HUMANE AND DIGNIFIED?

Migrants' Experiences of Living in a 'State of Deportability' in Sweden

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CONTENTS

GLOSSARY

English	*Swedish*	Explanation
Absconding	*Undan-hållande/ avvikande*	A common way to resist deportation, which could involve going to another country or city and/or living hidden in a house or apartment or as a homeless person on the street.
Alien	*Utlänning*	According to the Aliens Act, a person who is not a Swedish citizen. A foreigner.
Aliens Act	*Utlänningslagen*	Law regulating residence permits, deportation, detention etc.
Daily allowance	*Dagersättning*	Allowance that asylum-seekers can apply for to cover basic expenses during the asylum process.
Declaration of acceptance	*Nöjdförklaring*	If signed, the migrants declare that they accept the refusal of their application for asylum and forego their right to appeal.
DEPA (Accompanied Deportation)	*DEPA (Bevakad Verkställighets-resa)*	Deportation where the migrant is escorted by police officers or personnel from the National Transport Unit within the Swedish Prison and Probation Service.
Deportation	*Deportering/ Verkställighet*	The removal by the state of a non-citizen from the state's territory. Also known by different actors and in the literature as forced return and removal.
Deportable	*Verkställbar*	Migrants who have received a return decision and have no recognised impediments to their deportation.
DEPU (Unac-companied Deportation)	*DEPU (Obev-akad Verkstäl-lighetsresa)*	Deportation where the migrant is unescorted and travels alone, although the airline involved must be informed of the deportation.
Detention centre (pre-removal centres)	*Förvar/ förvarsenhet (platsen)*	A place where migrants are detained. In Sweden, detention centres are run by the Migration Agency and act primarily as pre-removal centres.

Detainment/ detention	*Förvar*	Foreigners may be detained for reasons specified in the Aliens Act – if his/her identity is unclear; if it is necessary for the investigation of the alien's right to stay in Sweden; if it is likely that the foreigner will be deported; and in order to prepare/carry out a return decision.
Detained	*Förvarstagen/ frihetsberövad*	State of being in detention, which means that a migrant's movement is restricted to a certain facility. Under the Aliens Act people are often held at a detention centre, but they can also, if certain legal requirements are met, be held in prisons, remand centres, psychiatric units or hospitals.
Dublin Convention /System/ Regulation	*Dublinförordningen*	Includes all EU Member States, plus Norway, Iceland and Switzerland, and is the mechanism by which the first country of arrival of the migrant is determined to be responsible for examining the application for asylum.
Escorted deportation	*Bevakad verkställighetsresa*	Deportation whereby the migrant is escorted by police officers or personnel from the National Transport Unit within the Swedish Prison and Probation Service. Also referred to as accompanied deportation (DEPA).
Forced return case	*Tvångsärenden*	Returns that are handed over by the Migration Agency to the Police on the presumption that force will be needed when returning these individuals.
Forced return/ removal	*Tvångsvis/ påtvingat återvändande/' återsändande*	The compulsory and forced return of an individual to the country of origin, transit or third country, on the basis of an administrative or judicial decision.
Individual travel	*Enskild resa*	A mode of travel that is not subject to surveillance by the police or the National Transport Unit and where the airline is not notified.
LMA card	*LMA (Lagen om mottagande av asylsökande) kort*	A certificate showing that the migrant is an asylum-seeker with the right to stay in Sweden while waiting for a decision. The card must be returned either when the migrant leaves Sweden or once a residence permit has been granted.

Migration Court	*Migrationsdomstolen*	One of Sweden's four administrative courts and one in which a rejection decision from the Migration Agency or a detainment decision or re-entry ban made by the Police authorities may be appealed against.
Migration Court of Appeal	*Migrationsöverdomstolen*	A general administrative court where an appeal can be made on a determination by the Migration Court, located at the Administrative Court of Appeal. It is the final instance and decisions made there will provide guidance for decisions by the Migration Agency and Migration Courts in similar matters.
SMA's housing centres	*Anläggningsboende*	Larger accommodation units, mainly for asylum-seekers, provided by the SMA but often run by private actors.
National Transport Unit (NTU)	*Kriminalvårdens transporttjänst*	A section of The Swedish Prison and Probation Service that, in most cases, accompanies migrants on DEPA deportations. The NTU is also responsible for escorting migrants facing deportation because they have been sentenced by a criminal court in Sweden.
Negotiation journey	*Förhandlingsresa*	Deportations where the Police authority has decided that negotiations are needed in order to get the country of origin to accept the deportee. They will accompany the deportee, with or without the NTU.
Negative decision (first, second or third)	*Negativa beslut*	The negative decision/refusal of application for asylum. first negative: decision from the SMA; second negative: decision from the Migration Court; and third negative: decision from Migration Court of Appeal.
Notification of Deportee	*'Notification of Deportee'*	Letter notifying the airline and the pilot about the deportation.
Parliamentary Ombudsmen	*Justitieombudsmannen JO/ Riksdagens ombudsmän*	Appointed by the Swedish Riksdag (parliament) to ensure that public authorities and their staff comply with the laws and other statutes governing their actions.

Police expulsions	*Avvisning beslutad av Polismyndigheten*	Deportations decided by the Police authority either at the borders or within the country.
Prison	*Fängelse*	Institution to which people are legally committed as a punishment for a crime or while awaiting trial.
Proof of departure	*Utresebevis*	Certificate from the Swedish Migration Agency or SMA (and, in some cases, the police) which must be handed in when passing Swedish border control so that the Swedish Migration Agency can be notified that the migrant has left the country.
Re-entry ban	*Återreseförbud*	Applied if an asylum-seeker whose application has been refused does not leave Sweden during the period of voluntary return specified; return to the Schengen Area is not permitted for one year. This ban may be extended to up to five years if the Migration Agency or the Police authority do not believe that the applicant will leave Sweden voluntarily.
Remand centre/ prison	*Häkte*	Facility for temporary detainment of a person awaiting trial or continuation of their trial; administered by the Prison and Probation Service.
Return unit	*Återvändandeenhet*	Unit at the Migration Agency in charge of the return process.
Return dialogue	*Återvändandesamtal*	Meeting to discuss the different practicalities regarding the return. The return journey to the origin country is planned and the migrants informed about the consequences if they abscond or refuse to cooperate. Depending on the case, there can be one or or more of these 'motivational' meetings, the aim of which is not just practical but also tries to convince the migrants to accept the return decision and return without force having to be used.

REVA	*Rättssäkert och Effektivt Verkställighets-arbete*	Literally translated as 'Legal Certainty and Effective Enforcement'. It was an operation carried out by the Swedish Police together with the Swedish prison service and migration service. The aim was to boost the effectiveness of the enforcement of deportations.
Supervision	*Uppsikt*	Process whereby the migrant has to report to the Police Authority or Migration Agency at certain times and may also have to surrender any identity documents.
Swedish Migration Agency	*Migrationsverket*	The authority that considers applications from people who want to take up permanent residence in Sweden, come for a visit, seek protection from persecution or become Swedish citizens.
Swedish Prison and Probation Service (SPPS)	*Kriminalvården*	Agency that implements prison and probation sentences, and is responsible for remand prisons and the transport service.
Third-country national (TCN)	*Tredjelands-medborgare*	Citizen of a country outside the European Union (EU)/European Economic Area (EEA).
Unescorted deportation	*Obevakad verkställighets-resa*	Deportation where the migrant is unescorted and travels alone, although the airline involved must be informed of the deportation. Also referred to as DEPU (Unaccompanied Deportation).
Unfounded asylum claims	*Uppenbart ogrundade ärenden*	According to the Aliens Act, the Migration Agency is allowed to deport a person before the deportation decision has become final and non-appealable, if it is determined that the applicant's asylum claim is unfounded, and that a residence permit should not be given on other grounds.
Voluntary/ uncompelled return	*Frivilligt/ självmant återvändande*	According to the Migration Agency, returning voluntarily is when an applicant chooses to take the initiative to return voluntarily or at least accepts the decision not permitting him or her to remain in Sweden.

MIGRANT INTERVIEWEES

Name	Profile
Aamir	Afghani male in his 30s. Failed asylum-seeker. In Sweden for two years with wife and young children. Living in[1] own apartment in 'hiding'. Has not been detained.
Akash	Bangladeshi male in his 30s. Labour migrant. Was deported but came back to Sweden through family reunification. Is now single and a Swedish citizen living in own apartment. Detained for about one month each in prison and in a detention centre.
Ana	Serbian female in her 40s. Failed asylum-seeker. In Sweden for a little more than two weeks with her children. Living in Migration Agency housing. Has not been detained.
Arjana	Albanian female in her 30s. Failed asylum-seeker. In Sweden for about three weeks with her children and husband. Living in Migration Agency housing. Has not been detained but her husband is in a detention centre.
Bahara	Afghani female in her 20s. Failed asylum-seeker. In Sweden for about two years with husband and children. Living in own apartment in 'hiding'. Has never been detained.
Davood	Iranian male in his 30s. Failed asylum-seeker. In Sweden alone. Living in detention centre. Risking deportation to an EU country (Dublin Convention).
Emmanuel	Nigerian male in his 30s. Failed asylum-seeker. In Sweden for four years. Living in detention centre.
Fatma	Stateless woman, Kuwaiti bidoon, in her late 20s. Failed asylum-seeker. In Sweden for two years with parents and siblings. Living with family. Has never been detained.
Hamdan	Pakistani male in his 50s. Failed asylum-seeker. In Sweden for two years without family. Living in detention centre.
Ismat	Afghani male in his late 20s. Failed asylum-seeker. In Sweden for two years with wife and children. Living in apartment in 'hiding'. Has never been detained.
Kader	Afghani male in his early 20s. Failed asylum-seeker. In Sweden for two years alone. Living with friends in 'hiding'. Has never been detained in Sweden but has in Greece.
Mahdi	Afghani male in his early 20s. Failed asylum-seeker. In Sweden for three years alone, arrived as a minor and could therefore attend school. Living with friends in 'hiding'. Not been detained.

Miranda	Albanian female in her 20s. Failed asylum-seeker. In Sweden for two years with her husband and children. Living in own apartment in 'hiding'. Not been detained.
Mohammad	Stateless male, Kuwaiti bidoon, in his late 20s. Failed asylum-seeker. In Sweden for two years with parents and siblings. Living with family. Has never been detained.
Nadir	Afghani male in his 30s. Living in Afghanistan and assists migrants who have been deported from European countries, of which Sweden. Has himself been deported.
Omar	Stateless male, Palestinian, in his 30s. Failed asylum-seeker. In Sweden for three years alone. Living in Migration Agency housing. Not been detained and cannot be deported.
Pal	Albanian male in his 30s. Failed asylum-seeker. In Sweden for two years with wife and children. Living in own apartment in 'hiding'. Not been detained.
Rashid	Afghani male in his 20s. Failed asylum-seeker. Was deported to EU country (Dublin Convention regulation) and then came back to Sweden. Is living without family with permanent residency. Has been detained.
Salah	North African male in his 30s. Failed asylum-seeker. In Sweden for 14 years; friends and family here. Living in detention centre.
Salim	Stateless male, Palestinian, in his late 40s. Failed asylum-seeker. In Sweden for a little more than two years without his family. Living in Migration Agency housing. Not been detained and cannot be deported.
Storai	Afghani female in her 20s. Failed asylum-seeker. In Sweden for two years with husband and children. Living in apartment in 'hiding'. Not been detained.
Tarek	North African male in his 20s. Failed asylum-seeker. In Sweden for a little more than two years alone. Living in detention centre. Has also been detained in remand centre and prison.
Teka	Ethiopian male in his 20s. Failed asylum-seeker. In Sweden for four years alone. Living in detention centre.
Vlad	Russian male in his early 20s. Failed asylum-seeker. In Sweden for two years alone. Living in detention centre. Has also been detained in remand centre.
Wali	Afghani male in his 20s. Failed asylum-seeker. In Sweden for three years with wife and child. Living in Migration Agency housing. Has been held several times in detention centres.
Yousef	Stateless male, bidoon from Kuwait, in his 30s. Failed asylum-seeker. In Sweden for two years with parents and siblings. Living with family. Not been detained.

PREFACE

The book that you are now holding in your hands (or reading online!) is not only based on the joint effort of the authors but also exists because of the hard work and support of many others, some of whom we would like to acknowledge here. This book is part of a project financed by the European Return Fund (ERF) and the Malmö Institute for Studies of Migration, Diversity and Welfare (MIM) at Malmö University, and we are grateful to both of our funders for their financial support. Within these organisations, we would especially like to thank Pieter Bevelander and Louise Tregert (MIM), and Hugo Rickberg (ERF).

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The field of forced return is not always easy for researchers to access and we would like to thank all those who have helped us to understand processes and contexts along the way. Migrants at risk of deportation are a heterogeneous and scattered group, and we are grateful to those who have helped us to establish contact with them, at times at great personal expense.

Last, but most definitely not least, we would like to thank all our interviewees. We are sending you our heartfelt thanks for trusting us with your stories, and for sharing your time and feelings. Without your generosity and openness, this study would not exist. We hope that this book will provide a glimpse of the reality of your lives and help to create an understanding of and solidarity with your situation.

Malmö, June 2015

1. INTRODUCTION

Background and rationale

The return of irregular migrants to their country of origin is an integral part of the European Union's strategy for managing international migration. As we write, in June 2015, the European Commissioner, Dimitris Avramopoulos, in reaction to the lack of agreement between Member States on a comprehensive European Agenda on Migration and to increasing irregular migrant flows through the southern borders, has just called on Member States to work more efficiently on their returns policy (Avramopoulos 2015). This demonstrates how the return of irregular migrants is increasingly being presented as part of the solution — not only of migrants remaining in Europe illegally, but also of the EU's inability to deal with these flows of asylum-seekers. Policies for the return to their origin countries of irregular migrants consist of both 'voluntary' and 'forced' returns. The former term makes reference to the return of migrants who have shown a willingness to cooperate with the state in their deportation. The spectrum of people taking this option can be quite wide: from those who are willing to return back to their country of origin or to a third country, to those who realise that, in the absence of alternatives, they have no choice but to accept the option. Forced return refers to the process of deportation by the state of those migrants who expressly refuse to go back to their country of origin or to a third country, and who actively work to avoid it.

The European Return Directive enacted in 2009 and transposed into Swedish law in 2012, makes two direct references to human rights. The first, Preamble (17) states that the detention of migrants should

be 'humane and dignified'; the second, Article 8(4) puts an obligation on Member States to ensure that forced returns are conducted in accordance with fundamental human rights and in a dignified manner. It is clear that forced return, or deportation, from the EU, as a state-implemented action, must be conducted in accordance with human rights. However, deportation is an action which goes against the express will of the person being deported. As such, achieving a 'dignified deportation' has its challenges. This book is an attempt to start the debate on what is understood by this term. What *is* a 'humane and dignified' deportation? Is it an oxymoron in itself?

Deportation is accepted within law and policy as a legitimate activity of the state. It is an 'inalienable function of the state; deriving from the state's territorial sovereignty' (Gammeltoft-Hansen 2013: 129). It is, today, an intrinsic part of migration management and control strategies. It is to this increasing tendency of states to attempt to control migration flows that Wong (2015: 3) refers when he describes our current 'age of migration' (Castles and Miller 2009) as one which is also 'an unrelenting age of immigration control'. Border controls were further tightened in Europe and America following the horrors of 11 September 2001. These security-focused developments have been criticised as measures which compromise the human rights of non-citizens, and derive from the dichotomy between the state's legitimate need to ensure national security, and its domestic and international obligations to protect human rights for all (Crépeau *et al*. 2007) – a dichotomy which hinges on an inherently asymmetrical power balance between migrants and states. Bosworth (2008: 210–11) further warns that the adoption of harsh rhetoric about foreigners in the UK undermines the agency and democratic freedom of British citizens. Finally, another development of the same theme are the 'deterrence policies' which are being pursued by states either in order to prevent large inflows of migrants, to influence the composition of immigrant flows or simply to get rid of those immigrants who are not considered to be desirable or lawful residents (Gammeltoft-Hansen 2014).

In the troughs of these security-focused developments in the field of immigration, another field is found at the nexus between migrants,

the state and human rights. This is the institution of asylum, rendered global with the 1951 Convention and its 1967 Protocol, and remains a ray of hope for migrants in need of such protection. Although the right to seek asylum has been limited by making it difficult for migrants to gain passage into Western countries, international refugee law remains an enormous achievement for the protection of the human rights of needy migrants. It is now well-established that the asylum process is a complex system often fraught with tension and suspicion, and one which, more importantly, can never be foolproof. Migrants whose asylum application is refused often lose their right to stay in the country and are subject to deportation. It is therefore of critical importance to safeguard the international principle of 'refoulement', officially enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees, which establishes the prohibition of the expulsion or return of an asylum-seeker or a refugee to a country where he or she is liable to be subjected to persecution. The situation is also problematic for stateless migrants, who do not enjoy the protection of any state, have no formal rights in any country and who, therefore, may be subject to perpetual experiences of deportation and detention (De Chickera and Fitzgerald 2010; ENS 2014).

Looking at these issues from a sociological perspective, the asylum process produces groups of people who are subject to arrest, detention and deportation. Living in a state of deportability (De Genova 2002) – that is, living with the possibility, often protracted, of being deported – has a negative effect on migrants. In practice, deportation causes

> … the sociolegal production of deportable populations (that) are not limited to bilateral transactions between 'host' and 'sending' states but rather must be comprehended as an increasingly unified, effective *global* response to a world that is being actively remade by transnational human mobility (De Genova and Peutz 2010: 2).

This state-sanctioned activity of forced return does not diminish the responsibility of the state to recognise the 'inherent dignity' and 'equal and inalienable rights' of all including people subject to deportation, as stated in the 1948 Universal Declaration of Human Rights.

The inherent tension between effecting forced returns and treating the individuals involved with respect for their basic human rights makes the focus and mainstreaming of human rights in this field even more important. In 2005, the Committee of Ministers of the Council of Europe issued *Twenty Guidelines on Forced Return* (Council of Europe 2005). The Preamble recalls states' obligation to secure for everyone within their jurisdiction the human rights enshrined in the European Convention on Human Rights and the right to freedom of movement. The Preamble adds that states have a right emanating from international law to control the entry and residence of foreigners on their territory and that, in exercising this right, Member States 'may find it necessary to forcibly return illegal residents within their territory'. It goes on to say, however, that there is concern about 'the risk of violations of fundamental rights and freedoms which may arise in the context of forced return' (Council of Europe 2005: 7). Although not legally binding, these are the most well-fledged human rights guidelines for states conducting returns.

Conversations of this sort – asking whether and how a dignified deportation can be conducted – need to be locally embedded. Sweden is a good case-study country to start with because, overall, it has a good asylum, migration and returns infrastructure which takes stock of the migrants' basic needs. This follows from Sweden's long-standing tradition of being a global leader on human rights. Indeed, the Swedish returns system has to be highly commended for giving the responsibility to a civil authority to manage the detentions and deportations (the Swedish Migration Agency), and for not outsourcing the running of detention centres and deportations to for-profit companies. Sweden endorses a decriminalisation policy in various areas of immigration. In addition, the Swedish system gives some financial assistance, albeit small, to irregular migrants. On the issue of returns, Sweden gives high priority to voluntary return and has managed to achieve a high percentage of voluntary returns (in 2014, around 75 per cent of migrants were classified as voluntary returnees). This is higher than most other EU states. The Swedish state regulates this field through the Aliens Act and, in 2012, transposed the EU Returns Directive into its local laws.

The Swedish state is also committed to mainstreaming human rights into all its activities, as seen in the Swedish Constitution: the first and second chapters of the *Instrument of Government* (Government Offices of Sweden 1974) deal with the protection of human rights. The first chapter establishes that public power should be exercised, with respect for the equal worth of all and for the freedom and dignity of the individual. Public authorities should safeguard, in particular, the right to work, to housing and to education and should promote social welfare, security and a good environment for people to live in. The second chapter covers regulations on basic rights and freedoms – such as, for example, positive and negative freedoms of opinion and physical integrity. It also includes regulations on those basic rights and freedoms in which restrictions may be permitted, on the form for decisions on such restrictions and on the general principles that must be observed when imposing such a restriction. This chapter is an example of how non-citizen foreigners have the same status as Swedish citizens in human rights matters, but may be subject to special legislation. Sweden has signed and ratified most of the documents involving human rights within the UN, the International Labour Organization (ILO) and the Council of Europe. In 1995, the European Convention for the Protection of Human Rights and Fundamental Freedoms was transposed into Swedish law. In the transposition of any European Union legislation in Sweden, human rights ought to be mainstreamed, as agreed by the signing by EU Member States of the European Charter on Fundamental Human Rights. Apart from national and local state authorities, there is an active civil society in Sweden consisting of both organised groups and established non-governmental organisations, as well as private individuals who contribute to the promotion and protection of human rights. Reports of the United Nations' and the Council of Europe's monitoring bodies' highlight some shortcomings in the fields of immigration, asylum, detention and returns, to which Sweden normally responds in a timely fashion and attempts to rectify, demonstrating a willingness to comply with international human rights regulations. The European Union has drawn the attention of Sweden, together with that of several other states, to its failure to meet its obligation of enacting a forced-returns monitoring system. Internal criticism in Sweden has been rather sharp, pointing to the

erosion of some standards and the harshening of others – such as re-entry bans – in compliance with the minimal standards expected by the EU Returns Directive.

Any discussion of how 'humane and dignified' a process or a system is needs to start from the people who are experiencing it directly. The research presented in this volume looks almost exclusively at the migrants' own experiences of the deportation process. Clear trends and patterns emerged from our analysis of the migrants' subjective experiences. This book focuses on these patterns, rather than on the particular cases or experiences of the migrants involved in the project. Migrants at risk of deportation from Sweden are a heterogeneous group in many ways. Their countries of origin serve to differentiate the groups considerably. Furthermore, their motivation for coming to and wanting to stay in Sweden can also be very different. Their life trajectories vary immensely, and they are at different stages of their lives: some are young, others older; some are married, some have children, some are in Sweden together with their families or partners, others are separated. Many have followed several and varied international migration trajectories. For the vast majority of migrants at risk of deportation, the return decision comes after a long migratory path which, at times, had crossed several countries; significantly, the decision also comes at the end of an asylum process. Indeed, the vast majority of deportable migrants sought asylum in Sweden but their application was rejected.

Broadly speaking, the approach taken by this project was a human rights one. It was applied expansively and consistently to the rationale and motivation for the study, the theoretical framework used to guide the discussions was that of human rights and the methodology was a person-centred one which took into account the vulnerability of the informants whilst allowing them to bring up the issues which characterised their experience of the deportation system in Sweden. This project draws inspiration from various human rights movements and from the pleas of excluded/vulnerable persons that they be involved in the design, management and evaluation of services. Two key examples from human rights movements come immediately to mind: the disability rights movement and its empowering maxim of

'nothing about us with us' (Charlton 1998: 3), and the children's rights movement which advocated for the children's greater participation in matters that involved them. These movements have argued that it was counter-productive to enact activities and services intended for their 'group' without their involvement in the design, management and evaluation. Migrants who have been deported and those at risk of deportation are rarely given the opportunity to share their experiences. And yet the experience of deportation is impossible to conceptualise for the regular bystander, however well-meaning they may be. This project, by drawing out the patterns and trends from migrants' subjective experiences of the deportation system, does not claim to fill this role – a role that can only be filled by the migrant him/herself – but goes some way towards bringing closer the experiences of migrants to policy-makers and practitioners.

Characteristics of the deportation process/system in Sweden

The emerging field of Deportation Studies is not only producing knowledge on the different countries' deportation systems, thus providing avenues for comparative research, but is producing analyses of the macro-level structures which shape enforcement regimes, the human experience of deportation and the societal impacts of removal (Coutin 2015: 673). Having been born at the intersection between immigration and security studies in the early 2000s (Coutin 2015: 671), it was inevitable that this knowledge and these analyses would also critically approach state actions and, as a result, expose gross structural human rights violations – violations which come about as a result of complex webs of laws, policies and structures. There are key characteristics that distinguish the Swedish deportation system from other deportation systems, even in the EU. This list broadly demonstrates a consistent policy approach based on a long-standing commitment to the mainstreaming of human rights.

The first characteristic is that Sweden has *not outsourced the running of its detention centres or deportation to private for-profit companies*. This is a route that several Western countries have taken, with disastrous results for migrants. As Gammeltoft-Hansen (2013) has argued, the privatisation of the migration control industry has

resulted in serious human rights violations, brought about by the market logic that drives private border guards. More critically, it is engendered by a fundamental accountability gap that arises in this field due to the difficulties that both human rights law and the institutional machinery have in accessing the 'corporate veil' (Gammeltoft-Hansen 2013: 136–45). This is very evident in the case of Jimmy Mubenga, who died in 2010, under restraint on a British Airways plane, while being deported to Angola from the United Kingdom. The deportation was outsourced to G4S, an Anglo-Danish private security firm contracted to escort deportees. In December 2014, the jury court case ended, after four days of deliberations, with a majority verdict of nine to one of unlawful killing. As a result of this case the coroner, Karon Monaghan, wrote a 30-page 'Rule 43 Report' (Monaghan 2013) – setting out recommendations to prevent future deaths – in which she raises serious concerns over how people are removed from the UK, many of which are related to this issue of privatisation.

Sweden's detention centres are run by the Swedish Migration Agency, an autonomous state agency that manages immigration and asylum issues, including the running of detention centres and the overall responsibility for returns (in the case of forced returns, they work together with the police). The *civil managing of the detention centre as a small and low-security unit* yields immediate benefits for the migrants. The Swedish Migration Agency does not operate the detention centres as a high-security unit and the staff are civilians. Detention centres are small, with the total capacity of the five centres in Sweden being between 200 and 250. To understand the benefits of this decision, it is enough to reproduce some of the comments in the last Council of Europe Committee Report on the Prevention of Torture (CPT) on the conditions in detention:

- material conditions at the two centres visited were of a very high standard';
- foreign nationals benefited from an open-door regime and enjoyed a considerable degree of freedom within the centres (they had keys to their rooms);

- [the staff had] different cultural backgrounds and possessed a range of language skills (e.g. at the Märsta Centre, 37 languages were reportedly spoken amongst the staff); and
- a staff member was employed to take charge of organized activities' (CPT 2009, 43).

Welfare benefits are wide-ranging and include migrants with different statuses, including asylum-seekers, migrants whose application was refused and who have therefore received a return decision and irregular migrants. Migrants who have been given a return decision and are therefore deportable have a right to state housing in the intervening period, and their children have the right to education. The financial benefits available change according to the status of the migrant, and decrease to the minimum level when a migrant is an irregular resident. Access to these services differs across municipalities. In particular, access to financial benefits for irregular migrants can be compromised if the migrant has absconded and wants to be avoid being apprehended, although some municipalities have come up with creative ways in which a migrant can access these benefits through a person or organisation of trust. These services and benefits go some way to helping migrants to meet their most basic needs.

Sweden's returns policy prioritises voluntary return. The Swedish Migration Agency, which is responsible for the implementation of this policy, states that 'Returning voluntarily means that you have chosen to return on your own initiative or that you at least accept the decision that you are not permitted to remain in Sweden and are prepared to comply with this and actively participate in making it possible for you to return' (Swedish Migration Agency 2015f). Voluntary returnees could also benefit from one or more of the following, generally depending on the country to which they are being returned: financial assistance to cover the return journey, re-establishment funds, assistance-in-kind and connections with support organisations in the return country. In 2014, the percentage ratios of voluntary to forced returns were 74:26 (this figure from official correspondence with the SMA includes migrants returned back to their countries of origin or to third countries, and Dublin returnees). However, the 'voluntary' label is often criticised for failing

to correctly describe the nature of the return. In fact, voluntary return might entail elements of direct or indirect coercion, and migrants often choose this option in the absence of other viable ones. In practice, however, when migrants take this option, they avoid the hardship and risks that forced return – and the problems caused by becoming irregular – often entail in Sweden and on the return journey.

A final characteristic worth mentioning is that Sweden has chosen and actively implements *an overall decriminalisation policy*. Although this is not an official stand-alone policy, it can be seen in the various decisions made in this field, some of which have just been presented. The decision to keep migrant detention centres as low-security units, to entrust the responsibility for their running to the Swedish Migration Agency and to prioritise voluntary return are three examples which contribute to decriminalisation. Another example is that, although the police are legally able to prosecute irregular migrants for not having a residence permit (for which they can be fined or sentenced by a law court), in the vast majority of cases they opt for the administrative measure of starting the return process. The migrant therefore avoids criminal proceedings and punitive measures.

The characteristics of this system explain why Sweden is perceived to be one of the leading countries in mainstreaming human rights in this field. Indeed, the issues mentioned above show that, legally and politically, there are significant decisions according to which human rights policies have been mainstreamed. This is not a recent development, and is testimony to the humanitarian principles underpinning law and policy development in migration in Sweden over recent decades.

Deportation and detention in Sweden – a very brief history

Deportation and detention have been regulated in Swedish law since 1914 due to the introduction of the Deportation Act. The purpose of the law was to regulate deportation practices and to have more control over the foreigners in the country (Hammar 1964). The law also introduced regulations in the field of migrant detention, such as the obligation to define the grounds on which a person could

be detained. At this point, detainees were held in prison or in a remand centre and there were no regulations governing the amount of time a detainee could spend there. Further changes in the law in this area came with the introduction of the first Aliens Act in 1927. This act required that, among other things, all migrants show their passports on entering the country and that migrants would need a residence permit if they wanted to stay longer than three months (Hammar 1964). The Aliens Act was amended in 1937 with provisions that increased the power of the state to decide on matters of detention (Ribbenvik 2009). The practice of detaining immigrants also increased during the Second World War with the establishment of closed internment camps (Berglund and Sennerteg 2009).

The amendment of the Aliens Acts of 1945 and 1954 did introduce some changes in the law concerning detention. According to the act of 1945, a migrant could be detained in order to facilitate his or her deportation and the act of 1954 further specified the grounds on which a person could be detained. The law was changed again in 1976 and further restricted the reasons for detention. Under the newly amended law, it was only legal to detain a migrant if there were reasonable grounds to suspect (*sannolika skäl*) that the migrant would abscond or take part in criminal activities, or if his or her identity was not known. The laws in this area were further harmonised with the legal area of arrests and remand centres (Ribbenvik 2009). Since 1984, the issue of detaining minors under the age of 16 has been regulated and minors cannot be detained unless there are extraordinary reasons; in 1997 the age limit was raised to 18 (Ribbenvik 2009).

Further changes were made in 1989 following the adoption of the new Aliens Act, which effected deportations. From that point on, it was the predecessor of the Swedish Migration Agency – the *Sveriges Invandrarverk* (SI) – which took over some responsibility for decision-making on expulsions and deportations that had been administered by the police authority. The Migration Agency was now the first port of call for all claims for asylum. Their new authority included decision-making in cases where it was obvious that there were no grounds for asylum, or where the individual had no right to reside in the country, and decisions on the deportation of persons who had been in Sweden for more than three months. In 1992, the Migration

Agency took over the responsibility of investigating asylum claims and this also meant that they were granted the authority to make decisions on some measures of control and coercion (Wikrén and Sandesjö 2010).

There have also been changes in the organisation of deportation and detention; this follows a larger trend of moving responsibilities in this area from the police to the civil authority dealing with migration issues. Historically the Police Authority was responsible for forced removals and detainees were placed in police custodial units such as remand centres (Khosravi 2009). Since 1997, the Swedish Migration Agency been responsible for running detention centres and, since 1999, has had the overall responsibility for returns, including forced return. In 2004, the responsibility for running detention centres was clarified in the law, which stated that, from then on, the Migration Agency would have overarching responsibility for the treatment and supervision of all migrants who are detained – even those migrants whose case is being dealt with by the police (Wikrén and Sandesjö 2010). This means that, in Sweden, there is a civil authority that has the main responsibility for forced return, even though the police is still the executive authority in certain cases.

A statistical snapshot of returns from Sweden and the EU

This section includes some statistical snapshots of return statistics from Sweden and the EU, with a clear focus on forced return. The aim is to give the reader a broad picture of what the general trends are regarding forced returns and detention. The statistics, mostly from the year 2014, are purely descriptive and thus we cannot say anything about longer trends in this area. Since migration flows can change quite rapidly from year to year, the picture given here may not be representative in a longer perspective. A thorough statistical analysis of this field, including comparisons between Sweden and other European countries and longer-term trends, would require much more elaboration and space, something which we are unable to do here.

The reader should also bear in mind that return processes are complex; in many cases it may take years from the time that the return is decided upon by the authorities until the migrant is returned

to his or her country of origin. There are multifaceted relationships between inflows and outflows in the asylum system, situations in countries of origin, migration policy in the EU and Sweden etc. which all affect forced returns. Numbers that may seem odd can, in some cases, be explained by the fact that there are lacunae in the system. We have also chosen not to include Dublin cases (intra-EU return of migrants regulated by the Dublin Convention) or forced returns to countries outside Europe which are not a migrant country of origin. The reason for this is that the statistics to which we have access do not provide us with information on the nationality of the deported migrant, only about the country to which the migrant is deported.

Returns and deportations in the EU statistics

A statistical snapshot of the return of third-country nationals without the right to stay in the EU should help to ground and understand the topic under discussion in this chapter. All statistics depend on accurate reporting. Eurostat notes that disparities in migration policies, as well as administrative, statistical and legal systems (legal acts, judicial procedure, and so on) contribute to differences among EU Member States. Any changes in these factors can influence the resulting statistics (Eurostat 2014). This should be borne in mind when reading the statistics.

In addition, as one can note even from the statistics given in the section below: Eurostat statistics and national statistics do not always match. Where possible national statistics from the Migration Agency were used in this report, but there are some instances where we used statistics from Eurostat.

The European Commission's (EC 2014a) report on the Return Directive highlights what are possibly the clearest revelations to arise out of the statistics – that there is a considerable gap between persons issued with a return decision and those who, as a consequence of this decision, have left the EU. There are several reasons given for this gap, including, in particular, the lack of cooperation from the non-EU country of origin or transit (problems in obtaining the necessary documentation from non-EU consular authorities, for example) and from the individual concerned (that is, the third-country national who conceals his/her identity or absconds). These same statistics also

reveal that the percentage of persons actually returned out of the total sum of those who have been given a return decision remained approximately the same between 2008 and 2012, then experienced a sudden increase in 2013.

Table 1.1. Return decisions in the EU and Sweden by year

	2009	2010	2011	2012	2013	2014
Return decisions made in the EU	594,600	540,080	491,310	483,650	430,230	470,080
Return decisions made in Sweden	17,820	20,205	17,600	19,905	14,695	14,280

Source: Authors' compilation from Eurostat statistics: http://ec.europa.eu/eurostat/ web/asylum-and-managed-migration/data/database.

Returns and deportations in Sweden

In recent years the number of persons seeking asylum in Sweden has increased significantly. According to the Swedish Migration Agency, there were about 29,600 asylum claims in 2011, a number which rose sharply to 81,300 by 2014. At the same time, the Migration Agency also reports that the number of returns, both voluntary and forced is decreasing. In 2012, about 11,700 migrants returned voluntarily; two years later, in 2014, the number had dropped to 7,600. Some 3,100 individuals were returned by force in 2012 and 2,700 in 2014 (Swedish Migration Agency 2015a).

According to statistics that we received from the police[2] on return cases in the year 2014, the total number of live cases on their files on 31 December 2014 was 21,787. Of these, 13,807 had been handed over from the Swedish Migration Agency or the courts, or were police expulsions (*polis avvisning*) that occurred in 2014. Again, of these, 833 were handed over from the courts and the Swedish Prison and Probation service. Around 11,500 cases were handed over from the Migration Agency. Police expulsions made at the sea border, the air border or within the country amounted to 973. The remaining 501 cases are unaccounted for in the statistics that we were given.

Deportation statistics are categorised as escorted, unescorted or individual journey deportations, where each 'deportation' can include more than one person (such as family or dependents). According to the statistics, there were 1,652 escorted deportations (DEPA, Accompanied Deportation) and 2,169 individuals were deported this way. The number of deportations without the Police Authority's or the National Transport Unit's escorts (DEPA, Unaccompanied Deportation) were 1,122 and the number of persons deported this way were 1,299. There were also 451 individual journeys (*enskild resa*) and 587 persons who in travelled this way.

An increasing concern for the authorities in the area of forced return is that there is a growing group of migrants whose cases drag on in the system or who are either hard, or more or less impossible, to deport. These are labelled Category 3 cases in the REVA system.[3] This group contains cases where the identity of the migrant is not determined and thus requires investigation and those where the return decision involves countries to which it is hard, or very hard, to carry out the deportation. There were 8,579 such cases in the hands of the police on 1 July 2015, among whom we find 1,199 Somalis, 646 Afghans, 479 Iraqis, 406 Iranians and 316 Ethiopians who cannot be deported due to their lack of cooperation. Further, there is a considerable group of 527 migrants who cannot be deported due to the fact that their citizenship is unknown and a further 432 stateless persons who cannot be deported for various reasons. During the period 1 January–1 July 2015, the police closed 5,033 Category 3 cases and, out of these, 1,984 deportations were enforced and 2,528 were barred. The remainder were closed either because the persons concerned were granted a residence permit or for other reasons (statistics by email from Fredrick Sundberg, 1 July 2015).

The number of migrants in the return process who have absconded and withdrawn their contact with the authorities has been fluctuating over the last three years but there have been no major changes. According to the Swedish Migration Agency, 6,949 individuals absconded in 2012, 7,803 in 2013 and 7,350 in 2014.[4]

Table 1.2. Forced returns to country of origin – the 20 biggest groups, 2014

Home country	No. of individuals
Albania	192
Serbia	127
Afghanistan	99
Kosovo	89
Russia	77
Bosnia Herzegovina	69
Georgia	69
Kyrgizstan	58
Belarus	57
Macedonia	50
Iraq	47
Iran	46
Mongolia	43
Armenia	36
Vietnam	33
Azerbajdzjan	32
Romania	31
Lithuania	25
Morocco	23
Nigeria	23

Source: Swedish Migration Agency.

In Table 1.2, we show the top 20 citizenship groups who have been returned by force from Sweden to the country of origin. The biggest groups of forced returnees in this period are Albanians and Serbians, followed by Afghans, Kosovians and Russians. Looking at the table, we can also see that many of the countries of origin of those forced to return from Sweden are in different parts of Eastern Europe.

Detention

According to statistics received from the Swedish Migration Agency, a total of 1,780 individuals were detained in 2009, with the numbers increasing gradually until 2013, when 3,438 individuals were detained (unfortunately we do not possess the statistics for 2014). However, the average of days spent in detention actually decreased – from 24 days in 2009 to seven days in 2013.

Table 1.3. Persons detained in 2014 – 20 biggest citizen groups

Country of citizenship	No. of individuals
Somalia	206
Albania	182
Afghanistan	167
Morocco	144
Georgia	131
Nigeria	124
Iraq	123
Serbia	123
Algeria	115
Syria	114
Stateless	109
Eritrea	106
Libya	105
Belarus	91
Kosovo	90
Russia	77
Unknown	76
Tunisia	70
Iran	67
Armenia	49

Source: Swedish Migration Agency.

In Table 1.3, we can see that the biggest nationality group in detention are Somalis, closely followed by Albanians. The third biggest national group are Afghans, who are then followed by Moroccans and Georgians.

Public debate issues of deportation in Sweden

A number of deportation issues have been raised in Sweden in recent years, mainly about human rights, efficiency and how to handle those cases that fall somewhere in between. Although Sweden has a good reputation in some areas of asylum and refugee processes – for example when the country's detention facilities are compared to those in other countries, a number of issues on the 'humanity' of

returns from Sweden has surfaced in the past two or three years. Here, activists and the media have played a major role in putting human rights on the agenda in relation to the deportation process. For example, the radio programme *Kaliber*, on *Radio Sweden*'s Channel P1, has scrutinised the deportation process from a number of angles such as health care in detention centres and what happens to migrants post-deportation; last but not least, in the autumn of 2014 journalists from the radio station were able to confirm that the authorities had been sedating migrants on deportation against their will, something which is illegal in Sweden. Another issue that has been raised in the area of human rights is that the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – FRONTEX – has criticised Sweden for its lack of monitoring of forced returns, including not having any independent observers on board the flights (*The Local* 2014).

The project REVA (*Rättssäkert och Effektivt Verkställighetsarbete*), funded through the European Return Fund, has been particularly condemned by NGOs, human rights organisations and prominent individuals in Sweden. REVA was an administrative project aimed at streamlining and making more efficient and legally secure Swedish processes of forced returns and improving the cooperation between the main actors in this area (the Swedish Migration Agency, the Swedish Police Authority and the NTU at the Swedish Prison and Probation Service).

This unjust criticism was based on the popular belief that the aim of REVA was to identify and apprehend irregular migrants in Sweden and that its practices necessitated racial profiling, discrimination and surveillance. It created considerable unease not only amongst migrant populations but also amongst those who look different (the foreign-born, or members of the different minority groups). What, in fact, *was* being criticised was the long-standing responsibility of the police in the area of internal border controls to apprehend migrants remaining in Sweden in an irregular situation. The media played a big role in spreading this misconception to the public (*Radio Sweden* 2015).

Another issue in the field of deportation that is getting a more attention from researchers and journalists is that Sweden now has a growing group of persons who cannot be deported and for whom the costs for forced return are still very high, even though the authorities are trying to make the cooperation more efficient. According to the daily newspaper *Svenska Dagbladet* (2013), the cost of foreign transport was almost 142 million SEK in 2008. The Swedish Prison and Probation Service reports, in its annual budget review (SPPS 2015a: 47–8), that this cost has been decreasing – from 241,593 SEK in 2013 to a stabilised 201,926 in 2014. These changes were explained by a more efficient use of personnel, with fewer policemen needed to accompany deportees on these forced-return trips, although a high level of security was still maintained.

Methodology

The choice of qualitative methods

The purpose of this project was to arrive at an in-depth understanding of how migrants experience the deportation process. The project sought to go beyond superficial reactions to the return decision or the system and, instead, to collect the migrants' own interpretations of their situation and try to identify patterns and trends. The choice of qualitative and ethnographic methods was therefore important insomuch as a qualitative approach allows the production of 'thick descriptions'. This is in contrast to a quantitative methodology, which generates facts and data, but does not allow the migrants' voices to be heard. Secondary literature was used primarily in the mapping and construction of the field, and the setting out of the context.

The main challenge encountered was the difficulty in finding migrants who were at risk of deportation. The group consists of marginalised individuals who often refuse to tell even their own friends that they may at any time be deported, either because they are in denial or because they are assessing their next move; therefore, apart from those held in detention centres pending deportation, they tend not to congregate or get together in any particular location. Those who live in Migration Agency accommodation are mixed in with other asylum-seekers and those with a different status, making it difficult for us to identify them. Those who are in hiding are even more

difficult to find – they are driven by a fear of being apprehended by the police and often live in temporary accommodation, both due to the nature of their situation and to avoid being caught.

In addition, we were also looking for people who would be willing to speak to us, not about the details of their 'case' but about their experiences, feelings and emotions. There was often no time or place for the traditional trust-building that usually precedes these kinds of interview. Recommendations from trusted friends went a long way towards creating the appropriate environment for frank conversations. In the end, it was clear from the nature of the conversations that they trusted us and there was a sense of appreciation that we were listening to them.

The difficulties in accessing this 'hard-to-reach' group and in finding individuals willing to share their experiences with us meant that techniques such as snowball sampling – which takes advantage of the social networks of respondents – could not be used. In the absence of the social networks of migrants at risk of deportation, we relied on every contact we could establish, sometimes from our personal networks and sometimes from referrals by people in the field. There was no alternative to this kind of random sampling. However, the variation of approaches we used to make contact with our interviewees finally allowed us to gain access to a larger portion of the population and a wider variety of perspectives than if we had relied more heavily on 'snowballing' or on one access point.

In-depth interviews, participant observation and self-reflexivity

The primary mode of data collection was *in-depth interviews*, which were strictly open-ended. An interview guide was compiled to assist the interviewers, but no topics were intentionally introduced by them, for two reasons. First, the aim of the interview was to allow the migrant to bring up issues and topics that were important to him or her, and care was taken to avoid introducing any pre-conceived ideas. Secondly, we were very much aware that the migrants were in an extremely difficult and distressing situation and, in order to avoid any harm, we did not want to open or introduce issues ourselves. The

shorter interviews, of around an hour, were with the migrants whom we met in detention, but most interviews took longer – the longest was around five hours. Interviews sometimes involved more than one person, particularly when interpretation was needed. The interpreters were people in whom the migrant had confidence, such as brothers and husbands. The majority of the interviews were conducted in English or Swedish and all were transcribed.

Apart from the interviews with those held in detention, the recorded part of the interview was only a small segment of the contact we had with the migrants. Often there was an introduction and conversation before the interview, at the meeting itself, and after the recorded interview was over. This, together with the migrants' experience in detention and transit centres, constituted the larger part of our *participant observation*. We were therefore able to observe how the migrants related to others, their physical composition and ease (or lack of it) in their surroundings and, for those whom we met in their homes, the conditions of their accommodation. Interviews held in detention centres were conducted in the visitors' room.

Self-reflexivity is a central tenet of ethnographic and qualitative work. This was important both for the individual researchers, and for them as a group. Understanding our positionality within the research, the impact the research was having on us as researchers and how this could influence our interpretation of the data, was extremely important. This field of forced returns is highly politicised and, in the course of the research, we were often pressured, primarily by activist organisations, but also other stakeholders, to state our views. When we refused to give our personal opinions, conflictual situations arose which, at times, were aimed at undermining our work. We, as researchers, often found the question 'Whose side are you on?' to be unfair and potentially detrimental to our research. Six months into the project, we also conducted a group exercise in self-reflexivity which was helpful in that it enabled us to process some of the hotter issues that had come up. We discussed how our role as researchers, our obligations, and the various power structures we were encountering could influence our research and results, and discussed strategies to avoid this happening.

Due consideration was given to *positionality* within the research, which was carried out by three female researchers; most of the interviews were conducted by the two Swedish researchers. Being female and a similar age to the interviewees was to our advantage, as most of them, even the male interviewees, appeared to feel comfortable. When they were not – which was evidenced by tense body language and raised voices – this was more the result of the subject under discussion and the accompanying fear than of the presence of the researchers, or their gender, age or nationality. When interviews became very tense or sad, the interviewers used various techniques to make the migrants relax and feel at ease. They sometimes talked about their own children, or their family or experiences or, depending on the situation, sometimes made little jokes in order to defuse the tension. The nationality of the primary researchers – Swedish – might account for some of the comments about how nice Swedish people are, and for the pains taken by some of the interviewees to distinguish between the Swedish system – which was creating their negative situation – and the Swedish people, who were nice and friendly.

Context-building and networking

In order to have a contextual understanding of the deportation system, various meetings were arranged with key individuals working on different parts of the return process. These interviews yielded critical information about organisational procedures and processes, and about key terminology and its use by the different entities involved. This gave us a sense of the magnitude and complexity of the system, and of the close interdependence of its different parts. All this information allowed us to communicate better with the migrant interviewees and to understand more clearly what they were sharing with us.

Over 50 meetings and communications were held, mostly with Swedish stakeholders, though some were international contacts, who were generally interviewed via Skype. The entities with whom we met up were the following:

- Migration Agency: policy-makers and managers, and visits on site to three detention centres (Åstorp, Märsta and Kållered), where we spoke to managerial and other staff;

- Police Authority: border police officers;
- lawyers working for asylum-seekers and detainees;
- NGOs: organisations specialised in supporting failed asylum-seekers in Sweden (*Asylgruppen, Tältaktion mot Deportation, Aktion mot Deportation*). After some initial meetings, it was made clear that they did not want to participate or collaborate in any way with this project, primarily because the funder is the European Return Fund. In addition, they explained to us in detail why they felt, ethically, that they should not collaborate;
- local branches of international NGOs: Swedish Red Cross; and
- leading academics in this field in Sweden.

This list also included meetings with people both outside Sweden who were able to give us knowledge about deportation from other countries, and in those countries to which migrants are returned. We held Skype meetings with representatives from NGOs involved in work with deported/deportable persons in deporting countries such as the UK, and in countries to which migrants are deported, such as Afghanistan.

Interviews and Interviewees

The interviews usually took place in the home of the interviewee although, occasionally, they were conducted in more public places such as libraries. We also visited the detention centre in Kållered, where we conducted seven interviews with detainees. Prior to our visit, the staff had given information about our study to the detainees during their weekly meeting, and those who were interested in participating signed up by letting the staff know. The staff also assisted with the organisation, by drawing up the schedule and bringing the detainees to the visiting room at the appropriate time.

Two researchers conducted interviews with people residing in Sweden. Most of the interviews were conducted without an interpreter – 11 in English, six in Swedish – though five were conducted with an interpreter – one in person and four by phone. In three other cases a spouse, sibling or friend functioned as interpreter – always a male interpreting for a female, as discussed earlier. Interviewers had a guide which consisted of key words, potential questions and themes to address (see Appendix 1), although the interviews were kept as

unstructured and open as possible. The interviews varied in length from one hour up to five hours, though most lasted for just one or two hours. Two of our respondents were interviewed on multiple occasions and contact was maintained with some of the interviewees by email, phone and social media.

Migrants who are given a return decision and either leave voluntarily or are deported from Sweden can be categorised into different groups; the majority of those who left in 2014 were returned to Serbia, Albania, Syria, Kosovo and Iraq (Swedish Migration Agency 2015a: 105).

Our interviewees also constitute a diverse group. They share just one common denominator and that is that they have all, at some point in time, received notification that they should leave Sweden – something which they were adamant that they did not want to do. The categorisation of this group is discussed further in this chapter. The authorities' categorisation was not of major importance when selecting our interviewees; instead the crucial aspect shared by all of our interviewees is that, from their point of view, they were risking (or had already experienced) deportation. Nevertheless the migrants' point of view also merges with the authorities' categorisation. Most of our interviewees have their cases with the Swedish Police Authority which, according to the Migration Agency's terminology, classifies them as 'forced returnees'.

The scope of this study was to look at people either at risk of deportation or who have already been deported to countries outside the European Union. This area is regulated primarily by the European Return Directive. Forced return takes place to other EU Member States generally, but not exclusively, under the Dublin System. The Dublin System is regulated by the so-called Dublin II Convention, Council Regulation (EC) No. 343/2003. It includes all EU Member States plus Norway, Iceland and Switzerland and refers to the mechanism by which one state is determined as responsible for examining a migrant's application for asylum. The objective of the system is to eliminate the phenomenon of so-called 'asylum shopping', where migrants move from one Member State to another,

submitting their application for asylum in order to seek a positive decision or better conditions. The Dublin System is simultaneously designed to prevent a 'refugee in orbit' situation where, thanks to the application of the third-safe-country concept, no state deems itself responsible for examining the asylum application on merit.

Rashid, one of our interviewees, had been deported to another EU country under the Dublin Regulation but had later returned to and received a residence permit in Sweden. Davood was, at the time of his interview, at risk of deportation to an EU country; however, he also feared deportation to a country outside the EU since a previous EU country had refused his asylum claim. These interviews yielded material which was surprisingly similar to that about people at risk of deportation to their country of origin, in particular in those aspects which have to do with their experience of an 'in-limbo' situation. Their narratives differed significantly in their explanation of why they feared that they would be returned back. However, migrants who had been interviewed in Sweden prior to the actual deportation often chose to speak at length about their experiences in Sweden and prior to their arrival. They spoke less about their fears of what might be awaiting them in their country of origin and, for this reason, the decision was taken to include these interviews in our empirical material.

Most of the interviewees (23 out of 26) were at risk of deportation at the time of their interview. Two were not; they had been deported from Sweden and then returned and had, at the time of our interview with them, gained permanent residency or Swedish citizenship. One was resident in his country of origin.

Ethical considerations

When researching vulnerable groups, there are considerable ethical considerations to be taken into account; these have been discussed thoroughly by the research group throughout the study, which received the approval of the Regional Ethical Review Board in Lund. The interviewers were careful not to ask questions that could raise potentially traumatic issues which the interviewee may not be emotionally able to deal with. Great efforts were made by the

Table 1.4. Interviewee characteristics

Characteristic	No.
Gender:	
Males	20
Females	6
Age:	
20–30 years	13
30–40 years	9
40+ years	4
Country of origin:	
Afghanistan	9
Albania	3
Algeria	1
Bangladesh	1
Ethiopia	1
Iran	1
Libya	1
Pakistan	1
Nigeria	1
Russia	1
Serbia	1
Stateless Bidoons from Kuwait region	3
Stateless persons of Palestinian ethnic origin	2
Reason for deportation:	
Failed asylum-seeker	24
Other	2
Living situation:	
Own housing	8
Family or friends	6
Migration Agency housing	5
Detention centre	7
Experiences of detention or penal imprisonment (10 individuals*):	
Detention	10
Remand centre	2
Prison	1

Note: *One individual can have experienced several types of incarceration.

interviewers to be attentive and to listen carefully in order to steer the conversation towards issues which the interviewees felt comfortable speaking about. This strategy proved successful. The interview style chosen was also conducive to ensuring that the interview did not resemble any previous interviews with or interrogations by the authorities, something that was brought up as an important consideration by Hasselberg, in her (2012) study of migrants at risk of deportation.

It was important to ensure that the interviewees received adequate information about the study before deciding to participate, and this was usually conveyed to them both orally and in writing. The interviewees were also informed that they could change their mind about participating at any time, and that the information they had given would then be removed from the study – none of them withdrew. The researchers ensured that the interviewees realised what the aim of the study was and that it would not be able to help them in their precarious situation, at least not in any direct way. The benefits of our study were presented as creating knowledge of migrants' experiences of the forced return process in order to potentially improve Swedish and European policies. Düvell *et al.* (2010: 228) claim that one of the most important ethical issues to consider is whether the potential social benefits of the research outweigh the potential social harm it may cause. We believe that our study provided great benefits as it allowed policy-makers and the general public to view issues of forced return from the perspective of migrants at risk of deportation. In addition we believe that no harm came to anyone from participating in this project – on the contrary, several interviewees voiced their gratitude to the researchers for being responsive and allowing them to share their story, which gave them a moment of relief. After agreeing to participate in the study, the interviewees signed an informal approval form which was, in most cases, provided in their native language.

Another aspect of great importance was to ensure the interviewees' anonymity. The names and other identifiable data have, from the beginning, been kept coded and in a safe. During the final stages of the writing process, the interviewee codes were replaced with names from the region that the interviewees originated from in order to

give the quotes a more personal feel. The list of migrant interviewees provided with the final text has been thoroughly examined to ensure that their anonymity has been preserved, and that all data have been removed which could potentially identify the individuals.

Most of our interviews were conducted without an interpreter, which we felt was preferable since it allowed for a closer connection between the researcher and the interviewee – and therefore better interviews. Mackenzie *et al*. (2007: 304) also state that using interpreters can be 'ethically problematic' as it makes the mutual understanding between the researcher and the informant more difficult to establish. However, this preference has restricted our study mainly to those individuals who speak Swedish or English, which might be seen as a limitation. Another is that most of our interviewees were male and, in most of the female interviews, a male spouse or relative was present in order to interpret. Both the smaller number of female interviewees and, in particular, the male interpreter or spouse's presence placed severe limits on the extent to which our interviews yielded any gendered experiences.

Limitations of the study and structure of the research process

There are several limitations to our study. The first of these, as mentioned above, is that the gender aspect is largely missing, due to the low number of women interviewed. The gender dimension, too, did not come out very strongly in most of the interviews carried out with women because, in most cases, the women brought their husbands, brothers or male friends as interpreters. Only in one of the interviews was there no male present. There were also no children or elderly persons interviewed and our material thus largely reflects the experiences only of young adults in their 20s and 30s.

Another limitation of the study was that the vast majority of interviewees did not have any experience beyond the deportation process in Sweden. They therefore had never made the return trip to the country of origin, or experienced the reception facilities and any forms of re-establishment and/or re-emigration. Therefore our study is largely limited to the time spent in Sweden and the first steps of the return process.

The interviewees, on the whole, remained silent about their strategies for establishment in the country of origin. We interpreted this as a denial of the eventuality of return and thus, for ethical reasons, as explained in the relevant section, we did not introduce this topic ourselves. Many also stated that they did not talk about their situation in the home country or the events that had happened as they were on the run as refugees.

The migrants we spoke to were perhaps, then, those who 'had something to say', or who were particularly desperate – the findings may therefore reflect this. Those individuals who engaged in open protest of some sort were also easier to find than those who were resisting the return decision in a less public way.

There are also geographical limitations to the study. The majority of the returnees we interviewed were based in Scania and we were only able to interview detainees at one detention centre, Kållered. However, at this point it is almost impossible to say whether, and in what way, this might have affected the representation of migrants' experiences of forced return. There can, for example, be differences in how the different detention centres are run, and the management and organisational culture within them, that affects the detainees situation in detention, but this is not something that we can comment on.

It is also important to note that this is not a case study and that the authorities' views on the different events that happened to the migrants in the return process are not presented. This means that we only present one side of the story. Firstly, the aim of the study was to explore the migrants' perceptions and experiences of the forced return process and not to recount how the different authorities perceived the process. Secondly, due to security and confidentiality issues, it was not possible to obtain the authorities' views on these events, and any documents connected to the case, if there was no written consent. Given the sensitive setting of the interviews and the need for us to gain the trust of our participants we, as researchers, did not feel comfortable asking for this.

Another limitation is that, given the vulnerable position of the migrants, the information that they were able to share with us may have been limited at times. They may have been afraid that information they disclosed about them and their case might be misused by us, even though we took pains to explain that the interviews were confidential and anonymous. The researchers strived to balance their representation of the interviewees' experiences by keeping in continuous contact with the migrants and asking follow-up questions. Research in the field, reports, and interviews and meetings with different stakeholders were also carried out in order to triangulate our analysis.

The various tasks in the structure of the research process were as follows:

I. data collection through interviews;
II. brief analysis of statistical data, meetings and policy reports;
III. observation of detention and asylum/transit centres;
IV. self-reflection on our field notes, on our role as researchers and on the various attitudes we encountered from gatekeepers etc;
V. 'codification' of the interviews;
VI. identification of the themes arising from the interviews;
VII. categorisation of the themes; and
VIII. interpretation of the data.

The terminology and language of deportation

As described in the previous section on methodology, we have been mapping the research field. The extreme politicisation and sensitivity of the issues of deportation become clear in the following section, where we discuss the terms used by the different authorities and actors.

Return

The term 'return' is problematic since it implies that a migrant has come from one country and will now be 'returned' to that country, often referred to in the return context as the 'home country'. However, the migrant's situation is often very much more complicated. The migrants have often lived in or travelled through multiple countries

before arriving in Sweden rather than just from country A to country B, which may mean that they have not been in their 'home country' for many years. This situation, in addition to the often highly problematic situation that they have left behind, makes the concepts of 'return' and of 'home country' highly problematic, which is why we will not be using them. Instead of 'home country', we use 'country of origin' and, in the section 'Our position', we discuss how, in most cases, we use 'deportation' rather than 'return'.

'Voluntary return' or 'repatriation' are perhaps even more problematic terms. The UN High Commissioner for Refugees (UNHCR) views voluntary repatriation as one aspect of its 'durable solutions' strategy which requires the full cooperation of the migrant's country of origin. Returnees are invited to be 'part of the solution' in post-conflict rebuilding situations. Voluntary repatriation is based on the principle of voluntariness in relation to the conditions in both the country of origin and the country of asylum (UNHCR 1996: section 2.3). This would suggest that the individual should be able to make a free choice, in other words 'The choice to leave must be genuine and not induced' (Webber 2011: 103–4).

Webber (2011) argues that none of the voluntary return programmes in Europe meet the UNHCR's criteria since the individuals in question are denied the means to support themselves in the country of asylum. The choice of return cannot be considered voluntary when the alternative is destitution. Blitz *et al.* (2005) argue that the context in which the voluntary return programmes are taking place compromises their voluntariness. The context referred to is one where states are using returns to appease their domestic population or show that their involvement in military intervention in, for example, Afghanistan or Iraq has created enough stability there for refugees to be able to return.

In the UK, the government uses tools such as taking away migrants' legal rights and welfare support to make asylum-seekers accept voluntary repatriation (Webber 2011: 104–5). However, Webber also highlights one example in the UK context of a 'true' voluntary return programme – one where refugees are able to return and spend up to a year in their country of origin without running the risk of losing

their residence permit in the UK. According to Blitz and his colleagues (2005), people who have a secure immigration status are those who are the most interested in return. Sweden also uses means such as the erosion of legal rights and financial support to coerce migrants into accepting voluntary return.

Nevertheless, the Swedish authorities use the term 'return' *(återvändande)* and the following section contextualises this. The Migration Agency divides the 'return process' into 'forced' and 'voluntary' returns and clearly states that it does not deal with 'forced' returns. If a person absconds or force is needed to return the person, the Migration Agency categorises them as 'forced' and their case is handed over to the police. The Migration Agency uses another term for the cases that they themselves handle – 'uncompelled return' *(självmant återvändande)*. This is felt to be a broader term than 'voluntary return' and refers to those cases where the migrant can be deported without force by the Migration Agency. This category includes migrants who are in detention. Using the Migration Agency's logic, this means that persons who are detained can still be categorised as 'voluntary', a classification which differs from categories in other countries and in the Return Directive, where individuals who are detained are not considered to be 'voluntary'.

Although the Migration Agency wants to separate its work from that of the Police Authority, it is in charge of the detention centres where people are detained on both its own orders and those of the police. These latter, however, categorise the cases they receive from the Migration Agency as forced returns (*tvångsärenden*). They also divide the types of deportation they conduct into 'escorted deportations' (DEPA), 'Unescorted Deportations' (DEPU, Unaccompanied Deportations) and 'individual travel' (*enskild resa*). Chapter 3, on return statistics, provides more details of these deportations.

Finally, to complicate matters even further, 'return' in EU circles is often used to refer to intra-EU returnees under the Dublin System, whereas 'removal' is used to refer to the return of third-country nationals (or TCNs) to their countries of origin outside the EU. This terminology is not found in the European Return Directive, where 'return' is used to refer to the return of TCNs to countries outside the EU.

The different use of terms by the various authorities makes it more difficult for an outsider to get a clear picture of the deportation process. Some NGOs (such as the Swedish Red Cross) have chosen to adopt the terminology used by the Migration Agency – such as 'return' – to diminish the confusion whereas others (e.g. *Asylgruppen*) believe that the terminology used by the Migration Agency is watered down and does not depict clearly enough the gravity of the activity, which is why they prefer a term like deportation.

Detention

The Swedish Migration Agency is responsible for all the migrant detention centres in Sweden. It is interesting to note that, in Swedish, the term for a migrant detention centre is *förvar*. Etymologically, this is an interesting word choice since its usage in everyday language is 'placement in a secure environment for the object's own safety'.[5] As illustrated in the definition, it is a term more commonly used for items, not people. In a legal context, *förvar* can refer to the detainment *(omhändertagande)* of intoxicated people. In our case *förvar* refers to the detainment of foreigners based on the Aliens Act (Chapter 10 § 1–9*)*.

A *förvar* is technically an administrative detention unit as opposed to penal detention units such as prisons. It is, however, interesting to note the different perceptions of a *förvar* (detention centre) and a penal prison. For migrants, a *förvar* is essentially a prison. They do not distinguish between the two. They feel that they are being 'punished' for not having a residence permit by being kept in a detention centre and eventually deported to their country of origin. Policy-makers and staff members of detention centres, on the other hand, understand that there is a clear and tangible difference. For example, security levels are much lower and staff members wear civilian clothes. Migrants' failure to distinguish between a detention centre and a penal facility is perhaps not surprising, however. Both share the fundamental restriction to basic freedom, as discussed further in Chapter 6, where the issue of criminalisation is analysed in more detail.

The detainees are being held *(frihetsberövade)* but have not received a sentence; instead the Police Authority, the Migration Agency or the Migration Courts have made a decision to detain them. This restriction of freedom is an administrative action not a criminal one. The distinction between a prison and a detention centre, and the different interpretations of what these two actually constitute is crucial for this study. From our observations the discrepancies between how the detention centre staff and the detainees view the space is particularly interesting.

Choices in terminology

The International Organization for Migration defines deportation as 'the act of a state, in the exercise of its sovereignty, in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain' (IOM 2004: 18). In addition, it defines forced return as the compulsory return of an individual to the country of origin, transit or third country, on the basis of an administrative or judicial act (IOM 2004: 18). Generally, depending on the focus of the discussion, deportation and forced return are also referred to by the different actors as removal, expulsion or refoulement. This book mostly uses deportation and forced return interchangeably.

The terms deportation and forced return are used because they denote the relationship of the migrants with the state, the possible use of force, the migrants' unwillingness to cooperate and the gravity of the situation. These terms frame the activity of forced return or deportation on the spectrum between non-movement and movement, as the antithesis of being allowed to settle, to remain. It is different from the forced–voluntary dichotomy in the 'returns' paradigm, which is fraught with problems deriving from the questioning of the 'voluntary' nature of voluntary returns. The term deportation also somewhat distances itself from EU law and the policy-framing of deportations within the irregular migration regime or broader Schengen and EU borders (Ripoll Servent 2013: 47).

Deportation is therefore the activity in which persons are removed against their will. They have made it very clear to the authorities that they do not agree to being sent back, will not collaborate in organising their return and are ready to resist in any way possible. The deportation process is conceptualised by this study as starting from the moment when the individual receives their return decision and decides to resist it; the process ends with the reception phase/facilities in the country of origin. Deportation from Sweden is often another phase in the longer migratory process, since most forced returnees originally applied for asylum in Sweden.

The migrants whose perspectives we are presenting in this study are referred to as a group in a variety of terms. We will be using the terms 'irregular', 'deportable' and 'undocumented migrants' in order to make the text consistent and not confuse the reader about which group we are talking of. However, in the empirical material presented in Chapters 4–6 the terms 'paperless' and 'in black' will be found; these terms have not been altered since they are part of our quoted material and are used by the interviewees to characterise their situation.

'Irregular' and 'undocumented' are the preferred terms rather than 'illegal'. The latter has extremely pejorative connotations and is often used not in a strict legal sense but to label and criminalise a whole group of people. Holgersson points out that, up until 2010, the term 'illegal immigrants' was not used in the Swedish Parliament, although this changed with the entry of the right-wing populist party, the Sweden Democrats, who used the term frequently in their parlimentary addresses (Holgersson 2011: 127). Holgersson also discusses the term *papperslösa* (undocumented), which emerged during the 1990s through a movement where persons risking deportation wanted to undermine the category 'illegal' and be seen as '*de-facto* citizens' (2011: 130). The term undocumented does not bear a negative label and refers to any situation in which an individual, generally an asylum-seeker or an immigrant, finds themselves when they do not have a valid entry or residence permit. Irregular is used in the same way as undocumented, but tends to convey the even broader message that a person might have the right permits for one aspect of his or her life and not for another. These conflicting situations in which some

migrants find themselves, at times through no fault of their own, can have serious repercussions. In this book, both 'undocumented' and 'irregular' are used interchangeably.

Persons who are undocumented and at risk of deportation belong to an extremely heterogeneous group whose only common denominator is their risk of deportation. For example, their living situations differ widely (see Chapter 5). Some of the migrants are living underground, 'in hiding', which the Migration Agency and the police call 'absconding'. The term 'living in hiding' is not unproblematic since it risks erasing important aspects of these people's lives, and creates an understanding of them as separate from the rest of the population and passive (Holgersson 2011: 112). The level of activity among those we interviewed was quite varied, some being very restricted by their circumstances whereas others participated in several social activities and were not greatly restricted by their hiding from the Swedish authorities. We have avoided creating or reproducing labels as far as possible, but this descriptive label ('in hiding') *is* pertinent, particularly when discussing migrants' psychosocial wellbeing in Chapter 5.

Outline of the book

The heart and soul of this book are Chapters 4 to 6, which analyse and discuss the empirical qualitative material of the migrants' experiences of forced return. The extensive use of the migrants' voices in their quotations brings the reader closer to the participants. In order to understand these chapters, however, it is important to have enough information about the context: forced migrant returns in Sweden and the EU. This book is therefore designed to provide the necessary legal, policy and institutional context of forced return from Sweden – an arduous task but one which is necessary if the reader is to grasp the complexity of the system and the various actors involved. The book ends with a brief concluding chapter which draws together the empirical findings and systemic conclusions.

Chapter 2 starts by laying out the European and national legal context: the European Return Directive and the Swedish Aliens Act. The former had a direct impact on the latter, which was amended in order to enable Sweden to transpose the Return Directive into

its national legislation. The European Return Directive, together with the Swedish Aliens Act therefore provide the legal and political framework necessary to understanding forced return in Sweden. The European Return Directive was criticised by a number of organisations for failing to mainstream human rights principles and therefore not providing adequate standards of protection for individuals being returned. This criticism serves as an analysis of the Directive from a human rights perspective and goes some way to conveying the policy direction taken by the EU, which has a direct impact on Sweden. Chapter 3 complements the legal chapter by providing a brief description of the various institutions involved in this 'returns project' at both European and national levels.

The original empirical material presented in this book is split into three separate chapters which deal with the issues involved from different perspectives. Chapter 4 discusses migrants' interactions and preoccupations with the various aspects of the system. Migrants feel that the system is ambiguous and imbued with arbitrariness. This lends itself to feelings of injustice, helplessness and sometimes anger, feelings which are difficult to address, particularly when the system has select discretionary spaces. These spaces of discretion can be complicated due to the securitisation of the forced return field, as well as the fact that the authorities approach this process from a very different angle. The latter are under pressure to implement return decisions and to increase their efficiency. Migrants who are in a state of deportability find different ways of resisting the system. The most common, amongst migrants who refuse to be returned, is that of absconding which, in turn, creates other problems for the migrants and puts even greater strain on their relationship with the authorities.

Chapter 5 demonstrates how the 'state of deportability' is an 'in limbo' situation which has negative repercussions on migrants' psychosocial wellbeing. Migrants felt a sense of helplessness and a lack of control over their situation and their future. This exacerbates the distress caused by the decision to be sent back which, in the case of forced migrants, creates an ironic situation whereby migrants, in spite of the danger and difficulties of living 'in limbo', often prefer to extend the situation in various ways in order to avoid being sent back.

This chapter also highlights the plight of the so-called 'undeportable deportables' – those, such as the stateless, who have been given a return decision but who remain in Sweden because the state is not in a position to execute that decision. Their situation, which we term 'super limbo', becomes particularly acute and distressing.

In Chapter 6, we move on to discuss an issue that creates immense distress for all migrants at risk of deportation – criminalisation. Migrants at risk of deportation from Sweden clearly conveyed that they felt they were unjustly treated like criminals. As a result, they perceive detention as punishment, even though technically, in law and policy, this is envisaged as an administrative measure. As expected, the culmination of criminalisation often happens when migrants are detained and therefore when they are at their lowest ebb. This chapter discusses the issues brought up by the migrants in light of the global tendency to criminalise migrants, including those at risk of deportation.

Finally, Chapter 7 draws together the conclusions from the preceding chapters, thus giving a unique insight into how migrants in Sweden experience the first part of the forced return process, prior to the actual journey and return. It also reflects on the findings from a human rights perspective, which may serve to inform or guide decisions made in this field by the various state authorities involved.

2. THE REGULATION OF RETURNS AND HUMAN RIGHTS: THE EUROPEAN RETURN DIRECTIVE AND THE ALIENS ACT

Introduction

The aim of this chapter is to give an overview of the legal and policy framework governing the return of third-country nationals in the EU. This will serve to locate the Swedish experience within the European one. The chapter starts with an empirical snapshot of the return of TCNs in the EU. Returns are not new to EU Member States; however, since the Return Directive came into force, some areas of returns have been harmonised, allowing for the production of better statistical data. This is then followed by a detailed presentation of the EU Return Directive which is implemented across the majority of EU Member States – including Sweden, where it was transposed into national legislation in 2012.

The Returns Directive was criticised for not mainstreaming or protecting already-agreed-to human rights principles and standards. This critique is particularly pertinent for our research. By highlighting those aspects where the Directive fails to protect the core human rights principles of TCNs who have received a notification of return, this chapter provides an indication of the balance between the state's legitimate right to impose return and human rights principles. With the transposition of the Directive, some of the human rights standards safeguarded in Sweden's Aliens Act were lowered or limited. This inevitably prompted adverse reactions to the amendments and to the Directive by internal human rights organisations.

EU policy and legislation

The EU policy trajectory on immigration and asylum

EU policy development on immigration and asylum has been consistently addressed in the last quarter of a century, demonstrating an intense awareness by EU Member States of the need to reach agreement and common paths towards its better management. This commitment is the most clearly seen in the repeated and developing plans to address these issues in the various multi-year programmes of the Council of the European Union. These multi-year action plans and agreements provide the background to the development of European law and serve, albeit in part, to explain the legal developments, some of which also led to the enactment of the European Return Directive.

The communitarisation of migration and asylum policies was determined by the Amsterdam Treaty which has been in force since 1999. In 2004, the Hague Programme attempted to provide a new framework for the management of migration. The EU has been seeking a more comprehensive approach to dealing with migration, including the return of migrants who do not have legal grounds to stay in the EU. In the Hague Programme, the Council of the European Union (2004) expressly called for the 'establishment of an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity'. The urgent need to establish minimum standards for return procedures can be seen in the following paragraph, which specifies that the Council should start discussions in 'early 2005' and, in a later section, that a European Return Fund should be established by 2007:

> The European Council considers it essential that the Council begins discussions in early 2005 on minimum standards for return procedures including minimum standards to support effective national removal efforts. The proposal should also take into account special concerns with regard to safeguarding public order and security. A coherent approach between return policy and all other aspects of the external relations of the Community with third countries is necessary as is special emphasis on the problem of nationals of such third countries who are not in the possession of passports or other identity documents (Council of the European Union 2004: 14).

Another development in 2005 was the Global Approach to Migration and Mobility (GAMM), which was an attempt to establish a comprehensive external migration policy based on common political principles and solidarity. The GAMM is the overarching framework of EU external migration and asylum policy. Using a rights-based approach, the GAMM aims to enhance the mobility of third-country (non-EU) nationals across the EU's external borders. The framework defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities and embedded in the EU's overall external action, including development cooperation (EC 2011a).

The 2008 European Pact on Immigration and Asylum was also adopted by Member States and contains a set of political objectives and strategic guidelines for the development of European immigration and asylum policies (Council of the European Union 2008: 4). It involves commitment to act in the following five key areas, which are further elaborated in the European Pact:

1. to organise legal immigration, taking into account the priorities, needs and capabilities determined by each Member State, and to encourage integration;
2. to control illegal immigration by ensuring the return of illegal immigrants to their country of origin or a country of transit;
3. to make border controls more effective;
4. to construct a Europe of asylum; and
5. to create a comprehensive partnership with countries of origin and transit to encourage synergy between migration and development.

The Hague Programme was followed by the Stockholm Programme, which ran between 2010 and 2014 (European Council 2010). The entering into force of the Lisbon Treaty on 1 December 2009 introduced several changes to EU law and policy-making which had repercussions on the implementation of the Stockholm Programme. A particularly important change, which had an impact on the content of the Return Directive, was that the joint decision-making process initially introduced by the Maastricht Treaty, and made more effective by the 1999 Amsterdam Treaty, became the main legislative procedure of the EU.

The European Return Directive agreed by EU Member States in 2008 entered into force at the end of 2010. It governs a broad range of issues, in particular an obligation to return irregular migrants, their treatment during expulsion proceedings, re-entry bans, procedural rights and the grounds and conditions for detention (EC 2013).

The European Return Directive was accompanied by the Decision of the European Parliament and of the Council to establish the European Return Fund in 2007 – Decision No. 575/2007/EC of 23 May 2007 (EP/CEU 2007). The European Return Fund started operating in 2008 with a total budget of 676 million euros for the five-year period between 2008 and 2013. All EU Member States contribute to this fund except for Denmark.[6] The fund seeks to improve return management as well as to encourage the development of cooperation between EU countries and countries of return (EC 2004). Each EU state implements the fund through annual national programmes on the basis of multi-annual programming. In 2011 the Commission, even though it was under no obligation to do so,[7] issued a report on the calculations made for the budget years 2007–11 (EC 2011b).

In March 2014, as part of the obligations listed in Part IV of the Directive, the European Commission published a Communication on EU Return Policy. This report presents the changes to EU return policy, analyses of its impact and presents ideas for future developments (EC 2014b). It is an important tool for analysing the impact of the Returns Directive (Peers 2014). The Commission states that, in order to face the challenge of irregular migration, a holistic approach is needed which would include actions such as an efficient border management and the strengthening of the fight against smuggling and the trafficking of human beings. The return of those third-country nationals who have no legal grounds for staying in the EU and no need to be granted protection is deemed essential to the credibility of EU legal migration and asylum policies. Return policy is closely related to readmission policy, both of which form part of the external asylum and migration policy, the GAMM. This 'external' dimension of return policy is key to the implementation of voluntary return, the reintegration of returnees in countries of origin and the identification and documentation of returnees. More specifically, five main areas for action were identified and listed in the Commission's Press Release (EC 2014b: 2) accompanying the report.

- Ensuring a proper and effective implementation of the existing rules/the Return Directive: The Commission will continue to address all shortcomings identified in the Communication with the Member States. It will pay particular attention to the implementation by Member States of the provisions of the Directive which relate to the detention of returnees, safeguards and legal remedies, as well as the treatment of minors and other vulnerable persons in return procedures. It will make use of the Schengen evaluation mechanism to assess compliance with the rules in the field of return and enhanced forced return monitoring.
- Promoting more consistent and fundamental rights-compatible practices: The Commission will adopt a 'Return Handbook' containing common guidelines and best practices. It will support the efforts made by the Council of Europe towards codifying detailed detention standards.
- Developing further dialogue and cooperation with non-EU countries: Return and readmission issues will continue to be consistently addressed, in a balanced way, in cooperation dialogues with non-EU countries, such as the Global Approach to Migration and Mobility, and Mobility Partnerships. Efforts to build capacity in non-EU countries will be strengthened, e.g. to improve their ability to provide assistance and reintegration support to returnees.
- Improving operational cooperation between Member States on return: The Commission will use the European Migration Network as a cooperation platform, especially for gathering and sharing information in the field of voluntary return.
- Enhancing the role of FRONTEX in the field of return: FRONTEX' coordination role in the field of joint return operations should be further increased, ensuring that common standards related to humane and dignified treatment of returnees are met. Trainings should be organised on return issues.

A series of European Courts of Justice (ECJ) rulings have clarified a number of key aspects of the Directive (e.g. detention), with a significant impact on Member States' implementation of the Directive

itself. A detailed assessment of the impact of the Return Directive on Member States' return policies and practices and an overview of the ECJ jurisprudence is given in Part IV of the 2014 Communication (EC 2014a).

The European Return Directive

Officially called the Directive 'on common standards and procedures in Member States for returning illegally staying third-country nationals', the European Return Directive, as it is more popularly known, was passed on the 16 December 2008 (Council of the European Union 2008b). The aim of this Return Directive is stated in Article 1:

> This Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

The preamble to the Directive lays down some fundamental principles which underpin the legislation as a whole. These should be taken into account to fully understand the provisions set out in this Directive. ECRE (2009: 3) highlights the following points.

- Paragraph (6) asserts that 'decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria implying that consideration should go beyond the mere fact of an illegal stay'.
- Paragraph (8) of the Preamble asserts that it is legitimate for Member States to return irregularly staying third-country nationals, 'provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement'.
- Paragraph (16) provides that detention is justified only 'if the application of less coercive measures would not be sufficient', while Paragraph (17) emphasises that persons in detention 'should be treated in a humane and dignified manner with respect for their fundamental rights'.

- Paragraph (22) provides that the best interest of the child and respect for family life should be a primary consideration of Member States when applying the Directive, whereas Paragraph (23) asserts that its implementation should be 'without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees'.
- Respect for the rights included in the Charter of Fundamental Rights of the European Union is reaffirmed in Paragraph (24).
- Paragraph (19) provides that 'the exchange and promotion of best practices should accompany the implementation of this Directive and provide European added value'.

The Directive is split into five chapters. The first starts by outlining the scope and key definitions of the Directive. As stated in Article 2, the Directive applies to third-country nationals staying illegally on the territory of a Member State. Member States can choose not to apply this Directive to TCNs who are refused entry or are subject to return due to criminal sanctions, or as a result of a criminal offence. In Article 3(3) of Return Directive, return is defined as:

- the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:
    - his or her country of origin, or
    - a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or
    - another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.

Definitions are the key to better understanding legislation and the policy approach underpinning it. The 2008 Directive, in Article 3 and apart from the definition of return mentioned above, lists a few other definitions:

- 'third-country national' means any person who is not a citizen of the Union;

- 'illegal stay' means the presence on the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry;
- the 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;
- 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State;
- 're-entry ban' means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;
- 'risk of absconding' means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond;
- 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision; and
- 'vulnerable persons' means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

The Directive requires that Member States take due account of the best interests of the child, family life, and state of health of the third-country national concerned. All Member States should respect the principle of non-refoulement.

The second chapter of the 2008 Directive, in its various articles, deals with the minimum standards and procedures required during the process of termination of an illegal stay. This includes the conditions under which a return decision is issued (Art. 6), the provision of an appropriate period for voluntary departure (7), the enforcement of the return decision by the removal of the third-country national (8), reasons for the postponement of the removal (9) and the return and removal of unaccompanied minors (10), and establishes a minimum re-entry ban into Member States (11).

The Directive lays down standards for addressing the cases of third-country nationals who refuse to comply with the return decision and are therefore at risk, or subject to, forced return. These fall under Article 8, which deals with the enforcement of the return decision (termed 'removals'). The Directive is clear that Member States shall take 'all necessary measures to enforce the return decision' if the obligation to return has not been complied with in the period granted by law. Member States may adopt a separate administrative or judicial decision or act ordering the removal.

In the case where a TCN resists removal, Article 8(4) states that Member States 'as a last resort' may take 'coercive measures' to effect the removal as long as such measures 'shall be proportionate and shall not exceed reasonable force'. These measures should comply with 'fundamental rights' and be implemented 'with due respect for dignity and physical integrity'.

> Where Member States use — as a last resort — coercive measures to carry out the removal of a third-country national who resists removal, they shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.

Removals by air should take into account the Common Guidelines on security provisions for joint removals by air annexed to Decision 2004/573/EC. This Decision lays down the rules for the organisation of return flights for third-country nationals who are the subject of removal orders. It concerns, in particular, the specific tasks of the authorities designated by the organising Member States as well as common tasks (European Council 2004a). The Common Guidelines deal with security provisions, the health of the persons to be deported, the code of conduct for escorts and the use of coercive measures. Security provisions for joint removals by air concern five phases: the pre-return phase, the pre-departure phase in departure or stopover airports, the in-flight procedure, the transit phase and the arrival phase (European Council 2004a: Annex). Finally, the Directive (2008a: Art. 8.6) puts an obligation on Member States who 'shall

provide for an effective forced-return monitoring system'. We provide more detail on this topic in the last section of this chapter.

The Directive states that removal *shall* be postponed if it violates the principle of non-refoulement, and for as long as suspensory effect is granted in accordance with Article 13(2). Removal may also be postponed for an appropriate period taking into account the specific circumstances of the individual case. Consideration needs to be given to (a) the third-country national's physical state or mental capacity, and (b) technical reasons, such as a lack of transport capacity, or the failure of the removal due to a lack of identification.

The third chapter of the Directive (Article 12) deals with the following procedural safeguards: the form communicating the decision, remedies made available to the third-country national, and safeguards pending return. There are details with regards to the communication of the decision in writing and the amount of information given, which can be limited in cases where the return decision is based on a threat to national security. It is also specified that generalised information sheets explaining the main elements of the standard form should be made available in different languages.

Article 13 describes the remedies that are afforded to third-country nationals to appeal against or seek a review of decisions related to return.

The following principles shall be taken into account as safeguards for third-country nationals pending return:

(a) family unity with family members present in their territory is maintained;
(b) emergency health care and essential treatment of illness are provided;
(c) minors are granted access to the basic education system subject to the length of their stay;
(d) special needs of vulnerable persons are taken into account (Art. 14).

The fourth chapter deals with detention for the purpose of removal. Article 15.1 sets out the scope for detention:

1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:
   (a) there is a risk of the returnee absconding or
   (b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

In addition, Article 15 adds that 'Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence'.

Detention must be ordered in writing by the administrative or judicial authorities, with reasons being given in fact and in law. In the case where detention is ordered by the administrative authorities, the Directive (Art. 15.2) puts the following obligations on Member States to either:

(a) provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention; or
(b) grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings. The third-country national concerned shall be released immediately if the detention is not lawful.

Article 15(3) states that detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or *ex officio* and, in the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial

authority. Detention ceases to be justified if a reasonable prospect of removal no longer exists and, in this case, the person concerned shall be released immediately (Art. 15.4). The third-country national shall not be detailed for more than 18 months (Arts 15.5 and 15.6).

The fifth chapter outlines provisions relating to the reporting of the Commission to the European Parliament and the Council on the implementation of this Directive and other proposals, and deadlines on the expected transpositions of this Directive into national laws. Indeed Member States were required to ensure that their domestic legislation complied with the Directive by 24 December 2010, except for legislation concerning Article 13(4) on legal assistance and representation, which had to be in place by 24 December 2011.

The Directive currently applies to all EU Member States except the United Kingdom, Ireland and Denmark. It also covers Iceland, Norway, Switzerland and Liechtenstein within the meaning of the agreements concluded between the European Union and these latter countries as regards their association with the Schengen *acquis*.

The European Return Directive: a critique from human rights advocates

The European Return Directive has faced serious human rights criticism from various migrant and human rights organisations, and experts in the field, who hold the 'perception that it took an unduly harsh approach on these issues' (Peers 2014). This chapter looks at some of the main issues of contention which impinge on the human rights of third-country nationals who are the subjects of this Directive. Unfortunately, it is beyond the scope of this chapter to delve into the details of the critique by NGOs and experts, or to legally analyse the Directive (for a longer analysis, see Baldaccini 2009; Olmos Giupponi 2009). It is, however, important to understand the general climate in which the Directive was drafted and negotiated, particularly because there had been ample dialogue on and awareness of both 'why' human rights considerations were important in this area of operation and 'how', in practice, they could be included in the Directive.

The Return Directive constituted the first major piece of legislation in the field of immigration and asylum to be decided under the co-decision procedure in which the European Parliament legislates on equal footing with the European Council. There was hope that the European Council's predominantly state-centred approach would be counter-balanced by the European Parliament. This is, indeed, what happened: the European Parliament managed to introduce some measures into the Directive (Peers 2008), but these were not enough to satisfy NGOs and experts, who had laid out the minimum criteria for the protection of the basic human rights of third-country nationals who were the subject of this Directive. Professor Liza Schuster, in her 2008 article, rather forcefully sums up the disappointment which characterised the critique:

> The Directive is shameful because it so clearly strips away some of the protections afforded migrants in some member states, encouraging them to adopt the worst practices across the Union. Why? Why couldn't the EU raise, rather than lower the standards and conditions of detention and deportation?

Professor Steve Peers, an expert on EU law, comments on *Statewatch* in April 2008, during the negotiations between the European Parliament and the Council that:

> The EP and the Council have to decide whether their endlessly-repeated support for the principles of fairness, human rights and human dignity is a genuine commitment, or simply empty rhetoric.

Leading non-governmental organisations, recognising that this Directive could throw a dark shadow over the whole migration and asylum field, had been not only monitoring the process but also vividly involved in the discussions. The European Council on Refugees and Exiles (ECRE)[8] adds that it was 'profoundly disappointed' that its recommendations and those put forward by other NGOs and the UNHCR were not taken into account either by the Council or the European Parliament (ECRE 2009). Amnesty International (2008) had also issued a press release:

> We believe that the text approved on Wednesday 18 June by the European Parliament does not guarantee the return of irregular migrants in safety and dignity. On the contrary, an excessive period of detention of up to one and a half years, as well as an EU-wide re-entry ban for those forcibly returned, risks lowering existing standards in the Member States and sets an extremely bad example to other regions in the world.
> …
> At the same time, the text lacks sufficient guarantees for unaccompanied minors and contains weak provisions with regard to judicial oversight of administrative detention. Finally, it allows specific derogations on detention conditions in those Member States confronted with so-called emergency situations.
> …
> The added value of this EU-directive is therefore hard to see. At the same time, it risks promoting prolonged detention practices in EU Member States and impacting negatively on access to the territory.
> …
> Amnesty International urges Member States currently applying higher standards not to use this directive as a pretext to lowering them.

The perception was that the message that this Directive sent out was harmful. By choosing to start the harmonisation of laws in the area of migration and asylum with the Return Directive, and by failing to mainstream long-acknowledged human rights principles, the EU both reinforced the exclusionary and radical philosophy popularly called 'Fortress Europe' and repudiated the human rights philosophy. This concern is articulated by ECRE, which urged 'Member States to abide by their commitment to refrain from using the Directive as a pretext to justify the adoption of harsher return measures' (ECRE 2009). The Return Directive was lambasted not for taking a state-centric approach, but because it failed to balance this state-centric approach with adequate protection of the human rights of the third-country nationals involved.

Finally, an indication of the magnitude of concern from a human rights perspective can be gleaned from the strong criticism that came from quarters that do not generally engage with the merits of EU legislation. In 2008, right after the text of the Directive had been agreed upon, a press release from the United Nations announced that ten independent experts from the UN Human Rights Council had voiced their concerns over shortcomings in the Directive's fundamental rights safeguards. In the letter, the human rights experts reminded EU governments that 'irregular immigrants are not criminals' and that, as a rule, they should not be subjected to detention at all. Member States are encouraged to look into alternatives to detention and detention must be for the shortest time possible. In addition, the experts encouraged Member States to strengthen the procedures for challenging the legality of detention by establishing time limits for judicial review, to allow appeals of decisions related to return, including re-entry bans. And that removal should be suspended in all these circumstances. Their final point was concern about the effect which the re-entry bans could potentially have on vulnerable groups (UN 2008). The following section will go through in more detail some of the main principles that have failed the 'human rights' mainstreaming test.

The European Return Directive: where it fails to protect the human rights of migrants

The Directive, in Paragraph 24 of its Preamble, stresses compliance with the principles laid out in the Charter of Fundamental Rights of the EU. Although this Charter includes many human rights standards which are accepted internationally, it is not, unfortunately, binding in EU law. As such it does not carry the force of law.

The Directive offers some guarantees by way of restraining some of the more repressive practices found across the EU. Indeed, it reiterates throughout certain well-known obligations of Member States, namely:

a) the prohibition on refoulement and collective deportations;
b) to take account of the 'best interest of the child', of 'family life' and the state of mental and physical health of the person to be returned.

Pertinent international human rights obligations that Member States have signed up to, as set out in ECRE (2009) are:

a) The principle of non-refoulement: Article 33 of the 1951 Refugee Convention. In addition, the jurisprudence of the European Court of Human Rights has expanded the scope of protection against deportation by interpreting Article 3 of the 1950 European Convention of Human Rights as prohibiting expulsion where there is a risk of torture or inhuman or degrading treatment, or of execution.
b) The right to liberty and security: Article 7 of the 1966 International Covenant on Civil and Political Rights, Article 3 of the 1984 Convention against Torture, Article 5 of the European Convention of Human Rights.
c) The prohibition of collective expulsions: Article 4 of Protocol No. 4 ECHR
d) The best interest of the child: Article 3 of the 1989 United Nation Convention on the Rights of the Child (UNCRC) provides that the best interest of the child should be a primary consideration in all actions concerning children.

Substantive safeguards against expulsion

Overall, the Directive is considered to be too weak with regards to substantive safeguards against expulsion and detention. One of the first points made by ECRE (2009) is that the Directive stipulates a period of return, ranging from seven to 30 days, a period which is far too short to be at all effective.

In the case of expulsion, many human rights under the European Convention on Human Rights are 'non-derogable'. These rights are so fundamental that Goodwin-Gill and Newland (2003) state that they may not be derogated, not even in exceptional circumstances and regardless of any situation of emergency. Olmos Giupponi (2009: 11), drawing on a United Nations (UN 2008) document on the rights of non-citizens and Goodwin-Gill and Newland's (2003) chapter, lists the following core, fundamental human rights which must, in any case, be respected:

- The right to life;
- The right to liberty and security of the person;
- The prohibition of torture, or other cruel, inhuman or degrading treatment or punishment;
- The prohibition of genocide;
- The prohibition of slavery;
- The prohibition of racial discrimination;
- The right not to be convicted or punished under retroactive laws;
- The right to private life and family;
- The freedom of conscience, thought and religion; and
- The right of access to a due process of law.

Detention, up to 18 months

The Directive permits the detention of migrants, for the purposes of return, for up to 18 months. There is a period between the adoption of the removal order and its enforcement when the third-country national may be detained if it is deemed that he or she may abscond or represents a threat to public order.

In international human rights law, in order for detention to be considered non-arbitrary there are a number of requirements which should be fulfilled. Amnesty International (2007: 3), in a detailed research guide on the issue of the detention of migrants, asylum-seekers and refugees, states that international human rights law:

a) contains a presumption against the detention of migrants;
b) places clear restraints on the usage of detention;
c) requires that where detention does take place, the conditions are humane;
d) expects adherence to the principles of non-discrimination and proportionality, and therefore respect for the human rights of detainees; and
e) expects there to be special attention given to standards relating to particular groups of concern, including children and other vulnerable groups.

The Directive has been criticised for not meeting these core human rights standards, since detention is allowed as both a judicial and an administrative measure. This judicial or administrative detention can be extended up to a period of 18 months. Olmos Giupponi (2009: 12) argues that the Directive thus opens up the possibility of the deprivation of freedom of migrants, even while their asylum applications and residence permits are under examination.

The re-entry ban – mandatory and potentially up to five years or more

According to the Directive, there is an obligation on Member States to impose a re-entry ban into European territory. These general re-entry bans can be as long as five years when applied following return decisions, and longer if the third-country national represents a threat to national security (ECRE 2009). Baldaccini (2009) aptly describes re-entry bans as 'very blunt instruments'. They are attractive from a public-policy point of view because they are seen as effective tools of deterrence against irregular stay; however, arguably the opposite can happen. Irregular migrant numbers are pushed up by migrants who go underground to extend their stay in the EU country for as long as they are able to remain undetected, and those who are deported will probably increase the number of illegal entrants.

Re-entry bans can lead to unacceptable situations, such as the prohibiting for those who have made a life in an EU country to return back to the host country and resolve their legal situation. Secondly, removal and a re-entry ban are akin to a double punishment for the same offence. Third, this kind of re-entry ban does not take into consideration what would happen should there be a change in the conditions in the country of origin, and the person needs to seek asylum. Although the Directive's provisions on re-entry bans are without prejudice to the right to international protection in EU Member States, re-entry bans will make it difficult for any person persecuted following removal to seek asylum.

Finally, Member States retain considerable discretion in the decision regarding whether to ban or not, and for how long. Third-country nationals tagged with a re-entry ban are listed as 'unwanted aliens'

on the Schengen Information System, the database that enables Member States to exchange information on persons who are to be refused entry. Baldaccini reports that, prior to the passing of this Directive, there were already inconsistencies and problems created by the divergence between national approaches to listing 'unwanted aliens' – the decision to enforce mandatory re-entry bans will simply compound this problem (Baldaccini 2009; Olmos Giupponi 2009).

Minors and vulnerable groups

The Directive opens up the possibility of detaining TCNs, including families, unaccompanied children and other vulnerable persons. Detention can be for up to 18 months, for reasons beyond the migrants' control (ECRE 2009).

The Aliens Act

The Aliens Act (*Utlänningslagen*) is the main law covering non-Swedish citizens' rights to enter, stay, work and/or seek asylum in the country. It also covers the circumstances under which a non-Swedish citizen can be refused entry (*avvisad*) or be expelled (*utvisad*), together with the most important procedural regulations governing the administration of migrants by the authorities and courts. The term 'alien' (*utlänning*) is not defined in the Act but refers to citizens of other states and to stateless persons. As only Swedish citizens, according to internationally recognised judicial principles, have the unconditional right to be in Sweden, the purpose of the Act is to protect aliens from arbitrary treatment. The Act also gives extensive rights to enter, stay and work in Sweden to large groups of aliens, most notably to citizens in the Nordic countries and in the EU and European Economic Area (EEA) states, and to refugees and other persons in need of protection who are seeking asylum (Wikrén and Sandesjö 2014).

Since 2006, several changes have been made in the law to enable the implementation of EU directives on freedom of movement for union citizens, on labour migration from EU members and third countries, and on asylum-seekers. Directives regarding asylum-seekers are numerous and regulate minimum standards for the qualification and status of persons either as refugees or as in need of

subsidiary protection (*alternativt skyddsbehövande*), the content of the protection granted, the procedures for granting and withdrawing protection, the right for families to reunite, and the procedures for returning illegally resident third-country nationals. In addition to these directives, the Dublin Regulation prescribing that the country where an asylum-seeker's first application is made must examine the application is legally binding and directed to in the Aliens Act. Sweden is, in addition to the standards of the EU directives, granting residence permits to a broader group of foreigners otherwise in need of protection (övriga skyddsbehövande), and also allowing foreigners to stay in Sweden on the grounds of exceptionally distressing circumstances (*synnerligen ömmande omständigheter*) (Wikrén and Sandesjö 2014).

Documents and permits

Early in the Aliens Act it is made clear that 'An alien entering or staying in Sweden must have a passport' (Chapter 2, Section 1) and 'a visa unless he or she has a residence permit or has long-term resident status', where a visa is a permit to enter and stay in Sweden when the length of stay is a minimum of three months and not longer than one year (Ch. 3). A residence permit is a permit to enter and stay in Sweden either for an unlimited length of time (permanent residence permit) or a pre-determined amount of time – a temporary residence permit (Ch. 2.4). Furthermore, with the exception of those who have permanent residence permits (Ch. 6.1), foreigners wishing to work in Sweden are required to have a work permit (Ch. 2.7). This section describes each of these types of document according to the Aliens Act, including the larger exemptions from these requirements. Additionally, the provisions on detention, refusal of entry, and expulsions are also described.

Visas and residence permits

Residence permits should normally be applied for and granted before entering Sweden; however, this rule does not apply to foreigners seeking protection (Ch. 5.18). When requested by a police officer, foreigners staying in Sweden have to present passports or documents showing their right to remain in Sweden. Aliens must also visit and provide information about their stay in Sweden when summoned by

the Migration Agency or the Police Authority. The Police Authority may round up foreigners who have not responded to the summons, and those who would not obey if a summons were sent. These kinds of control may be carried out 'if there is good reason to assume that the alien lacks the right to remain in this country or there is otherwise special cause for controls' (Ch. 9.9).

Within the Aliens Act, the term 'asylum' is defined as 'a residence permit granted to an alien because he or she is a refugee' (Ch.1.3). Refugees and persons otherwise in need of protection who are in Sweden are entitled to a residence permit which should be permanent or lasting for at least three years, unless concerns for public order and security or national security justify that the residence permit last for a shorter period or not be granted (Ch. 5.1).

Residence permits may be granted on the grounds of ties to Sweden. This makes it possible for members of a nuclear family to reunite with family members who are residing in Sweden or have been granted a residence permit (Ch. 5.3, 3a). If the relationship is exclusively for the purpose of obtaining a residence permit and, in certain cases, if the applicant cannot be supported by the relative in Sweden (Ch. 5.3b, 3c, 3d, 17, 17a, 17b), these may be grounds for not granting a residence permit. If it cannot be clarified in other ways, and if the persons to be tested are informed of the purpose of the analysis and have given written consent (Ch. 13.15), then DNA analysis may be carried out during an investigation in cases concerning residence permits on the basis of family ties in order to clarify whether or not such a biological relationship exists.

Foreigners, in particular children, may be allowed stay in Sweden, even if a residence permit cannot be granted on other grounds, if there are exceptionally distressing circumstances related to serious health issue, adaptation in Sweden or the situation abroad (Ch. 5.6).

Temporary residence permits can be granted in a wide range of situations in addition to those mentioned above. Examples may be when the foreigner's expected way of life makes it doubtful that he or she would be granted a residence permit (Ch. 5.7), when the foreigner

wishes to work, study, visit or do business (Ch. 5.10), when there are temporary hindrances to the enforcement of a refusal-of-entry or expulsion order (Ch. 5.11), when a paternity investigation is needed (Ch. 5.13), or when the 'alien' is involved in a criminal investigation or court proceedings (Ch. 5.15).

Work permits

If the employment lasts for more than three months, a residence permit is also required (Ch. 5.10). A work permit may be granted to an foreigner who has been offered employment if the employment allows the foreigner to support him- or herself and if the salary and other terms of employment are 'no worse than the terms that follow from Swedish collective agreements or practice within the profession or sector' (Ch. 6.2). If a foreigner works without a work permit, his or her temporary residence permit may be cancelled (Ch. 7.3).

Exemptions from documents and permits

The Aliens Act makes several notable exceptions to the requirements for entering, staying and working in Sweden. Nationals of the Nordic countries are not affected by the requirements of passport, visa, residence permit and work permit.[9] Nationals of non-Nordic EU Member States and EEA countries do not need a passport for entry but only when staying, and have a 'right of residence' which exempts them from the demands of having a visa, residence permit or work permit (Ch. 2.8, 8a, 8b, 8c; Ch. 3a.1, 3). The EU Blue Card is an alternative to work and residence permits which can be granted to third-country nationals who have been offered a high-skilled, high-salary employment for at least one year (Ch. 6a.1).

Another major group who are exempt from the normal procedures for entering and staying in Sweden are 'aliens' seeking protection there. These persons are divided in three categories:

1. refugees with well-founded reasons to fear persecution due to race, nationality, religious or political beliefs, gender, sexual orientation, or affiliation to a particular social group, and who cannot obtain or do not, because of fear, want protection from, their own state (Ch. 4.1);

2. persons in need of subsidiary protection who are at risk of a death sentence, corporal punishment, torture or other inhumane or degrading treatment or punishment, or as a civilian at serious risk of injury due to armed conflict (Ch. 4.2); and
3. persons otherwise in need of protection who cannot return to their country of origin because of armed conflict, other severe opposition, or environmental disaster (Ch. 4.2a).

Detention

The Migration Agency, the Police Authority, a court handling a case, or, in some cases, the government may decide that a foreigner should be supervised or detained (Ch. 10.12, 13, 14) (and, in some cases, the government Ch. 10.15). Supervision (*uppsikt*) means that a foreigner has to report to the Police Authority or Migration Agency at certain times. The foreigner may also have to surrender his or her identity documents (Ch. 10.8).

The rules for detainment (*förvar*) differ for children and adults. An adult may be detained on arrival if his or her identity is unclear and it is still impossible to assess the person's right to enter or stay in Sweden, or if it is probable or ordered that the foreigner will be refused entry or expelled and there are reasons to assume that the foreigner may otherwise go into hiding or turn to crime (Ch. 10.1). Children may be detained if it is probable or ordered that they will be refused entry with immediate effect and there is an obvious risk that they may go into hiding and therefore supervision would not be sufficient. Another example is that the supervision of the child(ren) was not sufficient to warrant the enforcement an expulsion order (Ch. 10.2). Children may not be separated from their custodians and, if they have no custodians in Sweden, they may only be detained on exceptional grounds (Ch. 10.3).

The length of detainment is limited. Unidentified adults may be detained for 48 hours on arrival in Sweden in order for their rights to enter or stay in the country to be assessed. In other cases, the normal maximum time is two weeks, unless a refusal-of-entry or expulsion order has been issued, which normally means a maximum time of two months (Ch. 10.4). Children may not be detained longer than

72 hours though, if there are exceptional grounds, this detention may be prolonged by another 72 hours (Ch. 10.5). The Aliens Act also specifies intervals at which detainment should be re-examined (Ch. 10.9). A detention or supervision order that is not re-examined within the prescribed period expires (Ch. 10.10).

When in detention, the foreigner has limited freedom of movement, but should be treated humanely and with respect (Ch. 11.1). Medical treatment should be given if necessary, just as it would be to other persons seeking asylum or protection. The detainee should be given the opportunity for activities, recreation, physical training and time outdoors. Visits are allowed unless they hamper activities related to the detention, and they may be monitored if security reasons demand it, unless the visitor is a lawyer – and the lawyer does not demand supervision (Ch. 10.1, 3, 4, 5, 6). Adults can be isolated from other detainees if it is necessary for order and security, or if he or she is a danger to himself, herself or others (Ch. 10.7). The Migration Agency is the authority responsible for enforcing detention orders (Ch. 1.18), arranging suitable premises for detention, and overseeing the treatment and supervision of the detainees (Ch. 10.2).

Refusal of entry and expulsion

It is the Migration Agency's task to examine, *inter alia*, the issue of the refusal of entry for asylum-seekers and their family members. In other cases, the Police Authority may also refuse entry, unless they are in doubt as to how to proceed (Ch. 8.17). A foreigner must be given an opportunity to speak and justify his or her need/desire to enter Sweden before a refusal-of-entry, expulsion, detention or supervision order is issued, unless it is unnecessary when deciding the asylum case. At the hearing, any circumstances that need to be clarified should be investigated carefully and the foreigner should have the opportunity to express his or her point of view and opinion on the circumstances invoked in the case (Ch. 13.1, 2, 3, 4).

Foreigners may be refused entry to Sweden for reasons such as giving false information, lacking a valid passport or permits, lacking the funds to support him- or herself, or being convicted of a crime. If it is obvious that there are no grounds for asylum or a residence permit,

refusal of entry may be enforced immediately by the SMA (Ch. 8.19). Foreigners lacking passports, visas or permits may be expelled from Sweden, even if they were not initially refused entry (Ch. 8.6). Refusal of entry or expulsion orders should be issued immediately upon rejection or withdrawal of applications for residence permits (Ch. 8.16, 17).

Expulsion may also be a consequence of criminal offences punishable by imprisonment, if the foreigner is assumed to continue committing crimes or if the committed crime was very serious (Ch. 8a.1). When considering expulsion, the court must take into account the foreigner's ties to society and to his or her family. Refugees may only be expelled after committing exceptionally gross offences and if they represent a serious danger to public order and security (Ch. 8a.2). Sentenced criminals and the prosecutor (åklagare) must also declare acceptance, and expulsion and refusal of entry should not be enforced when a prosecution process is going on. The orders are enforced after serving the prison sentence, unless the sentence is to be served in a prison abroad (Ch. 12.8, 9).

Foreigners refused entry or expelled with immediate effect must leave the country as soon as possible; when enforcement is not immediate, the time-frame varies between two and four weeks. If the foreigner does not voluntarily leave the country, the Migration Agency or the Police Authority should enforce the decision (Ch. 12.14, 15) The Migration Agency may turn over responsibility for enforcement to the police if the foreigner has gone into hiding and cannot be found without assistance or if there is likely to be the need for force to be used (Ch. 12.14). A refusal of entry is often enforceable even if an appeal has been filed against it but, if the foreigner is seeking asylum or is the relative of an asylum-seeker, the foreigner must declare that he or she accepts the refusal-of-entry order if that order has not become final and non-appealable (Ch. 12.6, 7).

Enforcement may be suspended – known as a stay of enforcement (inhibition) – in several situations of appeal and re-examination (Ch. 12.10, 11, 12, 13, 13a, 16) and when new circumstances and impediments such as those listed in the previous paragraph above,

come to light (Ch. 12.18, 19, 20). Enforcement of a refusal of entry or expulsion order is never allowed if it is to a country where there is 'fair reason to assume' that the foreigner may suffer from, or become sent to, another country practicing the death penalty, corporal punishment, torture or other inhuman treatment. Foreigners are also not allowed to be sent to countries where they may be persecuted unless, by committing exceptionally severe crimes, they have shown that they are seriously endangering public order and security or national security, and the persecution is not of a particularly severe nature (Ch. 12.1, 2). Persons seeking protection from armed conflict and environmental disasters should not be sent back to their countries of origin (Ch. 12.3) and children may only be expelled if they are received in the country of return by family members, a guardian or an institution well capable of taking care of children (Ch. 12.3a). The Aliens Act also stresses that, in cases involving a child – defined as a person under 18 years of age (Ch. 1.2) – 'particular attention must be given to what is required with regard to the child's health and development and the best interests of the child in general' (Ch. 1.10). It is also stipulated that, when assessing questions of permits and where a child will be affected by a decision, 'the child must be heard, unless this is inappropriate. Account must be taken of what the child has said to the extent warranted by the age and maturity of the child' (Ch.1.11).

Decisions made by an authority administrating migration may normally be appealed against. In general, the decisions of the Police Authority are appealed against via the Migration Agency, decisions of the Migration Agency in one of the migration courts, and those of a migration court in the Migration Court of Appeal (Ch. 14.2, 3; Ch. 16.9). The Aliens Act contains extensive information on the grounds for appealing the different decisions made by the various authorities, and on the procedures of the courts (Chs 14, 15, 16, 17, 18). By signing a declaration of acceptance (*nöjdförklaring*), a foreigner agrees to forego his or her entitlement to appeal against a refusal-of-entry or expulsion order, and withdraws any current appeals and/or applications for various permits and travel documents. However, it is not possible to withdraw the declaration of acceptance itself (Ch. 15.1, 2, 3).

Visas, residence permits and work permits may, with exceptions, be withdrawn if the foreigner knowingly lied or concealed facts in order to obtain a permit, works without a work permit, is a convicted criminal, no longer resides in Sweden, or is refused entry or expelled by another EU/EEA state (Ch. 7.1, 2, 3, 4, 5, 6, 7). Towards the end of the Aliens Act there is a list of penalty provisions for offences against the Act. A foreigner can be fined for remaining or working in Sweden, or entering from a country outside the Schengen Convention, without the appropriate permit. Foreigners may be imprisoned for up to a year if they return after being expelled following the serving of a prison sentence and are not refugees or in need of subsidiary protection. Persons employing foreigners without work permits may be sentenced to a fine or a year in prison, and must also pay a charge to the state (Ch. 20.1, 2, 3, 4, 5, 12). The Aliens Act also criminalises the planning, organising and carrying out of various forms of human smuggling and related activities (Ch. 20.7, 8, 9).

Human rights critique of the Aliens Act

The principle of non-refoulement is a prohibition against sending persons to countries where they may suffer from, or become sent to another country practicing, the death penalty, corporal punishment, torture or other inhuman or degrading treatment (Wikrén and Sandesjö 2014: 31–2). According to the United Nations' Committee against Torture, Sweden violates the principle of nonrefoulement, and the Committee urges Sweden to pay greater attention to the risks faced due to ethnicity and religion in the destination country before enforcing deportation, to improve the identification and investigation of torture victims and even, in exceptional cases, to refrain 'from the use of diplomatic assurances as a means of returning a person to another country where the person would face a risk of torture' (UNCAT 2014: 4). In a joint submission to the United Nations, 32 NGOs and the United Nations Association of Sweden also put forth a critique against the use of diplomatic assurances, along with a recommendation to Sweden to 'avoid the use of general country information to fully guarantee respect for the principle of *non-refoulement*' (Svenska FN-förbundet 2014: 10).

The Swedish Network of Refugee Support Groups or FARR (*Flyktinggruppernas Riksråd*), an umbrella organisation for groups and individuals working to strengthen the right to asylum, considers Swedish asylum policy to be contradictory. On the one hand, they see Sweden as one of the most generous and humane of developed countries in their dealings with asylum-seekers yet, on the other, they find it remarkable that the country is one of those which most frequently expels migrants and which has been criticised the most often (20 cases) by the UNCAT for deciding to expel someone despite knowing that there is the risk of torture in the destination country (FARR 2014).

FARR points out that the sections in the Aliens Act on the stay of enforcement of expulsion have several problematic features. A stay of enforcement is the result of a decision, according to Chapter 12, section 18 of the Directive, by the Migration Agency when it becomes aware of hindrances to the expulsion. After this, the Migration Agency also undertakes a new investigation into the foreigner's application for a residence permit but, according to Chapter 12, section 19, the Migration Agency may only take into consideration any new circumstances and evidence if the foreigner has a 'valid excuse' as to why he or she has not presented these facts during earlier investigations. A consequence of this is that the foreigner must be able to prove that, for example, traumatic experiences made it impossible to talk about these facts earlier. Furthermore, additional evidence for circumstances examined in an earlier investigation is usually not accepted, even if that additional evidence could have been decisive in that earlier investigation. If the new circumstance or evidence indicates a risk that the foreigner may be exposed to torture, the death penalty, or inhumane or degrading treatment, the Migration Agency or the Migration Court has to consider it, although in reality this does not always happen. For these reasons FARR (2014) sees these sections as a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In their 2014 concluding observations on the sixth and seventh periodic reports of Sweden, the UN Committee against Torture expressed their concern that the maximum time in detention may

be up to a year, that detention may last longer than necessary, that it is used even if it is not a last resort measure and that it is much more common than supervision. They are also critical of the fact that asylum-seekers may be detained in prison for security or other exceptional reasons.

The Swedish Red Cross (2014) expressed the same critique in its complement to the Swedish periodic reports that the organisation sent to the Committee against Torture. In 2012, the Red Cross presented a study of 953 decisions and rulings regarding detention, supervision and placements by the Migration Agency, Police Authorities and courts. They found that:

- there was a lack of implementation of the principle of proportionality in decisions and assessments;
- the alternative to detention – supervision – was not used to the extent intended by the legislator and that, in an absolute majority of the cases, there was no assessment or discussion of whether supervision or detention should be used;
- there was rarely an overall assessment in decisions regarding detention pending the enforcement of deportation, which meant that there was often an unnecessary use of detention in cases when other circumstances counterbalanced any expressed reluctance to leave Sweden; and
- the concept of segregation of violent or self-harming detainees was not implemented in practice as intended, with consequences such that self-harming behaviour became a justification for placement in correctional institutions or remand centres, or for police arrests, since the Migration Agency's detention units were unable to deal with persons who were a danger to others or to themselves (Swedish Red Cross 2012).

FARR's positions on detention include a critique against the fact that suicidal detainees are placed in custody and that detainees sometimes lack access to adequate medical treatment; while FARR welcomed the fact that detention facilities are altered to reduce the need for custodial sentences, they also point out that new places are not enough, and that the treatment of the detainees also matters.

FARR (2014) also objects to the fact that supervision is underused, that decisions to prolong detention are sometimes taken without assessment when an effort to carry out an expulsion has failed, and that detainees have their freedom curtailed even if they are neither suspected of or sentenced for committing a crime, nor are a danger to others' or their own health.

In 2013 there was a very intense debate on the Migration Agency's, the Police Authorities' and the Prison and Probation Service's REVA project (*Rättssäkerhet och Effektivt Verkställighetsarbete* or Legal Certainty and Effective Enforcement) which aimed to increase the expulsions of immigrants without permits, and was intended to fulfil Sweden's obligations under the Schengen Convention. The main activities were designed to make the administration within the authorities more effective, although this also included more identity controls of persons in public spaces (*Radio Sweden* 2015). FARR (2014) criticises the police for having unjustifiable reasons – such as appearance – for approaching a person in order to check their identity, and for using other types of control (for example traffic controls) as a pretext for identity checks instead of, as the Aliens Act allows, controlling a person's identity when the main purpose of approaching that person is to control something else. FARR (2014) also believes that the Police Authority should formalise and adjust its policies on where they carry out controls, since police checks near (not just inside) societal institutions may cause foreigners to refrain from seeking help and other services from those institutions. FARR (2014) goes on to critique the fact that, when it is impossible to enforce an expulsion for practical reasons – because the foreigner is unable to leave Sweden voluntarily or that the destination country refuses to allow the person to enter but does not formally state this refusal-of-entry to the foreigner or to the Swedish Police Authority trying to enforce the expulsion – the foreigner may potentially find him- or herself confined in Migration Agency accommodation without any possibility of obtaining a residence permit or a permit to work or study (except children, who may attend school).

The ways in which the principle of the best interests of the child is present in the Migration Agency's procedures and daily work has been scrutinised in a number of scientific reports. In Anna Lundberg's

(2009) report on the asylum process (her topic differs from that of this chapter, but her argument can be equally applied to the return process) she describes it as an open concept which allows Migration Agency officials to decide on the best actions to take to protect the best interests of the child, and what those interests may be. According to her, it is only under the most favourable of circumstances that children's needs are met according to the human rights that the international community has proclaimed, since Article 3 in the UN Convention on the Rights of the Child is formulated in such a way that the best interests of the child is something that public authorities have to consider, but are not obliged to guarantee. A similar argument is put forth by Hans E. Andersson (2010) in a scrutiny of the tension between the Convention on the Rights of the Child and a regulated immigration. The Aliens Act insists that the best interests of the child be at the same time a primary consideration and weighted against other interests of society, such as the regulation of immigration.

As Andersson (2010) again states, the principle of the best interests of the child is most prominently present in the Aliens Act in Chapter 1, section 10, which establishes that 'in cases involving a child, particular attention must be given to what is required with regard to the child's health and development and the best interests of the child in general'. In light of this, children diagnosed with apathy (*uppgivenhetssyndrom*) after receiving an order of expulsion from Sweden have caused considerable concern among organisations and professionals overseeing the 'best interests of the child' principle.

The Ombudsman for Children in Sweden (*Barnombudsmannen* 2005) position is that asylum-seeking children's right to health as established in the Convention on the Rights of the Child means that children with severe withdrawal behaviour should never be deported. These children are referred to as children with apathetic behaviour. Elizabeth Hultcranz and Anne-Liis von Knorring, both physicians and professors, reminded us in 2012 and 2014 that these children still exist even if their numbers peaked as far back as 2004; when a family with a child with apathetic behaviour was expelled in 2014 they stressed the importance of doctors who provide the requisite certificates making it clear that the condition is life-threatening, that

it can only be cured by creating a safe situation for the child, and that nasogastric feeding tubes are only life-supporting and not a cure, thus obliging the Migration Agency to grant a stay execution of the expulsion until further investigation has been carried out. In a discussion about the health of asylum-seekers, in which apathetic children are included, FARR (2014) criticises the fact that the Migration Agency does not take into account that treatment, even if it does exist in the destination country, may not be available to the returnee due, for example, to poverty or discrimination.

Concluding comments

This chapter has provided an overview of the various policy initiatives within the EU, the European Return Directive and ancillary legislation, as well as human rights critiques from different institutions. From this brief overview, it is relatively easy to ascertain the main policy direction taken by the EU.

EU policy and legislation are geared towards the expulsion of irregular migrants. The rationale is that persons without a lawful permit to stay should be removed to their country of origin. This is not surprising: it is an accepted activity in liberal-democratic theory and in line with international law. Human rights considerations are not a guiding force. They are simply acknowledged by the Directive without any elaboration. Some EU institutions, such as the FRA and, even more recently, FRONTEX, are embarking on efforts to streamline human rights principles in the field of migration management and border control. The outcome of these efforts still needs to be assessed. Clearly, however, a decision to include more substantive articles on the protection of the human rights of returned migrants in the Return Directive would have been a stronger safeguard.

Sweden, as from 2012, transposed the European Return Directive into its national legislation, primarily through amendments to the Aliens Act. Sweden has been criticised by the EU primarily for failing to implement the provisions requiring an independent monitor on return flights organised by Member States for their own deported persons or coordinated joint flights for other Member States, too. International human rights monitoring bodies and internal observers

have reported on shortcomings in the system, some of which can result in human rights violations. The main lament remains that the transposition of the European Return Directive to Swedish law meant that, from a human rights perspective, there was no substantial improvement of the law and some rights were limited.

3. KEY INSTITUTIONS

Introduction

In this chapter, the key institutions involved in the forced-return process in Sweden are presented and their role in the process is explained. Since the European Return Directive was transposed into Swedish law in 2012, new institutions have been added to those already existing in the Swedish context. What the role of these new institutions is in the process will also be explained in this chapter.

Institutions and systems pertinent to the implementation of the European Return Directive

The following ancillary regulations and entities make it possible to implement the European Directive in the different Member States. These regulations, since the transposition of the Directive to Swedish law, make them also applicable, directly or indirectly, to Swedish law.

Visa Information System

The Commission's analysis of the implementation of the Returns Directive comments that the Visa Information System (VIS) Regulation (EC) No 767/2008 is expected to become a significant tool for the identification and documentation of returnees.[10] One of the objectives laid out in Article 2(e) in the VIS Regulation is 'to assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States'. Articles 19(1) and 20(1) allow access by migration authorities to certain VIS data for verification and identification purposes. Article 31(2)7 allows these data to be transferred to or shared with a non-EU country, to prove the identity of third-country nationals for the purpose of return (EC 2014a: 3).

Schengen Information System

The European aspect of Return Directive re-entry bans is facilitated by the Schengen Information System (SIS). According to the European Commission's communication to the Council and Parliament, 'Schengen-wide re-entry bans are primarily preventive' (EC 2014a: 4). During the period 2008–13, an average of approximately 700,000 Schengen-wide re-entry bans were stored in the system.

The SIS will not solve the problems of identification and re-documentation for irregular migrants who have come into the European Union without a visa, or who have simply entered without documents and claim a false or real identity that cannot be verified. The Commission states that, for such cases –which take up new and significant migration-authority time and are a major challenge to return management – 'new, innovative solutions' must be found 'based on increased cooperation with non-EU countries and in full respect of fundamental rights' (EC 2014a: 4).

FRONTEX Joint Return Operations

Apart from helping border authorities from the different EU countries to work together, FRONTEX also, upon request, organises Joint Return Operations. FRONTEX plans, coordinates and implements joint operations conducted using Member States' staff and equipment at the external borders (sea, land and air). Third-country nationals from several Member States are brought to a destination airport in a third country and embark on the same FRONTEX-coordinated flight. The role of FRONTEX is that of an intermediary which coordinates with the various national authorities wanting to participate in a joint return flight. FRONTEX does not have any background information about the individual cases of the returnees. The only personal data that FRONTEX processes are those required for the purpose of a joint return operation and which are deleted no later than 10 days after the end of the operation (FRONTEX 2015).

FRONTEX Fundamental Rights Officer

In 2012, the position of independent FRONTEX Fundamental Rights Officer was created and the first officer was appointed on 17 December of that year. The officer's role is to monitor, assess and make

recommendations on the protection and guarantees of fundamental rights in all FRONTEX activities and operations, including those related to Joint Return Operations. The Fundamental Rights Officer should have access to all information on issues that impact on fundamental rights for all FRONTEX activities (FRONTEX 2014).

The FRONTEX Code of Conduct for Joint Return Operations

In addition, a FRONTEX Code of Conduct for Joint Return Operations was adopted on 7 October 2013 (FRONTEX 2013), which deals with effective forced-return monitoring procedures and the respect of returnees' fundamental rights and dignity during return operations. The forced-return monitor is tasked with duties under Article 8(6) of the Directive and is an independent outside observer who frequently represents an NGO or another independent monitoring body entrusted by a Member State with forced-return monitoring tasks. A full chapter, Chapter IV, of the Code of Conduct is dedicated to human rights monitoring (FRONTEX 2013: 14–15). This function is carried out on most flights by observers from international organisations, NGOs or national authorities. The code specifies that the monitors must have access to all relevant information, including the travel documents of returnees and information about any special conditions, including pregnancy or illness. The code also clearly specifies that medical personnel are required on every flight and that, if the escorting officers are not able to communicate with the returnees, there should be interpreters on board. It stresses that the use of force should be avoided or limited to the minimum and emphasises the importance of cooperation with returnees. All participants in FRONTEX joint operations are also obliged to report any incidents which they believe violate the Code of Conduct during a return flight. The code foresees that the monitor will be given all the necessary information in advance of the operation and will be involved in the return process from the pre-return phase (internal briefings) until the post-return phase (the debriefing). As well as access to all information, the monitor will also have physical access to any place. The observations/reports of the monitor will be included in the reporting on the Joint Return Operations. Even though this is not expressly required under current legislation, the Commission states in its Communication (EC 2014a: 3) that, given the visibility and sensitivity of such operations, an independent monitor should be

present in each Joint Return Operation. The Commission adds that the revision of the Code of Conduct will be considered as a matter of priority.

A common European forced-return monitoring system: the way forward?

The Commission, in its Communication on the Return Directive, reports that there are plans to establish a common European forced-return monitoring system in line with Article 8(6) of the Return Directive. It has commissioned the International Centre for Migration Policy Development (ICMPD) to research possible ways of harmonising the different approaches to monitoring taken by Member States. The project seeks to develop objective, transparent criteria and common rules for monitoring, and to provide a pool of independent monitors to Member States who may also be used in Joint Return Operations. The project will also address the challenges and needs of European states by developing an objective and comprehensive monitoring system focusing on the strict observation of the human rights standards of returnees and the safety of the staff implementing such returns (ICMPD nd).

Institutions involved in the deportation process in Sweden

Apart from the European institutions mentioned above, a number of Swedish authorities and actors are, in different ways, involved in the forced-return process, the most important of which are the Swedish Migration Agency, the Police Authority and the National Transport Unit – a branch of the Swedish Prison and Probation Service.

A process of cooperation between different authorities

In the following section, the different actors in the deportation process and their various responsibilities are presented. It is important to note that, in the Swedish deportation process to other countries, there are many different actors and authorities involved, functioning both on a national level – such as the Swedish Migration Agency and the Police Authority – and on an international level – such as FRONTEX. The process is also reliant on cooperation between the Swedish authorities and the different authorities in the receiving countries – such as the local border-police units. Although the Swedish Migration Agency

has overall responsibility for the process, it is important to note that enforcement of different parts of the process can lie in the hands of either the Police Authority or the National Transport Unit. The process is hard to describe, since it may vary greatly from case to case. It can be a very short or a very long process and the use of force varies, to a great extent, from case to case. The cases also differ depending on which authorities – who have different discretionary powers – are involved.

It is also important to note that, in contrast to Australia, the United States and many Western European countries, the different parts of the migration control structure (such as detention facilities or transportation services) have not been outsourced to private companies (Menz 2013: 108–24). However, note that the main authorities in the deportation process, i.e. the Swedish Migration Agency and the Police Authority, have undergone a number of organisational changes in recent years. In order to make these bureaucracies more efficient and to increase the legal certainty, programmes were introduced to implement the Lean Production concept[11] in 2010 (National Police Board 2013: 73; Swedish Migration Agency 2010: 9). However, according to police guidelines, the deportation should be enforced in the following way:

> Enforcement of a decision on deportation shall be carried out in a humane and dignified way. The foreigner's basic rights shall be catered for and particular concerns should be taken into account regarding the age, sex and physical as well as psychical health conditions and also other circumstances that may affect the foreigner (National Police Board 2014: 2).

The Swedish Migration Agency

The Swedish Migration Agency or SMA is part of the deportation process in a variety of ways, even if return cases where force is deemed to be necessary are handed over to the police. At the return unit (*Återvändandeenhet*) the migrant is given the decision that he or she has no legal right to stay in Sweden through what is called 'the return dialogue' or återvändandesamtal. Here, the civil servant discusses the return with the migrant, who is then asked to sign a

copy of the return decision and sometimes a declaration of acceptance (*nöjdförklaring*) whereby he or she states that the return decision is accepted. When this is done, the migrant no longer has the right to make another appeal to get the decision reversed (Swedish Migration Agency 2015b).

The agency is also responsible for running detention centres in Sweden, an activity regulated in Chapters 10 and 11 of the Aliens Act (Wikrén and Sandesjö 2014: 540–82). Currently, there are detention units in five different places throughout Sweden – in Åstorp, Kållered, Flen, Märsta and Gävle. Both voluntary and forced returnees can be detained on different grounds, a decision which can be taken by the Migration Agency, the Police Authority or the courts, depending on where the case is being processed (Swedish Migration Agency 2015c). The use of pre-removal detention centres is regulated by the Aliens Act (Ch. 10.1–3) as well as by the European Return Directive. The Migration Agency also has a special unit – the Embassy Coordination Unit – which has the responsibility of cooperating with the different embassies in order to obtain passports and other travel documents.

The different services that the migrants in the return process can access, even when the case is in the hands of the police, are also the responsibility of the SMA – which is in charge, too, of the running and subcontracting of accommodation for migrants in the asylum process, including returnees who do not want or do not have the possibility of staying with family or friends. Yet another of its responsibilities is the issuing of the LMA (*Lagen om mottagning av asylsökande*) card – a certificate stating that the bearer is an asylum-seeker who has the right to stay in Sweden while waiting for a decision. The card has to be returned either when the migrant leaves Sweden or when he or she has been granted a residence permit (Swedish Migration Agency 2015d).

The SMA is also the authority responsible for the administration of allowances to which asylum-seekers are entitled if they are not in possession of their own economic resources. This is a general daily allowance (*dagersättning*) which is supposed to cover the basic necessities and differs depending on whether or not the migrant lives in an asylum or transit centre where food is supplied. There is also

an allowance that can be granted if the migrant has specific needs that cannot be covered by the general allowance, but this is only granted in very special circumstances (Swedish Migration Agency 2015e). However, the likelihood of being granted an allowance will be reduced if the migrant does not cooperate in clarifying his or her identity, absconds or will not assist the authorities with the various elements of the deportation process (Swedish Parliament 1994). As the actual amount of money received from this allowance has not changed since 1994, it is, in practice, currently far below subsistence level.

The Police Authority

When a migrant absconds or the SMA makes the judgment that it is no longer possible to apply the return decision without using force, the case is handed over to the local Police Authority. After this decision is made, the SMA has (if possible) to notify the migrant that the case has been handed over to the Police and why. The case is then handled by the Border Police units within every local police district. If the agency decides that the person has absconded, the first step for the police is to officially declare the person as missing. If the case has been passed to the police because the agency decides that force is likely to be needed, the police are called and they will take over the case. The police also handle cases where migrants are deported due to criminal activities. The Migration Agency is never involved in this process (Swedish Police Authority 2014: 55–6).

As mentioned earlier, the different Border Police units in Sweden have been working towards implementation of the concept of 'lean production' in their organisations in order to make the deportation process more efficient. This means that incoming cases are labelled as Categories 1, 2 or 3 depending on how complex the cases are perceived to be. Category 1 cases are those where the deportation can happen fairly quickly and not much work is needed. In this category we also find Dublin cases. At the opposite end are Category 3 cases – judged to be complex and needing considerable work, and where the receiving countries are 'very difficult or impossible'. The deportation of foreign ex-offenders and the so-called 8:6 cases (persons without the right to claim asylum) are prioritised within each category, as are detainees (Swedish Police Authority 2014: 35–8).

According to a report from the National Police Board (2013: 17) on the processing of forced returns, there are problems with the way in which cases are handed over by the SMA to the Police Authority. Indeed, the report concludes that, when cases are handed over, there is generally little dialogue between the agency and the police (National Police Board 2013: 26). Communication at this juncture in the system is of critical importance, and a lack of it can affect cases in which there are special circumstances that need to be taken into account – such as when there are children with disabilities in the family or individuals with mental problems. There are also legal issues regarding the determination of identity of migrants in the deportation process. According to the Police Board, there has been a tendency to hand over these cases too early in the process and the quality of the investigation is also judged to be too low (National Police Board 2013: 17).

Once the police take over a case, they conduct further investigations before making their decision on how to handle the situation (National Police Board 2014: 4–9). The police can decide to detain a migrant if certain criteria in the Aliens Act are fulfilled. One example of this is when there are strong reasons to believe that the migrant will abscond or will take part in criminal activity. The migrant may also be detained if he or she lacks a passport or other identity papers. Migrants who are detained have the right to a legal representative, according to Chapter 18 of the Aliens Act.[12] The aim of the law is that detention should not be used other than under very special circumstances, particularly as the police also have the alternative of keeping the migrant under supervision – i.e., the migrant has to report to the police according to a certain schedule. Keeping a person under surveillance is basically no less problematic than actually detaining them; however, this measure is supposed to be used, whenever possible, instead of detention, when dealing with migrants who are considered to be at risk of absconding or of obstructing the deportation. A report from the Swedish Red Cross (2012: 6–7), where different cases were studied, concluded that, when it comes the use of detention, the decision to impose its use, were not always made by the SMA, the police and the different migration courts (which are all entitled to make the decision to detain someone) for the right reasons. Furthermore, in the process of estimating the possible reactions of a

migrant – such as the risk of absconding or obstructing an imminent deportation – verbal expressions of non-cooperation are often given a lot of weight, which can result in the lack of an unbiased judgment of the situation. The report also concluded that, in the majority of cases, the monitoring of migrants was often not considered as a viable alternative to detention (2012: 57–8).

A migrant can also be incarcerated in other premises than a detention centre. This could be a remand centre, a prison or a police arrest, but the authorities (the SMA, the police or a court) can, according to the Aliens Act (Ch. 10.1–3), make such a decision only if certain criteria are fulfilled, such as when an individual is deported because of a crime (*brottsutvisning*) or the person cannot remain where he or she is incarcerated for security or other extraordinary reasons (Ch. 10.8). The law also states that, even if there are security concerns, the migrant should, where possible, be kept in other areas of the detention centre (Ch. 10.20).

Once the case is entrusted to the Border Police, they start working on the execution of the deportation as soon as possible. There are a number of different steps in this procedure, such as checking that the migrant has a valid passport, verifying with the authorities in the receiving country that there is no obstacle to repatriating the migrant, ensuring that the migrant is not a criminal with a warrant through Interpol, and planning the journey to the country of origin with the migrant. It might also be the case that the police will have to coordinate many elements of the deportation if the flight is done via FRONTEX. If the migrant lacks a passport, the Border Police will work through the Embassy Coordination Unit which is located at the Central Unit of Border Control (not the one located at the SMA). Through this unit, the police try to get the valid passport or other travel documents that would make the repatriation of the migrant possible.

Different security concerns are also raised throughout the process and the police have to decide on whether to proceed with an unaccompanied deportation – a DEPU – or an accompanied one – a DEPA. In a DEPU the returnee is unescorted, though the airline concerned must be informed of the deportation. In a DEPA the

returnee is escorted by police officers or personnel from the National Transport Unit. However, in some cases the deportation is labelled 'individual travel' (*enskild resa*) and the migrant is not surveilled by the police or the National Transport Unit and no notification is made to the airline (National Police Board 2014: 2). Furthermore, decisions have to be made as to whether handcuffs or other restraints should be used in order to meet security concerns during flights or other transportation (2014: 6–7). Once the deportation is completed and the migrant is returned to the country of origin the police must file a report and return the LMA card to the Swedish Migration Agency. At the border the police also have to ensure that the migrant can be handed over to the local authorities without fear of violence (National Police Board 2014: 20–21).

The Swedish Prison and Probation Service/National Transport Unit

According to the regulations, attended deportations should be undertaken by the National Transport Unit unless there are special circumstances.[13] When the police escort a deportee it is usually for three reasons: negotiation with authorities in the country of reception is needed, security aspects or the migrant is detained and the National Transport Unit lacks the resources to undertake the deportation when it is needed (National Police Board 2013: 21–2).

Therefore, in most cases, it is the National Transport Unit – a section of the Swedish Prison and Probation Service – which will accompany the migrants on DEPAs, i.e. deportations where the authorities deem it necessary for the deportee to be escorted. The National Transport Unit also accompanies migrants who are facing deportation because they have been sentenced in Sweden. It should be noted here that, even if the National Transport Unit is involved in carrying out the deportation, it is still the Police Authority that is in charge of enforcing the decision (National Police Board 2014: 13–15).

Airports and airlines

Airports and airlines are today part of the deportation system, since they are responsible for flight security issues and for transporting migrants to different destinations. At the airport, the police or

personnel from the National Transport Unit have to notify the security controllers that the individual in question is a person being deported. Furthermore, when a migrant is to be escorted by the Police Authority or the National Transport Unit, the captain of the plane has to be notified about the deportation in a letter called a 'Notification of Deportee'. If the deportation is a DEPU, a *Document Envelope* is handed over to the captain of the aircraft. The *Document Envelope* contains the passport of the person to be deported, the ticket and the *Notification of Deportee*. In the case of an individual travel (*enskild resa*), the migrant will be given the proof of departure form (*utresebevis*) which he or she will hand over to passport control at the place of exit. During the flight, it is the captain of the aircraft who is responsible for safety and security on board. This means that the captain has discretionary powers to decide what measures need to be undertaken, in cases of coercion or violence, in order to maintain security on board (National Police Board 2014: 17–19).

Authorities in the country of reception

It is important to note that the deportation process is not necessarily completed when the migrant is back in the country of origin. If the Police Authority or the National Transport Unit is accompanying the migrant, they also have to make sure that they will be readmitted into the country they are being returned to. The responsibility of the Police Authority does not end until the migrant is officially readmitted. Although the police in Sweden may have the necessary documents and decide that the migrant to be deported will be readmitted, the situation may change once the migrant is at the border of the country of origin (National Police Board 2014: 19–20). The authorities in the country of origin may still refuse to accept the individual.

Therefore, if the police decide that negotiations are needed in order to get the country of origin to accept the migrant, they will accompany the deportee, either together with the National Transport Unit or without them. These so-called 'negotiation journeys' (*förhandlingsresa*) are not regulated and the various regional Police Authorities in Sweden work on these issues in different ways. According to a report by the National Police Board (2013: 21–2), none of the local Police Authorities have any written guidelines or routines in this area,

indicating, for example, when the deportation should be labelled a negotiation journey or who is responsible for making any decisions. According to police guidelines on deportation, if the authorities in the country of reception are seen by the personnel accompanying the deportee to be treating the migrant in a way 'that is not coherent with the Swedish common sense of justice', the deportation should be reconsidered and the migrant brought back to Sweden (National Police Board 2014: 20).

Obstacles to enforcement

Persons who are in the deportation process do not always end up being deported and the process may be stopped at any time, either temporarily or completely – in which case the deportation is cancelled altogether since the migrant may have his or her case reopened (Ch. 12.8). A broad range of potential obstacles to enforcement often comes into play, such as the migrant not being accepted back into the country of origin, the conditions in the country of origin making it questionable whether it is safe for the migrant to return or even the migrant having health problems.

Intermediaries

Apart from the authorities mentioned above, there are also a number of other actors who intervene in the return process. These actors work in different ways to protect the migrants' rights in the deportation process; this can include the provision of care for different mental or physical conditions, or simply of relief and humanitarian help.

Legal representatives can still play a role in the deportation process after the asylum decision is taken. In some circumstances, if the migrant has been informed that he or she is being detained, a lawyer may be employed. The role of legal representatives, when it comes to protecting migrants' rights on detention issues, is regulated in the Aliens Act (Ch. 18.1). If the migrants' rights are violated in the process of return, legal representatives can, in some instances, have a vital role to play.

Detained, irregular and other categories of migrant in the asylum process all have the right to healthcare, the provision of which cannot be postponed (Swedish Parliament 2013: 407). Therefore interactions between the health-care system and the migrants can be another, and quite important, element in the process, since it is not uncommon that migrants at risk of deportation, especially if they are detained, mutilate themselves in order to delay or stop their deportation. Sometimes, of course, nurses and doctors are required to accompany the persons who are to be deported on the flight back to the country of origin.

Very often, NGOs play an important role in supporting the migrants' rights to and claims for welfare in the deportation process. This could range from visiting transit living quarters or detention centres, providing clothes or organising daytime activities for children, to raising awareness campaigns in support of people who are facing a deportation order.

Another entity which can conduct inspections and independent investigations in cases where it is suspected that a migrant may have been subject to unfair treatment by the authorities is the *Justitieombudsmannen*, or the Parliamentary Ombudsmen. The *Justitieombudsmannen*, made up of four independent ombudsmen, are appointed by the Swedish Parliament to ensure compliance with the law. The ombudsmen are specifically tasked with ensuring that public authorities and courts comply with the provisions of the Instrument of Government concerning impartiality and objectivity and that the public sector does not infringe on the basic freedoms and rights of the citizens. The supervision of the ombudsmen includes ensuring that public authorities deal with their cases and in general carry out their tasks in accordance with existing legislation. The ombudsmen's enquiries are prompted both by complaints filed by the public or initiated by the ombudsmen themselves. Inspections are regularly made of the various public authorities and courts in the country (Parliamentary Ombudsmen 2015).

Summary

The main actors in the deportation process in Sweden are the Swedish Migration Agency, the Police Authority and the National Transport Unit. The SMA is responsible for communicating the return decision to the migrants. It is also in charge of running detention centres. If the SMA judges that force is needed, or if the migrant has absconded, the case is handed over to the police, who are then responsible for carrying out security assessments and planning the deportation. If the police decide that the deportee needs to be escorted, it is the National Transport Unit, a branch of the Swedish Prison and Probation Service, which accompanies the deportee unless there are particular reasons why it should not. Since the European Return Directive was transposed into Swedish law in 2012, new institutions – such as the Visa Information System and the Schengen Information System – were also added to the process. The Swedish authorities in the deportation process also cooperate with FRONTEX – for example, in joint return operations. Apart from these actors, legal representatives, NGOs, health-care personnel and the Parliamentary Ombudsmen all play an important role in the process in different ways, providing help and serving to protect migrants' rights.

4. MIGRANT INTERACTIONS WITH THE 'DEPORTATION SYSTEM': COMPLEXITY, GREY AREAS OF DISCRETIONARY SPACE AND GRADUAL RESTRICTIONS?

Introduction

Migrants at risk of deportation often feel that they have been unfairly treated, due to a perception that there are areas of arbitrariness in the system and, that, in general, the system's complexity leads to a lack of transparency. This picture is partly confirmed in reports that discuss the different parts of the deportation process such as the use of detention (Swedish Red Cross 2012) and the processing of deportation cases by the Border Police Units (National Police Board 2013). If we look at the amount of time that migrants in the deportation process actually spend interacting with the authorities and public officials, these meetings often constitute a very small part of this time. Years can pass without migrants having a single meeting with the SMA or the police. In spite of the relatively short time which the migrants spend interacting with the system, for them these interactions are highly significant and given a lot of importance. What we found surprising was the depth and level of migrants' reflections about the details of their interactions with the authorities and the different processes they went through. It transpires very clearly from our interviews that these interactions with the authorities have a big impact on the migrants in a multitude of ways, extending for months or years after the removal decision has been taken. Often,

the migrants feel that the process is unfair, although, in our analysis, it was difficult to separate their sense of unfairness and injustice at the decision from the extent to which this conditions all their other interactions with the system.

Chapters 9 and 10 of the Aliens Act states that a migrant who no longer has a legal right to stay in Sweden has to cooperate with the authorities regarding the return and that, if necessary, the state has the right to use control and detention as means to effectively carry out the deportation. This does not mean, as discussed in Chapter 2 of this volume, that this process is not regulated or that the authorities have unrestricted powers. Indeed, the law clearly states that, although migrants may lose some rights under certain circumstances, this process cannot be arbitrary (Ch. 1.8). Trying to understand how migrants who go through the process of deportation experience and understand their interactions with the authorities is important from different perspectives. It can provide insights into how the migrants actually perceive the process in practice and whether or not these experiences relate to the intentions of the Swedish Aliens Act and the European Return Directive to ensure that the deportation process is 'humane and dignified'. It can also provide information on any potential shortcomings in the implementation of these laws and regulations and discuss why and where in the process the migrants' human rights may be lost.

It is not surprising that migrants, who do not want to be returned to their country of origin, protest in different ways against the return decision. These acts of resistance, such as absconding or verbal and physical protests, are interpreted by the authorities as a lack of cooperation. In turn, this sometimes leads to further negative repercussions for the migrants, such as the withdrawal of economic support or incarceration. Another important aspect of migrants' interactions with the authorities is the fact that the asylum system and deportation process are complex. This renders the different interactions between civil servants and migrants complicated. Due to their lack of knowledge of the system, migrants may have a hard time understanding why certain decisions are being taken and why the processes they are involved in will unfold in a certain way. However,

something which will be apparent in Chapter 5, which discusses the migrants' 'in limbo' situation, is that this lack of understanding may be due to a mental block, or a limited capacity to comprehend due to shock, trauma or mental-health problems.

This chapter presents, in an organic way, migrants' reactions to, and reflections on, key aspects of the system. What emerges is that, from a human rights perspective, the key principles of fairness and justice are not always reaching the migrants. Another important point is that the process of deportation, for many migrants, is characterised by their weak position *vis-à-vis* the authorities, even though they offer different forms of resistance. Their attempts at resistance are geared towards rejection of the decisions made as well as towards expression of the way in which they feel that they have been treated. This resistance, in turn, leads to further repercussions from the authorities, which mean that the migrants' lives gradually become restricted in different ways. These repercussions may include the withdrawal of financial support, the need for the migrant to report to the police on a regular basis, incarceration or even violence. In analysing this, the chapter identifies and discusses those grey areas where these restrictions may be decided upon, and where arbitrariness may occur, in the decision-making of organisations in the deportation process. The chapter also highlights those areas where misunderstandings and confusion between migrants and the authorities occur, and argues that this should be considered a problem for which a solution must be sought. In brief, therefore, the main arguments put forward in this chapter are:

- that migrants' lives gradually become restricted if they, in different ways, resist decisions taken by the authorities, and complain about how they have been treated;
- that there are key nodes where arbitrariness may occur due to discretionary space – i.e. the power that bureaucrats have 'in determining the nature, amount, and quality of benefits and sanctions provided by their agencies' (Lipsky 1980: 13) in the decision-making of authorities in the deportation process; and
- that migrants often experience the different interactions that they have with the authorities, and the decisions that the latter make, as unpredictable and hard to understand.

This chapter is organised in the following manner: in the first section, migrant's perceptions of the first steps of the deportation process – how the decision is communicated and the return dialogue – are presented and discussed. In the second section, migrants' different attempts to resist the return decision are described and discussed, as are the ways in which discretionary spaces and security concerns may lead to arbitrariness in the decision-making of the authorities in the deportation process. These are important nodes, where discretion is used, and arbitrariness may occur – such as labelling the migrant as non-cooperative and handing the case over to the police, cutting down or withdrawing the allowance paid to asylum-seekers or deciding to use detention or other forms of incarceration. In the penultimate section, we discuss how the migrants perceive their interactions with the system when the deportation processes are either very short or extend over long periods of time. These extreme cases highlight, among other things, the problems of communication and perceptions of unjust treatment that are experienced by the migrants in relation to the deportation system. In the final section, the overall results are summarised and conclusions are drawn.

The asylum process, the decision and 'the return dialogue'

Events leading up to the decision

As stated earlier in this volume, the deportation process can be long and complex. One way of looking at it is that it starts when the migrant receives the first negative decision and when the legal possibilities of staying in Sweden are diminished. However, events before the decision also seemed to influence the way in which migrants perceived the deportation process. Since all the migrants we interviewed had high hopes and expectations of finding refuge in Sweden, they were all severely disappointed, frustrated and, at times, in shock when they found that there were very few or no legal options that would allow them to stay.

One recurrent theme in the interviews was that the migrants generally felt a great deal of frustration, anger, sadness and disappointment with the way in which their cases had been handled. Many felt that they have not been heard properly and that the Migration Agency did not treat their case in a fair way. For some of the migrants this meant

that they had very little time in which to explain their situation. For others it was the problem of being called a liar and being questioned over and over again – for example, regarding their identity or the different aspects of their situation. They were also left with the feeling that they had been treated with indifference, and not with respect, during interviews with the authorities. Pal, for example, emphatically states:

Pal: She [the investigator] did not care about what we said in any way. It was like she found it amusing and she was laughed at what we told her.

Interviewer: Why do you think she laughed?

Pal: [It was] everything what we said, my wife, and me she did not find it serious, she did not think it was important… Both she and the lawyer gave us a bad treatment because all they wanted was to do their job and to go home as soon as possible. They did not care about the fact that they had a person in front of them who wanted to tell them, who has suffered.

Many of the migrants talked about their image of Sweden as a human rights-friendly country and that this had led them to believe that, with their individual problems and backgrounds, they would find a safe haven if they ever managed to get here. Many of our interviewees also expressed feelings of discrimination by nationality and gender, and thought that other migrants were treated in a more benevolent manner than they were. Some think that it is wrong of Sweden to give people hope that they will be able to stay when they will not. They would have liked Sweden to disclose more information about their process beforehand. Wali said that it would be better if Sweden was up-front about the fact that they do not want people to come so that migrants can chose a different country.

> [If] the Swedish government does not want to accept asylum-seekers … they [can] write and say [it] in TV, write in newspaper that 'We do not accept people' and nobody will come to Sweden, nobody will accept these problems here like me.

This shows a myopic view of asylum in Sweden, since it is blatantly untrue to say that Sweden does not accept asylum-seekers. In the last year alone – 2014 – the SMA received 81,300 applications for asylum. Out of these, 32,500 asylum-seekers had their claims accepted during the year, a further 10,400 were rejected and the remainder of the applications were pending (Swedish Migration Agency 2015a).

Receiving the decision and the return dialogue

After the SMA has made the decision to deport a migrant, the individual in question is called to a meeting where he or she is given the negative response and the decision is explained. Here, the migrant has the choice to accept the decision and return 'voluntarily' or to appeal to the Migration Court (*Migrationsdomstolen*).

To begin with, what we find in the interviews is either that none of the interviewees seems to have expected a negative decision, or that they have, in some way or another, blocked out any negative thoughts about how the process of asylum might end. This is also confirmed in interviews with a border police officer and an NGO official. It is not clear to us if this is because many of them actually think that they have a good chance of being allowed to stay or if denying the risk of being rejected is just a coping strategy – an 'in limbo' state of mind – that will get them through the process. Migrants' first reaction, on receiving a negative decision, is often the feeling that no one has really listened to them and that they (the civil servants at the SMA) did not understand or care about their situation. What is more, the migrants are convinced that it is not possible and just not an option for them to go back. Ana, a middle-aged woman of Eastern European descent, explains how she reacted when the decision was communicated to her:

> And after two weeks they call me and say that they have a decision. And they say that I must go. And then I say, 'No, you know what is going on with me? Why don't you need me to explain everything? You just ask me a couple of questions and then nothing more? Did you not read what I gave to you?'.

Wali, a man, who did abscond with his family from Sweden to Denmark and then to Germany (from where he was sent back to Sweden) after having received a negative decision, explains how he felt when the Swedish Migration Agency informed him that the options to appeal further were exhausted:

> When the Migration Agency said that 'We will deport you' we said that 'We can't go'… They [the SMA, the Migration Court and the Migration Court of Appeal] took all three decisions in about nine months but they want to deport us back to Afghanistan in 2013. But because I had a problem and because of that we came here and we cannot go back to Afghanistan because of that. We don't have any way of thinking about that, to go back, because of that we escaped from here to Denmark and once to Germany but they sent us back to Sweden.

Being informed of the return decision is critical to the migrants. Some migrants feel that the decision should have been communicated in a more sensitive way; others complained that an inadequate explanation was given to them. Yousef explains how he perceived the situation when the negative decision was communicated to him and his siblings:

> One hour, they gave us one hour and she [the decision-maker at the SMA] has papers [with our family's cases]. I said 'Ok, what are the reasons for refusing my refuge?' She said 'I will not tell you, the lawyer will tell you. You only sign the paper that you have received the negative [decision] from Migration [the SMA]'. I said 'I will not sign. My rights are for you to tell me why you refuse [our asylum claims], I will not sign'. She said: 'No I will not read it for six persons now because I don't have time. I have one hour.'

After the return decision is announced, the migrants are asked to sign a document that states that they have been informed of the decision. They can also be asked to sign a declaration of acceptance (*nöjdförklaring*) which, if signed, means that they have accepted the decision, and waived their right to appeal. These documents are in Swedish and a translator is usually present. The migrants are also

informed about the possibility of appealing to the Migration Court within three weeks. At this meeting the migrants' legal representative is usually not present in person but a copy of the decision is sent to him or her.

At a later point, the migrant is called to a return dialogue meeting (*Återvändandesamtal*) where different practicalities regarding the return are discussed. At this point the journey back to the country of origin is planned and the migrants are informed about the consequences if they abscond or refuse to cooperate. Depending on the case, there can be one or several return dialogue meetings. The aim of this or these 'motivational' meeting(s) is not just practical but is also an attempt to get the migrants to accept the return decision and to leave without force having to be used. According to a civil servant working at a return unit, return issues occasionally also surface when the decision is transmitted to the migrant so, in practice, the distinction between these two meetings is not always that clear.

In many of the interviews, different issues surfaced which were connected with the signing of documents once the decision had been transmitted to the migrant. One of these issues was that the migrants felt awkward about signing a document referring to the decision taken on their application because it was in Swedish and they could not always fully understand it. Another issue was that they did not really accept the decision, and therefore did not feel comfortable about agreeing to it in writing. There were also those, like Ana, who did not want to sign it but who did not dare to not do it, since she feared that this would cause further problems for her in an already precarious situation.

When there are no more possibilities for appeal, and the migrant has received the so-called 'three negatives' (i.e. negative decisions from the SMA, the Migration Court and the Migration Court of Appeal or *Migrationsöverdomstolen*), the applicants are often faced with the reality of what could happen to them should they fail to cooperate. In several of our interviewees' explained how the SMA warns them that, if they do not cooperate, the case will be handed over to the Police Authority. This is often, as we discuss in Chapter 6, when the

migrants start to feel the weight of 'criminalisation', as did Yousef, who talks in the next quote about how this caused him considerable stress and fear since he did not know what to expect:

> 'If you're not cooperating with us, we will send your case to the police' [warning by the decision-maker at the SMA]. Ok, what will the police do with us in Sweden? Will they put us in prison?

Ana describes her reactions to the fact the she might eventually become a police case and explains that the threat of the potential involvement of the police does not scare her:

> And then she [official at the SMA] says: 'If you don't cooperate I will call the police' and I tell her 'Okay, call the police; in my country the police have been torturing me for 18 years. It is not strange for me and you can call them now'.

It is interesting to note that some migrants clearly perceive the handing over of their case over to the police as a threat and not just as a fact, something which came out very strongly in our interviews. This scenario was also confirmed by a border policeman whom we interviewed. But the tactic of trying to use the police as a threat in order to persuade migrants to leave the country 'voluntarily' can make interactions between migrants and the police more complicated in the later stages of the process since the former may be even more frightened and aggressive.

Sweden has actively implemented a policy of encouraging migrants who do not have the necessary permits to take up the voluntary-return option. This is portrayed as the more humane option out of the voluntary–forced spectrum although, in fact, the distinction between voluntary and forced return can sometimes be rather blurred. In fact, some 37 per cent of all returns in 2014 (Swedish Migration Agency 2015a) were labelled as 'voluntary'. This means, in practice, that migrants may avail themselves of some financial benefits,[14] organise their trip back and therefore 'cooperate' with the authorities. None of our interviewees who have actively refused to return voluntarily, have seen this as an option. Ismat expresses his feelings about the money that was offered:

> What's money? I didn't come here for money. I had a good job in Afghanistan, a good life in Afghanistan. I don't need money; I came here because my life was in danger.

Appeals

Some migrants took the opportunity of appealing to the Migration Court and the Migration Court of Appeal. Many of the migrants still seemed to have high expectations, even though they had failed their asylum application at the Migration Agency. They thought that they would receive a different decision when they had their cases examined by the courts.[15] However, interacting with the lawyers and the courts was a road to new disappointments. Again many of our interviewees felt that no one was listening to them and that the process was unfair. Their contacts with lawyers also varied, as is discussed further in this chapter. In the next quote, one of the interviewees, Kader, describes appearing in court at the end of a long and tedious process where there were no good options left:

> You can explain your situation there [in the Migration Court] too but you know that the court, it's just like you know, a waste of time. [It's] kind of a procedure, first you have to do an interview with Migration [the SMA], after that you got negative from Migration [the SMA], after that you go to the court... This is the process, you have to walk this way and at the end of this way you have to throw yourself down the mountains.

When a decision has been reached by the courts, a letter is usually sent to the legal representative, whose responsibility it is to explain the decision to the migrant. Some of the migrants, after receiving the second and the third negative decisions, also talked about the rumours abounding that the Police Authority was keeping an eye on them; other migrants had also warned them about an increased risk of deportation. One of our interviewees, Ismat, a young Afghani who lives in Sweden with his wife and child, talked about these rumours, which claimed that, after the third negative decision, the police is more present and migrants need to be on the alert. This clearly instilled fear in him and he did not dare to go to the meeting at the SMA:

> Some people told me that after the third negative, the Migration [Agency] called people up and they took someone. They [the people mentioned in the rumours] were caught and they were to leave and be deported. At the third negative, when the Migration [Agency] invited us to come to [them] we wanted to talk [to them] but we were very afraid, that they would catch us…

The right to a fair hearing

Sweden has institutionalised its appeal procedures in a bid to ensure that migrants and asylum-seekers' right to a fair hearing is safeguarded. This distinguishes Sweden from other countries, where migrants are not given the right to appeal, or to make a judicial appeal. The right to a fair hearing, however, greatly depends on the key figure of the lawyer. The varying levels of professionalism of the interviewees' lawyers has long been a cause for concern (see, especially, Feien and Frennmark 2011) as this can have a serious impact on how much, in practice, migrants can enjoy the right to a fair hearing.

Teka is careful to lay the blame not on his lawyer but on the system. Others complained directly about their lawyers. Mahdi was particularly upset by the lack of communication and of interest that his first lawyer demonstrated. The lawyer, Mahdi explained, did not bother to inform him of the decision until Mahdi himself contacted his lawyer three months later. The decision had been taken one month earlier, but the lawyer claimed that he had been too busy to call. This upset Mahdi greatly: '[I said to him] …"this is my life, how could you do this?" He just said, "This is the way it is".' Mahdi was further aggrieved by the perception that his first lawyer appeared to be far more interested in the payment associated with representing him: He [the first lawyer] only likes money…, my new lawyer, he really wants to help me he does not like money, but others [do]. Clearly, Mahdi felt that his second lawyer was on his side and was trying to represent him in the best way he could. The second lawyer engaged with Mahdi's story and explained to his client how he would present the case, which made Mahdi more hopeful and decreased the aggravation he felt. Mahdi described the second lawyer thus: 'He is very kind, he will help me, I hope'. This reaction was prompted

not just by the fact that his lawyer actually listened to him, but that the listening translated into practice, too. Mahdi told us that, at their first meeting, when he had ended up undocumented, the second lawyer informed him that he would lodge an appeal. Three weeks later, Mahdi received a phone call from the lawyer, who announced, 'Congratulations, you have a new hearing [in your asylum case], you're no longer undocumented (*papperslös*)'.

Other migrants complained bitterly about the service they got from their lawyers. Aamir was never able to meet his lawyer. For Aamir, a good lawyer should be a source of assurance. He decries this failing: 'This is the job of my lawyer to see me and tell me "Everything is safe, you can tell [the SMA] everything". He [my lawyer] didn't come and I was scared'. When he asked to have his lawyer changed, the SMA told him that the court did not allow any change in lawyer. Aamir felt under-represented in the system and was not hopeful for the future progression of his case. He articulates his thoughts in the following manner:

> Just open my case, give me one chance I want to speak face to face with my lawyer, it's not a big wish. … If they'll decide I cannot stay in Sweden, just tell me why. It is not good for me that I haven't seen my lawyer, or the court. It would have been better if I could have gone to court. I could have told the court directly. It is not good and I cannot accept it. Everything is like a show to me, everything is just show, not true, just show. Having a lawyer by phone, is that a joke? The court is that a joke? The decision is a joke to me.

Aamir seemed to believe that the lawyer went to court. Our sources tell us, nevertheless, that, if a person does not get summoned, the Court is processing his or her case from the information it has on file.

Others are happy with their lawyer. Yousef, a Kuwaiti bidoon, categorically states in the next quote how happy he is with his lawyer, who is rigorous, takes an interest and, overall, appears to offer a very good service.

> My lawyer is a very good lawyer. All lawyers in Sweden are not the same. My lawyer meets me before I get the interview. When I tell people [other asylum-seekers] they say 'You're lucky'. He meet with me before and he knows my case, he asks me about special details, and he sits down with every person [in the family] alone… Every time he sits with each person separate, separate. He asks Migration [SMA] and the Migration [SMA] gives us tickets to visit our lawyer in Malmö two times…

He considers himself lucky because his friends complain that they only met once with their lawyer who either did not take an interest in their case, did not believe them or were just not accessible. His explanation gives an insight into migrants' experiences with lawyers, which confirms the dominant narrative amongst migrants of lawyers offering a less-than-professional service, often meeting their clients very rarely.

Resistance, security concerns and discretionary space

Policy implementation and discretionary space

As discussed earlier in Chapters 2 and 3, the deportation process is very complex due to the fact that many different authorities are involved and there are policies at different levels – the EU level, the national level and the organisational level - that are supposed to be implemented at the local level. At 'street-level', SMA officials, policemen, nurses, doctors or National Transport Unit officials should be putting these policies into practice. They are what Michael Lipsky (1980) would call 'street-level bureaucrats' – i.e., public employees who interact directly with citizens or clients and who have a certain degree of discretionary space, or autonomy, in their daily work when they implement the different policies. According to Lipsky (1980: 13), the discretionary space is, as mentioned in the introduction to this chapter, the power that these bureaucrats have 'in determining the nature, amount, and quality of benefits and sanctions provided by their agencies'. The main reasons why these bureaucrats have discretionary space are because they have to make decisions based on a limited amount of information, and because their interactions with citizens (or, in this case, non-citizens) are too complex to be guided in detail by rules and regulations. This discretionary space, and the

degree of autonomy that goes with it, is a double-edged sword. On the one hand this space may be used to make better decisions and/or to solve problems in a more efficient way, since there is some degree of flexibility. On the other hand, the discretionary space may lead to wide variations in the implementation of the different policies, variations that can be so substantial that the principle of equal treatment is questioned in practice.

The individual civil servants in the deportation process have to balance different, and sometimes conflicting, goals in their daily work. This is not unique but is a common aspect of organisational life, especially in public-sector organisations (Brunsson 2007). However, the complex and sensitive nature of deportation issues puts a particular responsibility on decision-making in everyday life because the consequences for the individual migrant are severe. According to laws and organisational policies such as the Foreign Act and the directives that the state gives to the different authorities, the deportation process should be efficient, be characterised by the security of law, be 'humane and dignified' and take account of the different security perspectives (Swedish Migration Agency 2015a: 9; Swedish Police Authority 2015: 11; SPPS 2015a: 10). Sometimes decisions, such as the perceived need to use force, have to be taken instantaneously. At other times, decisions may involve difficult dilemmas when the individual police officer or SMA official has to balance efficiency and humanitarian concerns. In addition, there are different pressures from actors who are not strictly a part of the deportation machinery – these may be activists claiming that migrants' human rights have been violated, politicians with an interest in making the deportation process more efficient, or the media drawing attention to parts of the deportation process which might not be functioning well.

Following the work of Arlie Hochschild (1979) on the role of emotions in organisations, it can also be argued that emotion management and emotional labour are a crucial aspect of the work of civil servants in the deportation process. They, or other personnel who have the authority to make and execute decisions in the process of deportation, have to handle their own feelings of empathy, indifference, disdain or fear, have to remain professional and have to ensure that the security

of law is not jeopardised by their personal judgment. They 'are required to manage their own feelings in order to create displays that affect others in desired ways' (Ehrlich Martin 1999: 112). This work, however, is not only about controlling emotions, and the display thereof, but also about interpreting migrants' emotional expressions. As an example of the emotional elements to the work of civil servants and medical staff in the deportation process, Nicholas Fischer (2014) discusses how self-mutilation in French detention centres is causing stress and anxiety among civil servants and NGOs – feelings that have to be controlled by the individual as well as by the organisation. Civil servants in the deportation process are meeting individuals, on a daily basis, who are often in a state of depression, who are under high levels of stress, are in shock, are disappointed, seem confused or uncomprehending or who appear to be angry and who may even become violent. In the deportation process, interpreting and using these emotional expressions, along with other information they have on the case, will be a part of public officials' discretionary space, since they will use this knowledge to determine the likelihood that the migrant will abscond, will resist the decision or may be a danger to him/herself or others. These interpretations of emotion can influence decisions in the deportation process, such as the potential need to detain or to use force.

Resisting the decision

Resistance to the deportation decision can take various forms – *inter alia*, verbal protests, absconding, hunger strikes, self-mutilation or violent resistance. Our interviewees have all resisted their negative decisions, albeit in different ways, and this has, at times, had critical implications for them. For some of them, resistance led to their cases being transferred to the police while, for others, the resistance continued throughout the process in the form of hunger strikes, public protests or perpetual absconding. However, the opportunities to protest and resist were also constrained by the generic threat of repercussions from the authorities and by what resources the migrants could themselves access in the form of personal contacts who could help them, media coverage or financial support.

Absconding is a common way to resist deportation and many of our interviewees did so, once, or even several times. Returning to their country of origin was not seen as a possible option for them as individuals or families, as the quote from Wali in an earlier section made clear. Absconding could mean moving to another country or city and/or living hidden in a house or flat or as a homeless person in the street somewhere. But escaping deportation by absconding also puts the migrant at risk of further repercussions from the authorities – such as detention. One of the men we interviewed, Pal, was living in hiding with his wife and children in Sweden, helped by some Swedish natives. He spoke of his constant fear of the police and of how he does not even dare to have the TV on at night because of the fear that the police will notice him and that he and his family will be arrested:

> Outside [my house] there is a nightclub that is open until quite late at night. It's stuck in my head that the police might find us [because of this]. In the nighttime I don't watch television, I sit all night by the window, watching cars driving by…the police come to the nightclub sometimes because people are drinking and it makes me nervous.

Others did abscond to other European countries to apply for asylum there, or to hide, only to get caught and deported back to Sweden again, under the rules of the Dublin Convention. Finding themselves in this situation, they were disappointed by the fact that they could not, due to the Dublin Regulation, apply for asylum in another European country.

Not only is absconding something that puts the migrant at high risk of being detained if found by the Police Authority, in the long run it also requires resources. One of our interviewees, Ana, told us that, if she had had the resources, she would have run away but that this was not possible since she did not have any contacts, money or a place to stay. Her protests were more modest:

> Today they gave me the papers when I need to go and a time for airplane and I just…how can I tell you? I just destroyed the papers and I told them that I will not go back.

How the reactions of the migrants – when the decision is given to them and during the deportation process – are interpreted by the authorities is crucial in many ways. Being labelled as a migrant 'who does not cooperate' can have serious implications for the individual. When the migrant protests the decision by absconding, the rules are clear: the case is referred to the police and the allowance is removed entirely.

Those migrants who, at some point in the process, protest verbally by stating that they cannot, or will not leave or cannot provide any ID are in a grey area of the authorities' discretionary space. By protesting, the migrants are at risk of arbitrary treatment and of losing what few rights they have left – such as the right to move freely or a part of the small allowance that asylum-seekers receive. As was explained in Chapter 3, it is the individual civil servant at the SMA who has to make the decision as to whether or not 'force is needed'. Nevertheless, trying to pass judgement in such circumstances is understandably difficult, since the migrants who are in this situation often react with shock and anger in the heat of the moment (even though he or she may eventually cooperate); it may also no longer be possible for the SMA to continue handling the case.

After the decision is taken that the migrant has to leave the country, he or she is in a very vulnerable state; however, there still remain some avenues of protest for them in a last bid to claim their rights. Help from friends and social networks or NGOs, media contacts and coverage in the press and on social media or TV, or the support of a skilled lawyer, may all prove to be very important for the individual at this point. As will be discussed in the 'in limbo' Chapter 5, appearing in the media made some migrants feel safer.

Becoming a police case

According to police officers with whom we have spoken, it is quite common that migrants who end up having their case passed on to the Police Authority do not realise that they are 'a police case' until they receive a phone call or visit by a police officer who explains the situation. However, even after migrants have been contacted by the police, they may still not understand that this means that they

have no legal right to stay and may be deported at any time. For example, one woman whom we interviewed, Arjana, whose husband was already detained, kept asking if her children could go to school in Sweden, although she had been told that her deportation was imminent. She appeared to be in too much shock to fully understand and take in the seriousness of her situation.

When they learn that their case has been handed over to the Police Authority, some migrants are taken aback, saying that they do not understand why this as happened, since they are not criminals and that they have done nothing wrong, a situation which is discussed further in the next chapter. It is also interesting to note that it is not always obvious for the migrants which of the authorities has their case – some of the migrants whom we interviewed were unsure whether their cases were with the SMA or with the police. According to one police officer, quite often when cases are handed on to the police it turns out that there has been a mistake or a misunderstanding – maybe a failure of communication between the authorities and the migrant, which led to the latter missing a meeting and being reported as missing. The same officer said that, quite frequently, migrants who, at first, resisted the decision in some way or another, eventually change their mind and begin to cooperate. Often, the deportation then takes place without the use of force or physical coercion, even with those cases dealt with by the police.

Security concerns and discretion

What makes the discretionary issues in the area of deportation even more complicated is the security perspective, which is always a factor to be considered in the deportation process since migrants may harm others or themselves in a last attempt to try to stop the process. Furthermore, since some categories of migrants risking deportation have a criminal record or are, for one reason or another, considered to be dangerous, security issues often take precedence over other concerns in the deportation process.

Verbal threats, outbursts of anger and even violence are not uncommon reactions from migrants when they learn of the deportation decision, or when an SMA or police officer comes to escort them to the airport

or a detention centre. According to police officers whom we have talked to or interviewed, it is not uncommon for children or spouses to be held hostage by the father/husband in the family. The problem is that some of the interactions between migrants and the authorities (whether it be the SMA or the police) often, but not always, happen behind closed doors, such as in the SMA's offices, in detention centres or in a person's home, where there are no other witnesses. It is often difficult to ascertain what really happened and it is hard for the migrants to feel any satisfaction afterwards if they have been treated in an unjust manner.

For example, a young interviewee named Tarek claims that he was falsely accused of violent resistance towards a civil servant and was then sentenced to 40 days in prison (though he was never actually put there but in the remand centre). However, since the only witnesses were the colleagues of the person who had accused him, he had no opportunity to make a complaint or to protest at what he felt was unfair treatment:

> I was sentenced without any evidence or any witness. I was convicted without there being any evidence against me. These persons, they got their colleagues who witnessed in their favour. This civil servant was working as a guard. He was beating me but when he witnessed he said that it was me who beat him.

Another situation where security concerns and human rights are sometimes at odds with each other is when the identity of the migrant is unknown or unclear, usually due to a lack of valid identity documentation. It is known that, in some cases, migrants might throw away their identity documents and lie about their identity in order to increase their chances of staying. From the authorities' perspective it is regarded as important that the identity of those who enter the country be known. However, for some stateless refugees this is problematic, since it is difficult for them to prove their identity without having a nationality and a citizenship. Mohammad, a stateless migrant from Kuwait, explains:

> We have identity without nationality… I sent everything, documents from Kuwait, and then he [officer at the SMA] does not believe me. There are documents from lawyers and court from Kuwait but everything is treated the same [they don't believe it].

In the end, Mohammad's application for asylum was declined by the SMA, which decided that the documentation provided by Mohammad and his siblings was evidence that their situation in Kuwait did not provide sufficient grounds for asylum to be granted. Interestingly, Mohammad also talked about security problems when determining the identity of stateless persons without a passport; he assured us that there are 'false bidoons' in Sweden who claim to be stateless persons from Kuwait, when in fact they are not: 'They [the authorities] need to know the truth. In Malmö, people are saying they are stateless from Kuwait but they are not, it is a security problem in Sweden'.

Incarceration

Once a migrant's case is with the Police Authority, control of the individual can be more or less stringent depending on the results of the risk and security assessment carried out by the police. The migrant may be put 'under supervision', which means that he or she has to report regularly to a particular police station; other than that, the individual may move around freely. However, the police may also decide that the migrant should be detained because he or she is likely to abscond or because there is another security concern which the law stipulates must be taken into account. This is another discretionary space, one where security concerns weigh heavily. As mentioned in Chapter 2, the Swedish Red Cross (2012) laments the lack of transparency in this area. The organisation notes that the grounds for detention were often not documented thoroughly enough and therefore the decision-making in this area lacked transparency.

Some of our interviewees described the shock and surprise that they felt when the police came and took them into detention or another unit of incarceration. For some, it happened so quickly that they did not even have time to take their clothes or other personal items with them. For others the surprise and shock were because being taken by the police to the detention centre was not something that they

had expected. As is described in more detail in Chapter 6, the Police Authority may use more or less force in carrying out any removal to a detention centre. In the next quote, Hamdan describes his feeling about the moment when the police came and took him to a detention centre:

Hamdan: They [the police] said that I might abscond if I'm not kept in detention.

Interviewer: What was your first reaction when you were taken to the detention centre by the police?

Hamdan: This is the first time in my life that I have been incarcerated. I did not expect such an inhuman treatment. They could only have told me that I should help them to get travel documents or that they could help me with getting those documents. They should not have to lock me in. I said to the police that I would cooperate but they did not really listen and I could get a few things and then they took me here.

Once a migrant has a history of absconding, this fact will be taken into account in subsequent risk assessments and he or she is more likely to be detained again. Several of our interviewees had been detained on more than one occasion. Having a criminal record is not reason enough for a person to be detained, but it is another factor which the authorities will consider in the risk assessment. For those who have a criminal record, the risk of being placed in a remand centre instead of being detained is even greater, since this decision can be made without further reasons being given. This increases the risk of arbitrary decision-making, according to the Swedish Red Cross (2012). It is important to note that conditions in a detention centre are quite different to those in a remand centre. For example, people in the latter are not allowed to listen to the radio, watch TV or read the papers, nor are they allowed to spend time with their fellow inmates. There are also restrictions on communication with people outside the remand centre – visits or phone calls, for example – since this has to be approved in advance by the prosecutor (SPPS 2015b).

Some of our interviewees who had been detained also described their feelings of anger at being detained or incarcerated in a police arrest or remand centre. Tarek, a young male asylum-seeker, ended up in a circle of incarceration in different premises. After a series of very complicated interactions with the authorities, where he felt mistreated, he was involved in a fight with a guard and was then sentenced to 40 days in prison. However, he did not spend any time in prison but was placed in a remand centre for about 18 months, after which time he was moved to a detention centre. He describes it as a one-way process where there is no end other than being locked up and from where it is impossible to make one's voice heard:

> I was placed in a room. I cannot talk to anyone, I cannot see anyone. I have absolutely no rights there. The criminals who are in prison, they have better conditions than me… I refused to eat sometimes for 20 days, sometimes a month, sometimes 40 days. At one time I hungerstriked for 50 days. I lost 8 kilos... I said, 'Either set me free or take me to that place [detention centre] or let me die'. I fled from the war to France last time and they said 'Either you seek asylum or you have to leave the country'. But here they say 'Either you seek asylum or you have to go to prison'. And after you have sought asylum you get rejected and again you are in prison. So whatever you do you end up in prison… And if the staff does something wrong, there is no way that you can complain. They never get any punishment.

For the migrants, being detained and thus losing their freedom meant that they were running out of options to extradite themselves from their current situation and that they were in the hands of the authorities. One migrant, Vlad, described detention as a tool with which the police can put further pressure on him to provide valid identification; in the next quote he explains what this kind of pressure feels like, and describes detention as a space where resistance is very limited:

> This is not animal cruelty ('*djurplågeri*') it is human cruelty ('*människoplågeri*'), it is like that. [The authorities] try to put mental pressure on me until I open up, I give them something. It is like that, they say it themselves, 'You will be here until you give us

your identity [documents]', but it [the identity documents] doesn't exist. You cannot escape, you cannot fight with the staff – it is not possible. I can do nothing, just sit. It is not so easy.

Confusion, contradiction and silence

The fast track to deportation

Not all migrants have a realistic possibility of appealing the decision on their case. If the case has been labelled as one where the asylum claim is apparently unfounded (*Uppenbart ogrundade ärenden*) (Aliens Act Ch. 8.19), the deportation can be carried out even before the decision has acquired legal force (*vunnit laga kraft*). These cases can also be 'fast-tracked' by the authorities to avoid the cost and inconvenience of a long asylum process for someone who cannot stay and whose deportation the authorities are working to make happen as quickly as possible. This process makes the asylum system more efficient and less costly, and enables the speedy removal from Sweden of migrants who have no right to stay. In this category of asylum-seekers, the vast majority come from countries of the Western Balkans such as Serbia, Kosovo or Albania. In 2014, only 4 per cent of asylum-seekers from these countries were granted asylum (Swedish Migration Agency 2015a: 65).

This issue of 'fast-tracking' came up in some of our interviews and migrants in this situation feel discriminated against. They find that the system is contradictive and cruel, since they are told that they have rights (one of which is to appeal the decision within the timeframe of three weeks); however, the possibility of exercising these rights is, in practice, very limited by the lack of resources such as networks, time or the possibility of getting a legal representative. Furthermore, the short timeframe leaves very little opportunity for the migrants to prepare for the return, even less to digest and process the negative decision.

Two of our interviewees raised the issue of migrants having to leave without any real opportunity to appeal against the decision or being informed that they have to leave before the decision on any appeal is communicated to them. This can happen if the SMA judges that the asylum-seeker apparently has no real grounds for seeking asylum

(*uppenbart ogrundade ärenden*). However, this left the migrants very distressed and they reacted to the decision with shock and anger. Ana who, at that point, was two days from her planned deportation, vents her feelings of frustration and despair about the process in this next quote:

> They are giving me the decision on Monday and I must leave on Friday. Why do I have to leave the country on Friday? What is happening? … I have three weeks [to appeal the decision] and you tell me that you can put me in a plane before three weeks? And they say, 'Yes, we have the right to do that' and I am telling them, 'Your law is like the law in my country'. They are doing the same, you have rights and after that you don't have. 'You are telling me that I have the right to complain but after that you say that you are putting me on a plane'. That is the law without law.

Decisions, silences and resignation

As mentioned earlier in this chapter, there are categories of migrants who live in a state of deportability for a very long time due to the state's inability to deport them for one reason or another. Within these categories we find stateless refugees, persons with unclear identities, those with criminal records, individuals who come from countries or regions to where people cannot be deported at a particular point in time because the countries/regions are deemed to be too unstable or unsafe, and people who appear to have simply been forgotten or lost in the system. It may also be the case that the country of origin will not, for various reasons, accept some individuals. And at times the deportation cannot happen if the migrant does not cooperate. For many of these migrants, their interaction with the system was particularly confusing since it seemed absurd to them that they were repeatedly told by the authorities that they would be deported, even though both parties knew that the authorities were not able to.

Several of our interviewees did receive the decision (or decisions) that they had no right to stay in Sweden and expected either to be deported or that at least something would happen in their case – but neither event occurred. Some of these individuals have been trying for a long time to obtain an answer, or at least to have some kind of

dialogue with the authorities, but without success. Instead they ended up in a state of frustration where it was not clear to them what was happening. Omar, a Palestinian stateless refugee, tries to explain his situation:

> Two years ago the Migration Agency stopped my case [i.e. did not take any action] and for two years I have nothing here in Sweden. I have no contacts with the Migration Agency; I have no contacts with the police… I don't understand. I just go to the Migration Agency, what can you do? What will they do with my case, who knows anything about it? I don't know. Who can do [anything about it]? I don't know. Who's in charge? I don't know... They have no contacts with me, they send me letters with money and that is all.

Mohammad, also a stateless refugee but from the bidoon group, was even told by the Police Authority that he was not likely to be deported in the near future, and received no further answers from the SMA:

> He [the police officer] tells me everything, I sat with him, he says 'Nobody will send you to Kuwait'. They have many files (at the police) with stateless people without solution…We speak for three hours [with the SMA] and then we get nothing, 'Just OK, we wait', that was seven months ago.

In this category of persons – those who did not have the possibility of staying legally in Sweden, but who could not be deported either – are not just stateless refugees but also other types of migrant. One of our interviewees, Salah, had 'received his negative decision' more than ten years ago but seemed to have been forgotten by the authorities. Since Salah did not want to be deported, he had not confronted the Police Authority or the SMA about his situation, nor was he in hiding. His LMA card was continuously reissued and he received money every two weeks (which means that the authorities did know of his whereabouts). When he came to Sweden, it was still possible to open a bank account with just the LMA card as proof of identity (it is not possible nowadays). He claimed to have been working and paying taxes and he had a car and an apartment but was stopped one

day by an internal border control. He was then detained because they said that he was notified as missing; he was told that he was staying illegally in Sweden and would be deported. He explains his feelings, the situation, his inability to understand what was happening to him and the further problems that the period of detention created for him:

> They [the SMA] give me the refusal, they pay me, they pay me, they change my LMA card. There is no problem at all. I don't get it. … I was never afraid, never afraid. I have told them: 'Whatever you need, I am here'. I have given them the address... I don't get it. Like they…ahhh. They fuck up my job, my car, everything, my apartment, and my safety – what will I do? If they release me. What will I do? Will I tell my boss, say that I have been at the detention centre (*förvaret*)? No…

While the migrants whose asylum applications had been fast-tracked and who were deported just a couple of weeks after they arrived in Sweden had reacted with shock and anger, some of those who had been in Sweden for a very long time eventually reacted with a sense of resignation and desperation, especially if they were incarcerated. Tarek, a young man who had spent 17 months on remand and some further months in detention (where he was at the time of the interview) waiting to be deported stated that he had given up and that he just wanted to go back to his country of origin:

> I have regretted that I have come to Sweden. I have become evil because of my stay here. They have made me evil, I was not evil, it is them who have made me suffer so much... They have put me through psychological torture that no human can deal with… I have told them…release me and I'll go back. I'll leave the country.

Vlad vents his feelings of resignation about his situation:

Interviewer: Do you think that they can deport you?
Vlad: Now it is like I don't give a damn. Let them do what they want, just let them. I said: 'Send me to Ghana [not his country of origin] (laughter), send me anywhere, just not Russia [country of origin] and don't let me stay in here [in detention]. Send me wherever you like'.

Finally, we have Emmanuel, who had remained in Sweden without documents for about four years. He stated that, as mentioned in the following 'in limbo' chapter, when he was reported to the police because he did not have a valid bus ticket, he was already tired of living in Sweden without a legal status. He did not want to be deported but was desperate for change:

> I did not resist the arrest. When I was with the bus controller, I wanted to give them my number so they could help me call the police because I had already written to them [the police]. I was fed up. I was ready for them… I wrote to them to reconsider my application in the country. I don't want to be illegal because I know [being] illegal is not good for a human being especially in Sweden that's why I wrote to them.

Conclusions

This chapter has provided much food for thought, and five main conclusions are offered below.

- *The first conclusion that can be drawn from this chapter is that it is important for the authorities to remember that the migrants and the authorities both enter this process from completely different points of departure and that events that seem logical from the authorities' perspective may be incomprehensible to the migrants and vice versa.*

The migrants appeal depending on their individual circumstances and their right to seek asylum according to international agreements. The authorities on the other hand, have the task of deciding who is in and who is out and, once the decision is made, of implementing the return of migrants who do not have a legal right to residence. They are also under a strong pressure – from politicians and sections of the general public – to make these processes more efficient in order to avoid bottlenecks in the asylum and reception systems. There is a strong 'logic of enforcement' in the system where the aim is to make returns and deportations happen as fast and as efficiently as possible. This goes hand-in-glove with a 'logic of deterrence', where the aim is to signal clearly – for example, by using detention or force – that

those whose applications are not accepted should not be encouraged to stay. However, even though there have been frequent attempts to standardise the different processes and to increase cooperation between the authorities, there are still discretionary spaces that lead to variations in the decision-making and omissions between different actors in the treatment of cases. From the migrants' perspective, it is hard to understand the logic in certain events and the processes they go through are sometimes experienced as incomprehensive, arbitrary, unpredictable, unfair, cruel or even downright absurd.

- *The second conclusion that can be drawn is that events that happened either before the deportation process began, or in the early stages of the process, can influence interactions between migrants and the authorities in the later stages of the process.*

It is crucial that the authorities and lawyers treat the migrants in a respectful and professional manner so that the latter feel that their voices have been heard properly. If the individual feels that he or she has been treated in a rude or unprofessional manner during the asylum process or when the decision is communicated, it will be hard to achieve a sense of trust and cooperation later on. Here, special concern should be given to the documents that the migrants are asked to sign; if it is not possible to translate these documents into the main languages of the migrants, a thorough explanation should be given of what the migrants are committing to in signing the documents. In this way, common myths and misperceptions can be avoided. It can also be counter-productive to use the Police Authority as a threat. To build on the migrants' own negative images of the police force may create further problems at later stages of the process, when the police seek to establish cooperation with the migrants. It is also unacceptable that the police should be used as a lever to make migrants sign documents – especially as the latter are unsure about what they are actually signing, but are too afraid to protest.

- *A third conclusion is that, in the asylum and deportation processes, it is obvious that lawyers play a crucial role as safeguards and protectors of migrants' rights. Their professionalism, and the respectful manner in which they treat, and communicate with,*

their migrant clients, have, of course, a positive influence on the cases they are handling and the migrants' right to a fair hearing in practice.

This positivity and respect are also important because they affect the level of trust that the migrants have in the system and the authorities. It is crucial for migrants to feel that their voices have been heard, and that their lawyers have shown them respect and made them aware of important decisions promptly.

- *A fourth conclusion is that it is important to ensure that migrants are not 'unnecessarily punished' for expressing their disappointment at a negative decision, or for offering different forms of resistance. Security concerns and discretion in the decision-making processes must be employed, and documented, in a careful manner to avoid arbitrary decision-making and to increase the transparency in the system.*

The intersections between emotions and security concerns must be acknowledged. How civil servants interpret migrants' different ways of expressing their (often negative) feelings heavily influences the security assessment and decision-making processes of SMA workers and police officers. It is therefore important that the role that emotions can play is acknowledged and that the various civil servants in the deportation process have the wherewithal to avoid making prejudiced judgments. From our interviews with migrants and with civil servant in the various authorities, together with different reports which we received, we have been able to identify important areas of discretionary space where there is a risk of arbitrary decision-making. The area of what, in practice, constitutes 'non-cooperation', 'the risk of absconding' or 'cases where coercion is needed to enforce the return decision', needs to be discussed and clarified. Key issues which can arise when cases are handed on from the SMA to the police include whether or not the allowance which migrants receive should be reduced or withdrawn altogether, whether or not a person should be put under supervision, detained or incarcerated, or whether or not there is a need to use force or even violence. For example, if a migrant has absconded, and cannot be found, the law is quite clear on this

scenario. If, however, a person protests against the negative decision on his or her application by stating that return is impossible, or claims to have no identity documents, the situation is less clear. The different sanctions available to the authorities in order to return the individual his or her country of origin is seen by the latter as unjust, and sometimes brutal – it is therefore crucial that these sanctions are not used arbitrarily.

- *Our fifth and final conclusion concerns the collaboration (or lack of) between the different authorities in the deportation process. It is important that cases remain in the hands of the SMA for as long as possible and that they are only handed on to the police when there is genuinely no other option.*

These issues are especially important since the authorities in question – the SMA, the Police Authority and the SPPS – are under strong pressure to make their activities more efficient. Efficiency does not stand in opposition to human rights and there is no point in leaving migrants 'stuck' in the system. However, there is always the risk that, in order to meet efficiency standards and to have a statistical record that looks good, these different authorities try to avoid handling more 'difficult' cases, preferring to pass them on to another authority. In this case efficiency is not achieved – the case is simply moved to another part of the system, which makes the process longer and more complicated since important information is often lost due to issues of confidentiality. These delays are not in the best interests of the migrants as they make it more difficult for them to understand the processes that they are involved in. Handing cases over from the SMA to the police should, in any case, be avoided where possible since, under the responsibility of the police, the securisation increases and the migrants have fewer options – for example, they lose the financial benefits that are granted to voluntary returnees from some countries. To have their case handled by the police can also increase the deportation stigma and, as discussed further in chapter 6, the migrants' sense of being criminalised.

5. THE 'STATE OF DEPORTABILITY' – OR BEING 'IN LIMBO': NEGATIVE EFFECTS ON MIGRANTS' PSYCHOSOCIAL WELLBEING

Introduction

Migrants living in a state of deportability, irrespective of their background, nationality or legal status, commonly feel that they are living 'in limbo' – a particularly debilitating state to be in. In our interviews with them, the inability to plan their lives and future was often mentioned with huge regret, anger and a sense of helplessness which clearly contributed to the frustration they felt and the lack of control over their own lives. This is often exacerbated by ambiguous interactions with the complex asylum and deportation systems, a topic which will be discussed in detail in Chapter 4. Other migrants decide to go underground and live 'undocumented' lives, adding further pressure to an already precarious situation. The migrants explained in detail the desperate and helpless nature of their situation, which greatly impacts their psychosocial wellbeing.

Migrants exhibited several common reactions and behaviours which clearly indicated a high level of stress and anxiety. Emotional episodes were common but varied widely. At times, migrants vividly articulated their feelings and demonstrated, in a controlled fashion, equally strong emotions such as anger and frustration by describing, in the most minute detail, what they had been facing. Some migrants

broke down during the interviews. All imparted a sense that they were going through an immensely difficult time.

Migrant wellbeing is now a key concept in Migration Studies. Indeed, the IOM's 2013 *World Migration Report* focuses on migrant wellbeing (IOM 2013). The approach undertaken is one where migrants are encouraged to tell their own stories in order to create 'policymaking that is more attuned to human needs' (IOM 2013: 176). In a similar vein, Katie Wright (2010), writing about Peruvian migrants in London and Madrid, emphasises the importance of allowing the migrants themselves to describe their experiences and uses wellbeing to 'reveal the psychosocial elements that international migrants consider important for "living well"' (2010: 368). This was a clear departure from initial efforts to assess migrants' wellbeing, such as the Gallup World Poll, using objective indicators such as employment, housing and incomes which were only complemented by subjective perceptions of life satisfaction (IOM 2013; Wright 2010).

In recent years, in a clear move away from the medical model – where wellbeing was reduced to the medicalised definitions of psychological states – the term 'psychosocial wellbeing' is employed to refer to the close connection between psychological aspects of human experience and the wider social experience. Migration bodies such as the International Organization for Migration and the UNHCR refer to the importance of migrants' psychosocial health and wellbeing and have built development programmes and services around this concept – the understanding that both psychological and social aspects are necessary to migrants' wellbeing.

The definition and usefulness of the concept has also been discussed. Authors such as Egan *et al.* (2008) and Martikainen *et al.* (2002) emphasise the need to separate psychological factors from psychosocial factors. For them the concept is useful inasmuch as psychosocial factors help to explain the ways in which social processes, at both macro and meso levels, affect psychological processes at the individual level. Other research has focused on the factors that can nurture psychosocial wellbeing – agency, autonomy

and control, participation and involvement, social relationship and networks, and safety (Caplan 2002; Correa-Velez *et al*. 2010; Egan *et al*. 2008; Kohli and Mather 2003; Martikainen *et al*. 2002).

This prompted an interesting critique from Frederick Ahearn (2000), who finds it problematic that studies focus on the factors that affect psychosocial wellbeing rather than delineating a clear definition of the concept. Another issue which he brings up is that psychosocial wellbeing holds a strong element of cultural specificity. Wellbeing and illness are variously defined in the different cultures; however most of the variables and frameworks regarding them are based on Western values and norms and may not be applicable to other cultures.

This chapter presents various issues which our migrant interviewees brought up as having had a negative impact on their psychosocial wellbeing. An effort has been made to be as faithful as possible to the migrants' expressions and descriptions. As previously explained, it is clear that the biggest source of fear for the migrants was being sent back to the so-called 'country of origin', a fear that was all-consuming and incapacitating. The fear was so great that, despite the helplessness, the apathy, the frustration and the blow dealt by their 'in limbo' situation, migrants were often willing to 'extend' their 'in limbo' status if it meant that they could avoid being sent back. This brought about what can only be described as a vicious downward spiral, where the migrants' personal physical and mental health was severely affected.

Migrants are not apathetic actors in this situation. They are active, making choices, building strategies. This chapter also discusses some of these coping and resistance strategies, which are often limited by external material and socio-economic factors such as housing, social welfare benefits, the loss of rights, and life as undocumented migrants. Finally, the chapter ends with a selection of cases which exhibit a particular vulnerability for different reasons – those of children and stateless people.

Living situation – an open or closed cage?

Migrants at risk of deportation live in different types of accommodation. This section focuses on both their similarities and their differences. The one aspect of their living situation that is shared by all the migrants is that they do not feel free, they feel stuck. This is part of their 'in limbo' state and, of course, negatively affects their psychosocial wellbeing. Salim, who lives in an apartment provided by the SMA in a small community on the edge of a medium-sized Swedish city, says:

> It is like a prison, but an open prison. You are free to move but you cannot go anywhere. It is like an open prison. It is like you put a bird in a cage and then you open the door.

In 2014, 66 per cent of migrants received by the SMA were living in SMA housing – *anläggningsboende* or *ABO*); the rest were living in their own housing, often with family and friends – *eget boende* or *EBO* (Swedish Migration Agency 2015a). The SMA prefers to rent apartments to asylum-seekers but, when this is not possible, they use entrepreneurs who arrange temporary housing for the migrants. The agency is unable to control the placement of these housing units (due to rules on public procurement), which has meant that they are spread across the country, with some located far from an SMA office (Swedish Migration Agency 2015a).

The location of the centres, in combination with the migrants' strained financial situation, often makes it hard for them to meet other people, join in activities and move around freely. Contact with other residents at the centres is often limited, which can also lead to deterioration in the quality of migrants' psychosocial wellbeing. The lack of contact may be due to the fact that the other residents are only there for a short time or because they do not have a language in common. Residents might also be wary of talking to others who are burdened with as many problems as themselves. All this leads to boredom, a feeling of disconnection from the rest of the world, and a poorer state of wellbeing. Wali, who, at the time of interview, lived in a transit centre outside a small town, describes the scenario:

> We do not have any money for the bus to go outside of here it is far away from any bigger cities. When you go there [to the bigger cities] it is about 150 *kronor* for one family, just for one way. We cannot go outside of this small place… When you are in a small town like this you do not have any contact with another person and that will be boring for you.

Unlike those who live in housing provided by the SMA, those in hiding are trying to conceal their whereabouts from authorities such as the SMA and the Police Authority, to which their case will be sent as they are officially deemed to have 'absconded'. Our interviewees in this situation were living in different types of housing but all had contacts in Sweden who were assisting them. A common source of stress for those in hiding is their housing situation, which is often temporary. The migrants described in their interviews how they were always looking for housing and, at certain moments, had been forced to sleep 'rough' in parks or railway stations. In addition to the pressure of finding housing, those living in hiding are anxious and very worried about being detected by the police or other authorities. A discussion of this can be found later in this chapter, in the section discussing fear. This stress and anxiety has an extremely harmful impact on their psychosocial wellbeing.

However, in spite of the challenges brought about by a life in hiding and the fear of going outside, the interviewees took pains to explain to us why it was still worth remaining in this situation rather than being deported. Bahara, an Afghani migrant, puts it thus: 'We accept living with these problems in Sweden but we are not going to Afghanistan. Because we know in Afghanistan we don't have any future'.

Living in hiding can be extremely draining. Emmanuel lived underground in Sweden for a couple of years. He became so weary and stressed by the situation that he wrote to the Police Authority in a desperate attempt to legalise his situation. The police did not respond to his request. He was subsequently detained after being caught with an invalid bus ticket. He describes how he did not try to run away when the bus company called the police, since he was so sick of his situation which, he claimed, was no improvement on

that in his country of origin. Emmanuel speaks of his weariness and despair: '…I ran from the time that they wanted to deport me in 2011 so that was then. Until now I was out there, living a life that is kind of no hope, no future, nothing'.

Life in hiding limited our interviewees' movements but the most extreme version of this limitation was described by those interviewees in detention centres or other forms of incarceration. Several of our interviewees had spent time in a detention centre and a few in remand centres (*häkte*). The situation in detention centres is discussed in Chapter 6, which deals more specifically with the 'criminalisation' of migrants. Detention had a significantly negative impact on the migrants – psychologically, it was an immense blow. The interviewees showed high levels of stress about what was awaiting them after detention and their anger at being locked in, together with clear signs of apathy. The negative effects of detention have already been presented in earlier studies. A 2010 study by the Jesuit Refugee Service (JRS) Europe, with 685 detainees in 23 EU Member States, shows similar results – the physical and mental health of refugees deteriorates through detention. This decreased level of health is often attributed to the living conditions and the psychological stress experienced in detention. Being confined and not knowing when release will come about also contributes to detainees' deteriorating health and increasing anger. The study also indicated how the health of the detainees worsened the longer they spent in detention. Jose Puthoopparambil *et al.*'s (2015) study on the health and wellbeing of detainees in Sweden echoes these findings: 'Threatening behaviour from the authorities, substandard living conditions and absence of a proper support system to cope with stress created a stressful living condition for the detainees' (2015: 77).

Life without those 'last four digits': exclusion from the system and society

Persons at risk of deportation are migrants who do not have, or are about to lose, their residence permit. They are thus not able to participate fully in society. Without a residence permit, it is not possible to obtain a '*personnummer*', a Swedish personal identification number without which very few activities are accessible in Swedish

society.[16] Taking part in leisure activities might seem banal and definitely not the greatest of the migrants' troubles but these things add up and make their lives difficult. Omar used to play football in a higher league but, without a personal number, he was unable to get a licence to play games. In the next quote he describes the frustration of not being able to fully participate with his team.

> I don't have a personal number, I cannot play. If you want to live in Sweden you must get those four digits. If you don't have that you cannot do anything here, not even play football on a team. You can just practice and I'm sick of it, I don't want to practice, I want to play the game.

The outcome of being unable to participate in society is exclusion and discrimination, which negatively affects a migrant's psychosocial wellbeing. Yousef, a Kuwaiti bidoon, compares this to the discriminatory situation in his country of origin, where the lack of documents serves as a means of discrimination. This difference between those who have documents and those who do not becomes apparent, for example, when attempting to access one's rights. Without a residence permit a person does not have the right to work legally in Sweden and irregular work is but rarely to be found, is precarious and often temporary and puts the migrant in a particularly vulnerable position with regards to his employer, who often takes advantage of this illegality to not pay very well. Mahdi puts it in a nutshell: 'I wanted to work but it was hard to find one. But I have also talked to some people who say that you have to work for 20 SEK per hour[17] like that, and you have to work 10–12 hours per day'.

None of our respondents were working at the time of interview; instead those who were not in hiding received money from the SMA or the Police Authority, while those who were in hiding did not want the police or SMA to know about their whereabouts and therefore did not claim any funding. Any money received by migrants is cut off when the authorities find out that they have absconded. In some municipalities, those in hiding are able to get money from the Social Services (*Socialtjänsten*) – some of our interviewees received these payments whereas others relied heavily on the financial support of

their social networks, both of individuals and of organisations. What our interviewees all had in common was that their financial situation was dire and they struggled to cover even the basics such as food and housing. Ismat stated:

> The Social (Social Services) gives us this much money, and we give half of it for rent of the house, the other [half] is not enough for us because we have the children, it's very low... The organisation that we are a part of they help us sometimes; if they wouldn't be here, we would be hungry by the end of the month.

In addition to having difficulty in feeding themselves without a job, not being able to work or study made it hard for the interviewees to engage in any meaningful activities. Several interviewees, independently of each other, summed up the lack of activities with the following phrase: 'The only thing that you can do is to eat and sleep'. Omar explained how having nothing to do made him feel like an animal. The interviewees bemoaned the fact that they had nothing to fill their days with, nothing that could distract them from their problems. As Wali said, 'If you have work, if your children go to day-care, that is also a duty for you, it will be a duty and you don't think so much about your situation'. Having nothing to fill their days became an issue as it left them with time on their hands to worry and get stressed, which had a negative impact on their psychosocial wellbeing.

The lack of activities made the migrants feel as though they were wasting their lives away, doing nothing and learning nothing. In a study on post-deportation, Schuster and Majidi highlight how the deported feel as though they have lost opportunities and return to Afghanistan with 'no improvement in their education, skills, or working experience' (2013: 228). Our interviewees told us that if, one day, they are forced to leave Sweden, they would be leaving without having gained any new skills. This is a problem regardless of whether they stay in Sweden or are deported – either they did not acquire skills that would enable them to find work or, if they had an occupation, they were 'de-skilled' because they had not worked for a long time. Nadir worked with migrants deported to Kabul and describes how many of them felt after deportation:

> They talk about the waste of their lives, because I have met at least two people who have been deported after staying 12 years in Norway, so just imagine you stay somewhere for 12 years and after 12 years you are sent back and you don't have anything in your hands, your whole life is wasted, so this is what they talk about, this is what they sometimes regret, sometimes they hate those countries.

The physical and mental health of migrants at risk of deportation

Many of our interviewees were negatively affected both physically and mentally by their situation. They exhibited high levels of stress, anxiety and constant worry. During our interviews, some migrants were close to tears, many were excessively distressed and angry and most showed symptoms of extreme hopelessness – all generally associated with episodes of depression.

Several declared that they had aged prematurely in Sweden. Wali put it succinctly: '…when I came here, I was fresh like a 14-year-old boy and now my hair has become white, just [after] three years'. The time spent in Sweden has been exhausting for many of the interviewees, draining them of both hope and energy, as illustrated in this quote by Mahdi:

> Before I thought a lot about my future, what I wanted to become and things like that. I will study, I will. But now when I lost my hope, I don't think so much [about the future], I don't have the energy right now to study, the feeling is that I'm tired.

Being unable to plan for the future is extremely frustrating and puts a lot of strain on many of the interviewees. Many described their future as 'very dark'. For those in hiding, the prospect of remaining in that situation did not seem very appealing. As Pal states: 'I cannot stay in "black" for four years because I'm tired… I can't wait for so long'.[18] Fatma, a young Kuwaiti migrant, felt that all of her thinking and worrying made her both physically and mentally ill. Mohammad also described how his health had deteriorated since he was denied asylum and he had visited the doctor several times for different conditions. Aamir also had concerns regarding his physical health:

Aamir: I have a big 'push' over my heart, lots of stress. And I think about what if my heart stops, what will happen to my future, my daughter's future? … I talk to my wife about my death because I have too much stress. I'm a human.

Interviewer: You're afraid you're going to get a heart attack?

Aamir: I'm not a machine; I'm human, same as you. Six years of stress will come to me... I have lived for six years with high stress. Two years here. I'm human, I cannot… [live with all this stress]

Several of our informants told us how they are constantly thinking about what is going to happen and worrying about their future, which affects both their sleeping and eating patterns. Wali was informed by the police that the deportation of him and his family was only a couple of days away and related how this had affected them: 'The police told us that "We will send you on Tuesday to Afghanistan". We do not have appetite for eating anything, I have not slept for three nights, and I haven't relaxed'.

Many of the interviewees themselves described their mental health problems as depression. Some had had thoughts about – or had even attempted – to commit suicide. Kader portrays the complete desperation he felt after he received his third negative decision (from the Migration Court of Appeal) and became homeless – he had left the SMA's housing so that the deporting authorities would not be able to find him. He felt completely lost and overwhelmed, as though there was no way out of his misery. Sweden did not allow him stay, going back to Afghanistan was too dangerous an option, and the Dublin Convention made it impossible for him to apply for asylum in other European countries. Kader recalls this desperation: 'The only solution you have is to finish yourself. Yeah I tried lots of times [to kill myself] but fortunately [I failed]'. This desperation, because of which some interviewees had attempted to take their own lives, was also described by Kader as 'burning': '…most of the immigrants are coming because they want to live in paradise, but which kind of paradise is this which is burning you without fire yeah? You're burning without fire in Sweden'.

Part of the difficult situation that Kader describes as 'burning' is living with a constant fear that deeply and internally erodes a person's psychosocial wellbeing. The fear originates in thoughts about what would happen to them if they were deported. Some fear incarceration, others what they would have to do to stay alive. For many, the fear is that returning to the country of origin would mean the end of their life, as Bahara, a female from Afghanistan, explains: 'If the Talibans find my husband they would kill him, me, and after that they would cut off my head, cut off the heads of my children'. The police were the most commonly cited as the authority of which people were the most afraid, but sometimes the SMA was also mentioned. It is to be noted that the fear of the Swedish authorities appeared to be a projection of the fear of being deported. Fear of the police limited migrants' movements and activities, as Rashid invoked: 'I was afraid that if I go out the police would find me, arrest me. The problem is that I couldn't even go outside so I was confined to my home'.

During the autumn of 2014, the Swedish Police Authority took part in a European project – *Mos Maiorum* – a joint operation between EU border police that many saw as involving increased searches for migrants living in hiding (Leander 2014). Bahara explained how the increased police activity added to their fear of being caught and further limited their movements:

> You know for two weeks the police searched [referring to *Mos Maiorum*]. We don't go outside, and we don't have any food during those two weeks because we cannot buy it. It was a high risk to go outside. We were just eating the things we had at home.

The migrants' fears were not limited to the authorities but included other people who could turn them in to the Police Authority. They were constantly afraid and never felt secure, not even in their home, which further limited their range of movement and access to the different services. Interviewee Miranda attended an open day-care centre (öppen förskola) occasionally, although she was afraid that other participants there might turn her in: '…since I don't speak Swedish, quite often I feel afraid that someone is going to call the police and say that it is someone here who doesn't speak Swedish'.

Mahdi attended school but did not tell anyone there about his situation. When he fell ill he was reluctant to visit the hospital, even though, as a minor, he had the right to access any parts of the health service. In contrast to minors, for adults without residence permits access is restricted to 'care that cannot be postponed', a concession which came into force through a change in the law in 2013 which would allow the undocumented the same healthcare access as asylum-seekers (Swedish Parliament 2013: 407). This quote by Aamir shows the difficulty he experienced, as an adult, in getting care: 'For example during these two years [in Sweden] my tooth broke, I tried to go to doctor and the doctor said "No, not now. After you get a personal number you can come". Every night it hurts and it's bad for me, bad for my health'.

Coping strategies

The previous sections have depicted a daily life and a future filled with challenges, over which the interviewees had little control. Here Emmanuel describes a sentiment shared by many of our interviewees when he said that they lacked power in Sweden: 'I don't have power in this country that is number one, because I don't have residence permit I don't have anything so I have nothing to say...' This lack of autonomy was a severe blow to their psychosocial wellbeing. People's lack of control over their lives is seen as deeply problematic, according to one study on detainees, since control over life is 'a prerequisite for good health' (Jose Puthoopparambil *et al.* 2015: 81). In order to cope with or escape from their situation, our interviewees employed a number of strategies, which could potentially improve their psychosocial wellbeing by allowing them to regain some autonomy in their lives.

Firstly, the interviewees demonstrated the ways in which they dealt with the immediate threat of deportation. For example, when Ismat and Storai were called to a meeting at the SMA, after they had received the decision from the Migration Court of Appeal, they made sure not to take their children with them. Ismat clearly told us that he only took his wife with him because he knew that the authorities would not deport them without their children. Secondly, in spite of their sadness over their reduced power and lack of control over their own

situation, migrants nonetheless managed, given the circumstances, to exhibit an extraordinary degree of resourcefulness and creativity in coping with their dire situation. What was certainly common to all the interviewees was that they tried to do anything they could in order to stay. Kader illustrates this in the following quote:

> When I was in [mid-sized Swedish city] I went to the police station. I asked them, I told them the Migration [Agency] is behaving like this with us… everyone tries his best to save his life. And now it's kind of time, I got three negatives and now I'm sinking. If you're sinking in a river or in a sea you just try to rescue yourself, pull [at] everything what you got.

Quite a few of our informants were involved in some form of activism – demonstrations, hunger strikes etc. They were using their own agency to fight for their rights and their lives. They had exhausted all the options open to them in the system and were therefore trying to use the media and other outlets to promote their story, provide information about their situation and hopefully be offered some help. A couple of them took part in an event where a group from their country of origin went on hunger strike for several weeks. Many of the participants told us that this was their last attempt to try to escape their current situation – they had tried everything else but nothing had helped. They had no hope of any other solution and seemed prepared to seriously jeopardise their health in order to get out of their dilemma and regain some control over their lives. One of the participants said: 'We have finished the deep depression and this is the last resort'. Other interviewees were involved in an awareness-raising demonstration. Their activity gave them the opportunity to speak publicly and to interact with many different people, and especially with journalists from all over Europe. As an outcome of this activity, they were invited to travel around Sweden giving lectures about their plight at conferences and universities. They received support from many people. Their hope was that this would make it hard for the SMA to deport them. It also meant that they felt a lot more hopeful about the future than they did before they started the protest. The support received from organisations and individuals gave them hope and more strength to keep on fighting, and even had two positive results in that, since the demonstration, two of

the participants were able to get their case revisited by the SMA (*praktiska verkställighetshinder*) and were no longer undocumented but were waiting for their decision as asylum-seekers. However, not all our interviewees protested in this public manner. Tarek, for example, was on hunger strike whilst he was in the remand centre but the media did not report on this. Those interviewees who were successful in gaining the attention of the media in order to broadcast their protests generally received supported from different networks and organisations in Sweden, which improved their psychosocial wellbeing by providing them with more positive relations with others, reducing their fear, enabling them to take part in more meaningful activities, have greater autonomy and improve their chances of staying in Sweden.

A third point to add to the discussion on coping strategies is that migrants at risk of deportation try to find support from friends and social networks. Creating a social network is a strategy that our interviewees mentioned as a means to receive resources enabling one to live in hiding. Social interactions were also used as a distraction from their mundane daily lives. Mohammad was living in his mother's apartment but every week they went to visit his uncle, which provided him with some distraction from the perpetual waiting. He spoke of it as having 'other things on our mind', rather than the continual threat of deportation and ensuing difficulties. Migrants gain comfort from spending time with family and friends, as this also decreased their fear. Pal had a network of friends from his church: 'When we're in church then we don't feel afraid. When we are with our friends from church then we feel a little better, not afraid either'.

For Mahdi it was very important to stay active and to interact with other people:

> I don't want to think about the Migration Agency… It is because if I think a lot I get headaches and cannot sleep at night. I have to make myself not think so much… I have to do things. If I'm alone I'm going to think about it that is why I don't want to be alone for very long, instead I talk to someone.

Sharing one's worries with others is a well-known way to relieve stress and tension. Migrants at risk of deportation try to use this as a coping strategy. However, even here they encounter difficulties, as the interviewees explained, because it can be difficult to find an appropriate person. Some explained that they did not want to burden their families or partners. With friends who are in a similar situation the relationship can easily become very negative, and the sharing thus becomes less helpful, as described in this quote by Aamir:

> Fahim is my best friend and he can be very helpful to me. For example if I have any problem or stress, I don't speak with my wife because she has so much stress. Why should I tell her? Instead I speak with Fahim and I'm relaxed. But at the same time, I don't feel better because they're in the same situation as me. Both his family and mine have a lot of stress and tension. When I sit with Fahim we only speak about the future. – What will happen in the future, will they send us to Afghanistan?

This quote shows clearly how isolating this situation can be. Those we interviewed were, to a certain extent, isolated from the wider society and also sometimes from their own families, either due to the fact that they were separated physically or because they did not want to burden their loved ones with their worries.

Particular cases

This section presents three specific cases of atypical groups. The first case is that of children within families, who are vulnerable due to their developmental stages and dependence on the decisions of their parents. The second and third cases are two groups of stateless people for whom this 'in limbo' situation took on new significance because they knew that it was unlikely that they would be deported.

Parents' concerns for their children's wellbeing

This section discusses the issues about which the parents spoke concering their children. However, it does not purport to put forward the views or interests of children, since no children were interviewed. It does not describe the situation from the childrens' perspective, not because it was deemed unimportant but because it fell outside

the scope of this research. Indeed, we were aware that the impact of deportability on children was different to that on adults, as was the impact of return on the psychosocial wellbeing of children: this has been ascertained in earlier studies such as that of Vathi and Duci (2015), who looked at children who had returned to Albania from the UK. Lundberg's study of children in the asylum process also highlights how the needs of the children might differ from those of their parents and that their situation is particularly vulnerable (Lundberg 2009: 34). Therefore what are presented here are some adult views on certain aspects of how children could be affected by their family being in a state of deportability.

Children were characterised first by their dependence on their parents' decisions and choices, some of which, such as that of absconding and hiding, would have had a huge impact on their lives. Secondly, the 'in limbo' state in which they, together with their families, found themselves, must certainly have affected their wellbeing and development. Finally, children could be instrumentalised or 'used' by adults, even family members, in order to stay in the country.

According to the parents, the housing situation had a big impact on the children's wellbeing. Since they were undocumented, they described how they were always on the lookout for housing and how, at times, they had been forced to sleep outside in parks or stations with their young children. The instability brought about by the limited space was often disturbing for small children. Storai lived in quite a small studio flat together with her husband and two young children. She described their living situation:

> We are living all the time in this small room and the children are sometimes crying because it's not so big that they can walk around the room because we have only one small room that we need for rest.

Parents in hiding, who were in constant fear of being caught by the police, tried to restrict their childrens' movements. Often, the parents did not want them to go outside and run any risks, even though they felt that this was an unnecessary hardship for their children. Pal, a man from Albania, said:

> The worse thing is that the children cannot go outside. The only thing that bothers us and that we have [strong] feelings about is that the children should be able to go outside that they should not be locked in (*instängda*)… The worst is with the girl when she sits in the window and sees other children outside but she herself cannot go outside.

Parents regret not having had access to day-care services where their children could interact with other children and adults. They felt that this had a negative impact on their children's wellbeing. This access to day-care services for children whose families were at risk of deportation differed between the municipalities (Ismat and Storai, Aamir and Bahara were able to send their children to day-care, Wali was not). Ismat described how being able to attend day-care had improved his children's, especially his daughter's, situation:

> My daughter also had psychological problems… All the time she was asking about the house that we had before that was very big…She asked me for that house. 'Why don't we go back there to our home?' After she has gone to the '*dagis*' [day care] she is feeling better.

Wali was not able to send his daughter to the day-care centre, and just staying at home had a negative effect on her social interactions and development. Wali, speaking about this abnormal situation, explained his daughter's distress: 'My daughter does not have contact with any other children; you know she is just crying to see another person'.

More shockingly, some parents told us how, in spite of the poor conditions in which they were living in Sweden, the situation for their children was still an improvement on what they had to contend with in their country of origin. A good example of this was the experience of Arjana and her family, who were living in hiding in their country of origin, Albania. She was threatened and was the potential victim of a blood feud. It was not safe for her children to go outdoors. In Sweden they were living at the SMA's transit centre and their activities were much less restricted. Arjana said: 'The children can go outside and run, play ball and such things…' Bahara had a similar experience:

> My children they have friends here, they know Sweden as their country. For example there is no day care in Afghanistan. Now they're going to day care, there are other children. They're very happy in Sweden. They're going swimming. We don't have stress from attacks. It's relaxed.

Most parents who are not in hiding tended to describe the situation for their children as one which was, overall, an improvement when compared to their country of origin. However, parents who were in hiding were worried about how their current situation would affect their children's development, wellbeing and opportunities. For example, Aamir believed that his children's speech development had been delayed:

> My children are three years old and they cannot speak. I don't think this situation is good for the children. My stress and tension is not good for my sons. We [both my wife and I] are stressed and tense all the time. We can't play with the children now; my babies are feeling that we are not happy.

Of great concern is the unintentional projection of parents' fears onto their children. Aamir and Bahahra, parents of three, describe how their children fear the police as much as they themselves do:

Aamir: We talk about the police, that we don't want the police to see us; we don't want to go with the police. We often talk about the police and my children are scared of the police.
Bahara: For example last night our son woke up in the middle of the night, at 3 o´clock, and cried. We asked him why; he just said 'Police, police, police'.
Aamir: I think he was dreaming about the police coming.

Finally, children were also be used by parents as a means of preventing the Swedish authorities from returning them to the country of origin. The classic case was that of Ismat and Storai, mentioned earlier, who – aware of the risk that they might be deported as a family – went alone to a meeting at the SMA.

The 'super limbo' of stateless bidoons and Palestinians

The number of persons who have received a deportation decision but who cannot be deported by the Swedish Police Authority has increased by 74 per cent over the past six years – in 2014 there were more than 20,000 people in this situation (Sjödell 2014). Around 10,000 of them were not living in hiding, and their whereabouts were known to the police (Adan 2014). Many could not be deported as they were stateless. In our study we encountered five such persons.

A stateless person is internationally defined as 'a person who is not considered as a national by any State under the operation of its law' (UNHCR 2001a: 2004). There are two global conventions that aim to legally protect stateless people and prevent and reduce statelessness. These are the 1954 Convention relating to the Status of Stateless Persons, which deals with the standards of treatment of stateless persons and their access to basic rights such as employment, public education, and social security, and the 1961 Convention on the Reduction of Statelessness, whereby states have agreed to reduce the incidence of statelessness through the recognition of the fundamental right to nationality of every person (UNHCR 2001a, 2001b; 2004; 2015). It is estimated that there are 12 million stateless people in the world and yet the problem of statelessness is under-discussed (De Chickera and Fitzgerald 2010: 150). Stateless people are 'politically voiceless' and their struggle places them at the core of the tension between national sovereignty and universal human rights. Stateless migrants are in a particularly vulnerable situation and can 'face years of uncertainty, destitution and repeated, lengthy immigration detention' (ENS 2014: 1).

Apart from members of national groups not recognised by states, such as some Palestinians, some Kurds, some Bedouins from the Western Sahara etc., there is now a growing awareness that, apart from these *de jure* stateless groups, there are also new *de facto* forms of statelessness. A recent edited collection by leading experts Caroline Sawyer and Brad Blitz (2011) discusses various issues pertaining to new forms of statelessness in Europe, such as undocumented migrants in the UK, the *sans-papiers* in France and stateless Russians in Estonia. Their choice of title describes the legal, political and social conditions of these stateless populations: 'displaced, undocumented, unwanted'.

Our interviewees belonged to two separate stateless groups: bidoons (or bedoun/bidoun/bidun, UK Home Office 2014) from Kuwait and Palestinians. We describe their situation as being in 'super limbo' because, although they were not permitted to stay in Sweden, they could not, due to different factors pertaining to their statelessness, actually be deported. Leerkes and Broeders have called such people the 'undeportable deportables' (2010: 831). Their plight is unique in the sense that their 'in limbo' situation can drag on for years without either the authorities or the people themselves seeing a way out.

Kuwaiti bidoons

Writing in 2011, Kohn (2011) estimated that there were between 93,000 and 180,000 persons in Kuwait belonging to the bidoon population. Kuwait considers them to be 'illegal residents' (*Landinfo* 2012). The group is diverse and their common denominator is that they belonged to the third of the Kuwaiti population who, after Kuwait gained independence from Great Britain, were not given Kuwaiti citizenship (Kohn 2011). The Kuwait authorities issued the 1959 Nationality Law in order to register all residents of Kuwait but many did not learn about this registration or else disregarded it (UK Home Office 2014). The bidoons are refused admittance to public schools and subsidised health care (Kohn 2011). Migration authorities in countries such as the UK and Norway have presented reports in which they distinguish between documented and undocumented bidoons (*Landinfo* 2011; UK Home Office 2014). It is argued that the former are discriminated against but are not at the same risk of persecution as the latter (UK Home Office 2014). The following section presents the narratives of three of our bidoon interviewees.

Yousef used to go to school in Kuwait but was kicked out after 1991. His father also lost his job at that time. His two younger siblings, Mohammad and Fatma, only had a few years of schooling in Kuwait and spent most of their time taking care of their sick father, who was unable to get the medicine he needed in Kuwait. They rarely left the house and felt as if they were stuck in a cage. When their father's health deteriorated even further, they decided to leave Kuwait. For this they needed to obtain false passports. In Sweden, they applied for asylum, but their applications were rejected, as is common for

many other Kuwaiti bidoons. Nevertheless, many bidoons are still in Sweden, since Kuwait does not accept them as citizens and does not allow them back into the country. Mohammad and Yousef met with the Police Authority in Sweden, and were told that they are unable to send bidoons back to Kuwait:

Interviewer: Then the police said 'We cannot send people back to Kuwait'?

Mohammad: Yeah he showed me all the files of all the stateless from Kuwait, and said that nobody is going to Kuwait. Some people have stayed here for 7–8 years. Oh my gosh, 7–8 years without a solution. They have tried to send them to Kuwait for 7–8 years, and then they [the police] send the files to the Migration [Agency] to get them a residence permit but then they don't get it.

In Sweden, bidoons end up in a state of rightlessness. Although different from their situation in Kuwait, that in Sweden is similar in that they also have fewer rights than other groups in society. They are not able to work, study, marry or receive full access to healthcare. However, Yousef found that there was one big difference with his life in Sweden compared to that in Kuwait:

> The difference is that in Sweden we are free, no one is running after you, or saying bad things, no forces are beating you. The police in Sweden is very very kind… It's the same story in Kuwait and Sweden, in both places we are asking for rights. We do similar things in Sweden and in Kuwait, have a website, talk to people. But the difference is that here the police doesn't come and catch people.

Yousef also illustrates that the way they are treated by the authorities is better in Sweden than in Kuwait: 'We have some rights in Sweden, we are humans here. The Migration [Agency] tells us in the wrong way etc. but still they accept that we are humans'.

In contrast to our other interviewees who exhibit a constant fear of the police and of being sent back, the bidoons' situation is different. They do not fear being caught by the Police Authority and they are not in hiding. The authorities know where the bidoons live and they know that, at the moment they are unable to deport them to Kuwait. In spite of the fact that they are not in any immediate danger of being deported, they still have to live with the risk of deportation because they do not have residence permits. What the bidoons do have to live with is the fear of the situation changing to one which would make their deportation possible. They are also aware that, as returnees who left the country illegally, their treatment in Kuwait will be even worse than before they left.

Stateless Palestinians

The Palestinian case is often referred to as a 'case apart' (Akram 2002; Dumper 2008; Shiblak 2006). In Shiblak's words: 'Unlike other aliens, stateless Palestinians are not admissible in any other country. If expelled from a country they are at risk of finding themselves in 'perpetual orbit' as stateless individuals' (Shiblak 2006: 9). The three characteristics which distinguish this group from other groups are, firstly, that the Palestinian case is a long-standing one (since the end of the 1948 war). Secondly, the number of Palestinian refugees is extremely high – close to three-quarters of the entire Palestinian population (Rempel 2006). They make up the largest stateless group in the world and many live without citizenship in different parts of the Middle East, where they have varying access to basic rights depending on the country in question. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was set up in the aftermath of the Israeli–Palestinian war of 1948 to take care of the special needs of the Palestinian refugees. An unintended consequence is that Palestinian refugees enjoy fewer protections than other refugees because UNRWA only has a mandate to provide the former with humanitarian assistance and, unlike UNHCR, does not have a specific protection mandate.

Two of our interviewees, Salim and Omar, argued that, in not granting residence permits to Palestinian refugees, Sweden was in violation of these international laws, to which it was a signatory.

Salim claimed that the SMA was not respecting government rules in not 'considering us as humans'. Like the bidoons, the Palestinians' lament is best described as an 'extreme' or 'super" state of limbo. They are not allowed to stay in Sweden but they cannot be deported. In Salim's case this was because he did not have any acceptable identity documents, just his Palestinian refugee documents. Omar was going to be sent back to the West Bank but, after the SMA contacted the Israeli Embassy, which stated that he could not be sent back to the West Bank, nothing happened to his case for two years.

Interviewer: What do they tell you?
Omar: Silence, they just stop my case.
Interviewer: You have received three rejections and then...?
Omar: I just appeal, appeal, and appeal to the court and receive the same decision, the same decision. What else can one do? I don't know. What should I do? I don't know. What is happening with my case? I don't know what should I do? I don't know!
Interviewer: If I understand you correctly, you have done everything that you can to help the authorities and they cannot do anything for you.
Omar: Yes.

Salim was appalled by the way the SMA dealt with his and other Palestinians' situations. His misery stems from the fact that the SMA left them in limbo. This was particularly hard on people who had been living in Sweden for long periods of time, sometimes even up to eight years. In a sentiment which is common with the bidoons and other stateless people, he protested against the sheer injustice of this situation.

Concluding remarks

Empirical analysis

Overall the inability of stateless people to plan their lives and their future created a sense that they had lost control over the situation – which, to a large degree, in practice, they really have. Therefore describing a situation brought about by state policies as 'in limbo' already denotes a situation of injustice. This chapter has shown

that this 'in limbo' environment is not conducive to a migrant's psychosocial wellbeing. It is worth noting that this 'in limbo' situation comes at a critical point in peoples' lives: at a time when they have to deal with the news that they cannot remain in the country in which they sought asylum, and will therefore be returned to a country from which they fled or with which they have few positive connections. Finally the 'in limbo' state comes at the end of a long migratory and asylum process for many people: a process which often started several years before, with the difficult decision to leave their country, apply for asylum and hopefully settle in another country for some time.

Migrants who are 'in limbo' lack access to the basic conditions for achieving psychosocial wellbeing which, earlier in this chapter were summarised as: i) agency, autonomy and control; ii) participation and involvement; iii) social relationships and networks; iv) safety. Firstly, they lack control over their own future even though, as discussed in the section on coping strategies, they display levels of agency and resistance. When it comes to changing their situation they have very little autonomy, since the Swedish authorities and European regulations block the only option they can envisage for their future – to stay in Europe. Secondly, they do not have access to most societal activities, and their participation and involvement are therefore low. They have access to very few meaningful activities and struggle to satisfy their basic needs since they are unable to work and earn an income in the formal sector. Thirdly, their financially strained situation and their constrained movement limit their social relationships and networks. Their movement is constrained by their financial situation, the sometimes rural location of their housing, and their fear of being detected. Their social isolation is, at times, augmented by their own desire not to burden those they care for with their worries. Even when social relationships exist, they can feel alone with their worries. Finally, their sense of safety is extremely low; they live with a debilitating fear. Contrary to popular belief, this fear is not one of being caught by the Swedish authorities, but one which stems from their country of origin and from what could happen if the deportation decision was executed.

As a result, the migrants themselves reported that this situation of being 'in limbo' diminished their psychosocial wellbeing. The problems they displayed, which we were in no position to determine whether they were chronic or temporary, were stress, anxiety, insomnia and depression. Those interviewed in detention centres displayed a high level of frustration, anger and apathy (for example, JRS 2010). The migrants told us how their situation has aged them and made them feel as if they were 'wasting their lives'. In addition to the mental impact, several of the interviewees suffered from physical symptoms that they believed were connected to the stress and tension of their situation.

Nevertheless, the strain on their psychosocial wellbeing was not as great as their fear of the situation awaiting them in their country of origin. We were in no position to evaluate this fear, but what we do know is that they concluded that staying in this state of limbo was better than being sent back. However, as mentioned earlier in the chapter, there were people who would normally have been deported but who were unlikely to ever be so – those considered as stateless. This group of 'non-deportables' had perhaps even less autonomy over their situation than others since they did not have the option of being sent back. Some of those who spent years 'in limbo' felt that the situation was so bad that they would do anything to end it. Being 'in limbo' created an untenable situation for the migrants and severely worsened their psychosocial wellbeing.

Human rights: Systemic, legal and political

This chapter has highlighted that the right to life, now commonly referred to as 'the right to *quality* of life and *wellbeing*', is restricted for people living 'in limbo' as a result of the decision taken by the Swedish state to deport them. The overall impact of living in this situation with restricted rights, without opportunities, without control over their future, as has been demonstrated, severely impacted their health.

This leads us to the second human rights issue which needs to be further investigated: to what extent did this 'in limbo' state also limit migrants' right to health? This chapter has concluded that

migrants' psychosocial wellbeing has been negatively impacted by the return decision and the creation of this state of being 'in limbo', a state of deportability. Any signatory state to the basic human rights conventions is also obliged to ensure that everyone has equal access to basic health rights. This can require positive intervention by the state, particularly, but not only, in cases where there are mental health issues. Many migrants at risk of deportation due to: a) their high levels of stress, frustration and anxiety, b) their uncertain legal status – i.e. they were 'undocumented' or irregular; and c) their fear of being returned back to their country of origin by the authorities, might have refrained from seeking medical attention even when eventually accorded these social rights by the state[19].

From an ethical and justice perspective, another point of discussion which arises out of the findings in this chapter, is certainly the fact that this 'in limbo' state of deportability is a result of a state decision. As such it could be argued that this is a situation socially and politically created by the Swedish state. Is the Swedish state justified in creating such a situation in which at least two important basic human rights – the right to life and the right to health – are restricted? Can the Swedish state be held responsible for the creation of the 'state of deportability'? The moral principles on the line here – and this is a well-known source of tension – are the human rights of the individual and the right of a nation-state to expel people from its territory based on the ethical principle of 'common good'. In this regard, the creation of the 'in limbo' state of deportability would be the 'lesser evil', whereby the intention is not the creation of such a situation but the implementation of a legitimate decision taken that the person be removed from Swedish territory and returned to their country of origin. In the latter case, the role assumed by the Swedish authorities and the choices they make are based on the principle of minimising harm. It would appear that this is the approach undertaken by the Swedish state. A common recommendation made by well-established human rights institutions such as the Council of Europe's Commissioner for Human Rights and the European Court of Human Rights, which both recognise the negative effects of 'in limbo' situations such as this, is to minimise the length of the period in which migrants are kept in this state.

As a result, the situation of some stateless people, the so-called 'undeportable deportables', can be considered as unacceptable. Interminable 'in limbo' situations which go on for years result in acute, 'super-limbo' lives whereby people's human rights and dignity is slowly and steadily eroded. This explains the extreme reactions of some stateless people in Sweden who are ready to self-harm in different ways, the most public generally being through hunger strikes.

6. 'I'M TREATED LIKE A CRIMINAL BUT I AM NOT': THE EFFECTS OF 'CRIMMIGRATION' ON THE DEPORTATION PROCESS

Introduction

> Undocumented migrants are not criminals. Detention is not prison. Deportation is not punishment. These are truths in the legal system of the United States. Undocumented migrants are treated like criminals. Detainees feel as if they are in prison. Deportees experience their removal as punishment (Golash-Boza 2010: 81).

This quote from an article written by Tanya Golash-Boza, an expert on immigration control and deportation in the US, resonates with and sums up the experience of migrants at risk of deportation in Sweden. Criminalisation is broadly conceptualised as the process by which some behaviours and attitudes, deemed as harmful to society or individuals, are sanctioned and lead to the application of criminal law and/or the creation of criminals. More pertinently, the criminalisation of migration, or 'crimmigration' refers to the 'troubling' convergence of immigration law and criminal law (Stumpf 2006). This includes the application to migrants, purportedly for breaking some aspect of immigration law, of techniques generally used or associated with criminals. Mitsilegas defines the criminalisation of migration more comprehensively as 'the three-fold process whereby migration management takes place via the adoption of substantive criminal

law, via recourse to traditional criminal law enforcement mechanisms including surveillance and detention, as well as via the development of mechanisms of prevention and pre-emption' (Mitsilegas 2015: 2).

From a longer-term perspective, the policy direction in Sweden when it comes to broader immigration issues is that of de-criminalisation. Two major examples are the distinction between administrative and penal detention in order to avoid giving immigrants the impression that detention is a 'punishment' and, second, the setting up of the Swedish Migration Agency or SMA, a public authority dealing with most aspects of immigration, with the exception of some areas which have to do with deportation. Migrant detention centres fall under the responsibility of the SMA and are regulated under public law (Aliens Act Ch. 11.2). This gradual policy development began in the 1990s, following serious reports of mistreatment by the Swedish Police Authority which, up until then, had been responsible for immigration detention (Flynn and Cannon 2009: 12). Therefore, while irregular stay in Sweden in the past could incur serious penalties, including fines and prison sentences (see Pöyry 2009: 89), in recent years, whilst these penalties are still possible, the authorities have de-emphasised detention and deportation in the treatment of undocumented residents.

Although Sweden has, in general, de-criminalised various aspects of the asylum process, the same cannot be said for the deportation process, which remains a criminalising one. Sweden has made a clear distinction, as described above, between administrative migrant detention centres and disciplinary prisons. In addition, although, according to the Aliens Act, migrants can be prosecuted and penalised for staying in the country in an irregular situation, the authorities often choose not to press charges and instead just expel the migrant, thereby choosing an administrative measure over a criminal one. However forced return can include detention in specific cases – a person can be detained in order to enforce a return decision if it is feared that the person would otherwise abscond, pursue criminal activities or hinder the deportation (Aliens Act Ch. 10.1). This plays into Khosravi's (2009) argument that techniques used to 'humanise' and 'rationalise' the detention and removal of asylum-seekers, combined with a discourse of 'caring' and 'saving',

actually serve as disciplinary mechanisms whereby asylum-seekers are seen as responsible for their own detention and deportation. A key point on which Khosravi constructs his argument is his observation that, following 11 September, migrants are increasingly being subjected to pre-removal detention and removal as a result of greater criminalisation. This is certainly true on a global scale. We do not have information to support the connection with 11 September in Sweden; what can be seen, however, is that more migrants are 'experiencing' detention. As seen in the statistics in Chapter 1, although the period of time migrants spend in pre-removal detention has decreased considerably, there is an increasing number of migrants who have been detained in recent years. Another issue which can exacerbate criminalisation is the fact that, in exceptional circumstances, children and families may still be detained. Finally, in 2010, as seen in Chapter 2, Sweden, in accordance with the European Return Directive, adopted new provisions concerning the maximum detention period for an irregularly resident migrant who is to be returned; this period had previously been indefinite. The maximum detention period is now six months, which may be extended to 18 months under certain circumstances, in accordance with Article 15 of the Directive. According to the Aliens Act, a person should not be detained for more than three months; however it is possible to detain them for up to 12 months if the person is not cooperating or if it takes longer to get the appropriate documents. Detaining someone for more than 12 months is only possible if the person is being deported because of a criminal offence (Aliens Act Ch. 10.4 [again, this does not exist in the English translation]).

The field of migrant deportations contrasts heavily with the rest of Swedish migration policy, since many deportation practices and processes are not decriminalised in practice. The legal framework recommends a criminal penalty for an irregular stay in the form of a fine and, in the case of a violation of an re-entry ban, up to one year's imprisonment (Ch. 20.1–2). Deportation, however, is not envisaged in the law as a *punitive* measure for irregular entry or stay, but as an *administrative* measure, inasmuch as it regularises the situation through expulsion of the migrant from Sweden and the return to the migrant's country of origin. The SMA and the police can deprive migrants of their liberty in migrant detention centres upon arrival

and during the investigation of the person's right to stay in Sweden (Ch. 10.1); however the detention centre is mainly used when a return decision has been issued – it therefore functions primarily as a pre-removal centre (Swedish Migration Agency 2015a: 99). Finally, the police, particularly, but not exclusively, if the migrant is detained, are allowed the use of strategies and tactics which mimic those used with criminals posing grave security threats – handcuffing, the use of force and surveillance. Although, overall, the migration system has been widely decriminalised, this chapter will show that the deportation (forced removal) system is still, in reality, infused with criminalisation practices. As a result of this, a common narrative by migrants at risk of deportation, a narrative imbued with some very harsh emotions, is the sentiment that they are being criminalised.

When it comes to legal safeguards, persons held under the Aliens Act should enjoy certain fundamental rights as from the onset of their deprivation of liberty. The Committee on the Prevention of Torture, in its latest report in 2009, found detained migrants were 'promptly' allowed to inform a person of their choice of their situation, had access to a lawyer if they were subject to an expulsion and had been detained for three days, had access to a doctor, were duly informed of their rights with the provision of leaflets in different languages and interpreters and had 'excellent' opportunities for contact with the outside world (CPT 2009: 45). These legal and policy decisions distinguish Sweden from most other EU countries (EMN 2014).

Despite these mitigating factors and the broader policy of decriminalisation in immigration, deportation in Sweden remains a criminalising process. This came out very strongly in this research. This chapter is an attempt to contextualise these feelings and emotions, whilst remaining faithful to the framework which the migrants have described to us. The overarching narrative is a sense of incomprehension at the gravity of the actions against them, as Rashid said: 'They acted in such a way as if I had committed a grave crime such as causing a death or a big crime'.[20]

Secondly, and unsurprisingly, the detention of migrants is the singular most-mentioned issue concerning this aspect of criminalisation. Mahdi says:

> I would first close all detention centres. One does not need to have detention centres, it is not wrong to go to another country. They [the Swedish authorities] send people to detention centres, why? They [the migrants] have to be there for several months, they are not criminals, they have not done anything wrong, they just came here. Why do they have to be detained, why?

The increasing concern over the use of criminal sanctions – or administrative sanctions which mimic criminal ones, such as detention, police tactics, etc. – in border and immigration control processes, is not unfounded. Nor is the use of certain terminology, which justifies repressive measures (Merlino and Parkin 2011: 3). Bigo (2002) points out that this also occurs in the EU through the framing of the issue of undocumented migration in a security terms, or as Merlino and Parkin (2010) describe it as an 'insecurity continuum that ranges between irregular migration and criminality'. This criminalisation puts migrants under greater duress and pressure and, as a consequence, they take greater risks to avoid being sent back (Cholewinski 2007; Guild and Minderhoud 2006; Lee 2005). Sweden is no exception.

This chapter combs through these narratives which, in the interviews conducted for this project, are often closely interwoven with the feelings of helplessness symptomatic of being 'in limbo', as discussed in Chapter 5. The aim of this chapter is to try to understand how migrants experience criminalisation and the ways in which this understanding interweaves with, on the one hand, the law – which effectively makes an irregular stay a criminal offence – and, on the other, with policy, which prioritises the administrative measure of expulsion over that of criminal prosecution. This chapter also continues the discussion of the migrants' reactions to the system by shedding light on how their interactions with the system are tainted with their experience of criminalisation; it also links to our previous analysis of migrants' psychosocial well-being. The pressing question that underlies this, but remains beyond the scope of this chapter, is the extent to which this criminalisation is or is not necessary, and how it can be avoided.

Theoretical and conceptual framework

Criminalisation, immigration control and human rights

Criminal law and administrative law are two distinct fields which have been woven together in the area of borders, immigration and asylum. Criminal law is designed to punish individuals who harm other individuals or society at large. In liberal democracies, it is crimes against individuals which are considered the most grave, whereas the so-called 'victimless crimes', such as drug consumption, are more subject to contestation. The field of administrative law is composed of rules and regulations which are of an administrative nature, generally considered less serious and harmful to either individuals or the wider society. Discussions generally centre around whether or not border-crossing or illegitimate residence, as 'victimless crimes', ought to be dealt with in the field of criminal law at all. The Council of Europe's Commissioner for Human Rights, who is against the criminalisation of irregular entry into a territory, puts forward the following argument:

> Leaving aside the issue of trafficking in human beings, an individual who irregularly crosses a border or stays on the territory of a state beyond his or her permitted period does not harm a specific individual. To the extent that harm is done at all, it is to the integrity of the state's border and immigration control laws (Council of Europe Commissioner for Human Rights 2010: 8)

Interweaving criminal law and immigration control creates an obvious challenge for states which have made a commitment to comply with their human rights obligations. The key issue here is the principle of non-discrimination. The adoption of criminal laws establishing offences which can 'only' be committed by foreigners therefore clearly violates this sacrosanct principle in international human rights law. Border control, however, whilst being accepted as a consequence of the organisational principle of state sovereignty in international law, is grounded in discrimination on the basis of nationality – that is, citizens have the right to enter a territory and non-citizens do not. Human rights law and principles sit uncomfortably with the issue of border control (Council of Europe Commissioner for Human Rights

Commissioner 2010) but deal, nonetheless, with the treatment of non-citizens at physical borders and even beyond, where the state's agents are in control of the individual (Guild 2006).

From a human rights perspective, the criminalisation of migration is certainly not condoned. The human rights challenges connected to this criminalisation have been documented in various reports, including two reports by the UN Special Rapporteur on the human rights of migrants (2015, 2013) outlining principles and guidelines on human rights at external borders, a paper issued by the Council of Europe Commissioner for Human Rights (2010), and a 2013 regional report by the UN Special Rapporteur on the Human Rights of Migrants which was presented to the UN Human Rights Council on the management of the external borders of the EU. The Fundamental Rights Agency of the EU published two reports, one on the fundamental rights of migrants in an irregular situation in the European Union (FRA 2011) and another specifically entitled *Criminalisation of Migrants in an Irregular Situation and Persons Engaging With Them* (FRA 2014). All these reports draw attention to the fact that the criminalisation of migrants, and in particular of irregular migrants, is unfair and creates situations which can have a severe negative impact on migrants.

Criminalisation from a sociological and psychological perspective

Irregularly staying migrants and those risking deportation are criminalised both in law and as a result of stereotyping and stigmatising by society. Therefore, whilst it is important to understand the triadic relationship between criminal law, administrative law and human rights, it is also vital to go back to the roots of the concept of criminalisation in studies of deviance. Studies of deviant behaviour have demonstrated that the actual labelling of individuals, either through the application of a relevant law making an activity unlawful or through societal perceptions, can lead to an internalisation of a 'deviant' identity. This, in turn, leads to the creation of 'deviant' groups for whom it becomes easier to then cross over into other forms of 'deviant' activity.

This argumentation is grounded in the school of thought of interactionist sociology which, in essence, viewed deviant behaviour not as a self-evident behavioural entity, but as one that could only be created through a process of social interaction (Tannenbaum 1938). Some people committing deviant acts 'become deviant' through the imposition of social judgements on their behaviour. In this process, they become the essence, the personification, of the problem. As a result of this approach, rules and regulations would not be viewed as consensual 'givens' but as sites of negotiation and dispute. Elaborating this argument further, sociologists use Lemert's (1951) distinction between primary and secondary deviation. Primary deviance is often a temporary transgression in which perpetrators have no conception of themselves as deviant, whereas secondary deviance is created through the reaction of others to the initial deviance. This becomes a self-fulfilling prophecy: once a deviant identity, through name-calling, stereotyping and labelling, is created, deviants accept their deviant status and reorganise their lives accordingly. Deviance was no longer viewed simply as a pathological act that violated consensual norms, but as something created through micro-level interactions between rule violator and rule enforcer. This process ensures that some people who commit deviant acts come to be known as deviants, whereas others do not. Looking at deviance and criminality from a different perspective, Becker (1963) argued that being considered 'outsiders' in society meant that the group is more likely to epitomise what is considered to be criminal. Criminality, then, is continually sought only in those identified as criminal, who are likely to be 'outsiders' and therefore social control can, itself, cause deviancy (Lemert 1967). The insights gained from this school of thought led to a better appreciation of the social causes, and social repercussions, of the labelling of an individual's behaviour. This is the basis for recent studies in this area, such as that by Banks (2008), who argues that the current policy direction in the UK which is increasingly reflecting the trend of punitive crime control is made possible through the stereotyping of asylum-seekers as deviant and dangerous.

The inherent dangers of criminalisation, for both the migrant and the migrant risking deportation, go beyond the migrants' personal discomfort with the label and the tactics used. First, the criminal label,

given by groups in society, can narrow the options of a person to such an extent that it becomes a self-fulfilling prophecy. Indeed irregular migrants who are committing an offence by not having a legitimate permit to stay are often unfairly perceived as criminals, a perception which, in turn, makes them more vulnerable to exploitation and abuse. In line with the above schools of thought, the use of criminal sanctions and treatment could create a vicious – and self-perpetuating – circle of negative labelling and stigmatisation by society, during which the migrant would be more likely to engage in other unlawful or criminal behaviour. Migrants at risk of deportation break away from these tendencies, and no evidence has been found to connect them to criminal behaviour. It is beyond the scope of this project to analyse why this is so, but a tentative hypothesis could be that, in contrast to other groups, migrants at risk of deportation are very diverse and do not constitute a 'cohesive' group. In addition, the time–space element is such that these migrants are present at different points in time and, except for the short period which some of these migrants spend in detention centres, are in different places around Sweden. A third addition to this hypothesis is the importance of morality and righteousness for these migrants, most of whom are appealing to be granted 'asylum' by Sweden, an institution founded on particularly moral standards.

Migrants at risk of deportation, like other groups exhibiting deviant or unlawful behaviour, are labelled in law and policy, and in practice, as 'criminals'. In contrast to these groups, as can be noted in the interview extracts presented below, migrants at risk of deportation fiercely resist and refuse the label of criminal to such a degree that they appear to interpret it as a 'moral' offence. This would indicate that the level of 'internalisation' of a 'criminal identity' is minimal. This is, indeed, supported by the fact that there is no indication from this or any other study that, as a group, they are more likely to take part in other forms of criminal behaviour.

Migrant narratives – the main issues

The overarching perception shared by all our interviewees, and generally put across rather forcefully, is that they felt that they were unfairly treated as criminals. Teka adamantly stated in his interview

that this is why detention for him was hard: 'That is difficult for me because I'm not a criminal, I am an asylum-seeker… They didn't treat me like an asylum-seeker, it's really difficult'. Kader, too, was angry: 'They don't respect you and they're like [treating me as if] I have killed 100 people and I'm quite a dangerous killer and they're talking with you like that'. Mahdi tried to make sense of the situation. The problem, he said, was that 'the Police Authority catches undocumented migrants and not criminals'. He adds:

> They do the same as with a criminal with you. When I was there [during the asylum case], there were case workers, the interpreter, the lawyer. If you cannot tell them like this [in that situation], they say that you are lying or so.

The impression that many of our interviewees had was that the authorities were putting pressure on them to give the evidence needed in order to deport them. Vlad, who was in detention and claimed not have been in possession of a passport, was informed that he would be kept in detention for as long as was needed for him to give them his passport. He exclaimed that the 'border police, they just do their jobs. But I am frustrated by this Swedish mentality that just thinking [a thought] is enough to keep us in here, locked up'.

The migrant–police relationship

For migrants who remained in Sweden with an irregular status, their relationship with the police was often strained to such a degree that they would avoid them even after their situation had been regularised. This tension was brought about by an array of factors stemming from the interactions of the migrants with Swedish institutions and border control, the ease with which they were able to be targeted and the encounters which migrants had had with police and soldiers in other countries. This complicated relationship could also have been negatively influenced by the migrants' own internalisation of the 'clandestine' label or stereotype they were given by society.

Rashid was one of two interviewees who had already applied for asylum in another EU country. He was sent back to Italy. He says:

> When I meet a policeman [on the streets in Sweden] the idea that I have, it feels a little like hate in my heart because I believe that the police task is to save people and not do what they've done [to me]. They already knew that I suffered from those problems that I have, they should not have done it [deported me] that way.

Rashid explained how the removal took place, an experience which tallied with those of some other migrants. His focus is on the means used to restrain him:

> And the day after I was still in my room and I was sleeping when the police came to the room. There were three or four police officers who came. Then when the police came to the room… they asked my roommate what my name was, and he said my name… without any warning or anything they [the police] attacked, they started attacking me and took my hands behind my back and I had no clothes on except for a shirt … it was six or seven in the morning. Then after this attack, he [the policeman] put handcuffs on me and they [the Police Authority] said: 'We are going to deport you'. I said: 'You can deport me if Italy accepts me again, there is no problem. But if Italy will not accept me it is your responsibility and you are playing with my life'. Then the police phoned someone I do not know who, and after the call the police came with a chain, they had the chain it was over my legs and entire body. And on this chain there were two handles and one of them had a handle and a policeman held it [on my shoulders] and I was barefoot without shoes, we walked almost for 20 minutes before we arrived at the boat. Before the other passengers got on the boat they took me to a corner; they said 'You should stay there and you cannot, you have to be completely silent ... And you should be quiet'. They waited until all passengers went on the boat and then I could go. Then we came to another small town then we went with a small car to Stockholm. Then they took me to a remand centre or a prison where the people, there were some who were 25–30-year-olds and among those there were some who were to be deported too. When they were going to move me to this remand centre/prison, and I discovered that the others were older 25–30 years old I was wondering why should I be with them because I'm under age. I was there for almost 6–7 days.

Rashid's articulation of his experience of being caught was quite common amongst irregular migrants who, in a similar fashion to criminals, were caught, restrained and detained, with the intention of removing them from the country. In contrast, criminals were never removed from the country unless they were 'migrant criminals'. Either way the police were tasked with the responsibility of finding and organising the removal. They acted within their remit, and the tactics they used, one could say, constituted a somewhat inevitable course of action in the case of non-consenting adults. The migrants, however, felt that being treated like criminals was unjust. Mahdi spoke of a feeling of injustice, racism and double standards and betrayed his uncomfortable relationship with the police:

> I know many criminals in Stockholm, we are not friends but we greet each other sometimes in my school and out and so. They do many stupid things, they steal from shops, they have guns, they sell cocaine and marijuana and everything but the police are not on them, the police is only on REVA.

As we explained in the introductory chapter to this volume, REVA stands for *Rättssäkert och effektivt verkställighetsarbete* or – literally translated – 'Legal Certainty and Effective Enforcement'. Although the aim of the operation was to increase cooperation between the different government agencies in order to make the deportation process more efficient, in Mahdi's quote REVA was being used in the popular sense (a misconception) to refer to the apprehension and identification of irregular migrants.

Connections to criminal activities

As explained above, the migrants we interviewed took pains to explain that they were not criminals and that they were different to criminals. Some interviewees, however, did mention that they had been prosecuted for committing crimes and, as a result, had spent time in prison. These appeared to be what might be referred to as 'petty' crimes, since the sentence was often just a few months in prison. Vlad brought up another important point. He argued that, as an irregular migrant, you can be driven into poverty and therefore have to steal to make ends meet. He explained it thus:

> [When one is in the asylum process] one is forced to do something wrong. One cannot [get by]. Look, I smoke and one gets 70 SEK per day from the Migration Agency, and that is not enough for cigarettes. I cannot work, I cannot study, I am not allowed to take care of myself. I just sit there in one camp and eat what they give me. But I am also a human, one will do wrong things, it comes, it happens that way… It's not that I like what I did but it happens … If I don't get asylum here [in Sweden], then I get a black job [in Germany] so I don't have to steal.

Vlad was ashamed of having stolen – he knew it was wrong. Of particular interest was that he felt an illegal job was less morally reprehensible than stealing. From his point of view a black job would have meant that he was working for money although, from a Swedish or state perspective, both were illegal activities.

Detention

Pre-removal centres were often described as disciplinary prisons by the migrants. What mattered to them was the lack of liberty, which is also evident in Jose Puthoopparambil *et al.*'s study of detainees in Sweden (2015: 80). Migrants, especially those who had spent time in different prisons around the world, admitted that the conditions in Swedish pre-removal centres were 'OK'. This resonates with reports such as Caritas Sweden (2015) and CPT (2009) which state that the conditions inside pre-removal centres in Sweden are of a 'very high standard' or that operations at the detention centres function well (Parliamentary Ombudsmen 2011: 314). However, earlier studies also highlight issues with Swedish detention centres, the Parlimentary Ombudsmen (2011) presents a fairly harsh critique of the detention of people in remand centres which will be discussed later in this section, and Jose Puthoopparambil *et al.* are critical of the lack of healthcare services, in particular mental-health care services, in detention (2015: 81).

Teka spent time in prisons and migrant detention centres in Ethiopia, Libya, Malta and then Sweden. His description tallied with those of other interviewees who had spent time in remand centres and prisons in Sweden: 'The differences are like: there is internet here, there is

not internet over there. The food is better here. The people will treat you better. Here it is not the police, its normal people that makes a difference'. It is not surprising that Teka highlighted the fact that the detention centre was run by lay members of staff, unlike in some other countries where the military, the police or high-security staff were employed. Jose Puthoopparambil *et al*. (2015) conclude that, although most of the factors that make detainees feel like prisoners – uniformed personnel and detainees, no windows, surveillance cameras – are absent in Swedish detention centres, their informants still felt that they were imprisoned (2015: 81). The authors also claim that 'Detention systems around the world have similar effects on detainees irrespective of the structural and administrative variations (2015: 81–2). The CPT reports that staff working in the detention centres were 'sufficient in number, had different cultural backgrounds and possessed a range of language skills (e.g. at the Märsta centre, 37 languages were reportedly spoken amongst the staff)' (CPT 2009: 43). In addition, staff members at the centres in Märsta and Gävle were employed to organise activities for detainees. Most importantly, the CPT adds that:

> The delegation did not hear any allegations of ill-treatment of detained foreign nationals by staff of the Migration Agency detention centres in Märsta and Gävle. On the contrary, many detainees interviewed spoke positively about the staff, and the delegation observed that staff–detainee relations were generally relaxed (2009: 42).

Nevertheless, Vlad spoke quite harshly of his detention. At the time of our interview, Vlad was in a detention centre, but he had also spent time in a remand centre. He focused on his lack of freedom, saying: 'I am also a human being. I also have feelings…. You feel like an animal. You do not get to decide something for yourself they [the detention centre staff] are telling you to do things. It's like you know, being a slave'.

The system is not foolproof and mistakes are made which could seriously damage a person. One of our interviewees, a young Bangladeshi, was erroneously detained in a disciplinary prison

(*fängelse*) for three weeks before being transferred to a migrant detention centre (*förvar*), from where his deportation eventually took place. Another interviewee, Akash, stressed that this was an abnormal occurrence 'in Sweden'. It was clearly a source of relief and restored his sense of justice when the Court ruled in his favour. He was even awarded monetary compensation.

> It was unreal and I was really nervous. I could not understand what I had done wrong, then I asked myself just – 'Why am I here? Why did they take me to prison?' And then when I came to the prison and those who are criminals [who were in prison] they asked me 'What have you done?' I said 'I have done nothing [laughs] they picked me up from the street and then they sent me here'. But this was a criminal prison …. And there I was for three weeks. After three weeks they decided to send me to the Migration Agency [detention centre (*förvar*)] for I had not done anything stupid here in Sweden and it was the police's fault that they sent me to the criminal prison. It was the government's fault that they sent me to the criminal prison and I got money [compensation] for that when I got back [to Sweden, post-deportation]. …. After three times in the Court they decided that I am not a criminal, I have not done anything wrong and it was the police's fault that they just took me like that from the street. This does not usually happen in Sweden it is not normal. That is why the Swedish parliament must pay for those weeks that I spent in prison, criminal prison.

This mistake, which is rare, however, rather disturbingly demonstrates that the conceptual and legal distances between *administrative* pre-removal migrant detention centres and other forms of *penal* detention such as prisons and remand centres, are less than would appear on paper. The Aliens Act clearly states that a person's freedom should not be limited more than necessary (Ch. 1.8). The Act allows the SMA three alternatives for dealing with detainees who disturb the order and security of the detention centre and are dangerous to themselves or others: restricted movement (Ch. 11.6), isolation (Ch. 11.7) and placement within the prison and probation services (Ch. 10.20). However, an investigation conducted by the Parliamentary Ombudsmen shows that the SMA only uses the third alternative

and severely critiques this praxis, since being placed in a remand centre with people who are suspected of having committed a crime is a lot more restricting than being placed in a detention centre (Parliamentary Ombudsmen 2011: 315, 366). Particularly harsh criticism is addressed to the placement of detainees who are only dangerous to themselves and who are mentally ill in remand centres where their psychological illness is likely to deterioriate (2011: 315, 317). The report states that this is a violation of the detainee's human rights (2011: 315). The reason given by the SMA for not using the second alternative – isolating people in detention centres – is because they do not see that as part of their mission, their staff are not trained in dealing with violent or mentally ill persons, and they do not have appropriate isolation facilities (2011: 365).

When asked how the prison and the detention centre compared, Akash's reaction was a repeat of what had previously been highlighted: both were places where freedom was restricted:

> Yes, it is a prison, it is a prison but they [the detainees] get good food there every day, they can eat as much as they want. But it does not help. If you have to go to prison, if there is only one room not for a month, not for a week, just 24 hours – how would you feel about yourself there?

But when pressed to explain the differences between the prison and the detention centre, Akash came up with some factual differences, highlighting the overall better atmosphere in the detention centre. It was telling, however, that he immediately lapsed back into the negative psychological state of migrant detainees who know that they will be sent back against their will:

> There in the prison one only had one room approximately 14–15 square metres. It's just a small bed, a small television, one can only lie / sleep there is not extra space… when you go to prison then I am very nervous. Even a murderer or a smuggler, it does not matter everyone is nervous there in the prison. But the Migration Agency [the detention centre] it is also like a prison but it is a little more open, there is a lot of room, people could play something,

> billiards or other stuff you could play something. And the people working there they are not so stupid actually. They talk to each other and then they talk to those who come to the Migration Agency [detention]. They want to hear from them about their lives and such. It's not that bad but what it is bad when one get to the Migration Agency [detention centre] for a person then everyone knows, one day I'll go back, everyone knows that. The Police sends people to the Migration Agency [detention centre] at the end when the person will go back when that person has no right to stay here in Sweden then they send to the Migration Agency and then the Migration Agency take the responsibility to send [the person] back to their country, fixes all the papers and then send. And absolutely everyone gets really nervous even if they get great food there. But it does not matter, nobody wants to go back, nobody. Not if you talk to those who have stayed illegally here in Sweden. You can talk to everybody, ask anyone. You cannot find a single person.

In spite of the 'justice' he received after the government's mistake in placing him in prison, and in spite of his presentation of the detention centre as a little 'better' than prison, the personal impact on the migrants' wellbeing was significantly negative. Akash himself said:

> I was crying all the time. I had not eaten any food in the prison, I could not eat. Then after three weeks I could not stand up. I was so tired. I was not thinking about whether their food was good or not but I could not eat the food they gave me. And I was really really nervous then. I could not eat, drink, sleep. I could not sleep at all. And when I got a little out into a larger room [at the prison]. As I sat there, everyone asked me what had I done, why I was there and I could not answer. And I felt really sad. I laugh now but I did not laugh then.

Pre-removal centres were places where migrants felt voiceless and vulnerable. Kader, a young 21-year-old Afghani man, articulated this well. He was clearly projecting previous experiences of being detained in other countries, and his fear of the police was based on ill-treatment he received in other countries. This did not remove anything of his fear and feelings of vulnerability:

> Nobody hears your voice, only the police officer, and they can treat you in any way, they can beat you, they can harm you in different ways because nobody is there and you don't have a camera. They don't let you have a camera with you yourself or something to at least get something out [of the detention centre].

Tarek referred to his treatment in detention as 'psychological torture'. It was a deliberate and significant use of terminology, arising from his incomprehension of the complex system that he found himself in once he had emigrated from his country. Tarek fled from a North African country following the Arab Spring. He sought asylum in Sweden after having been in Italy and Switzerland. During the time that his asylum application was being processed in Sweden, he also spent periods in Denmark and Norway. He narrated his story, which was a complicated one involving several irregularities and some criminal activity as a result of which he was sentenced to prison. In Sweden he spent time in a remand centre, and in migrant detention centres. When we met him, Tarek was rather incomprehensively trying to explain his navigation of the 'European' system. As an individual who had originally applied for asylum in Italy, he thought that, under the Dublin Convention, he should have been returned there from Sweden. However, Sweden was seeking to remove him out of the EU and back to his country of origin. He was unclear as to why he was moved to a detention centre when he had not yet served his sentence. And whenever he resisted or became aggressive, he ended up in isolation, and was sometimes moved to another remand centre. His story was that of a person who had been seeking asylum for years, whilst unsuccessfully navigating a system which was too legally and systemically complex for him to understand. More critically, perhaps, it was the story of a person whose punishment and detention, often for an 'irregular stay', seemed totally disproportionate to the offences committed. It was an individual story, but one which reflected a pattern amongst our interviewees of failing to grasp the system: a system which was often not transparent, and which was reliant on various relationships between countries which change over time, where, although the countries might use similar terminology, European law was applied in different ways by the Member States. Understandably, therefore, migrants felt 'psychologically tortured' and powerless.

Lawyers and legal representation

Migrants at risk of deportation were assigned one lawyer during the asylum process, and another lawyer if they were detained. This 'detention lawyer' was separate from the 'asylum' lawyer. Irregular migrants – who were neither in the asylum system nor in detention – were not assigned a lawyer. Migrants were clearly dependent on their lawyers to represent them, obtain information and get updates about their cases. In the composition of the bureaucratic system described in Chapter 3, the lawyer was a critically important channel for upholding the rights of migrants at risk of deportation. The quality of this relationship can be of even greater importance due to the prevalent culture of disbelief that is characteristic of asylum systems and which was a source of distress amongst many of our interviewees. Their relationship and interaction with their lawyers differed greatly. Ironically, the provision of legal services and lawyers in itself was enough for some migrants to feel criminalised, as Kader emphatically stated:

> They are treating you really bad, especially in the interviews. For example what did I do, they gave me a lawyer. Did I commit any crime? – No. Did I steal anything? – No. Did I kill anyone? – No. They gave me a lawyer, the interviews took hours, they're asking different kinds of questions and then they're asking you one question in a hundred different ways…They [the Migration Agency] have this kind of procedure. And they give you negatives and they are like telling you, you're a liar.

Teka recognised that his government lawyer was a good person, but felt that she did not have the power to help him:

> She [the lawyer] is just trying to get me out of here. Last time when we were meeting with the police, she was with me and she told them to let me free, to be outside. Then I don't know, they didn't hear her…. What I think is that it is for nothing. Many times they speak, but she [the lawyer] cannot change anything. …. what I feel is that. In my case the lawyer didn't have an effect. She talked but no one heard her. I don't think they [lawyers] have power that's what I have seen in my experience because I have been here for three years or four years [in Sweden]. I always give them [the Migration Agency] and they say 'No'.

Access to lawyers is extremely important for migrants within such a regulated system, but particularly so in cases where a person is subjected to restricted freedom or to force, and treated 'like a criminal'. This creates a somewhat circular argument because, on the one hand, human rights organisations mention the importance of having access to a lawyer but, on the other, migrants need a lawyer precisely because they are 'treated like criminals'. The criminalisation of migrants is not condonable from a human rights perspective; that of migrants who risk being or have been deported, although popularly tolerated more, is also problematic. Two conflicting messages, albeit of varying intensity, often emanate from human rights organisations. Deportation may be tolerated by the human rights movement, but the accompanying criminalisation is not. Yet states will argue that, even if unintentional, criminalisation is a corollary effect of any forced return action. Speaking to migrants going through this ordeal has helped us to simplify the argument: the criminalisation of deportation does not allow for humane and dignified treatment.

The tactics used

The use of force and criminal-like tactics – i.e. those generally used with criminals – to detain and remove a migrant in lieu of a deportation order are staple reminders of the harsh reality underpinning feelings of criminalisation. Kader spoke of the psychological pressure that he found himself under during the interviews with the authorities and in the investigation room. He said the process made him feel 'unwanted' and 'distressed'. In an articulation which was reminiscent of an absurd Orwellian attitude, brilliantly captured by Steve Cohen (2006) in his book *Deportation is Freedom! The Orwellian World of Deportation Controls*, Kader went as far as to say that he could even find relief in a removal from Sweden. This kind of absurd irony is not unheard of. Van Kalmthout *et al*., writing about foreigners in European prisons, argue that the regime of administrative detention is aimed at increasing pressure on detainees to leave the country and to cooperate with the expulsion procedure, just as prisons are intended to pressurise criminals into law-abiding behaviour (2007: 53). Kader said:

> As much as they can they try to make our situation complicated you know. They're [the authorities] putting you under different kind of pressure. They use their own tactics to make sure that… they force him [the asylum-seeker] to say something. In our process, in our cases they just put us in different kinds of situations, like hot water and cold water. And at the end we should be ready to say, to tell them 'Please send me now. If I die I want to die there, I don't want to live anymore in Sweden'. It's difficult for other people to understand, who don't experience this kind of situation [this kind of pressure from the state authorities].

Handcuffing was described as particularly distressing by our interviewees. In this next quote, Teka agitatedly recounts an incident when he needed medical assistance, but was so upset that he refused to be seen by the doctor. Following a reform of the law in 2013, all irregular migrants in Sweden, including those in detention, have full access to primary health rights (that is, healthcare that cannot be postponed). However, for Teka, access was limited due to his distress at being handcuffed:

> But from here [the detention centre] for example last time I had a pain in my teeth then when they took me from here then I was with [handcuffs] like the police has, like a criminal. They put me like that and even when I was at the hospital with the doctor I was like that and then I asked them to release me, they said 'No'. Then I was really sad and then I had a lot of pain but I was not happy to stay with the doctors like that and then there were three persons [accompanying me] and then the doctor was seeing me. After that, I didn't get anything and I came back because I told them 'I'm not a criminal, and why you did that [handcuffing]?After that I didn't cooperate with the doctors. And then they take me back here again. Now I'm waiting for another appointment. … If I go with that [handcuffs] when I'm with the doctor they have to release me at least. I told them [that last time] but they didn't.

Tactics used to effectively carry out the removal of a migrant from the country can be even more serious. Mahdi spoke about a close friend of his who was sedated before being taken on a flight back to Afghanistan.

> I have a friend who was going to be deported, he screamed when they were taking him to the aircraft, all the people on the plane asked why he screamed so much and then the police could not deport him. Then they took him back to the detention centre. After a week a doctor comes, he gives him medicine to make him calmer. When he [my friend] woke up he was in Afghanistan (…). It is absolutely wrong and nobody knows about it. They treat people like animals. They talk about human rights but they are lying. There are human rights but they do not follow them.

Sedation during deportations is not an unknown or undiscussed practice. It has been the subject of public discussion in Sweden both in the past and more recently. In 2014, a radio programme called *Kaliber* investigated 33 reports about deportation which took place between 2010 and 2014. They found seven instances in which the migrants were given sedative injections, because they were described in the reports as 'aggressive' or at risk of harming themselves or others. Four of the injections were given against the migrants' will, and two instances took place just before the plane took off. The injection of this sedating narcotic, according to Lars-Håkan Nilsson, a medical adviser for the Prison and Probation Service, clearly broke the national rules (*Radio Sweden* 2014). The SPPS deny these allegations. They claim that they do not use any forced medication during transportation. If there is a need for medical care, a doctor or nurse (usually both) are commissioned to accompany the migrant. In our correspondence with the National Transportation Service on 17 June 2015, they reiterated that, according to Swedish law, it is not permitted to use forced medication, and that they must ensure that the migrants return to their countries of origin in a humane and dignified manner. Sedation without consent is not condoned by the human rights community. The UN High Commissioner for Human Rights categorically states that, to ensure that the human rights of people are respected at the border, the use of non-medically justified measures or treatment, such as the use of tranquillisers, sedatives or other medication to facilitate deportation, should be prohibited. Medication should only be administered to persons during their removal on the basis of their informed consent and a medical decision taken in respect of each individual being returned, and only where

there is a medical need on the part of the migrant which is unrelated to the state's interest in his or her removal (OHCHR 2015: 40).

These tactics, in mimicking those used with criminals, conveyed a deep sense of criminalisation to migrants. The question to ask here is whether they were really necessary. If such practices were not necessary, then the resulting outcome – which is often an unjust sense of punishment and subjugation – was also an unnecessary part of the procedure, and should have been avoided.

The return journey

The criminalisation approach would appear to continue on the return journey. This is not altogether surprising given that, particularly accompanied deportees (DEPA), are accompanied on the return flight because they might not collaborate or might constitute a security threat. The situation might be different for unaccompanied deportees (DEPU). Nadir gave us a reality check of what could constitute a forced return from the migrants' point of view. He assists people who have just been deported back to Kabul, including deportees from Sweden. The main characteristic which he repeated and exemplified several times was humiliation:

> The deportation journey is one of the worst journeys I can say. That's because you are a human being and they treat you like a criminal for example if there is one person there is at least two police man who's guarding [that person]. If you want to, for example go to the wash room, they do not let you to close the washroom door even, you know? Which is very humiliating, according to humility, according to human rights or whatever you call it. It is really humiliating if someone goes to washroom and you won't let him close the door and take the door open like you know.

Upon being asked whether there was any respect shown for prayer time or personal activity that might have made the journey more bearable, Nadir continued with his previous emphasis on how humiliating the whole journey was:

> I don't think so, I don't think so. Because if you ask them anything like, if you tell them – OK I want something or if you kind of restrict or stand against your deportation then they just handcuff you, they tie your hands, they tie your legs, they put a helmet on your head and everything so that you avoid resistance. They use whatever force they can to bring you back. They'll use whatever force they have and they can.

In the home country

Sadly, there are strong indications that for some deportees criminalisation does not stop with the departure from Sweden, or with the end of the journey back to the migrants' country of origin. Akash, who was deported to Bangladesh, and returned back to Sweden in a regularised way, explained:

> It doesn't matter if you are a citizen of that country. The police will take you directly to prison and then they want money. The same thing happened to my friend [also from Bangladesh] that I met [at the detention centre in Sweden]… When he went back, he got an injection…he did not want to go back that's why he needed a little injection so he wouldn't do anything on the plane… He became a little calm and so and then they sent him back. And when he came to the airport in the country [of origin] then the police took him straight to prison and demanded money from him.

The fate of stateless migrants is often more difficult. They are rendered vulnerable in the states they originally resided in, but their nationality does not carry currency with the state. Mohammad, a bidoon from Kuwait, was certain that, if returned, he would be put in prison. The stateless migrants we interviewed did not speak of criminalisation with the same intensity as others did, but they did fear criminalisation back home. Stateless bidoons were not supposed to leave Kuwait (they travelled on fake documents). It is a crime punishable with a prison sentence.

The fear of being sent back to the country of origin is a common theme. Teka, a member of a minority group in Ethiopia, articulated this fear. He introduced this by explaining what he went through to

arrive to Sweden, even spending time in prisons and migrant centres in Ethiopia, Libya and Malta. He was certain that he would be put in prison by the Ethiopian authorities:

> Right now if I go back to my country it is hard. That means it's really hard because the situation in our country it's very bad now. Because even now if I go there, even if they didn't kill me they will put me in prison. I can't [handle] that prison now. If before I managed a little bit but now I don't have the morale, I have lost my morale [ability to cope with prison].

The stigma of deportation is one of the problems that those who have been deported face when they return to the country of origin. Schuster and Majidi (2015) have written about the stigma of 'failure' and 'contamination' as a serious post-deportation outcome for Afghans, as a common explanation for the re-migration of people out of the country of origin to which they are deported. Miller describes how persons deported from the US to Jamaica, who arrive back in Jamaica, are shunned by their family and friends and treated as criminals (2012: 145). For Nadir, who was himself based in Afghanistan, this was one of the main problems. This was worse still, he explained, if they were originally from towns and villages outside Kabul, where they were often judged negatively by their communities. When asked if this was really societal or whether it was just a perception, or fear, exhibited by the migrants, Nadir replied:

> It is a stigma of the society. … In Afghanistan not many people know about returnees even do not know how many people are returned back to Afghanistan. When I tell them for example there are every month more than 100 or 150 people returned back, they kind of tell me 'Are you kidding me?' I say, 'No I am not kidding I know about it'. This is the situation here. What people know is for example if, let's say there is a boy named Ahmed, for example, so what people know is, or what Ahmed's family know is. They say if Ahmed's cousin has gone for example to the UK and he got a permanent protection visa or he got refugee status then Ahmed also if he goes there, he will get it. They don't even know what the protection is, you know. They don't even know. They don't even know the word protection. That's why when they [the returnees]

> come back they [the family, people in Afghanistan] will ask us 'OK what have you done wrong? Have you done a crime? Because your cousin got a status and you didn't, what have you done wrong?'

Concluding remarks

Finally, a few reflections on the most critical points that arise from the presentation and analysis in this chapter. The Police Authority's policy of prioritising an administrative measure of expulsion, rather than a criminal prosecution of a migrant irregularly staying in Sweden, does not diminish the effects of criminalisation. The convergence of criminal law and immigration law, or the *de facto* criminalisation of aspects of immigration, only serves to produce a complex situation whereby migrants are viewed as threats, akin to grave criminal threats, and therefore treated accordingly. As a result, migrants live through the deportation process with a great sense of *injustice* and *unfair subjugation*. They feel that their actions do not constitute morally grave actions which would warrant criminalisation. This is interesting considering that criminalisation does not appear to be the intention behind the active policies or what the authorities set out to achieve. Evidence of this is the small number of prosecutions carried out by the police. This can be situated in and confirmed by Sweden's overarching policy of decriminalising the field of immigration with concrete choices of administrative measures rather than criminal ones. Migrants, however, feel that they are *unjustly* treated like criminals.

Another issue which came out very clearly from the migrants' narratives is that, in spite of the separation between administrative and criminal proceedings and detention in Swedish law and policy, migrants perceive deportation to be a *punishment*. Deportation is clearly, both in the law and in policy, an administrative measure and is considered a preferable option by the human rights community. For migrants who have refused to return voluntarily, deportation is the punishment. Similarly, detention, even if it is for removal purposes in low-security detention centres run by the SMA, is seen as a punishment. The deprivation of freedom, for the migrant, is always a punishment – the concept of either a rehabilitating space (such as a prison) or an administrative detention is not present. It is crucial that the authorities understand this perception.

The deportation process involves various elements of active resistance. As such, force and/or restraint often need to be used by the police and involve criminal-like tactics which serve to label migrants in a state of deportability as 'criminals'. Migrants at risk of deportation *resist* and *refuse* the label of 'criminal'. Any mention of them taking part in other criminal activities was shrouded in shame and usually justified as a measure unwillingly taken as a result of poverty. This is in contrast to certain other groups who internalise, identify and rally around the criminal label in such a way that they start exhibiting other forms of criminal behaviour, leading sociologists to declare the social creation of criminal groups. For migrants at risk of deportation, this label of 'criminal', which denotes morally deplorable behaviour, is a source of great personal *distress*.

Migrants' psychosocial wellbeing is *severely* and *negatively* impacted on when they are admitted to a migrant detention centre. This builds on the analysis found in Chapter 5 which showed how, overall, migrants' psychosocial wellbeing nosedived once they received the return decision. This is taken to another level when a migrant is admitted into a detention centre.

Finally some concluding remarks on the system:

Detention

Detention, if arbitrary, is a clear violation of international human rights standards. The detention of asylum-seekers is not condoned, but detention for the purposes of managing migration, particularly if migrants are not asylum-seekers or have failed in their asylum application, is tolerated by respectable organisations within the human rights movement such as the United Nations and the Council of Europe. This notwithstanding, states are encouraged to find alternatives to detention. Sweden, in this, generally fares better than its peer EU Member States and is commended for this. For example, the comparative report by the European Migration Network, *Use of Detention and Alternatives to Detention EU 2014* (EMN 2014), mentions Sweden in this regard. Sweden, however, has also been criticised for not exhausting all other options before detaining people. Such criticism appears to be more internal – for example,

in the report entitled *Förvar under Lupp* (literal translation: *Focus on Detention*) by the Swedish Red Cross (2012), which looks into various aspects of the detention of asylum-seekers and non-citizens in Sweden. At present, the decision as to whether or not a non-citizen will be detained is discretionary and made by an SMA officer or the police. This is a critical juncture in the procedure that needs to be monitored carefully. Migrants can have recourse to a judicial review and are assigned a lawyer by the state, which is separate from their asylum lawyer. To sum up, whilst the conditions in migrant detention centres in Sweden are good, and migrants have access to a judicial review, the issue to be investigated further is the extent to which detention is being used as a last resort.

Tactics used

The Return Directive clearly states that 'Third-country nationals in detention should be treated in a humane and dignified way'. The use of restraint tactics, such as handcuffing, need to be cautiously approached, and only used when it is absolutely necessary. Clearly these are decisions subject to the officers' discretion. The administrative detention of migrants is authorised inasmuch as migrants are deemed to be at risk of absconding, or going underground, when they are living in the community. As such, the aim of detention is to ensure that the removal can take place once the paperwork has been processed. The risk that this initial judgement for admission in a detention centre precludes continuous re-evaluation will always be present. Therefore, the most pressing question here would be: Are the tactics being used really necessary? And, in view of the fact that they have such a negative impact on the migrants, to what extent can they be avoided?

The return journey

This research study does not have sufficient data to report on the forced return journey. However it is worth noting that Sweden has not yet set up the monitoring system on the return flights of migrants which the Return Directive obliges Member States to do. The monitoring system would observe the process and ensure that removals are conducted according to the standards set out in the Directive – that is, in a humane and dignified way. This applies to flights organised jointly and those managed by the Member State.

A report by the European Fundamental Rights Agency comes down rather heavily on Sweden for this, particularly in view of the fact that Sweden, apart from organising return flights itself, has also operated joint return flights for other Member States, too (FRA 2013: 56). Sweden needs to implement an independent monitoring system on return flights.

The stateless: a concluding point

Finally, what stood out in this analysis of the experiences of criminalisation amongst migrants at risk of deportation was that this did not seem to apply to stateless migrants. This possibly derives from the fact that the situation for stateless people in Sweden is characterised predominantly by problems of being 'in limbo', whereby the threat of deportation is felt less. Our case study of stateless people demonstrates that feelings of criminalisation are essentially tied to the *actual* threat of deportation, whereas the previous 'stages' of deportability do not necessarily inflict criminalisation. Stateless migrants at risk of deportation feel predominantly 'helpless', as so clearly described in Chapter 5. This 'in limbo' characterisation of stateless migrants resonates with other writings on the subject of forced return. For example, Leerkes and Broeders (2010) and Broeders (2010), looking into forced return from the Netherlands and Germany, have commented on how the detention system, for 'undeportable deportable immigrants', often risks becoming a 'revolving door'. An edited collection by Sawyer and Blitz (2011) deals with different perspectives of the 'in limbo' situation, such as the legal, the philosophical and the empirical.

In Sweden, the fact that feelings of criminalisation do not appear in stateless migrants' interview narratives, when they are so forcefully presented by all other migrants, demonstrates that criminalisation is primarily tied to a 'real' or 'actual' threat of deportation, and not to the general state of deportability. In this way, therefore, stateless people act as a 'control group' in our project. The glaring omission of criminalisation from their experiences confirms that the experience chiefly comes with the actual threat of the implementation of deportation – of forced return to the country of origin. Experiences of criminalisation in Sweden are therefore closely tied to the possibility of actual return and not to the state of being 'in limbo'.

7. CONCLUSIONS

Consistencies and variations

The aim of this study has been to look at the deportation process from Sweden from the perspective of those who are experiencing it and who might have few opportunities to bring forth their concerns – the migrants themselves. The project has used a human rights approach and a person-centred methodology inspired by anthropological methods. Our point of departure is that a full understanding of the workings of a system is incomplete without the perspectives of those individuals who are on the receiving end. As such, the project has aimed to start a conversation on the issue of human rights and deportation and the challenges and possibilities involved in making the process 'humane and dignified'.

The 26 migrants who we interviewed for this study were a very diverse group in terms of gender, age, family situation, nationality, time spent in Sweden and social situation. Furthermore, some were detained at the time of our interview with them, while others were living in hiding and yet others in asylum centres or with friends. In order to gain an understanding of the deportation process and to be able to contextualise and understand the migrants' experiences, the researchers also spent time in the early stages of the project mapping the field of study and meeting and interacting with the different gate-keepers and actors – such as the heads of detention centres, police officers, workers at detention centres, NGOs and fellow researchers.

As is always the case, there are some limitations to this study. The research was, from the outset, designed to follow the migrants through the process, from the point where the decision was given to them to the reception of the migrant in the country of origin. For different reasons, this turned out not to be possible. Instead, the project focuses on the migrants' experiences of living in a state of deportability in Sweden. It is also important to note that, although different aspects of the migrants' interactions with the deportation system in Sweden are discussed, this study is not and does not aim to be, an evaluation of this system. Rather, different aspects of the workings of the system are reflected through the experiences of those who go through the process.

Our interviews with migrants give a complex and multifaceted picture of their experiences of the deportation process. However, through a close reading of the interview transcripts, a number of common themes arose that came up in all the interviews. The first of those themes was the feelings of frustration, anger and injustice that the migrants were left with after having interacted with the authorities in the 'deportation system'. The migrants go through complicated processes and, very often, they have a hard time understanding why these processes unfold in a certain way. The migrants' experiences of the return process are also tinged by their experiences of how they have been treated and if they feel that their voices have been heard by lawyers and SMA workers in the asylum process and early stages of the return process. Later, in the forced return process, the migrants' interactions with the authorities in the deportation system are conditioned by their various forms of resistance to the return decision and the repercussions by the authorities in enforcing the deportation. These repercussions, resulting from discretionary decisions such as reducing migrants' freedom of movement or cutting down their daily allowance, restricts the migrants lives in different ways. Since the migrants contest the return decision in the first place, and sense that it is deeply unfair, they find themselves in opposition to the system, with strong feelings that they have been the victims of an injustice.

The second of these common themes is migrants' experience of being in an 'in limbo' situation. With no legal options to remain in Sweden, and with strong negative feelings about returning to the country of

origin, migrants are under the impression that they have lost control over their lives, are wasting their lives away, and are ageing at a faster pace than they should. This difficult 'in limbo' situation often comes at the end of a long migratory process in which the migrants find themselves constrained by their lack of energy and resources. They display symptoms of stress, insomnia, depression, suicide attempts, frustration, anger and apathy and they, themselves, report that it is connected to their situation. Significant for living in this 'in limbo' situation is the lack of freedom of movement, of resources and of meaningful activities and a low sense of participation in society. To sum up in the migrants' own words: 'The only thing you can do is to eat and sleep'. Thus, living in a 'state of deportability' has negative consequences for migrants' psychosocial wellbeing. However, despite living in a difficult circumstances, most migrants use coping strategies to regain some sense of control over their lives – finding support in friends or becoming involved in some form of activism.

The third of these common themes is that the migrants feel that they are unjustly treated as criminals, despite the fact that the Swedish state has aimed to use administrative measures of expulsion and to separate return operations from police activities as far as possible – for example, by letting a civil authority run detention centres. The different measures taken by the authorities to enforce the deportation –detention and the use of control such as hand-cuffing – are, in spite of the separation between administrative and criminal proceedings, perceived by the migrants as a punishment.

As stated before in this section, there was considerable diversity among our interviewees and their access to resources and social support varied greatly. Depending on the cases and the situation in the country of origin, these deportation processes can look very different. Consequently, the experiences of migrants who are in the deportation process also tend to vary. A case apart is the situation of stateless persons and other 'undeportable deportables', who have exhausted their legal rights to stay in Sweden but who cannot be deported either. Since their 'in limbo' situation can drag on for years without a solution, they are a particularly vulnerable group. The living conditions also have a major impact on migrants who are living in a state of deportability. Obviously, persons who are incarcerated

or who are living in hiding suffer from their restricted ability to move freely in different ways to those who live in asylum centres or with friends. These groups have, for different reasons, a more strained relationship with the authorities. Their feelings of anxiety, fear, anger and resignation are often more clearly articulated. The situation of living 'in a state of deportability' is also very different for families with children, since their economic situation and restricted freedom of movement severely affect the children's psychosocial wellbeing.

Systemic considerations and human rights

This study is based on 26 in-depth interviews with migrants who live, or have experienced being in a state of deportability. As such, the conclusions that can be drawn from the study have to be seen as tentative and as starting points for further studies and discussions. However, our interviews with migrants highlight areas that could be considered further by those responsible for the 'deportation system' in order to improve the process for the migrants.

The first of these considerations is that it is important to remember that the migrants and the authorities enter the process from very different points of departure and with opposing agendas. The deportation system is also very complex, which makes it hard for the migrants to understand why certain things happen at certain points in time. Furthermore, at this stage of the migratory process, many migrants have a low level of psychosocial wellbeing and may not be in the best mindset to understand complicated processes. It is important that case workers bear this in mind and remain patient when interacting with migrants. It might take the migrants some time to understand/accept the return decision and they need clear explanations of why certain decisions have been made, why they are being asked to sign certain documents, how the authorities will proceed and factual information on what happens when the case is handed over to another authority. Such information could, to some extent, prevent the dissemination of myths and misperceptions about the workings of the authorities. It is important that concerns for efficiency do not stand in opposition to giving the migrants the time that is needed to understand why decisions are made and what will happen next.

The second of these considerations is that migrants' perceptions and experiences of the return process are, to some extent, conditioned by their experiences of the asylum process and early stages of the return process. If they feel that lawyers and SMA workers have treated them in an unprofessional or unsympathetic manner it can be difficult for the authorities to gain migrants' trust and cooperation in the later stages of the return process. Needless to say, it is important that the migrants have the opportunity for a fair hearing in the asylum process – a 'humane and dignified' return process is greatly dependant on this factor.

The third of these considerations is that the authorities in question (The Swedish Migration Agency, the Police Authority and the Swedish Prison and Probation Service) have the power to put restrictions on the individual migrants' lives if, and when, the migrant does not cooperate in the return process. These restrictions are regulated by different laws such as the Aliens Act, but are decided upon as a part of the discretionary space available to the authorities working within the deportation system. The latter may reduce the daily allowance to which asylum-seekers and returnees are entitled, can detain them and use control such as handcuffing and even force. These restrictions and repercussions have a big impact on the migrants' lives and wellbeing (they are already in a very stressful situation) and the use of detention and control makes the migrants feel unjustly treated as criminals. Because of this, we can only agree with other researchers that this discretionary space should be used in a very careful and transparent manner in order to avoid arbitrariness in the decision-making process and to protect the human rights of migrants in the forced-return process.

The fourth consideration is that there are critical junctures in the collaboration between the authorities. As is the intention with the division of responsibilities between the Swedish Migration Agency and the police in the forced-return process, we conclude that the case should be in the hands of the SMA – until they are no longer able to enforce the decision – in order to respect the best interests of the migrant. This is not grounded in observations that the treatment is different between these authorities but rather that the more actors are involved, the more difficult it becomes for the migrant to understand

the process. Furthermore, when the case is handed over to the police the security increases, the migrants have fewer options and they are more at risk of the stigma of deportation on return to their country or region of origin.

The fifth and final consideration is the 'in limbo' state in which migrants in the forced-return process find themselves. Given the strain that this situation puts on the individual, and the effects that it has on an individual's psychosocial wellbeing, greater efforts should be made to limit this situation. This can be done in different ways, one of which would be to ensure that migrants are making an informed response when refusing their return decision. A more transparent return dialogue could include information about what life without a permit in Sweden might look like. Nevertheless, all of the people we have met are still, even with all the difficulties they face, convinced that it is better for them to remain in Sweden in this state of 'limbo' than to return to their country of origin. For their situation to improve, they would need access to societal rights that, in Sweden, are connected to a residence permit. If Sweden wanted to better the migrants' situation, they could provide residence permits or extend more rights to those without them. Having more of their rights respected is particularly crucial for those who have not chosen to remain 'in limbo' but are forced to because they cannot be deported, a situation which we have chosen to call 'super-limbo'. Having control of one's life is crucial for a person's psychosocial wellbeing, to which being 'in limbo' is not conducive – which is one of the reasons why the Swedish authorities should avoid migrants being stuck in that situation without any means of extracting themselves. Raising awareness of the difficulties migrants face when 'in limbo' might be useful for the Swedish authorities when meeting both those who have chosen to remain 'in limbo' and those who have ended up in it.

'Humane and dignified'?

The overarching discussion that this study contributes to can be summed up in two crucial questions:

- What should a humane and dignified deportation look like?
- Is a humane and dignified deportation possible, in practice?

This study, by focusing on how the migrants' themselves experience the deportation process, provides a unique perspective. Our findings indicate that it is quite difficult to conceptualise a 'human and dignified' deportation, firstly because any deportation is characterised by an asymmetrical power relationship between the state and the individual migrant and, secondly, because, very clearly, the interests and wishes of the migrant and of the state in the deportation process are diametrically opposed. Indeed what we can conclude from our study is that the deportation process is not perceived by the migrants to be 'humane and dignified'.

There are, however, important variations which, in the experiences of the migrants, can either aggravate or alleviate the impact of deportation. Sweden's efforts have cemented some important achievements which have led to the alleviation of the procedure for migrants, of which the civil staffing and running of detention centres and deportations, combined with the absence of outsourcing to private profit-making companies, the financial benefits and the right to primary health care for irregular migrants, and the high rate of voluntary returns are just a few. Migrants also need to be reassured that they will be accorded a fair hearing, with respect for the principle of non-refoulement, transparency in how decisions are made, respectful services by lawyers and civil servants, and the avoidance of unwarranted control and force. We therefore understand clearly that the discussion cannot be conducted in absolute terms but rather should be discussed in terms of 'more or less' or of the lowest level acceptable from a human rights perspective. If this were so, efforts to balance the rights of the state with those of the migrants throughout the asylum and the forced-return process could lead to a relatively more 'humane and dignified' deportation process, even though such a standard (however minimal and basic) may appear hard to achieve.

Complacency in the establishment of a 'good-enough' system will not get us anywhere. Nor will helplessness brought about by the apparent futility of the authorities' efforts to make the process easier for the migrants to cope with. An appreciation of the positive differences that a system can make, even in this distressing process, needs to be reaffirmed. Deportations, however tragic the nature of the activity, can be conducted in a better or a worse manner.

8. AFTERWORD: THE COURAGE TO LISTEN

Katrine Camilleri

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I am honoured to contribute to this invaluable work which provides some insight into how migrants experience deportation and helps us to understand what it is like to be in their shoes. Listening to the experiences of asylum seekers in such different countries as Sweden and Malta underscores several common themes, including criminalisation, limited rights, and lives in abeyance. While their perspectives are subjective, I believe that it is essential that we listen to these narratives if we want to move towards developing more humane and dignified processes. The following section is a reflection on the findings of the research study presented in this book, both in the light of my experience working in Malta with Jesuit Refugee Service (JRS) as well as within the broader European context.

Malta: Opposite case, similar outcome

Malta is diametrically opposed to Sweden in several respects, and not just because the two countries are geographically located at opposite ends of the European Union. They are different in terms of size and population density and, possibly more importantly, in terms of other more relevant issues relating to the treatment of migrants and asylum seekers.

Unfortunately, over the years, my country has been consistently criticized for failing to respect the rights of asylum seekers and migrants arriving on our shores. In *Aden Ahmed v. Malta* Application no. 55352/12 [ECtHR, 9 December 2013] we have been criticised for subjecting asylum seekers arriving irregularly by boat to long term detention in extremely difficult conditions, which European Court of Human Rights (ECtHR) found to be in breach of Article 3 of the European Convention on Human Rights (ECHR). We have also been criticised for implementing a policy of detention that raises serious human rights concerns and fails to provide adequate guarantees against arbitrariness, in violation of Article 5 of the same Convention (A*den Ahmed v. Malta; Louled Massoud v. Malta* Application no. 24340/08 [ECtHR 27 October 2010]; *Suzo Musa v. Malta* Application no. 42337/12 [ECtHR 09 December 2013]). When it comes to return, the situation is more or less the same — suffice it to say that, for all its shortcomings, the Return Directive was a significant improvement on what we had before, in terms of procedural and other guarantees against arbitrariness.

What never fails to strike me, however, is that in spite of the differences in context, migrants' experience of the more punitive aspects of the system — e.g., the deportation process or detention — is all too often strikingly similar. I first noted this when JRS Malta participated in a research study, DEVAS, on detention of vulnerable asylum seekers coordinated by JRS Europe (JRS 2010). As part of that study, project partners interviewed 685 migrants and asylum seekers detained in 23 Member States of the European Union (ibid.). Given the diversity of the legal rules regulating detention, the different conditions in which migrants are detained — ranging from purpose built detention centres in Sweden, to warehouses and army barracks in Malta, to prisons in Ireland and police station cells in Cyprus — and the varying lengths of time for which detainees are held — ranging from a few days to several months in some cases — we were surprised to note not only how similarly the migrants experienced detention, but also how similar the impact of detention, particularly prolonged detention, was on detainees' physical and psychological well-being.

As I was reading the book I was struck once again by the similarity between the outcomes of this research and the outcomes of a project

implemented by JRS Malta, between April and October 2014, with a group of Somali women (JRS Malta 2015). The project started while the women were in detention and continued in the initial months following their release from detention. Although the situation of these women was not identical to that of the interviewees in this project, primarily because none of them were at imminent or even real risk of removal, they share a number of common characteristics. All of the women in the project had their initial asylum application rejected – some were awaiting the outcome of the appeal and a couple had also received a final negative decision from the appeals board. All spent at least 12 months in detention; those whose application was finally rejected were detained for 18 months. In the latter case, in theory at least, detention was for the purposes of removal — although few, if any, rejected asylum seekers are removed from Malta (ibid.). This is mostly because of the difficulties obtaining the necessary documentation to implement return. Although most of the women involved in this project were asylum seekers and therefore still had hope of obtaining protection, all of them perceived themselves as 'rejected'. During our discussions, they would refer to themselves as 'rejected women' and they said that others did the same: 'They say of us, "this group are rejected, they were in detention for a long time". They forgot our names, we are called the "rejected ones"' (JRS Malta 2015: 30).

That they assumed this label could in part be due to the fact that they know that their chances of getting a reversal of the decision at appeal stage are slim, as the rate of success at appeal stage is quite low. But it also largely due to the way in which they were treated, deprived of their liberty in miserable conditions for months on end with very limited access to rights, not only while they were in detention but also following their release, all of which heightened their sense of exclusion.

During the sessions organised as part of the project, the women discussed human rights and what protection means to them. They also talked about their needs and concerns and identified the messages that they wanted to convey to the authorities and to the outside world. Some of the messages they identified are:

- 'We believe our dignity has been destroyed' – in this context they referred specifically to the fact that they were treated like criminals, deprived of their liberty and made to wear handcuffs, although they committed no crime (JRS Malta 2015: 14–17).
- 'Detention is harmful' (JRS Malta 2015: 18–21).
- 'We feel the asylum procedure has failed us' (JRS Malta 2015: 22–27).
- 'We urgently need a document' — referring to their need for a status that affords them more rights and greater security, because all without exception believe that they need protection (JRS Malta 2015: 30).

I heard all of these themes echoing in the narratives of migrants awaiting deportation in Sweden, which we have just seen in the previous chapters. When it comes to detention and the resulting criminalisation, the findings of the Swedish study are also very similar to those of the DEVAS project, where the focus is not exclusively on migrants awaiting return but also asylum seekers. For me this is particularly significant; as, in my view, the fact that the findings of the Swedish study are echoed by migrants and asylum seekers subjected to administrative sanctions for breaches of immigration law in other EU Member States further validates them. It also makes it more difficult to dismiss them as them as the cynical ramblings of individuals who are disappointed about the fact that their asylum application was rejected and are therefore, as it were, taking it out on the system. More than this however, it helps us to see these findings as part of a bigger picture: as part of a European trend to implement policies of criminalisation and exclusion to deal with irregular migrants.

Perhaps the clearest example of this trend is the pervasive use of detention across the Member States of the EU, supposedly to manage migration more effectively and to implement removal more efficiently. Another is the tendency to severely limit the rights of those who have no right to stay within the territory of the state, even if they cannot be removed, the so-called 'undeportable deportables', which happens not only in Sweden, but in many other Member States of the EU, including Malta. This trend is causing untold and, in my view, largely unnecessary hardship to hundreds of migrants, as this

study makes clear. And it is precisely for this reason that it needs to be addressed. I will therefore take each of the themes in turn and make some observations.

Immigration Detention: Imprisonment without crime

It is clear from the study that the migrants experience detention as a prison, and that 'what mattered to them was the lack of liberty' (pg 172). The lack of freedom they complain of is not just a lack of freedom of movement, but also a lack of freedom to choose what to do – lack of control over one's life and the inability to take decisions or plan for one's future. As quoted earlier in Chapter 5, 'You feel like an animal. You do not get to decide something for yourself they [the detention centre staff] are telling you to do things. It's like, you know, being a slave.' (pg 173)

Migrants in detention feel 'voiceless and vulnerable', isolated and largely powerless to do anything about their situation or to stop the inevitable from happening (pg 176). These sentiments are echoed by the women who participated in the Malta project, who also described themselves as 'prisoners, isolated people in a cage… with no freedom at all' (JRS Malta 2015: 19). They also talk of living with constant fear and uncertainty and describe their shock at finding themselves locked up as soon as they arrived in Malta.

> In detention, we live in fear. Every time we hear the gate clang open, we are afraid someone else has been rejected. We have nothing to do, too much time to think; we feel anxious, that we are going mad. We feel ashamed, humiliated, that we have done something wrong, being treated like criminals. (JRS Malta 2015: 19)

> When I arrived in detention, I was really very shocked; I never thought I would imprisoned in a country like this. To me, detention is a place where you have no access to your life, you have no control, someone opens the door, someone feeds you food you may not even want. Being here, I think a lot, of the past, of the future, I always fear about getting a second rejection. Whenever the guards open the door and I hear the sound of the gate slamming, I get a shock. If I am asleep, that noise wakes me up immediately. I always think: is this bad news for me or for someone sleeping near me? I always fear something bad. (JRS Malta 2015: 21)

Human rights law and the deprivation of liberty

Human rights law makes clear that liberty is a fundamental right; deprivation of liberty is an extreme measure and it should therefore be the exception, not the rule (see Article 5 of the ECHR [Council of Europe 1950]; Article 9 of International Covenant on Civil and Political Rights [UN General Assembly 1966]; and Article 6 of the Charter of Fundamental Rights of the European Union [European Union 2012]). It is clear that, both in terms of national and EU law and in terms of human rights law, States are allowed to deprive migrants of their liberty for immigration-related reasons. However, the Convention makes clear that freedom to detain is not unlimited and States are bound to ensure that their laws contain adequate and effective safeguards against arbitrary detention. Even the Returns Directive, contains a number of basic, though limited, safeguards against arbitrary detention.

Article 5(1)(f) of the European Convention states that detention is justified only 'to prevent … unauthorised entry into the country, or where action is being taken with a view to deportation or extradition' of a particular individual (Council of Europe 1950). The European Court of Human Rights has repeatedly stressed that: 'the list of exceptions to the right to liberty is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision' (*Giulia Manzoni v. Italy* Application no. 19218/91 [EctHR 1 July 1997] at paragraph 25). Detention under the second limb of article 5(1)(f) is justified only where there is a realistic prospect of removal and where proceedings are in progress and are being conducted with due diligence (*Chahal v. The United Kingdom* Application no. 22414/93 [EctHR 15 November 1996] at paragraph 113). These requirements are echoed by Article 15(1) of the Return Directive, which allows detention 'in particular when: there is a risk of absconding or the third country national concerned avoids or hampers the preparation of return or the removal process… for as short a period as possible and… as long as removal arrangements are in progress and executed with due diligence.'

Lawfulness

Where detention is resorted to, it must be 'on grounds prescribed by law and in accordance with a procedure prescribed by law'

(see Articles 5(1) and 9(1) of the ECHR [Council of Europe 1950]). According to the ECtHR, this implies not only that the detention 'must have a legal basis in domestic law', but also to the quality of the law authorising deprivation of liberty, which 'must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness' (*Amuur v. France* Application no. 19776/92 [ECtHR 25 June 1996] at paragraph 50).

Protection from arbitrariness

It is a fundamental principle of human rights law that detention should not be arbitrary. According to established jurisprudence, 'the notion of "arbitrariness" in Article 5(1) extends beyond a lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention' and '[t]o avoid being branded as arbitrary, therefore, such detention must be carried out in good faith; it must be closely connected to the purpose…; the place and conditions of detention should be appropriate…; and the length of the detention should not exceed that reasonably required for the purpose pursued' (*Saadi v. The United Kingdom* Application no. 13229/03 [ECtHR 29 January 2008] at paragraphs 67 and 74).

Necessity, proportionality and alternatives to detention

The Return Directive (Council of the European Union 2008b) provides that detention must be used only where 'other sufficient but less coercive measures can be applied in a specific case' (Article 15[1]), and 'where it is necessary to ensure successful removal' (Article 15[5]). This clearly implies that an assessment should be conducted in each case to determine whether detention is necessary and whether alternative measures could be applied effectively. This is also evident from the decision of the Human Rights Committee in *A v. Australia* Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (1997), where the Committee stated that detention 'could be considered arbitrary if it is not necessary in all the circumstances of the case… the element of proportionality becomes relevant in this context.' The ECHR does not require detention to achieve the stated aim (*Chahal v. The United Kingdom* at paragraphs 112–113), nor does it make any specific reference to the need to

use alternative measures. In practice, the Court looks at whether other less draconian measures could have been applied in determining the lawfulness or otherwise of an applicant's detention (*Mikolenko v. Estonia* Application no. 10664/05 [ECtHR 8 January 2010] at paragraph 67; *Louled Massoud v. Malta* at paragraph 68).

Procedural safeguards

In order to provide protection against arbitrariness, the law regulating detention should contain a number of procedural safeguards. These include the right to be given reasons for the decision to detain (see Article 15(2) of the Return Directive [Council of the European Union 2008b]; Article 5(2) of the ECHR [Council of Europe 1950]; and Article 9(2) of the ICCPR [UN General Assembly 1966]) and the possibility to obtain a review of one's detention (see Articles 5(4), 9(4) and 15(2) of the ECHR [Council of Europe 1950]. In terms of article 5(4) of the ECHR 'everyone deprived of his liberty… shall be entitled to take proceedings by which the lawfulness of his detention shall be decided.' In terms of the case law of the ECtHR, in order to qualify as such, the said remedy must fulfil the following criteria: it must be sufficiently certain, accessible and effective; the reviewing court or judicial authority must have the power to decide whether detention is lawful in terms of article 5 and to order release if it is not; and the review must be conducted speedily. It is worth noting that while there is no fixed time limit within which the case must be concluded, the Court has judged remedies taking 23 and 17 days respectively to be excessive.

Detention is harmful: The impact of detention on people

Over and above the human rights concerns detention raises, there is the harm that detention causes. As the DEVAS study shows, there significant evidence that:

> In almost every case… detention has a distinctively deteriorative effect upon the individual person… The vast majority of detainees describe a scenario in which the environment of detention weakens their personal condition… The biggest implication from the DEVAS research is the way in which detention – frequently implemented as a tool of asylum and immigration policymaking for

> the EU and its Member States – leads to high rates of vulnerability in people. It calls into question the proportionality and necessity of detention in relation to the ends it seeks to achieve: that is, to systematically manage migration flows so that States may enforce their asylum and immigration policies. (JRS 2010: 13)

Yet detention continues to be used by States as a migration management tool. It is true that the number of legal safeguards are in place creates a frame of reference – a standard to which states can be held accountable. However, in spite of the safeguards contained in law, ensuring that detention is not resorted to unless it is really necessary to effect removal, and that it is only used where other less coercive measures cannot be applied in the individual case, continues to be a challenge.

Life 'in limbo': living in a state of deportability

The same cannot be said about another consequence of being 'in a state of deportability', which this study describes so well as life 'in limbo' — i.e., the restriction of basic rights that comes with the final rejection of one's asylum application and receiving a deportation order – where legal safeguards are far more limited.

The study describes the migrants in this situation as being stuck: 'they do not feel free, they feel stuck' (pg 136). They are unable to participate fully in society since they do not have a residence permit and the outcome of this is exclusion and discrimination, as they cannot work legally, they have only very limited financial resources, and 'the only thing you can do is eat and sleep' (pg 191). One migrant is quoted as saying: 'It is like a prison, but an open prison. You are free to move but you cannot go anywhere' (pg 136).

The Somali women, too, described their situation in very similar terms: 'When we were in detention, we thought life would be better outside. But after we got our freedom, we discovered that life in detention and outside is the same except that now we have freedom of movement' (JRS Malta 2015: 27). They explain that: 'Without a document, we are stuck in the containers and we cannot make any plans: right now, our future is zero. We have nothing, we cannot do anything, we cannot go anywhere' (JRS Malta 2015: 30). Living in this situation puts them in a state of dependence, unable to rebuild

their lives: 'I will give you a document and you will know how to improve your life by yourself. Or I will give you food drink and clothes. This is the difference between those who have protection and those who don't' (JRS Malta 2015: 31).

The situation is possibly worse for those who are stateless and for whom there is no realistic prospect of removal – those who have no way out of this situation unless their situation is regularised. I have particular sympathy for the predicament of stateless people, which was brought home to be very vividly by my first ever client in detention – a stateless Palestinian man who had spent 6 years in detention. The authorities had made several attempts to remove him but no country wanted to accept him so he stayed in detention. He used to tell me: "I didn't fall off a cloud. I was born on earth like everyone else. So how is it that there is no place for me?"

Eventually we managed to obtain his release. I will never forget the day he was released from detention – I picked him up, piled all of the possessions he had accumulated throughout 6 years of detention into my little car, and drove him to a flat that the local Imam found for him, feeling very pleased with myself for having satisfactorily concluded the case.

Just days later he turned up at my office and told me, "You need to help me. I cannot stay here, this is just a bigger prison. I cannot work. I cannot travel. I have no money. I can't do anything." So started a new phase in his lifelong battle to be accorded what I like to call 'recognition as a person' and access to the basic rights that go with it, in spite of the fact that he was stateless – a battle that sadly ended only when he died.

Limiting rights: applicable human rights standards

With measures like these – i.e. the reduction of all support and entitlements except the most basic – the applicable legal standards are far less clear than those relating to detention and considerations such as proportionality and necessity in the individual case do not automatically come into play.

It is clear that where the situation in which the individual finds him/herself as a result of these measures is sufficiently severe as to constitute cruel, inhuman and degrading treatment or punishment in terms of article 3 of the ECHR, then the State is obliged to rectify

the situation. However, it is also true that it is very difficult to reach the threshold set by the said article, which requires that the treatment attains a minimum level of severity in order to engage the responsibility of the State. On several occasions, the Court has held that to satisfy the criteria it is necessary that the treatment:

> attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering. Where treatment humiliates or debases an individual showing a lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of article 3. The suffering which flows from naturally occurring illness, physical or mental, may be covered by article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible. (*Pretty v. The United Kingdom* Application no. 2346/02 [ECtHR 29 July 2002])

In all cases the Court stresses that the assessment of this minimum is relative, as it depends on all the circumstances of the case such as the nature and context of the treatment or punishment that is in issue. In *R v Secretary of State for the Home Department ex p Adam, Limbuela and Tesema* [2005] the House of Lords dismissed the notion that:

> the test is more exacting where the treatment or punishment which would otherwise be found to be inhuman or degrading is the result of … legitimate government policy. That would be to introduce into the absolute prohibition, by the backdoor, considerations of proportionality… proportionality, which gives a margin of appreciation to states, has no part to play when conduct for which it is directly responsible results in inhuman or degrading treatment or punishment. The obligation to refrain from such conduct is absolute.

I would argue that the impact of life in limbo – which implies living with severely limited rights while being neither permitted to be present nor expelled – raises serious human rights concerns. Whether or not it reaches the threshold required by article 3 is an assessment that would need to be made in each individual case. But I would argue that, because of the severe hardship it usually causes, particularly in the case of people who cannot be returned, such as stateless people, living 'in limbo' for a prolonged period could qualify as inhuman and degrading treatment, whether or not it is intentionally imposed or the result of 'legitimate government policy'.

Lost in the system: migrants' experience of asylum and return procedures

The interviewees' accounts of their interaction with the refugee status determination procedure and later with the deportation procedure sounded depressingly familiar. Their accounts speak not only of disappointment and frustration, which is probably inevitable where people feel the system has failed them, but also, and possibly more worryingly, of complete confusion and disorientation. Migrants and asylum seekers have to make their way through extremely bureaucratic and complex procedures, often with very little support. The women involved in the project in Malta pointed out that, with hindsight they realised:

> We were not well prepared. We did not understand what was expected of us nor did we understand how the whole procedure works, although we had been provided with some information about it we were still confused because we heard so many different things from different people. (JRS Malta 2015: 22)

All countries effecting returns presume that if there were any protection needs the asylum procedure would have picked them up. However, in my experience this is not necessarily the case. There are many factors that might lead to a failure to recognise an individual's need for protection. I will mention a few that I have encountered in my work. Although it is true that I work in an asylum procedure that is probably far less sophisticated and which possibly offers fewer procedural and other guarantees than the Swedish system, I am sure that some of these apply even here:

- if the procedure used is accelerated, the procedural guarantees are weak and the possibilities of review extremely limited;
- even where the 'normal procedure' is used, the credibility assessment conducted could be extremely stringent, to the point of being completely unrealistic;
- the assessment of the merits could be insufficiently thorough or based on a very superficial evaluation of the evidence available;
- the standard of proof required could be ridiculously high;
- the legal interpretation of terms like 'persecution' and 'serious harm' set an extremely high standard - as the does the ECHR when it comes to the application of Art 3 to cases of forced return, so some grounds could be deemed to be insufficiently serious, or to fall outside the relatively narrow confines of the respective definitions (take serious illness and availability of treatment in country of origin for example);
- the asylum seeker may not have had access to proper information or decent legal assistance – particularly to take his/her case further and challenge a negative administrative decision at a judicial level. In Malta (and I imagine everywhere) this would particularly impact the 'poor' (the poor being not only those who have no financial means but also those with no social capital) as these would often have to rely on a legal aid system which is riddled with shortcomings. Also, in Malta, with legal aid there is always the luck of the draw, because the quality of legal assistance will depend on the lawyer you get;
- there are also factors related to the individual that affect not only how they perform in an interview, but also how much they trust and understand the system (e.g., age, gender, educational background, past experiences) — all of which will inevitably impinge on how much they can effectively benefit from the system designed to protect them.

One of the women involved in the project in Malta explained that:

> I said the truth about many things in my interview but I also hid a lot of things from my life — intentionally. I was new and I didn't know that what happened to me could make a difference to my

> future. When I arrived, I meant to say everything but people inside [in detention] told me not to say certain things because I will get a 'reject'. There was a lot of fear around me and I was terrified. The interpreter was a Somali man and I was not brave enough to tell him everything. (JRS Malta 2015: 24)

Information which is divulged at later stages of the asylum procedure inevitably raises questions regarding credibility. However, from my experience there are so many reasons why an individual might not divulge certain facts at the outset. These include:

- The impact of past experiences such as trauma or torture, which could lead to PTSD or other psychological problems
- Misinformation from trusted sources — e.g., other detainees or friends and relatives who may mean well but are as lost as the asylum seeker himself
- Lack of trust or fear

I have met so many people whose protection needs were identified years after their arrival in Malta. I will mention just one such case to illustrate my point: Blessing was 17 years old and 2 months pregnant when she arrived in Malta with a number of other, mostly Nigerian, migrants. They had spent four days at sea before they were rescued; many of those on board died during the rescue when the boat they were travelling on capsized because of the rough sea, so when I met them in detention some days after their arrival they were visibly traumatised. They were also mistrustful, guarded, almost hostile, and very upset that, having risked everything to reach Europe, they found themselves locked up facing an uncertain future. Things got worse with time, especially after all of their asylum applications were rejected.

What I remember most clearly about Blessing from those early days is how angry she was. During the time she was in detention we didn't really manage to communicate, which is not surprising — for all our good intentions, to her we too were part of a system that rejected and imprisoned her. Some months after she came to Malta, Blessing was released and placed in a shelter. There she found people who really cared for her. Over time they built a relationship of trust, so she could finally divulge the horror of all that she had endured.

She had left home at the age of 15, lured by promises of a better life and a job in Europe, but instead she found herself enslaved by those she trusted and forced to prostitute herself. She endured horrific physical and sexual abuse while in Libya, and would probably have faced more of the same wherever she was headed for, had she not met people who helped her find a way out.

She explained that while in detention she could not speak out about what happened to her because she did not know who she could trust — neither the people travelling with her, who provided some support but also told her what to say and do, nor the people who came to visit from the outside who she did not know anyway. Also, in her own words: "It's very difficult to trust, because it's trusting that got you into this mess in the first place". Only in a place where she felt safe with people she could trust could she start the process of healing and rebuild her life. Thankfully her asylum application was reviewed and she was granted protection in Malta, but whenever I think of her I cannot help wondering how many others, including those who arrived with her, all of whom were deported back to their countries — had protection needs we failed to recognise.

Criminalisation: a violation of human dignity

The research highlights the criminalisation of the deportation process in Sweden and the impact that this has on the people directly affected by these measures. This in spite of a broad commitment to decriminalise immigration offences and to apply administrative sanctions rather than criminal ones in most cases involving breaches of immigration law, even where the actions concerned constitute criminal offences in terms of law.

The bigger picture: Sweden as part of a broader regional trend

As you are no doubt aware, Sweden is far from unique in this regard, and it is probably fair to say that among Member States of the EU it is not the worst offender. In Malta, for example, asylum seekers who lodge an application after they have been apprehended for irregular entry or stay remain in detention – until recently they remained there until their application was decided, which could take months.

Included in the category are asylum seekers who are rescued from vessels in distress and brought to Malta.

In 2008, the Council of Europe Human Rights Commissioner expressed his concern about the increasing trend among Member States of the Council of Europe using criminal sanctions or administrative sanctions which mimic criminal ones (such as detention) to 'manage' migration. He stressed that: 'such a method of controlling international movement corrodes established international law principles; it also causes many human tragedies without achieving its purpose of genuine control' (Council of Europe Commissioner for Human Rights 2010).

Although at face value administrative sanctions might appear to be less harsh or less invasive than criminal sanctions, in actual fact they are very similar both in impact and in implementation. Moreover they take place within a context which is far less regulated than the criminal justice system, which imposes strict controls on police powers and affords the individuals affected a number of procedural guarantees. As a result, the use of measures such as detention could, and in fact often do, raise serious human rights concerns.

In addition to use of such sanctions, the Commissioner notes 'a steady advance of the discourse of 'illegality' in migration law and policy' and highlights the fact that 'while the early EU legislation refrains from using the terminology, after about 2003, it becomes common currency appearing again and again throughout documents, legislation and decisions' (Council of Europe Commissioner for Human Rights 2010).

This increased focus on 'illegality' reflected a growing preoccupation with irregular immigration among Member States of the EU, which during the past decade has been consistently identified as a major concern.

In this context, States have resorted to the use of increasingly punitive measures within the context of migration management, with some states criminalising not only irregular entry or stay and the use of false documents, but also the exercise of economic activities by individuals with irregular migration status, the employment of individuals with irregular or uncertain status and, in some cases, even the provision of assistance or shelter to irregularly staying third country nationals.

Impact on people

The research indicates that these measures have a significant negative impact on the migrants directly affected, who 'live through the deportation process with a great sense of injustice and unfair subjugation' as 'they feel that their actions do not constitute morally grave actions which would warrant criminalisation' (pg 185). They categorically refute the label of 'criminal' and feel ashamed and distressed by the negative connotations/implications of the treatment to which they are subjected.

The women who worked on the publication of No Giving Up also vividly highlighted the humiliation they felt because they were treated as criminals, when they did nothing wrong (JRS Malta 2015). They state unequivocally that they feel that this treatment has violated their dignity as human beings.

In the words of one Somali woman: 'When I came to Malta, I thought now you are in Europe and your life will be better. When I found myself in detention, I started to think "What have you done to deserve being put in prison like a criminal? What did you do?"' (JRS Malta 2015: 17). One other woman described the shame she felt when she was taken to hospital in handcuffs:

> I am handcuffed to go to Mater Dei and everyone looks at me and I think they are saying, 'are they those immigrants who came to our country?' And I feel really ashamed. First when I came for asylum in this country, they didn't believe me, so they make me a liar, then they handcuff me, so even if I did nothing, people see me as a criminal — first they see me a liar, then cuffs, so I felt ashamed, like I did something wrong. (JRS Malta 2015: 21)

Impact on societal perception of migrants and migration

It is clear that both the language used and the way in which migrants are treated feed into public perception of migrants and immigration generally. As the woman quoted earlier pointed out, because she is taken to hospital escorted by a guard with her hands in cuffs, 'even if I did nothing, people see me as a criminal' (JRS Malta 2015: 21). The Malta Migrants Association stressed that:

> We believe that this negative way of perceiving migrants is even due to the language used to discuss immigration. When you talk of 'burden sharing', you are telling the Maltese people that immigrants are a burden, a problem for Malta, and it discourages society from accepting migrants. Another side effect of this language is that it tells immigrants that they are a burden and contributes to the philosophy that makes some people superior and others inferior.
>
> This perception of migrants as inferior also affects the way we are treated by our employers and colleagues at work, by the people behind the desk in government offices or at the bank, on public transport, and in every other place where we meet Maltese people. (Malta Migrants Association n.d.: 7)

This is very much in line with what the CoE Human Rights Commissioner states regarding the use of language. He states that:

> the choice of language is very important to the image which the authorities project to their population and the world. Being an immigrant becomes associated, through the use of language, with illegal acts under the criminal law. All immigrants become tainted by suspicion. Illegal immigration as a concept has the effect of rendering suspicious in the eyes of the population (including public officials) the movement of persons across international borders. The suspicion is linked to criminal law – the measure of legality as opposed to illegality… conjuring up images of police and the criminal justice system. (Council of Europe Commissioner for Human Rights 2010)

Perhaps more worrying is the fact that the use of the terminology of illegality somehow justifies the use of measures such as the deprivation of liberty or the use of coercion or force in the context of deportation, making them more acceptable, more legitimate.

In conclusion: the courage to listen

Unfortunately the migrants' voices are often unheard and, when they are, they are easy to dismiss as one-sided or naïve. Where those speaking out have no right to stay their very right to speak is often

questioned, and the fact that they have no right to stay is seen as undermining the legitimacy and importance of their message. This is a pity because, though no doubt subjective, their experience shows us how our laws, policies and practices impact the lives of those directly affected by them. Listening to their voices is the only way for us to understand this, because we enter the system from completely different points of departure, and have completely different perspectives, so it is really very difficult for us to begin to imagine what it must be like to be in their place. Listening also makes us better equipped to address the challenge of creating a deportation system that is humane and dignified.

Of course it's not always easy to listen, especially if what is being said explicitly or implicitly criticises our services, the services we set up and which we have invested so much in. At JRS Malta we had this experience when we were working on the women's project. As an organization which dedicates so much time and energy to providing information to asylum seekers arriving in Malta, their description of the fear and confusion of their early days in Malta and their lack of preparation for their asylum interview, was clear evidence that our message is not getting across; our information programmes were failing to have the desired effect. Painful as it was, we chose to take it as an invitation to review the manner in which we provide information and the content of the information we provide. It's probably still not perfect, but that we have the courage to continuously review our practice is important.

Having listened to the migrants' experiences, you are invited to do the same — to look at the laws and practice regulating the implementation of forced return and to ask:

- Does this study highlight areas of practice that need to be reviewed?
- Are there practices that can be avoided?
- Is detention really being used only where it is really necessary to effect removal, and where other less coercive measures cannot be applied in the individual case?
- Could a grave fear or return be the result of a failure to identify protection needs?

9. NOTES

1. 'Living in…' means 'at the time of the interview' and not that the whole time in Sweden has been spent in that living situation.
2. The statistics were received by e-mail from Anna Garphult of the Border Police Section, The National Operative Department, 10 March 2015.
3. REVA (*Rättsäkert och Effektivt Verkställighetsarbete*/Legally Secure and Efficient Forced Return Management). According to this system, errands are labelled as Category 1, 2 or 3 depending on the complexity of the case.
4. The statistics on absconding were received in an e-mail correspondence with Kristina Rännar, process leader, The Quality Department, Swedish Migration Agency on 18 June 2015.
5. *'Placering på säkert ställe med hänsyn till vad som kan drabba objektet'*.
6. Denmark opted out. 'In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application'. Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund O.J. L 144/45 of 6.6.2007 44 (EP/CEU 2007; see also updated opt-out: 'Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters', O.J. L251/1 of 21.9.2013).
7. Although this was an obligation for the other funds which were reported in this same Communication: the External Borders Fund and the European Fund for the Integration for Third-Country Nationals.
8. ECRE is a pan-European alliance of 85 NGOs protecting and advancing the rights of refugees, asylum-seekers and displaced persons. ECRE's mission 'is to promote the establishment of fair and humane European asylum policies and practices in accordance with international human rights law' (ECRE, 'About Us', http://www.ecre.org/about/this-is-ecre/about-us.html, accessed 28 June 2015).
9. As per three Nordic Council agreements: 1) 'Protocol concerning the exemption of nationals of the Nordic countries from the obligation to have a passport or residence permit while resident in a Nordic country

other than their own', originally signed May 1954, effective December 1955; 2) 'The Nordic Passport Convention', signed 1957, amended and supplemented by agreements in 1973, 1979 and 2000; 3) 'Agreement Concerning a Common Nordic Labour Market', signed 1982, effective 1983 (replaced previous agreement from 1954).

10. European Commission, Visa Information System (VIS) Regulation (EC) No. 767/2008, Article 2(e), http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008R0767, accessed 15 June 2015.
11. Lean Production is an organisational model developed by Toyota, the aim of which is to streamline a process so that work that has no value for the end user is eliminated.
12. In some cases it is deemed that no legal representative is needed; however, this is only when the deportation is imminent and there are no reasons to believe that there will be obstacles.
13. What these special circumstances might be is not specified in FAP 638-1 but the regulations state that, if police officers attend the deportation, the reasons must be documented.
14. This option is not available for all voluntary returnees and, at this point in time, returnees to the following countries are the only ones eligible for financial aid upon return – Afghanistan, Burundi, Central African Republic, Democratic Republic of Congo, Ivory Coast, Eritrea, Iraq, Yemen, Liberia, Libya, Mali, Sierra Leone, Somalia – together with stateless persons from Gaza and the West Bank, Sudan, South Sudan, Syria and Chad (Swedish Migration Agency 2015).
15. In 2014, according to Olle Kylensjö, a statistician at the Swedish Migration Agency, 85 per cent of those migrants who were given a negative decision on their asylum application appealed. Of these 10,920 cases that were determined by the Migration Court, 7 per cent managed, on appeal, to have their decisions overturned. In the last instance, in the Migration Court of Appeal, 2.2 per cent of the decisions were changed (information received by e-mail correspondence, 25 and 29 June 2015).
16. This refers to the last four digits of the Swedish personal number that is given to all citizens and documented residents.
17. This is less than a regular hourly wage in Sweden for low-skilled jobs.
18. A deportation decision is valid for only four years after it has gained legal effect (Aliens Act, Ch. 12.22).
19. As mentioned earlier, the access to healthcare for adults without residence permits is restricted to care that cannot be postponed (Swedish Parliament 2013: 407).
20. *De agerade på det viset jag har begått ett stort brott som dödsfall eller ja något stort brott.*

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By analysing migrant experiences of living in Sweden under the threat of deportation, this book contributes to our understanding of the effects of deportation, or forced return, on people. Migrants at risk of deportation are a varied and disparate group, with singularly different stories. Within their different stories, often painful to listen to, there arise common and strong narratives. These narratives, the outcome of qualitative research with migrants, are the focus of this volume. An overview of key policies, legislations and institutions at the Swedish and EU levels is provided to contextualise the data and conclusions. What can we learn from these migrant experiences of the Swedish forced returns system, a system which has been both highly commended in some areas while critiqued in others?

Deportation is increasingly being discussed from a social and global justice point of view, as well as from a human rights point of view. It is therefore of critical importance that migrant voices are heard and their experiences analysed. The 2009 European Return Directive, transposed into Swedish law in 2012, states that deportation and pre-removal detention should be conducted with respect to fundamental human rights, or in other words, in a 'humane and dignified' manner. But what is a 'humane and dignified' deportation? Is it an oxymoron in itself? This book does not claim to answer this question, but merely contributes to the debate through an analysis of migrant narratives. The afterword by UNHCR Nansen Award winner Dr. Katrine Camilleri reflects on the results of the study by juxtaposing it with her own work in Malta and primes a wider discussion of the topic by putting the Swedish case in the broader context of European Union trends.

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