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DETENTION OF ASYLUM-SEEKERS: COMPARISON OF THE ASYLUM  
AND DETENTION PRACTICES IN UNITED STATES AND SWEDEN

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Submitted in partial fulfillment of the requirements for the degree of

Master of Arts in International Studies

May 2020

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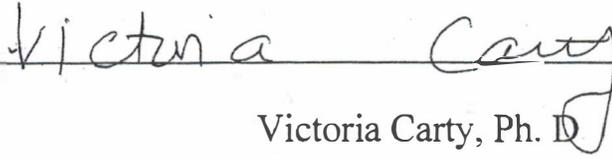
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The thesis of Yuliia Pohorilets is approved.



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May 2019

DETENTION OF ASYLUM-SEEKERS: COMPARISON OF THE ASYLUM  
AND DETENTION PRACTICES IN UNITED STATES AND SWEDEN

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## **ABSTRACT**

### **DETENTION OF ASYLUM-SEEKERS: COMPARISON OF THE ASYLUM AND DETENTION PRACTICES IN UNITED STATES AND SWEDEN**

by Yuliia Pohorilets

Refugees are both an urgent humanitarian issue and the subject of much political debate in the U.S. and Europe. This research paper compares and contrasts the asylum process in US and Sweden. It analyzes the similarities and differences in their refugee policies and how asylum-seeker rights are undermined or supported in the detention centers. The research discusses the historical origin of the contemporary asylum/immigration policies, international standards on detention, their implication, and key contemporary policy trends in US and Sweden. The selection of US and Sweden was not random. Both countries are highly influential in different ways in shaping global policies toward refugees. Both have faced a recent upsurge in incoming refugees; however, they have adopted different approaches to the asylum process. It also focuses on detention policies and conditions and their implications for the ability of refugees to fully exercise in practice their rights to asylum.

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## **Chapter I: Introduction**

The Syrian Civil War shook the world and brought more than three million refugees fleeing torture and persecution to the shores of Europe by the end of 2014 (Bauman, 2016). Facing repression in Burma in 2010, half-million people crowded into refugee camps in Thailand (Human Rights Watch: Country Chapters, Burma, 2010). By 2018, the UNHCR reported “the highest levels of displacement on record. 68.5 million people around the world have been forced from home. Among them are nearly 25.4 million refugees, over half of whom are under the age of 18. Nearly “1 person is forcibly displaced every two seconds because of conflict or persecution” (UNHCR: Figures at Glance).

With the flow of Syrian refugees into Europe countries started to grow concerned that there might be insufficient financial aid, as well as an inadequate resettlement system in place that could help refugees readjust in a host country. The fact that Syrians were one of the major groups coming in, created debate inside the host countries whether they were coming with good intentions or planning to create turmoil. According to the Pew Global Attitudes Survey, citizens in multiple European Union Countries believed that the presence of refugees could increase “terrorism and take jobs and social benefits away from residents” (Amaral, Woldetsadik, & Armenta, 2018). In some countries like Greece and Italy, citizens argued that greater diversity of races and nationalities would worsen quality of life and increase the probability of terrorism in their countries (Amaral, Woldetsadik, & Armenta, 2018). These debates shaped the immigration policies in many European Union countries which aimed to create a special system of processing refugees and asylum-seekers, provide safe environment for them, and above all else, to protect their country, borders and population from potential threats from incoming refugees.

Many seeking asylums in Europe in the 2010s were arriving off the coast of Italy. Under the Dublin Regulation, refugees were required to file their applications for asylum and be screened in the country in which they arrived first. However, many refugees who arrived in Greece, for example, were given papers and waved through, which caused the continuous movement of people towards the Austrian border (*Kurz, 2017*). Germany and Sweden, in particular, have opened their borders to admit refugees who seek asylum fleeing from countries in turmoil and those who have been displaced from their homeland (*BBC, 2015*). Sweden, historically, has received a large number of asylum-seekers, including the largest number “per capita among the countries of the Organization for Economic Co-operation and Development” in 2013 (*Arnett, 2014*). In addition, it took more Iraqi refugees than both the United States and United Kingdom combined during the Iraq war (*Ekman, 2007*). In addition, Sweden was the first country in Europe to grant permanent residence permits to asylum-seekers from Syria (*Sveriges Radio, 2013*). As a result, Sweden became the most welcoming country for asylum-seekers and refugees.

In contrast to the surge of Syrian refugees and asylum-seekers who arrived in Sweden and other E.U. countries, on a smaller scale, an increasing number of refugees from Latin American countries have attempted to reach the U.S. borders in search of better opportunities during this same period. Two years after the 2008 economic crisis, the United States began to see an outstanding increase in incoming economic migrants (*Camarota & Zeigler, 2016*). In fact, 37 percent of those who came from 2010 to 2014 were from Mexico, Central America, South America and Caribbean (*Camarota & Zeigler, 2016*). While many European countries also struggled with providing appropriate accommodation to the arriving refugees, many countries, including United States, have acknowledged that the influx of refugees will also bring migrants who will attempt to enter the countries for economic benefits.

### *Research focus*

This research paper compares and contrasts the asylum process in US and Sweden. It analyzes the similarities and differences in their refugee policies and how asylum-seeker rights are undermined or supported in the detention centers. The research discusses the historical origin of the contemporary asylum/immigration policies, international standards on detention, their implication, and key contemporary policy trends in US and Sweden. It also focuses on detention policies and conditions and their implications for the ability of refugees to fully exercise in practice their rights to asylum.

### *Significance of the research*

As noted above, refugees are both an urgent humanitarian issue and the subject of much political debate in the U.S. and Europe. The selection of US and Sweden was not random. Both countries are highly influential in different ways in shaping global policies toward refugees. Both have faced a recent upsurge in incoming refugees; however, they have adopted different approaches to the asylum process.

In both countries, immigrants currently make up more than 10 percent of their population. In 2014, United States' 42.4 million immigrants comprised 13.3 percent of the U.S. population, the highest percentage in 94 years (Camarota & Zeigler, 2016). In Sweden, on the other hand, 16 percent of the nation's population were immigrants. In addition, initial research indicated that Sweden had less strict immigration policies than the United States. It took the initiative of viewing and treating asylum-seekers as victims of torture and violence, not as criminals. Therefore, Sweden was chosen to be a country in contrast to the United States on the immigration and detention matters. While, without a doubt, every system has its flaws, Sweden, until 2015, was an model to

follow when it came to detention practices. Therefore, Sweden was chosen as a contrast to the United States on asylum and detention matters.

Finally, while there has been a lot of research done in the field of immigration, there is only a limited amount of scholarly work on the detention system. Moreover, there is minimal comparative information on the successful detention system in Sweden. The goal of this research is to compare and contrast two countries not only in their immigration and detention policies, but also in their overall treatment and understanding of the detainees, and to provide a background for further research in the field of the detention policies.

#### *Key definitions*

This paper will utilize the UNHCR definitions of a refugee and an asylum seeker:

“A refugee is someone who has been forced to flee his or her country because of persecution, war or violence” (UNHCR: Refugee Facts). Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries. Two thirds of all refugees worldwide come from just five countries: Syria, Afghanistan, South Sudan, Myanmar and Somalia” (UNHCR: Refugee Facts).

An asylum seeker is someone who seeks international protection but whose claim for refugee status has not yet been determined. An asylum seeker must demonstrate that his or her fear of persecution in his or her home country is well-founded (UNHCR: Refugee Facts).

## **Chapter II: Methodology**

This thesis aims to analyze the policies and conditions of detention centers in the United States and Sweden, and how those conditions affected the detainees, asylum-seekers in particular, while in detention. Comparative analysis was used as a best fit research method for such topic. In social science practice, a small (two, four, six), and less often a mid-sized (between ten and thirty) number of cases is understood as typical for comparative design (Porta, 2014). “Case” in this sense does not necessarily refer to organizations. According to Weigmann, “individuals can also be described in terms of their characteristics...a high level of diversity among cases is needed” (cited by Porta, 2014). While other research methods of collecting data, such as interviews/surveys, seemed to better fit the nature of this research paper, a number of obstacles led me to choose comparative analysis method over others. Refugees and asylum seekers are considered a “vulnerable” population, making it hard to obtain approval for the interviews from the IRB. Even if the approval was given, strict visitation policies in detention centers would likely prohibit any interviews of the detainees. Interviewing detainees inside the detention facility could also trigger responses influenced by the confined environment and fear of retaliation for telling the truth. Considering all the mentioned complications of conducting interviews with the detainees inside the detention facility, comparative analysis method was best method to use for this study.

The main sources of data were U.S. and Swedish Government reports on immigration and detention policies, UN reports on migration and international standards of detention, and secondary data. The documents were recorded and processed through the Nvivo software. I coded the data based on topics related to the research, such as detention, international standards on detention, guidelines on conditions of detention facilities, the international convention on refugee

rights, international human rights law, detention policy of the United States, and implications of international standards of detention in Sweden and United States.

Due to the fact that the official Swedish documents are presented on the official government websites and translated from Swedish, it is possible that the documents could be biased. There is also lack of transparency on the US data. There are limited data on the percentage of asylum seekers and refugees apprehended at the border, together with the information on how many were detained.

Similarly, there is minimal publicly available information on the training and guidelines for the employers of detention facilities. The data are not transparent on the conditions inside the detention centers and there is no official documentation provided on the current situations in the detention facilities, except for the documentaries and articles provided by mass media. In addition, there is a gap in the data on the percentage of complaints filed within the detention facilities. The reports that were available, were published by NGO and non-profit organizations.

The study focused on 2010 to 2015 time period. During that time, both countries experienced an influx in incoming refugees and asylum-seekers due to the refugee crisis. In addition, Sweden after 2015 started alternating the immigration policies by enforcing stricter regulations for the incoming asylum-seekers (Eid, 2017). In addition, the United States in 2016, elected Donald Trump as a new President. Trump initiated a new phase of zero-tolerance immigration policy whose legal and social implications were still unfolding as this research was conducted (Martin, 2017). For this study, it was significant to have access to stable policy data that could provide substantial comparative information and analysis of the immigration policies and detention regulations and conditions. Therefore, any data from 2015 and onward were excluded.

## **Chapter III: Historical Overviews and Key international Standards**

### III.1 Historical Overview: US and Sweden

#### *United States*

A historical overview of immigration policies shows that from the 1800s onwards, the United States has experienced multiple waves of migration, in essence, in response to fluctuating demands for labor, nationalist goals of land settlement, and racialized ideologies, U.S. policy zigzagged from highly pro-immigrant policies to stricter entry policies. Over the years, contemporary asylum policies have become an extension or altered version of these older policies. In the 1800s, the United States had an open border policy. However, as the years passed by, the immigration policy started to become more restricted. In 1891, the revised version of the 1882 Immigration Act was adopted, which introduced the certain criteria of entrance based on race, ethnicity and class (*1891 Immigration Act*). The main intent of the United States was to admit only those who could support themselves without any assistance from outside sources.

Over the years, the Congress also had concerns over the naturalization process. Many courts proposed their own naturalization requirements, charged their own fees, followed their own naturalization procedures and issued their own naturalization certificates (USCIS: Overview of INS History, 2012). A need for the nationwide naturalization standards arose. The Basic Naturalization Act of 1906 combined the immigration and naturalization functions of the federal government, expanding the Bureau of Immigration to the Bureau of Immigration and Naturalization. the Act established standardized procedures regarding naturalization, such as fixed fees and uniform naturalization forms. In addition, knowledge of English became a requirement for naturalization.

A year later, the people arriving to the United States were officially classified as immigrants and nonimmigrants when they were required to declare their intent to permanent or temporary stay in the United States. This categorization affected the asylum-seekers, as they had to now carry a valid visa for entrance into the United States; otherwise, they would not be allowed into the country. Starting from 1907, the immigration acts started to tighten the entry and naturalization requirements ("Summary of Immigration Laws, 1875-1918"). World War I greatly affected immigration, as the number of the incoming immigrants from Europe dropped. In addition, the Immigration service became more cautious of who to admit due to the potential enemy aliens (USCIS: Overview of INS History, 2012).

Mass immigration resumed after the end of the war which brought a new immigration policy into action. It included the establishment of the national-origins quota which limited immigration by assigning a quota to each nationality based on its representation in past U.S. census figures. The assigned quota particularly gave preference to immigrants from Northwestern Europe. In 1924, the Congress introduced the U.S. Border Patrol, an establishment within the Bureau of Immigration ("Historical Overview of Immigration Policy"). The U.S. Border Patrol was the leading decision maker, to decide on the spot whether to let the people into the United States or set them for deportation or detention. Over the next 20 years, there were almost no changes in immigration and immigration policies. During the depression, net immigration dropped below zero for a few years. It was relatively low during the World War II as well, due to the quota system which was still endorsed.

After World War II, the lack of labor force triggered the immigration policy by bringing workforce, mainly through the U.S.-Mexico border under the Bracero Program (USCIS: INS History, 2012). While the program promised good money and work, the quality of living was not

great, and the promised benefits were not delivered (Mize, 2016). As a result, the program was shut down, however people were not sent home, but rather stayed inside the United States illegally to look for other jobs. Due to the influx of so called “economic migrants”, the national origin quota was re- introduced, giving admission preference to people from Northern Europe.

Over the next 30 years, however, this national origins system shifted to a preference system which aimed to unite families and attract skilled immigrants to the country. As a result, there was an increasing number of immigrants (over a million) coming from Asia and Latin America. Even though the preference system increased the number of immigrants; at the same time, it limited the number of immigration visas available each year. However, the Congress still admitted refugees with special legislation ("Historical Overview of Immigration Policy").

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act required all asylum seekers to be detained at the port of entry (104<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1996). The asylum-seekers must remain in detention even after officials confirmed their claims to be credible. In addition, they can pay a bail, which they often cannot afford. That leaves asylum-seekers with two options, either be detained for an indefinite period of time until the court hearing or become subjects for “expedited removal” without receiving immigration court hearing (104<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1996). This Act became a controversial document as it completely opposed both the 1951 Refugee Convention and Universal Declaration on Human Rights which will be discussed later.

The September 11 tragedy added to the recognition of the existence of flaws in the US immigration system, which consisted of failures in visa procedures, internal enforcement and information sharing. In 2004, the US Congress passed the Intelligence Reform and Terrorist Prevention Act, which increased the border surveillance (sec. 5201), hired more Border Patrol agents (5202) and immigration and customs enforcement investigators (5203), and added more

bed spaces in the detention facilities (5204). The establishment of the IRTP Act led to the addition of up to 40,000 bed spaces in the detention centers over the span of five years (Frelick, 2005). In 2006, the President's fiscal year budget saw a seven percent increase for the Department of Homeland security. The Detention and Removal Office, within the DHS's Immigration and Customs Enforcement (ICE), received \$176 million, a 19 percent increase. Moreover, George Bush included up to \$90 million to the fiscal year budget to provide more bed spaces in the detention facilities (Frelick, 2005).

However, the Act did not stop just on greater enforcement control and surveillance. Now, all visa applicants, regardless of age, had to go to in-person interviews with all the documentation that fulfills the requirement for visas. At the ports of entry, more in-person interviews were to be conducted with the incoming visitors. Any foreigner was a subject to inspection, and if the enforcement authorities were to determine that the incoming foreigner has received any type of military training from terrorist organizations or had committed acts of torture or extrajudicial killings abroad, they were the immediate targets for deportation ("Intelligence Reform and Terrorism Prevention Act", 2004). This explains why there is a "random" check on certain visitors at the airports, where the enforcement authorities would approach a potential suspect and perform a fingerprint check, passport and travel documents check, making sure that the suspect can cause no harm to the citizens of the United States once they go through the customs.

However, despite this act being as a cover or justification for authorities to detain, question, and investigate incoming immigrants and refugees, it also serves as an explanation why all these people are under the "suspect" category. The IRTPA shifted the perception of asylum seekers from being victims to becoming potential threats to the safety of the American population. The United States government asserts it is trying to protect its people from the repetition of potential terrorism

that happened in 2001. Even though their preventive measures may be justified, however, some of the detention that they perform fall on completely innocent people who flee their country to seek protection in the United States.

Overall, certain events (9/11, refugee crisis) have contributed to the introduction of stricter immigration regulations with regards to entry procedures and the overall admittance of both economic immigrants and asylum seekers. The older policies set a background for the United States and later on these policies were modified and became a more intensified version of earlier 1800s policies (USCIS: Overview of INS History, 2012). Detention became a first-response action and default process in the United States.

#### Sweden

Sweden's immigration policy was historically more welcoming than the United States. The reason behind this was the huge emigration of Swedes to the Americas and Australia in 1850. In 1887, more than 50,000 people left Sweden which remained the peak year of the great emigration until 2011, when more than 51,000 left the country to other European countries, US and China ("Sweden and Migration", 2019). As a result, Sweden became one of the countries where immigration was based on labor. Many skilled workers came to Sweden in 1952, and received their residence permits due to the agreement between Nordic countries on common labor market and movement across borders ("Sweden and Migration", 2019).

The housing of immigrants became an issue. The Swedish government, at that time, did not act on removing those immigrants, in part because the country needed skilled workers to improve the economy ("Sweden and Migration", 2019). It was more convenient and much faster to find accommodations that would expedite economic growth, rather than to exhaust labor force which would damage the economy. As a result, the Million Program was introduced which

promised to build 100,000 flats per year between 1965 and 1974 to accommodate all incoming immigrants (“Sweden and Migration”, 2019). As a comparison, by that time, United States already had a U.S. Border Patrol System and strict immigration policies preventing people from entering the country.

The Swedish did not restrict the immigration until 1970s when there was an increase in incoming workers from other countries. At this point, people were required to show proof of any job offers, financial support and housing arrangements (just like in the United States), before they were granted permits into the country (“Sweden and Migration”, 2019). Even though, Sweden introduced the same regulations on the country admission process, instead of giving visas like the United States did, Sweden was giving out the permits to stay in the country. Why is it important? It shows the significant difference between the two countries and how the government was thinking of immigrants. In Sweden, it seemed more like an immediate decision to assist the incoming immigrants. It also demonstrated the willingness of the government to accept other nationalities as they were arriving to seek employment.

After 1970, the Swedish started coming back to the country, and the workers who had migrated to the country started leaving it for their home countries were on the rise. As a result, for a few years, Sweden had more emigration than immigration (“Sweden and Migration”, 2019). Starting from 1980, asylum seekers from Iraq, Iran, Lebanon, Syria, Turkey, Eritrea, Somalia and South American countries came to Sweden to escape the war and repressive regimes. Approximately 7,000 Iraqis and 27,000 Iranians received residence permits in Sweden as refugees according to the Geneva Convention. In 1980s the immigration based on labor transitioned to the one based of refugee status, due to the Yugoslavia tragedy which brought more than 100,000 Bosnians to seek asylum in Sweden (“Sweden and Migration”, 2019). In 2001, Sweden became

part of Schengen co-operation, opening borders for other European Union member states and EU citizens looking for work and love, which led further increase of immigrants.

Sweden, unlike United States did everything to regulate the asylum and refugee process (“Sweden and Migration”, 2019). The EURODAC Regulation, enacted in 2003, established an EU asylum fingerprint database. When someone applies for asylum, no matter where they are in the European Union, their fingerprints are transmitted to the EURODAC central system. EURODAC has proved to be a very important tool assisting to determine which country is responsible for examining an asylum application made in the EU. Its primary objective is to serve the implementation of Regulation (EU) No. 604/20133 and together these two instruments make up what is commonly referred to as the ‘Dublin system’ (“Dublin Regulation”, 2013). In part, this fingerprint system was enacted due to the invasion of Iraq in 2003, led by the United States which brought more migrants to Sweden. As a result of EURODAC, there was a reduction of applications that have granted asylum in 2005, from 42 percent to 13 (“Dublin Regulation”, 2013). Whilst EURODAC was in place, it did not stop Sweden from accepting refugees and asylum-seekers. As a matter of fact, in 2007 Sweden accepted approximately 1,265 Iraqis, comprising 5 percent of all Iraqis arriving to Europe, while during the same year US and Canada combined took 1,027 Iraqis (“Sweden and Migration”, 2019). As can be seen here, the violent tragedies which either happened inside or outside the country, dramatically affected the immigration policies of Sweden as well as United States. However, Sweden was less strict in their policies and simply was regulating the whole immigration process rather than investing money in border patrol enforcement.

During the Syrian Civil War, 96 percent of Syrians who came to Sweden in 2013 were granted asylum. This event showed the readiness of Sweden to assist those in need. 2014 was yet another year with the highest level on record for asylum seeking applications, and the Swedish

population grew by more than 100,000 having more births than deaths. This happened due to Sweden granting all Syrian asylees permanent residence cards which totaled to 70,000. As a result, every sixth person in Sweden was born in another country (“Sweden and Migration”, 2019). This fact created debates about what was happening to those immigrants after their arrival and what Sweden’s plans were about their integration.

In 2015, the Swedish government made changes to migration laws which led to general decline in asylum applications. Incidents that led to it were an increasing number of beggars in Swedish streets, many of them were from Romania and Bulgaria, provoking people to question why they were there and what the government could do to prevent those people from begging on the streets (“Sweden and Migration”, 2019). The government faced a challenge where almost 35,000 of incoming asylum seekers were unaccompanied minors. Those factors led to a major shift in migration laws in Sweden. In order to sustain lives of those already living in Sweden, the government temporarily constricted border entry controls, requiring now a valid passport and other identification documents upon entry.

The historical difference in migration laws and strategies shows the contrast between the US and Sweden. The US followed a path of the enforcement of policies and criminalization of refugees and asylum-seekers in the United States. It is clear that 9/11 was almost a breaking point in the migration pattern, as asylum-seekers and refugees were seen as potential threat to the American population. In Sweden, the refugee crisis pressured the country, that used to be so accepting of immigrants, to restrict the border entrance, by requiring valid documentation, yet still admitting people that were able to prove their identity. Despite both of them having stricter border regulations, Sweden still remains more humane in their policies.

### III.2 Documents on Refugee Rights

The following section analyzes the internationally recognized documents, and documents published by United States that support refugees and their rights or relate to refugees and asylum-seekers. They, in detail, explain the obligation of the States before refugees and the guidelines and regulations that have to be followed in regard to refugee admission and asylum processing. Discussion of the following documents will set the background to analyze whether or not United States and Sweden follow the regulations mentioned in the documents.

#### *1951 Refugee Convention*

The 1951 Refugee Convention, adopted by both the U.S. and Sweden, serves as a main source of international refugee protection and enumerates a series of recommendations regarding the status of refugees. Article 1A (2) of the 1951 Convention provides the following definition of a refugee:

“Refugee is any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality and is unable, or owing to such fear, is unwilling to avail him [or her]self of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (UN: Refugee Status Determination, 2005).

Some recommendations adopted in the document are focused on the protection of the refugee’s family and the obligation of the government to provide the necessary measures for it. Another recommendation is to provide suitable welfare services. One of the recommendations that is particularly important in this research highlights the necessity of the government to admit refugees and “act in a true spirit of international cooperation” for those refugees to find an asylum and possibility of resettlement (UN: Refugee Status Determination, 2005). The convention

acknowledges the following rights and protection of refugees: to request and enjoy asylum; the right to work, housing and education; the right to freedom of movement; the right to identity and travel documents; the right to non-refoulement (protection from forcible return to a country of persecution); protection from penalties of illegal entry; protection from discrimination (UN: Refugee Status Determination, 2005). The above rights are significant especially in the United States, where the immigration stakeholders often focus on the prevention of the approval of asylum cases and massive deportation of refugees and asylum seekers.

#### *1967 Protocol relating the status of refugees*

The 1967 Protocol relating the status of refugees improved the definition of refugees mentioned in the 1951 Refugee Convention by removing from the definition the geographical and time limitations. United States signed on the protocol and ratified it in 1968; Sweden signed on both 1951 Refugee Convention and 1967 Protocol and ratified it in 1954 and 1967 respectively (United Nations, “1967 Protocol relating to the Status of Refugees”). The United States, however, did not sign on the refugee convention, fearing that the international law would overrule the U.S. laws. The United States was worried about the international bodies taking over national policies and laws, but did not acknowledge that this fear would not be present had they followed the regulations and corrected the immigration policy and overall treatment of immigrants.

#### *Universal Declaration on Human Rights*

While the United States did not sign the refugee convention and the 1967 Protocol, it was a signatory to the 1948 Declaration on Human Rights. One of the rights mentioned in the Article 9 of the Declaration states, “No one shall be subjected to arbitrary arrest, detention or exile” (UN Declaration on Human Rights, 1948). Yet thousands of people in the United States are apprehended on the streets without proper evidence for the arrest (Jordan, 2019). Moreover,

despite the arrest, they are taken into detention for an indefinite period with no right to “life, liberty and security”, as mentioned in Article 3 (UN Declaration on Human Rights, 1948). Article 14, for example, underlines the right to seek asylum. Thus, every time an asylum-seeker ends up in detention, the United States violates the human rights, as asylum-seekers are considered legal inside the hosting country since they filed the application for asylum.

#### *1996 IIRIRA (USA)*

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act, known as IIRIRA, only relates to the United States. The reason why this document is mentioned within the international framework is because it is an absolute contradiction of all the documents on refugee and asylum-seeker rights mentioned above. This act requires detention of all individuals seeking asylum at ports of entry who have no or fraudulent documents. The detention of these aliens is mandatory (Healey, 2004). In addition, they must remain in detention unless they have valid grounds for parole. However, the officers from the Department of Homeland Security (DHS) have a different view on this matter, as they argue that the parole should be the exception not the rule. If claims of the applicants determined to be not credible, asylum-seekers automatically listed for “expedited removal” and do not receive an immigration court hearing. This “expedited removal” process detained numerous asylum-seekers for a long period for not having valid travel documentation. In fact, the report published by Amnesty International, revealed stories of asylum-seekers that were detained for years during their asylum proceedings. The shocking part is that there were cases of several asylum-seekers that were still detained even after receiving asylum (Amnesty International, 1999).

As mentioned in the 1951 Refugee convention, asylum-seekers and refugees are not to be penalized for the absence of travel documents and have to have protection from illegal entry.

Department of Homeland Security and other immigration stake holders violate the regulation by arbitrary detention which is another violation mentioned in the Declaration on Human Rights. So, on a national level, United States government is seen as a safeguard and protector of border that detains people who could potentially pose threat to the country. Internationally, however, they violate rules and guidelines on so many levels that they lose that “savior” image in front of international community.

### III.3 International Standards of Detention

After reviewing the main international documents that define the rights of refugees and asylum-seekers in general, the next step is to define what their rights if they get detained. The international standards on detention, introduced by UNHCR in 2012, provide guidelines and advice to governments and other bodies for all countries regarding the detention of asylum-seekers, as well as the standards for detention facilities. These guidelines were first written in 1999 to accompany the 1951 Refugee Convention and 1967 Protocol relating to the status of refugees (United States Court of Appeals. Ninth Circuit, 2015). Although non-binding, these guidelines reflect the state of international law in regard to refugees and asylum-seekers and their detention. UNHCR defines detention as deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centers or facilities (UNHCR: Detention Guidelines, 2012). There is a strong emphasis on the deprivation of liberty as it is one of the main human rights, together with the right to security. In other words, detention is a violation of one of the human rights.

### Guideline 1: the right to seek asylum

The 1951 Convention states that asylum-seekers shall not be penalized for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence (UNHCR: Detention Guidelines, 2012). In exercising this right, asylum-seekers often arrive to the territory of their asylum without prior authorization. This fact distinguishes them from other migrants who attempt to enter the country without proper documents. Asylum-seekers may not be able to obtain necessary paperwork in advance of their departure, due to fear of persecution or wars in their home countries which forced them to leave their homeland in the first place. Therefore, lack of documentation is not a reason for detention, as all the circumstances and experiences of asylum-seekers before the arrival need to be considered before restricting their freedom of movement based on irregular entry (UNHCR: Detention Guidelines, 2012).

### Guideline 3: Detention must be in accordance with and authorized by law.

Any deprivation of liberty that is not in conformity with national law would be unlawful, both as a matter of national as well as international law. Insufficient guarantees in law to protect against arbitrary detention, such as no limits on the maximum period of detention or no access to an effective remedy to contest it, could also call into question the legal validity of any detention (UNHCR: Detention Guidelines, 2012). This is a flaw in the US detention system, since there is no specific regulation that would protect asylum-seekers, in particular, from being in detention for an indefinite period of time.

In any case, detention, according to UNHCR Guidelines, can take place anywhere, ranging from sea and land borders, airports, islands, boats to refugee camps and homes (UNHCR:

Detention Guidelines, 2012). I believe this range of locations misleads most of the US enforcement authorities to believe that they have a right to detain people basically anywhere. However, there is also a punishment for detention without grounds. Arbitrariness, according to UNHCR, includes not only unlawfulness, but also elements of inappropriateness, injustice and lack of predictability (UNHCR: Detention Guidelines, 2012). In no way the detention should be arbitrary. Each case is individual and needs its own assessment, taking into account all the circumstances and details of the case (UNHCR: Detention Guidelines, 2012). Factors that have to be considered are the stage of the asylum process, intended final destination, family and/or community ties, past behavior of compliance, and risk of absconding or articulation of a willingness and understanding of the need to comply (UNHCR: Detention Guidelines, 2012). In other words, detention is the last resort, not the first immediate response, and action that needs to be carried out by immigration enforcement authorities. This is the major factor that could potentially protect individuals from enforcement authorities.

#### Guideline 5: detention must not be discriminatory

International law prohibits detention or restrictions on the movement of a person on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, such as asylum-seeker or refugee status (UNHCR: Detention Guidelines, 2012). This guideline also specifies that any such detention makes states liable to charges. Moreover, an individual that is being detained has the right to question the detention on the grounds of discrimination, where the State will have to provide proof that there was a justifiable reason for detention. This guideline, although provided for all countries, applies most to the United States, where people of color become victims of discriminatory detention.

### III.4 Asylum Application: US vs Sweden; Decision to Detain or not.

As discussed earlier, United States and Sweden have different approaches to the asylum process. This section explains the procedures that refugees and asylum-seekers have to go through before being granted asylum, if granted at all.

#### *United States*

There are several scenarios that could play out when refugees and asylum-seekers arrive at U.S. Border. If applying for asylum overseas, refugees may qualify for resettlement program (“Asylum in the United States”, 2018). Although it seems like the easiest way to get asylum, it may take years for refugees to be chosen for resettlement. The waiting list is far too long, and there is no guarantee that those on the list would get the approval. If refugees and asylum-seekers enter legally (valid visa), they will go through affirmative asylum process, where a person who is not in removal proceedings applies for asylum through U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS). If the USCIS asylum officer does not grant the asylum application and the applicant does not have a lawful immigration status, he or she is referred to the immigration court for removal proceedings. There, he or she may renew the request for asylum through the defensive process and appear before an immigration judge (“Asylum in the United States”, 2018). It is important to know that refugees do not necessarily have to request asylum at the border, they can do it within one year of their arrival.

If entering illegally and requesting asylum at the border, refugees and asylum-seekers get transferred to immigration detention facilities. Next, they have to go through credible fear screening interview, where they have to demonstrate a credible fear of returning home due to persecution or torture (Duffy, 2018). If approved, it will protect the person from being deported until the asylum case is processed.

Another option is defensive asylum, where a person who is in removal proceedings may apply for asylum defensively by filing the application with an immigration judge at the Executive Office for Immigration Review (EOIR) in the Department of Justice. In other words, asylum is applied for “as a defense against removal from the U.S.” (“Asylum in the United States”, 2018). Failure to apply for asylum within one year of arrival disqualify people for asylum, unless there are special circumstances that prevented asylum-seekers from applying within that time period. In fact, the majority of asylum denials in the recent years was due to asylum-seekers applying for asylum years after they arrived.

However, DHS is not obligated to notify the asylum seekers of such deadline which could be taken as an intentional act against asylum-seekers. Even those who are aware of the deadlines may not be able to submit their application on time due to the backlogs. In many cases, this one-year deadline determines the final decision of the asylum case (“Asylum in the United States”, 2018). Credible and reasonable fear screening process were introduced to make sure that the United States did not violate international and domestic laws by deporting people to the countries where they may be at risk (“Asylum in the United States”, 2018). Overall, the asylum process can take years to conclude. In some cases, a person may file his or her application and receive a hearing or interview date years in the future.

While asylum-seekers, who went through affirmative asylum application, are waiting for their hearing date, if no action is taken within 6 months, they can apply for the employment authorization document (EAD) which will give them a chance to support themselves as they wait for the court. If spouses are listed on the asylum application, they may also request work authorization (“Asylum in the United States”, 2018). United States, however, claimed that the asylum seekers are subjects to detention even if they have a pending case for asylum. Some courts

have not acquired this regulation and still continue carrying out court trials for asylum seekers (“Asylum in the United States”, 2018). As mentioned earlier, the standard international detention policies prohibit detention of any sort of an asylum-seeker that has filed his asylum application. In this case, United States violates the international standard by detaining individuals who are considered legal inside the country.

Figure 1: Individuals Granted Asylum Affirmatively or Defensively in the US:  
Fiscal Years 1990 to 2016

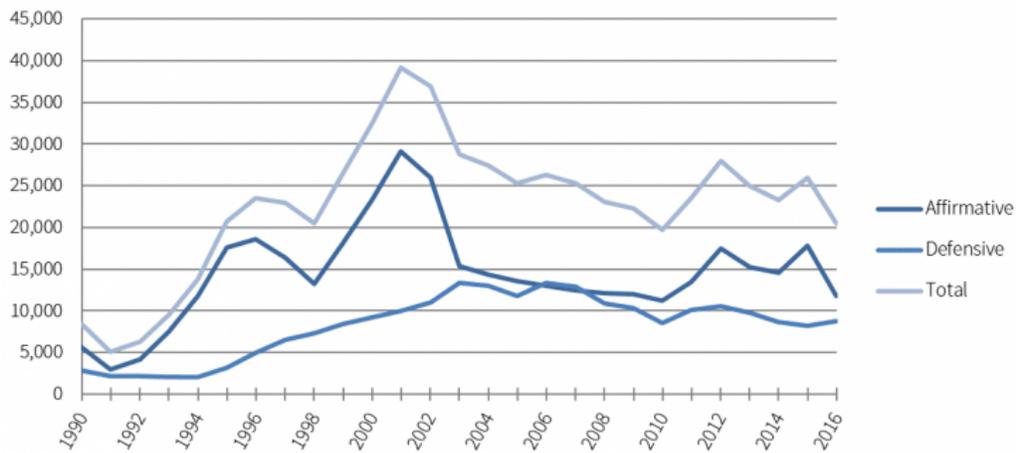
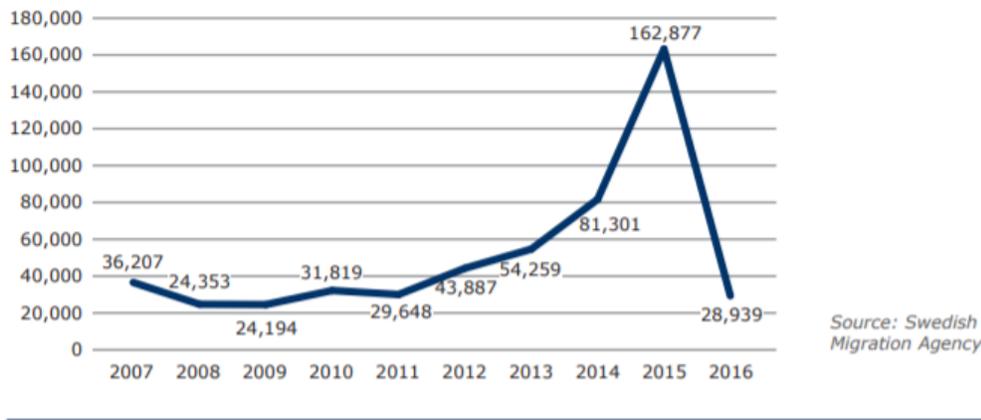


Figure 2. Individuals granted asylum in Sweden: Fiscal Years 2007-2016



In 2012, the United States received a total of 29,484 asylum applications, both affirmatively and defensively (Figure 1) (DHS, 2018). As can be seen in the Figure 1, after the peak of cases received in the 1990s in response to Balkan wars, the annual approval rate went down. Two years after the economic crisis of 2008, the number of granted asylum applications increased again to accommodate an expected increase in asylum-seekers coming from Iraq, Iran, and Bhutan (Zong & Batalova, 2017).

Sweden, during 2012 took 43,887 asylum-seekers (Figure 2) (Annual Report on Migration and Asylum in Sweden, 2016). As far as the main countries of origin of asylum seekers are concerned, in 2012, most applicants came from Syria, Somalia, and Afghanistan (Annual Report on Migration and Asylum in Sweden, 2012). Comparing this data, we can see how Sweden, despite being a relatively small country compared to United States, admitted more refugees and asylum-seekers from war zones. The question is how Sweden manages to admit such a large number of refugees and asylum-seekers without damaging their economy. The US policymakers, for example, believe that if a large number of asylum-seekers are admitted, job competition will increase and wages could go down (Solman, 2016). Lower skilled asylum seekers could replace

the lower skilled American workers for lower wages, drastically impacting the labor market. However, there is evidence that there is a positive economic outcome from immigrants overall. Since 2011, immigrants have driven two-thirds of U.S. economic growth. They founded 30 percent of U.S. firms and companies, with more than 50 percent of startups valued at over \$1 billion (Amadeo, 2019). Immigrants helped the US economy grow and moreover, provided more job opportunities for U.S. citizens by opening businesses on U.S. soil.

The whole asylum application process in the United States challenges and discourages asylum-seekers from seeking asylum there. Moreover, if no proper research is done beforehand, asylum-seekers end up in detention for an indefinite time. It is essential to be prepared for credible fear interview or have a valid visa that would let asylum-seekers into the United States. Yet many asylum seekers and refugees do not have enough time to prepare for leaving their country. They have limited amount of time, money and resources to help get away from war. Moreover, when they arrive at the U.S. border, they get traumatized by the amount of security checks and interviews they have to go through, including the detention procedure.

#### *Sweden*

It is important to go over the asylum application in Sweden to see if there are any similarities or differences with the United States. If one enters Sweden, they can apply for asylum once they meet the border police; for example, at the passport controls at the airports, ferry terminals or train/bus stations that pass through Sweden. The border police will question them, and then refer them to the Migration Agency where they take their asylum application. Another option is to go straight to the Migration Agency (MA) and apply there. Once the MA takes the files, they register the application.

It is important to state on the application who you are, the reason for asylum and how you got to Sweden. You have to prove your identity in some way, whether it is a passport or

identification documents (“Sweden and Migration”, 2019). If you do not have those, you can show your birth, marriage certificates, or military registration documents. Even though having one of those documents will not prove the identity, having all of these documents together may be accepted. The MA will register you as an asylum seeker with the name and information you provided. What this means is that transgender people, for example, are registered under the name and gender they were given at birth (“Sweden and Migration”, 2019). The next stage is picture taking and fingerprints. The photograph will be added to the MA’s register and will be put on the Asylum Seeker card (LMA-card) that you will get as proof that you are an asylum seeker. The fingerprints are needed to check whether the asylum seeker applied for asylum in any other Schengen country and if there are any residence permits or bans from residence in other countries. If the fingerprint database, known as EURODAC, shows that indeed there is another asylum application under your name in another country, then the MA will decide which country will be responsible for the application of asylum. MA uses European Union Dublin Regulation to determine this. The Dublin Regulation “establishes the Member State responsible for the examination of the asylum application” (European Commission, 2016). The criteria for determining lies in family considerations, visas, residence permits in Member States, and the way of entrance to EU (regular/irregular). The changes have been made to the Regulation since it was introduced in 2013, and the constant arrival of asylum seekers put the Regulation under debate on how to control migration flows and provide appropriate protection to those in need (European Commission, 2016).

After the fingerprints and picture, asylum seekers meet with investigators that will inquire who they are, why they left their home and how they came to Sweden, and what they think would happen if they were to go back to their home countries. At this meeting, the asylum seekers have

an interpreter who will help with the translation during the conversation. The investigator will provide the asylum seekers with the information on their application process, their rights to accommodation, financial support, health care and education for their children (European Commission, 2016). If asylum seekers, for example, do not have any money or other assets, they can apply for financial support from the Migration Agency. Apart from the financial assistance provided by the government, all asylum seekers have the right to work while waiting for the application to be processed. In order to work, asylum seekers need to have a certificate (AT-UND) which states that they are exempt from the requirement to have a work permit under the following conditions:

- They provide proper identity papers or in some other way to help to prove their identity.
- Their application is to be considered in Sweden.
- There are solid reasons for their application for asylum.

If all the conditions are met, the asylum seekers will be given the Asylum Seeker Card stating that they have the AT-UND (“Sweden and Migration”, 2019). The certification lasts until either they are granted asylum or denied the residence. This is one of the major differences in the asylum application processes between Sweden and USA. While the United States has stricter rules on the whole asylum application process, Sweden allows its asylum applicants to enter the labor market freely and immediately.

### III.5 Contemporary Asylum-Seeker Trends and Interception Policies

All countries around the world manage the flow of immigrants implementing their policies, ranging from granting international protection to deportation and issue of entry bans (Puthooprambil, 2016). One of the most used policies is immigration detention. It is defined as

“a non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented” (European Migration Network, 2018). The following are the grounds for detaining an asylum seeker:

1. Protect public order and national security
  2. Verify or determine identity
  3. Determine those elements of application that cannot be carried in the absence of detention
  4. Decide an applicant’s right to enter the territory (usually at border checkpoints)
- An immigrant subject to return process may be detained if:
1. There is a risk that the immigrant concerned will abscond.
  2. The immigrant concerned hampers or avoids the repatriation process to his or her home country or to another EU member state responsible for examining an application for protection (UNHCR: Detention Guidelines, 2012).

Considering the international standards on detention of asylum-seekers, this section will go over the detention practices of United States and Sweden. It will compare and contrast the two countries regarding the rights of asylum-seekers, specifically the right to enjoy asylum and right to counsel.

### *United States*

Considering the aforementioned criteria for detention, it is significant to point out that, in the United States, the enforcement authorities do not necessarily follow the rules of detention. PBS Frontline series called “Lost in Detention” discovered the operations led by the US enforcement

authorities that were far from humane. The Obama administration implemented different immigration strategies that were targeting illegal immigrants, however mainly with criminal records, at least as it was mentioned in the report (Lost in Detention, 2011). ICE was detaining people who were stopped by local police at checkpoints and who happened to not have their license with them. The program that assisted in identifying the undocumented was called Secure Communities. Once a person was stopped by the police, if they could not show proof of their residence, they would be sent to jail to get fingerprinted. The fingerprints not only went through the criminal background check but were also sent to the immigration office to check the status of the detained person (Lost in Detention, 2011). As a result, if immigration sent the confirmation that the detained was illegal, that person automatically went to the detention facility, without getting explanation on their detention. The detained thought they were detained for the traffic violation, but the immigration already got them in their hands for removal procedures (Lost in Detention, 2011). Due to the introduction of Secure Communities, the number of detained started growing and it did not matter whether the detained were indeed criminal record breakers or not. ICE had to meet certain removal quota, approximately 400,000 people per year, and failure to do so could put them under the risk in the face of Obama administration (Lost in Detention, 2011). Asylum-seekers, unfortunately, became subjects of illegal entry, and thus were also detained under the mentioned program (Lost in Detention, 2011). As mentioned earlier, the asylum-seekers that request asylum at the border, automatically get detained unless they pay the bail. The Immigration and Customs Enforcement authorities most of the time ignore or selectively apply the parole criteria, which exist only as a guideline and not as a formal regulation. As a result, when the parole is denied, the asylum seekers have no way out, they cannot appeal the decision to any authority or immigration judge (Asylum Protection News 21, 2003; Jones, 2003; Lawyers Committee for

Human Rights, 2004). The asylum seekers, upon entry to the US, are already treated as criminals in the first place, when they are taken to the detention facilities for the screening interview. Regardless of their “protectionist” agenda, everyone should be treated with respect.

Once inside the detention facility, asylum-seekers face numerous limitations that prevent them to exercise their rights established by law. What does it mean for the detained? It means that the detained are unable to defend their case properly, depriving themselves of a chance to stay in the United States and fast-tracking the time of their deportation. The law of the United States requires that “individuals in immigration proceedings receive a reasonable opportunity to present their case in court” (8 U.S.C. §1229a(b)(4)). However, thousands of detained have limited access to the legal assistance for various reasons. Heartland Alliance’s Nation Immigrant Justice Center (NIJC) conducted a national survey which showed that “the geographic isolation of many detention facilities hinders detainees’ ability to obtain counsel” (Isolated in Detention, 2010). The survey was conducted in 150 immigration detention facilities that were active between August and December 2009. It concluded that 80 percent of detainees had insufficient legal support, where one full-time NGO attorney works with 100 detainees. In some facilities, the ratio was one attorney to 500 detainees. Approximately ten percent of detainees had absolutely no access to legal assistance (Isolated in Detention, 2010). Moreover, these organizations are short-staffed and cannot dedicate enough time and attention to the detention cases.

Asylum seekers cannot exercise their right to seek asylum, because the asylum seekers in the United States do not have the right to government-funded legal representation (Frelick, 2005). An important fact is that there is no instant access to phone or internet, which completely isolates detainees from either obtaining legal assistance or contacting their family members (Skodo, 2018). In addition, there is no legal assistance due to the constant transfer of detainees to remote detention

facilities with minimum or no pro-bono legal counsel available (Skodo, 2018). For example, there was no attorney to represent 84% removal proceedings in 2013. It is important to note the study conducted by Human Rights First showed that asylum seekers in detention centers that did have legal representation were three times more successful with their asylum applications than those without it (Skodo, 2018).

Most of the asylum-seekers do not speak English which complicates their case, because they are not able to communicate and express themselves properly in the court unless they are given an interpreter. But most importantly, they are not aware of their rights while they are detained. The fear of being deported for speaking up is always present in their minds. When they arrive to the detention facilities, they may be given an orientation on their rights, but they may not speak English. And if they are given a brochure or handout in Spanish, what are the chances that the detained know how to read? These concerns are constantly brought up by the NGO's which attempt to stand up against the violence and dehumanization of the detained.

Many refugees seeking asylum end up in criminal court hearings, pleading guilty, barely understanding what their charges are. Many asylum seekers think that they are in immigration court, not a criminal court, and they believe they can stand up for their chance to stay and declare the reasons for seeking protection. Unfortunately, when they express fear of persecution, the judges explain to them that this is not the right place for hearing such claims. In Tucson, AZ, one group of detained refugees was prosecuted right after another, the hearing lasted no more than a minute (Human Rights First, 2018). In El Paso, TX the detained were charged with constitutional violations due to the language barrier and the inability to consult the attorneys. Twelve women from El Salvador had to defend themselves in front of the judge answering the yes and no questions, some of which were "are you willing to waive your trial rights? Are you pleading

voluntarily?” (Human Rights First, 2018). Despite them having the headsets to hear the translations of the given questions, all women responded “si” to all of them. As a result, all of them pled guilty and were sentenced to timed-served and one-year probation, with a warning that if they entered the United States again, they would be charged with felony, which is a maximum sentence of twenty years (Human Rights First, 2018).

Looking at the above examples, it is obvious that the current U.S. government and its immigration enforcement authorities have been violating the regulations stated in the 1951 Refugee Convention. One contributing factor could also be that the ICE troops did not get proper training at the time of their employment process on the definitions of illegal immigrants, refugees and undocumented. As a matter of fact, the orientation given to the ICE new employees only consists of filling out different forms (tax, oath affidavit form, statement of prior federal service) without even a mere workshop on their work on the field (ICE, 2017). If the ICE employees do not know for a fact who they need to detain or question, they are predisposed to detain people that have no criminal history but look foreign and illegal in the eyes of ICE members. If such treatment is given upon the detention, then it is no surprise that the workers in the detention center treat the detained as prisoners.

U.S. Immigration and Customs Enforcement published an official document on the Performance-Based National Detention Standards 2011, which provides a detailed information on the possible incidents occurring in the detention centers and the appropriate actions to be taken to respond to them. The document described emergency responses to every possible negative incident in the detention facility. After almost 60 pages of describing the riots, food strikes, hostage and homicide situations, the information about the procedures of the pre-arrival and at the detention center are presented, however very briefly. For example, a meal during transfer to the detention

facility is only given to those who have been on the road longer than six hours, with priority given to pregnant women, disabled people and minors. At the detention facility, there is a constant hourly headcount and search of personal items (PBNDS, 2011). After those descriptions, the document continues to explain different types of offenses and appropriate responses to them. The mentioned document fails to provide any information on the accommodation situation as well as the services available to the detainees. The report criminalizes immigrants and asylum-seekers by stereotyping them to be disposed to criminal activity and suspicious behavior.

To conclude, detention in the United States is default. Parole is an exception rather than the rule. Asylum-seekers have no right to appeal once inside the detention facility with little access to legal counsel. In addition, they are treated as criminals with all the punitive confinement measures applied.

### *Sweden*

The Aliens Act of 2005 is the document that regulates the Swedish migration policy, providing the requirements and eligibility for obtaining visas, long-term residence status, work permits, denial of entry to the country and the control measures, including immigration detentions and penal sanctions (Sweden Immigration Detention, 2018). The longest period of detention in Sweden is two months, while in the United States, detainees can wait for their trial for months. Chapter 10 of Aliens Act states that the “detainees have access to oral hearing before each review” (Swedish Code of Statutes, Aliens Act, 2005). The detainees are also provided with a public counsel within three days of detention (Swedish Code of Statutes, Aliens Act, 2005). Moreover, the detained have access to legal counseling if they are in need of legal support. The Aliens Act also provides the alternative to detention, “supervision”, which means an obligation to report to

the police office on a regular basis until the court decision, which could take up to six months (Swedish Code of Statutes, Aliens Act, 2005).

Despite the violent nature of incarceration in general, the detention system in Sweden adopts hospitality which emphasizes the safety, dignity and comfort of the detainees (Khosravi, 2009). Detention, in Sweden, is last resort, and only happens if upon the individual case assessment there is still a need for further investigation. Despite the fact that people are detainees, they are treated as human beings. They are allowed to have visitations; they have legal assistance available. The Swedish Migration Authority is responsible for providing legal assistance to detainees free of charge (Right to Counsel for Detained Migrants, 2017).

### III.6 Explaining US Policies

Before moving to the detention conditions standards and the actual conditions in the detention facilities in both countries, the reasons behind such strict US policies have to be addressed. The concepts of mass incarceration, criminalization of asylum-seekers and privatization will be explained and analyzed.

Some might think that asylum-seekers became a target just recently due to the Trump administration, “zero tolerance” immigration policy and the enforced border control, however, it is not so. Trump’s immigration policies are just a continuation or expansion of the policies enacted by previous presidents. Under the Obama Administration (2009-2016), the authorities of the United States started to tighten the borders and intensify the admission requirements for the incoming aliens (Brown, 2010). This issue led to continuous unauthorized detention at the border of not only illegal migrants but refugees that were planning to seek asylum inside the countries. Those, who either got caught at the border for illegal crossing, or those who got arrested while

inside the country for being undocumented, find themselves locked in detention facilities until their case is processed and the final decision is announced at the court (Duffy, 2018). Detention has become a punitive measure in the United States. The issue is that even those who did arrive into the country legally fall under the same category as undocumented and get detainees for indefinite period of time (Duffy, 2018). Asylum seekers, in particular, became victims of the detention, despite them being legal in the hosting country.

David Smith acknowledged this problem by stating: “The politicization of crime and punishment combines with a successful effort by far-right parties to define migration and asylum seekers as a focal political issue” (Smith, 2004). The practice of detaining asylum seekers is acquired through the criminalization process that marginalizes those seeking asylum; those seeking protection are taken as bogus and not entitled to asylum (Kaye, 1998; Refaie, 2001; Cohen, 2002). Despite being neglected by the US government, the detention of undocumented immigrants in general, and asylum seekers in particular, rarely raises any public concern among American citizens, in large part because the use of confinement and other expressive punishments are so ubiquitous (Welch & Schuster, 2005).

In the US, the most striking product of the culture of control is mass imprisonment (Austin et al., 2003; Chivigny, 2003; Useem et al., 2003). In fact, the United States a nation that declares itself a haven of freedom and liberty, is the world’s leader in incarceration (Collier, 2014). The fast imprisonment proves the cultural disposition in support of prisons, while not considering the long-term effect of imprisonment on society, communities and prisoners (Garland, 2002; Blomberg and Cohen, 2003; Tonry, 2004). According to ACLU, “the politicization of criminal justice policy and a lack of evidence-based assessment result in a one-way ratchet in which law and policy grow even more punitive” (ACLU: Prisoner’s Rights). The Economic Policy Institute

released a report which concluded that in the United States, the disproportionate incarceration rate of minorities in general, and people of color in particular, is one of the most “pressing civil rights issues of our time” (Economic Policy Institute, 2015). Government officials often remind the population that they live in a post-9/11 world, “where the risk of terrorism is so extraordinarily high that it justifies enormous expenditures” (Nowrasteh, 2016). Racial profiling, stereotyping, exaggerating the common behavior of a foreigner started to create an enormous gap between United States and other countries. Refugees, seeking asylum in the United States with legal paperwork and pending statuses, started to experience an increased attention from the Immigration and Customs Enforcement and local authorities continuously stopping them in the streets or raid the neighborhoods looking for suspicious behavior (Chen, 2016).

There is a perception that the terrorists use asylum as a way to enter the United States to further perform terrorist attacks on US soil (Frelick, 2005). However, those assumptions are not justified due to the fact that all asylum seekers have to be fingerprinted and interrogated, which make it highly risky for any terrorist to pass through the whole application process (Amnesty International, 2003). Alex Nowrasteh collected data on risk analysis of terrorism and immigration, by looking at all types of visas in the United States and comprising the results showing which visa types exposed more risk to commit terrorist agenda. The analysis focused on the 41-year period from January 1975, to December 31, 2015. It identified the terrorists, born outside the United States, that were convicted of “planning or committing a terrorist attack”, and specified the initial visas that were issued on their arrival (Nowrasteh, 2016). The chances of dying in an attack from asylum-seeker visa category was four death per the category (1 in 2,728,940,320), comparing to 2,834 (1 in 3,851,715) deaths from an attack by someone with tourist visa (Nowrasteh, 2016). It is

evident that there is a greater probability of terrorist attacks carried out by people entering on tourist visas than on asylum grounds.

It is also worth mentioning, that in the US, immigration authorities rely on their own detention facilities along with a network of private and state jails where asylum seekers co-mingle with prisoners charged (and convicted) of criminal offences. Generally, conditions of confinement are punitive and, particularly in the case of private facilities, there is a lack of adequate monitoring that would otherwise hold companies accountable for the abuse and mistreatment of detainees (Welch & Schuster, 2005). In addition to the above-mentioned conditions of detention, the treatment should be “humane”. The Conclusion 44 also suggested that detention of asylum seekers and refugees be subject to judicial and administrative review (Frelick, 2005). This primarily means that refugee and human rights advocates do not mind the detention of refugees and asylum seekers unless it is necessary on grounds prescribed by law. However, advocates agree that detention should be understood as an exception, not the rule (Frelick, 2005). To follow this example, the actions performed by Immigration and Customs Enforcement authorities where they detain asylum-seekers based on racial profiling are unjustified.

Looking into the history of the United States, we can see reasons why the government decided to enforce the border regulations and immigration procedures. However, looking at the same history, we can trace the attempt of the United States to respond to its own terrorist attacks executed by native-born Americans with the 9/11 event which of course not only impacted the safety procedures for the whole country, but also changed the whole perception of immigrant, refugee, asylum-seeker in the eyes of American citizens.

## **Chapter IV: Standards and Conditions of Detention**

The following section explains the international standards on detention conditions introduced by the Office of United Nations High Commissioner for Refugees in 2012. Next, the detention conditions in Sweden and United States are discussed, as well as the impact of detention.

The UNHCR Detention Guideline 8 states that conditions of detention must be humane and dignified, followed by Guideline 9 where the special circumstances and needs of particular asylum-seekers must be considered (UNHCR: Detention Guidelines, 2012). If detained, asylum-seekers are entitled to the following minimum conditions of detention:

(i) Detention can only lawfully be in places officially recognized as places of detention. Detention in police cells is not appropriate.

(ii) Asylum-seekers should be treated with dignity and in accordance with international standards.

(iii) Detention of asylum-seekers for immigration-related reasons should not be punitive in nature. The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. If asylum-seekers are held in such facilities, they should be separated from the general prison population. Criminal standards (such as wearing prisoner uniforms or shackling) are not appropriate.

(iv) Detainees' names and the location of their detention, as well as the names of persons responsible for their detention, need to be readily available and accessible to those concerned, including legal counsel.

(v) While in detention, detainees should receive periodic assessments of their physical and mental well-being.

(vi) Asylum-seekers in detention should be able to make regular contact (including through telephone or internet, where possible) and receive visits from relatives.

(vii) The opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities needs to be available; as well as access to suitable outside space, including fresh air and natural light.

(viii) The frequent transfer of asylum-seekers from one detention facility to another should be avoided, not least because they can hinder access to and contact with legal representatives.

(ix) Non-discriminatory complaints mechanism (or grievance procedure) needs to be in place.

(x) All staff working with detainees should receive proper training, including in relation to asylum, sexual and gender-based violence, the identification of the symptoms of trauma and/or stress, and refugee and human rights standards relating to detention. Staff-detainee ratios need to meet international standards; and codes of conduct should be signed and respected (UNHCR: Detention Guidelines, 2012).

The following guidelines on the detention conditions are set to provide the international regulations and the standards the countries should follow when admitting the asylum-seekers into detention. Following the description of some standards, it could be noticed that some conditions were not carried out by the United States, like transfer of asylum-seekers to isolated detention facilities, little access to legal assistance and lack of proper training. However, further discussion on the conditions in both countries will uncover whether there are more violations on behalf of United States as well as Sweden.

#### IV.1 Detention conditions: USA

Detention not only effects the asylum case but also impacts the asylum seekers. The detained suffer mental and physical health problems (“Asylum in the United States”, 2018). The detention policies of the United States are claimed to be a “post-migration stressor” according to one study (Chui, Katona, Mason, Ottisova, Robjant, Schon, Werthern, 2018). The authors argue that adding such a stressor to already pre-existing anxieties due to the border crossing, is a straight path to the development of mental disorders, such as PTSD. Chui et al (2018) label this process the “building block effect.” As a matter of fact, the 2009 systemic review reports on such issues found that the immigration detention led to high levels of depression, PTSD, anxiety, suicides and self-harm (Chui, et al., 2018). In the above article, the studies were comprised of male or female adults and children detained for immigration purpose who have reported mental problems, as well as cross-sectional surveys and case-control studies with no restrictions on where the immigrants were coming from or the occupation. In total, the researchers analyzed 26 quantitative studies, providing the ending results in the chart with their findings and outcomes. The results of the study showed that for the adults, 17 studies came out positive, meaning that the mental health consequences were present as a result of immigration detention (Chui, et al., 2018). As for the children, ten studies have reported the mental health issues due to the detention (Chui, et al., 2018). Studies showed that detained individuals in removal proceedings are nearly five times less likely to secure legal counsel than those not in detention. This disparity can significantly affect an individual's case, as those with representation are more likely to apply for protection in the first place and successfully obtain the relief sought (“Asylum in the United States”, 2018).

Between 2010 and 2015, there were more than 1,100 sexual abuse complaints submitted at the detention facilities, 59% of which identified officers as perpetrators (Speri, 2018). The incidents range from physical abuse to threats of deportation if detainees do not consent to sexual encounters with the guards. Only 225 cases were investigated as of two years later (Habib, 2018). The reports provided by media between 2010 and 2017 suggest that the sexual assault and harassment has become systemic and widespread practice in detention facilities which do not hold perpetrators accountable for their actions (Habib, 2018). The number of reported violence would probably be higher if detainees felt safe enough inside the walls of the detention facility. The fear of being threatened or abused again leaves many sexual abuse victims silenced.

Apart from physical abuse and violence, detainees are confined as prisoners. They wear color-coded prison-style uniforms and are monitored by closed-circuit television (CCTV). They only get a few hours of outdoor activities, and common areas have prison stainless steel furniture that is installed to the concrete floor. In the United States, although called voluntary, the detainees are forced to work for less than the minimum wage (*Sputnik News*, 2015). It is ironic that the people that are not allowed to work in the United States while their asylum case is pending, are required to work for immigration services in any case. It is safe to conclude that the system not only contradict itself, but also benefits from cheap labor force. The overall administration of the detention facility is more like a prison industry with little attention paid to providing proper care and services to asylum-seekers, or most importantly, to ensuring the appropriate training on the rights of asylum-seekers for the detention employees.

#### IV.2 Detention conditions: Sweden

Chapter 11 of the Aliens Act gives details on how detention centers should be run. For example, it states, “Aliens who are held in detention must be treated humanely and their dignity

should be respected. By ‘humane treatment’ is meant that: - the foreigner is always the focal point and their case must be dealt with in a legally safe and expedient manner; - a good relationship must be established between the detainee and the staff from the very outset of the detainee’s entry to the premises; - the foreigner must be able to feel secure and safe in this exposed situation; - the staff must be sensitive to the needs of detainees” (Swedish Code of Statutes, Aliens Act, 2005). The Swedish Model is not only exemplary in its immigration regulations but also in the conditions in which detainees are held. They have “access to recreation activities, physical training, and outdoor exercises; families are accommodated together; detainees receive visits and have contact with the outside world through the phone or internet access” (Swedish Code of Statutes, Aliens Act, 2005). In addition, the detainees have access to health care that is covered by the government. Detainees can spend at least three hours per day outside in the yard and they have a free movement within the center (Ceccorulli, 2014). Apart from that, detainees wear their own clothes. Two persons share a room, with “20 detainees sharing a common space designated as an immigration reception center” (Skodo, 2018). The common area/space has couches, television, pool tables and dining furniture. Besides, detainees are given daily allowance which they can spend anywhere they want.

Johan, the head of a division in the Märsta detention center, proudly recalled a visit by a church group, who had praised the conditions at Märsta detention center and compared it to a hotel. Similarly, the chief of the migration division at the National Police Board believes that life in detention centers is not uncomfortable: one detainee did not want to be released. He had a place to sleep and was served good food. He enjoyed the activities at the center (Khosravi, 2009). Apart from the Swedish authorities attempting to make the asylees feel comfortable in detention while waiting for the decision from the Migration Board, the actual detention workers play a huge part in accommodating the detained. Many were aware of the inherent paradox of their work: that they

were taking care of detainees who were at the same time exposed to violent forms of bodily removal. According to Johan, after the Migration Board took over the deportation process, it focused on ‘humanizing’ procedures.

There were two aspects to the new detention regime (Khosravi, 2009). First, they hired staff with non-European backgrounds, mainly as caseworkers, with the idea that their ethnic background gives them cultural competence and language skills to communicate with the detainees which made deportations faster, less painful and less complicated. Furthermore, the Migration Board believed that a caseworker from the same country can verify whether a detainee is lying about his or her identity. Caseworkers also negotiate with the authorities in the countries to which a person is being deported (Khosravi, 2009). Moreover, higher level of education is a requirement for hire, meaning that employees have to have college degrees in Social Science or related major. According to Johan, people that used to work in detention centers before were Swedish natives who had neither appropriate education nor training to match the specifics of the job (Khosravi, 2009). However now, staff members at Mårsta detention center, for example, speak twenty-seven languages which enormously help the detainees if they do not speak Swedish. Even though there is a diversity amongst employees, people with Nordic backgrounds give the final decision on the cases in detention. It also should be noted that the process of assessing asylum applications is subject to systematic error; for example, the Migration Board uses language analysis to verify the origin of refugees but around one in ten language analyses are faulty (Khosravi, 2009). The rest of the detainees are mainly “identity detention” cases: foreign nationals whose identity has not been established (Khosravi, 2009).

Detention centers in Sweden are called *förvar* which means “warehouse”. The purpose of the confinement is not to tend or to treat. It is to keep an alien accessible for investigation or

deportation (Furman, 2016). For pre-removal detention, the Migration Board explicitly disapproves of any program which can be seen as offering entry to Swedish society. For example, Swedish language programs are not allowed at the detention center (Khosravi, 2009). Sweden in this case is similar to the United States in the way that the Swedish government has no intention of helping the asylees integrate with Swedish. This approach has transformed the detention system, and although it did not help to adjust or integrate with Swedish society, it did assist detainees to have the opportunity to be understood and heard.

However, not everything is so perfect in Swedish detention centers. Let's consider Mårsta detention center as an example. Despite having all these services available and staff members willing to assist detainees in their own language, this detention center looks like an industrial building on the outside, but it is packed with prison safety equipment like alarms, locks, security routines and restricted movement for the detainees. The building has two floors; the first serves as a transit area, and the second floor as a detention. However, there is a special section for families, gym, lounge room with TVs and computers available for use (Khosravi, 2009). This prison-like facility looks similar to the ones in the United States, but with less restrictions for the detainees.

When comparing Sweden and US, it should be noted that Sweden also has cases of violence and torture. Despite the Swedish government's and the Migration Board's emphasis on the humane treatment of detainees and despite all the laws and regulations that guarantee detainees' dignity and human rights, there is broad and systematic violation of their human rights in detention centers and during deportations. For example, asylees in detention who attempt suicide are transferred to police custody, where they are put in a harsher environment with a restricted visiting policy, or even in solitary confinement. According to Swedish authorities attempted suicides are fake, self-destructive actions intended to manipulate the deportation process and increase the likelihood of

being granted asylum (Khosravi, 2009). As it can be seen, Sweden behind its so-called perfect detention system also has its flaws and neglects some rules and regulations as well. However, the overall practice in Swedish detention centers where detainees have more services available to them, have legal access to support their cases, have visitation policy makes them more humane than the system of the United states.

Considering all the mentioned regulations at the detention facilities in Sweden, it is evident that Sweden has got a less strict detention policy. The detainees have a 24-hour access to any type of information online, whether legal assistance or contacting family members. They are allowed to keep their personal belongings without regular inspections unless needed, and they can freely move around the detention facility without being locked in a cell or room. The United States has tougher conditions of detention. Due to the criminalization of immigrants, they are treated as potential threat to the society, therefore they have to be locked up and regularly inspected.

#### IV.3 Alternatives to detention

In a 2000 study on alternatives to detention, the Swedish Model was called an exemplar to follow, because Sweden provided refugees with consultation and access to NGOs, and treated detainees with dignity and fairness (Sampson, 2015). In fact, supervision is the only alternative to detention available in Sweden. It entails regular reporting to the police or to the Migration Agency. It may also imply surrendering passports or other identity documents. Besides, if considered for supervision, the asylum-seekers may request residence permit that will assist them with finding employment and housing, as well as healthcare services (Sampson, 2015).

In the United States, there is a selective parole that is applied as an exception. Apart from parole, detainees can pay the bond, which is usually very high, with which they guarantee their

presence in every court hearing or investigation interview. Upon the final court decision, the bond can be returned to detainees. Of course, many cannot afford such luxury, but those who can, avoid being confined in the detention facility (Detention Watch Network, 2018). Private bail bond companies make profit off the bonds paid by detainees, imposing high interest rates and monthly fees (Detention Watch Network, 2018). Some other alternatives include check-ins at ICE offices, home visits, telephonic monitoring and GPS monitoring through an electronic ankle bracelet. These mentioned alternatives are run by private prison company, the GEO Group (Detention Watch Network, 2018). It can be seen how for-profit agenda is installed even in the detention alternatives.

While Sweden has only one alternative to detention, it actually supports an asylum-seeker on every step in their asylum process. They receive allowance, work permit, residence while they wait for their court hearing. The United States, on the other hand, uses detention alternatives as ways to make more money, by introducing bonds that partner with ICE, and different private contractors that make money off providing alternative measures to detainees.

## **Chapter V: Conclusion**

This thesis compared the immigration policies of United States and Sweden over time which revealed the key differences in their approaches to handling the asylum seeker flow. The United States used open border policy only when it was crucial for the maintenance or improvement of its economy. Sweden, on the other hand, was accepting skilled labor constantly, balancing between the admission of asylum-seekers, refugees and economic immigrants. The historical overview also uncovered the reasons behind the strict US policies, that put the terrorist attack of 9/11 as the major push for enforcing strict border control.

The thesis also explained and analyzed the asylum application processes in both countries, with dividing the asylum process into different phases: arriving at the border, detention, asylum rights inside the detention facility, and detention conditions. It identified the international standards of detention and the international standards on detention conditions, as well as analyzed how the living conditions and treatment in the detention centers influenced the detainees. The analysis of the data proved that there were discrepancies and flaws in detention policies in both countries. United States, for example, violated the international standards of detention by arbitrary detention of people to meet removal quota (Lost in Detention, 2011). Besides, the conditions inside the detention facilities were more fitting for people who committed crimes, than for people who were victims of torture in their home countries. Considering the increasing number of detainees in the detention center, it is clear that the enforcement authorities of the United States did not follow the standard guideline for the detention. Moreover, the asylum-seekers that have applied but were yet to receive the proper documentation and final decision from the court on their case were detained on the grounds of expulsion which is prohibited by law (United Nations, 2012). In this situation, asylum seekers can be subject to detention only if they were not granted asylum, they

received a set date of their departure and they overstayed it. However, if the asylum case is still in progress, regardless of how long asylum applicants have been inside the country, they are considered legal because they have filed proper documentation for their asylum case.

Sweden, on the other hand, followed the mentioned guidelines. The detention facilities are specifically built for the asylum-seekers and refugees. The detainees can move freely within the facility, be outside or have visitations. Apart from that, the detainees have a 24-hour access to the internet, which is something that the detainees in the United States do not have. Having access to the web, phone, visitations, Swedish asylum-seekers in detention can freely communicate with their legal assistance, having higher chances of being granted asylum during the court hearing. Unlike Swedish asylum seekers, the detainees in the United States most of the times are taken from the detention in their city of residence to remote locations with few or no legal assistance available, and no connection with the outside world, making it almost impossible, due to the language barrier, to protect themselves in court.

The approaches of two countries are completely different, with one applying punitive measures like detention for seeking asylum and the other one making sure refugees and asylum-seekers have all the sources they require for living until their asylum case is in process. Sweden would rather find alternative ways to detention than have people locked up. The United States, however, spends millions of dollars on additional bunk beds and builds extra facilities to keep detained in control.

The study concluded that the immigration policies of Sweden in regard to asylum-seekers, if only implemented in the United States, could increase the chances of asylum-seekers avoid trauma and mental disorders from being detained, could increase their chances of being granted asylum due to the presence of legal assistance, and overall could improve the detention regulations,

conditions and practices within the country. If only the policies and practices of Sweden were adopted at least partially, there could have been a tremendous shift from seeing and treating asylum-seekers as criminals to accepting them as victims of torture who need major support and care for becoming self-sufficient in a host country.

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