four most important conclusions reached by the Ombudsman for Children following our meetings with around 600 children and young people who have fled to Sweden.

We listened to children and young people telling us about difficult experiences in their home countries and during their journeys to Sweden.

Many children told us about their dreams for the future, about the hopes they had regarding Sweden and the refuge offered here. But children also told us of asylum procedures in which their child-specific grounds for seeking asylum – including child marriages, genital mutilation, and threats that they would be recruited as child soldiers – were not given any prominence, of how the procedure had not been carried out in a child-appropriate way and how they had not always understood what was happening.

The children also described a reception that had sometimes felt unsafe, with large accommodation facilities where there were many adults they didn’t know, frequent moves and departures, long waits to have a guardian appointed, and impeded school attendance. Not all of the children had been allowed to begin school, despite having been in Sweden a long time.

In view of what the children told us, and on the basis of our additional examinations, the Ombudsman for Children would like to see the following four changes:

1. STRENGTHEN THE CHILD RIGHTS PERSPECTIVE OF THE ALIENS ACT

*Child-specific forms of persecution must be clearly defined as grounds for refugee status in the law.

*The child’s right to be heard must be strengthened in the law.

A review of the Aliens Act is required to ensure that it fully complies with the CRC. More support is also needed to ensure that interpretation of the Temporary Aliens Act is in conformity with the CRC.

Persecution suffered by children must be highlighted in the Aliens Act, in line with the recommendations made by the UN Committee on the Rights of the Child to Sweden. Every child’s right to an individual examination of his or her grounds for asylum must be strengthened.

The child’s right to be heard and the best interests of the child must also be strengthened. The so-called inappropriateness exception in the section on the child’s right to be heard in the Aliens Act must be removed. The child’s right to information must be strengthened.

It is the Ombudsman’s view that the regulation on the child’s best interests must include a clearer connection with Article 3 of the CRC. The law must state expressly that the best interests of the child must be examined and specifically considered in all cases involving a child. In establishing the child’s best interests, consideration must be given to the child’s own views.

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185 The Aliens Act, Ch 1, Section 11.
187 This is also clear from the report Barnkonventionen blir svenskt lag ("The CRC becomes Swedish law") (SOU 2016:19). Page 178 ff.
188 The Aliens Act, Ch 1, Section 10.
189 This is also clear from the report Barnkonventionen blir svensk lag ("The CRC becomes Swedish law") (SOU 2016:19). Page 175 ff.
Processing of asylum cases that involve children must apply a clear child perspective; this must be made clearer in the law, and a regulation should therefore be introduced that the Migration Court must review ex officio that the processing has been carried out correctly.

2. STRENGTHEN THE CHILD RIGHTS PERSPECTIVE OF THE ASYLUM PROCEDURE
*Establish child-appropriate asylum procedure teams at the Migration Agency.
*Introduce a time limit for beginning the asylum procedure in cases involving children.
*Establish a special supervisory body to ensure that the Migration Agency’s procedures and guidelines are applied consistently and with legal certainty.

The child rights perspective of the asylum procedure must be strengthened. The asylum procedure must be better adapted to children. We therefore propose that child-appropriate asylum procedure teams be established at the Migration Agency. The Migration Agency needs to develop its methods to ensure that children are heard in a proper and meaningful way – including younger children and children with functional impairments.

The Ombudsman’s view is that the longer term ambition should be that children always be interviewed by specially trained officials with access to current country information about the living conditions for children. Interpreters must also have special knowledge about children in the asylum procedure and about children’s fundamental rights.\textsuperscript{99} We are aware that the latter requirement will take time to realise and that it will mean that interpreters will have to be trained over the next few years.

For children, weeks and months are a very long time. Memories can fade, which is why it is particularly important that children’s asylum procedures are given priority. We propose a maximum time limit of two months from the registration of an asylum application until the child’s asylum procedure begins.

It is clear that there are considerable deficiencies in the processing of cases in which children seek asylum. Laws and regulations are not being observed in a satisfactory way, and neither are the Migration Agency’s own legal positions and other regulations.

The Ombudsman for Children therefore proposes that a supervisory body be established with the task of monitoring that the Migration Agency’s regulations and procedures are applied as intended. This supervisory body will not look at individual cases, but rather monitor procedures at the structural level. A first step towards establishing such a supervisory body could consist in commissioning the Swedish Agency for Public Management to carry out a systematic audit of the Migration Agency’s application of regulations and procedures.

3. GUARANTEE SAFETY AND PROTECTION IN CHILDREN’S ACCOMMODATION AND DAILY LIFE
*Introduce state-run reception and asylum examination units for the initial assessment of the needs of unaccompanied children.
*Reform the system of appointing guardians.
*Children in families must only be placed in accommodation intended for families.

It is the Ombudsman’s view that all unaccompanied children should initially be placed in special arrival accommodation facilities. At these facilities, there must be a multidisciplinary team that carries out an overall analysis of the child’s needs. Matching family homes and short-term

\textsuperscript{99} In the same way as there is LGBT certification for interpreters, court interpreters etc, there could be child-certified interpreters.
homes to the child’s needs is crucial for a long term and safe placement. When children are placed in their own accommodation with relatives, the time for the assessment of the short-term family’s or family home’s aptitude must be shortened. Both the child and the family must be entitled to better support and information than they are currently receiving.

In the event of a change of placement, the best interests of the child must be decisive. For example, if the social services are unable to find a long term solution, or if the placement does not work out and is discontinued. The child must participate in all decisions taken.

The current system with a guardian for unaccompanied children is not working and needs to be reformed. It is unacceptable that children sometimes have to wait weeks and months to be appointed a guardian. A time limit must be introduced in the law, under which the child is entitled to be appointed a guardian within five working days of his or her arrival in Sweden.

A limit must also be introduced on the number of guardianships a person can hold at the same time. Children must furthermore be able to request that a guardian be replaced if he or she is not doing the job properly. A model that uses professional guardians for children with special needs should be introduced. This is for cases in which the child’s difficulties are so severe that special qualifications are required of the person giving assistance. It must be possible to appoint a professional guardian straight away if necessary. It must also be possible to appoint a professional guardian at a later stage if a child’s contact with his or her guardian has not worked out because of the child’s special needs.

Children who arrive with their families are protected in a different way than unaccompanied children are. Still, accommodation needs to be safe and secure for these children as well. We have listened to children describing a sense of great insecurity in their accommodation. That is unacceptable. Accommodation facilities for families with children must be appropriate to children and be intended exclusively for families. It should be against regulations to place families with children in the same accommodation as adult asylum seekers with no family. The Health and Social Care Inspectorate (IVO) must have a supervisory remit over the Migration Agency’s accommodation facilities, as well as over community homes (HVB) and auxiliary accommodation for unaccompanied children.

Requirements should also be introduced that the Migration Agency’s accommodation staff be vetted prior to employment, by means of extracts from the criminal register. It should further be made clear that staff at all types of accommodation facilities have an obligation to report concerns to the social welfare board if they suspect that a child is coming to harm.

4. GUARANTEE THE CHILD’S RIGHT TO EDUCATION

*Introduce compulsory schooling for asylum seeking children in order to guarantee their right to education.

*Impose a time limit stating that children have to begin attending school within a month of arriving in Sweden.

The child’s right to education is a fundamental right, laid down in a number of conventions on human rights. It is therefore troubling that children spend long periods of time out of school—regardless of whether this is because school operators do not offer them schooling in time, because guardians do not know that the child is entitled to it, or because they are intentionally keeping the child out of school.

It is unacceptable that asylum seeking children’s school absenteeism is not taken as seriously as when other children are absent from school. The view of the Ombudsman for Children is that the child’s right to education needs to be strengthened. Asylum seeking children must have compulsory schooling, and a clear time limit should be imposed to the effect that children have to be attending school within a month of their arrival in Sweden.
Definitions and terms

**Accommodation on arrival**\(^{99}\): The Migration Agency's accommodation for asylum seekers who have just arrived in Sweden.

**Accommodation facility (ABO)**\(^{92}\): Accommodation provided to asylum seekers by the Migration Agency during the waiting period, typically a flat in a residential block (ABE) or temporary accommodation (ABT).

**Designation**: For unaccompanied children, a designation means that the Migration Agency designates a municipality where the child is to live. This is done under the Social Services Act.\(^{93}\) In the municipality, the child can live in a foster home, with a relative or in a community home. Children arriving with their family are designated an accommodation facility.

**Asylum**: Means a place of refuge. When a person seeks asylum, s/he is seeking protection in a country other than his or her home country.\(^{94}\) If a person is granted a residence permit as a refugee or a person eligible for subsidiary protection, this means that s/he has been granted asylum.

**Asylum seeker**: A person who is in a country other than his or her home country and is applying for protection (asylum) there, but who has not yet received a decision in the matter.

**Children in families**: Asylum seeking children who are living with their families.

**Child and adolescent psychiatry services (BUP)**\(^{95}\): Child and adolescent psychiatry services are intended for children and young people up to the age of 18 who need psychiatric support or care.

**Child welfare centre (BVC)**\(^{96}\): Child welfare centres provide health care to all children aged between 0 and 5. The centre monitors the child's health and development. Taking your child to the child welfare centre is voluntary and free of charge.

**Own accommodation (EBO)**: When a family or an unaccompanied child lives with a relative or friend.

**Unaccompanied children**\(^{97}\): Asylum seeking children under the age of 18 who arrive in Sweden without parents or other custodial guardians.


\(^{97}\) UN Committee on the Rights of the Child: General Comment No 6 (2005), Treatment of unaccompanied and separated children outside their country of origin. Item 7 defines unaccompanied children thus: ‘[...] are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.’
Community home (HVB): Community homes provide treatment, care, support or fosterage. The target group in this context can be unaccompanied children seeking asylum or who have been granted a permanent residence permit in Sweden.

Asylum seeker card (LMA-kort): A temporary photo identity document proving that the holder is an asylum seeker in Sweden and is comprehended by the Act on the Reception of Asylum Seekers and Others. Issued by the Migration Agency.

LVU: Act with special provisions on the care of young persons.

Undocumented: The Swedish term is 'papperslös', which is a direct translation of the French 'sans papiers', meaning 'without identity documents'. In Swedish the term is used figuratively and refers to such documents as a person needs to legally reside in Sweden. In other words a person may be undocumented although s/he has identity documents.

Post-traumatic Stress Disorder (PTSD): Individuals who have experienced a traumatic event in which their life was in danger, or a severe violation of their personal integrity, may suffer from PTSD.

The National Board of Institutional Care (SIS): Is a government agency providing individually adapted compulsory care and treatment of young people with serious psychosocial problems and adults with addiction problems. Most of the young people placed in one of SIS' treatment homes have been taken into care under LVU.

Without the necessary permits: A foreigner staying in Sweden without a requisite decision from a government authority or in accordance with a Swedish statute. Foreigners whose stay in Sweden is intended to be temporary are not comprehended by this category.

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Our work in 2016 – a small selection

The CRC into law
In 2016 the Child Rights Commission (Barnrättighetsutredningen) submitted a proposal to the government for how the CRC is to be made into Swedish law. This is a milestone in the efforts to implement the rights of the child. The Ombudsman for Children was an expert member of the commission. We also arranged meetings between the head of the commission and children with personal experiences of being in vulnerable situations and not having their rights provided for.

Children’s knowledge of their rights
The Ombudsman for Children involved children and young people in creating lessons for a child rights portal that teachers will be able to use from 2018 to convey knowledge of the CRC. During the year we launched, in partnership with the National Board of Health and Welfare (Socialstyrelsen), the website Kolpdosoc.se (‘Know your soc’, at www.kolpdosoc.se) with information directed at children about how they can get support from the social services. An east-to-read book about the social services, aimed at preschool children, and posters to be displayed in schools were produced.

The CRC in municipalities, county councils and regions
The statistics tool Maxis.se, with statistics at the local, regional and national level, was updated and an analysis report based on indicators of financial vulnerability was compiled. The report analysed the situation of children who are evicted and live in temporary lodgings. Together with the Swedish Agency for Youth and Civil Society (Myndigheten för ungdoms- och civilsamhällesfrågor, or MUCF) we developed a tool for following up a child rights and youth perspective.

The CRC at public authorities
The Ombudsman for Children leads a network of public authorities working from a child and young person’s perspective. Using its legal power to do so, the Ombudsman for Children convened dialogues with public authorities on three occasions to discuss how the CRC can be made to have a strong impact. These dialogues were with the Swedish Security Service (Säkerhetspolisens) and the National Board of Health and Welfare, about reporting suspected harm; with the Swedish Prosecution Authority (Åklagarmyndigheten), the Tax Agency (Skatteverket), the National Board of Health and Welfare, the Östergötland County Administrative Board, about child marriages; and with the Police Authority (Polismyndigheten), about children in police detention.

Child Rights Days and child rights seminars
Together with the Allmänna Barnhuset Foundation, the Ombudsman for Children arranged Child Rights Days in Örebro, with 1 200 participants and seminars on the theme of the CRC as law. In Almedalen we arranged Barnrättstorget, with 48 seminars and activities for an audience of more than 1 800 people.

Children in vulnerable situations
Our 2016 annual report – Respect – focused on children with functional impairments. The report has influenced the proposal for a new national strategy for functional impairment policy. Sweden has been sharply criticised by the international monitoring committees for its solitary confinement of children, a problem the Ombudsman for Children raised in our 2013 annual report. Over the year we carried out a follow-up review which shows that the number of children placed in police detention has not been reduced. The Remand Prisons and Restrictions
Inquiry (Häktes- och restriktionsutredningen), which met with the Ombudsman for Children, presented a number of proposals, including a ban on solitary confinement of children who are in detention on suspicion of crime.

Read more about our results in our annual financial statement on www.barnombudsmannen.se
“It’s really tough. You have to hold out. You see, we have to do everything as if it was normal, but we don’t know if we’re going to be allowed to stay here or not. So we’re expected to study, work and do everything, but in total uncertainty. I mean I can only tell you about it, that this is what I’m thinking.” Nadir