



COUNTRY STUDY SWEDEN

Access to Justice for Victims of Violent Crime Suffered in Detention



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Introduction

Under EU law, victims of crime benefit from a range of rights, including the rights to receive support, to information about their rights, to protection, to reparation (including the investigation and prosecution of alleged perpetrators), and to compensation. These rights are expressly provided for in *Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime* and *Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims* (hereafter referred to as “the Directives”). The Directives apply to victims of crimes committed within the EU, regardless of the victim’s status (stateless, non-national, etc) and are binding on Member States as of November 2015.

The project *Victims of Violent Crime in Detention* focuses on what happens to detainees who become victims of violent crime while in pre-trial or immigration detention, regardless of whether the crime was committed by a member of staff at the authority where they are being detained or by a fellow detainee.

The first part of this report is divided into different sections, focusing on the legislative and administrative framework surrounding victims of violent crime in immigration and pre-trial detention in Sweden. The first section starts out with a short description of how the Directives are implemented. Focus then shifts to the general, national standards governing recognition of the rights of both detainees and victims of violent crime suffered in immigration or pre-trial detention, as well as the applicable national institutional framework. The second section focuses on the existing regime governing the notification of rights to victims of violent crime suffered in detention. The third section outlines existing monitoring mechanisms aimed at preventing harm or victimisation in detention and ensuring that detention conditions are adequate. The fourth section covers the existing regime governing the right to file a complaint and the procedure available to victims of violent crime suffered in pre-trial or immigration detention. The purpose is to gain an understanding of the mechanisms in place to ensure that detainees are able to file formal complaints after suffering physical, mental, or emotional harm, regardless of the identity of the perpetrator. The fifth section identifies the measures available to protect victims and their families from secondary or repeat victimisation, intimidation, and retaliation, including the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and testifying. The sixth section focuses on the right of detained victims to receive a timely and individual assessment in order to identify specific protection needs, and to determine whether and to what extent they would benefit from special measures being taken during the criminal proceedings to prevent secondary or repeat victimisation, intimidation, or retaliation. The seventh section covers the right of detained victims to claim compensation from the offender whilst remaining in pre-trial or immigration detention or at a later time. The eighth section highlights research



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conducted into violent crime in detention in Sweden, whether the regime covering detained victims in Sweden has been criticised in the past, and any specific case studies that may be followed up on during the next phase of the project.

The second part of this report contains a summary of 38 interviews conducted with various stakeholders (detention facility staff, lawyers, civil society organisations (CSOs), police officers, immigration officials, victims, and policy makers).

The third and final part contains a summary of a number of round-table discussions with stakeholders to identify challenges and solutions with regard to the shortcomings identified throughout this investigation.

Summary

The research has identified a range of shortcomings regarding the rights of detained victims in Sweden. Although there are no obvious deficiencies in the legislative implementation of the Directives, insufficient arrangements have been made to ensure that detained victims are able to exercise their rights in practice. The identified shortcomings include:

- Insufficient arrangements to inform detained victims about their rights;
- Insufficient arrangements to identify detained victims of crimes committed in detention;
- Insufficient arrangements to document the injuries of detained victims suffered in detention;
- Insufficient arrangements to ensure access to interpretation;
- Staff training only covers conditions in the work environment and leaves out the detained victim's perspective as well as methods for identifying vulnerable victims;
- Insufficient data on violence committed in immigration detention centres;
- Most often, detained victims do not receive documents relating to police reports as these are sent to the address of the public register;
- A lawyer acting as a public defender of persons in pre-trial detention is not paid to represent a client as the victim of a crime;
- There is a consensus among lawyers, regarding victims within both immigration and pre-trial detention, that inmates who become victims of crime are a low priority. Thus, victims in immigration detention have often left the country by the time their case is seen to;
- The Parliamentary Ombudsmen, who constitute the NPM, do not have adequate tools to follow up on their criticism of various detention facilities.

A general observation from the interviews with various stakeholders is that the detained victims are not seen as victims of crime



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1 THE NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK

This section focuses on the general, national standards governing the recognition of the rights of both detainees and victims of violent crime suffered in immigration or pre-trial detention as well as the applicable national institutional framework.

Implementation of the directives

Directive 2012/29/EU

Affected entities

The implementation resulted in some amendments of the Code of Judicial Procedure (“Rättegångsbalken 1942:740”) and the Decree on Preliminary Investigations (“Förundersökningskungörelsen 1947:948”), mainly concerning the victim’s right to information.¹ In general, the position of the Swedish Government was that Sweden already fulfilled the obligations laid down in the directive. The Government delegated no special assignments to the authorities with regard to its implementation.² However, the Swedish Police Authority has been assigned a general responsibility to report on how relevant EU regulations are implemented within the organisation.³

During the preparatory work, the following entities were expected to be affected by the implementation:⁴

- The Swedish Police Authority
- The Swedish Prosecution Authority
- The Judiciary

¹ Government Bill, Genomförande av brottsofferdirektivet, prop. 2014/15:77 and Regulation, Förordning om ändring i förundersökningskungörelsen, SFS 2015:477.

² E-mail conversation with Ulrika Bladelius, Registrar at the Swedish National Court Administration, 2018-06-15; e-mail conversation with Lin Nordqvist, Analyst at the Victim and Personal Security Section (brottsoffer och personsäkerhetssektionen, BOPS), the Swedish Police Authority, 2018-06-15; e-mail conversation with Ann-Cathrine Wikström, stabsråd at the Swedish Prosecution Authority, 2018-06-19; e-mail conversation with Emmy Holmlund, Kunskapscentrum, the Swedish Crime Victim Compensation and Support Authority (brottsoffermyndigheten), 2018-06-21.

³ See for example Government Decision II:22, Ju2015/09906/PO Regleringsbrev för budgetåret 2015 avseende Polismyndigheten, 2015-12-17.

⁴ Ministry Publication Series, Genomförande av brottsofferdirektivet, Ds 2014:14 p. 44 (this was not commented on in the Government Bill, Genomförande av brottsofferdirektivet, prop. 2014/15:77).



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- Victim support services (NGOs, the Crime Victim Compensation and Support Authority [“Brottsoffermyndigheten”], and the social services)
- Health and medical services
- Schools and pre-schools
- Swedish Customs
- Consulates and embassies

Notably, neither the Swedish Migration Agency nor the Swedish Prison and Probation Service were listed as entities affected by the implementation. This was criticised by the Swedish Prison and Probation Service in their consultation response.⁵

The definition of the term “victim”

There is no statutory definition of the term “victim” in Swedish legislation, nor is the term used in criminal or procedural law.⁶ Instead, the relevant term when addressing those occupying the victim’s position in criminal proceedings is “injured party” (“målsägande”).

The term “injured party” is defined in Chapter 20 Section 8 Paragraph 4 of the Code of Judicial Procedure. Of the provision follows that an injured party is:

1. *The person whom the crime was committed against (i.e. the person that is protected by the penalty regulation which the offender has breached).*
2. *The person who has been offended by the crime and, with regard to the purpose of the criminal provision, can be considered directly affected by the crime.*
3. *The person who has been harmed by the crime (i.e. a person who has a right to damages as a result of the crime).*

⁵ The Swedish Prison and Probation Service, Remissyttrande över Ds 2014:14, Genomförande av brottsofferdirektivet, 2014-08-12, dnr 2014-12214.

⁶ The term “victim” is only used when laying down the Social Services obligation to give support to victims of crime and their dependents (anhöriga) in Chapter 5 Section 11 of the Social Service Act (socialtjänstlagen, 2001:453). The provision specifically states that children being witness to violence or other type of abuse shall be considered a victim of crime. The decisive element in determining whether a person should be considered a victim’s dependent or not is if there is a close and trustful relationship between the person and the victim. The assessment shall be based on the family- and living conditions in the individual case, see Government Bill, Socialtjänstens stöd till våldsutsatta kvinnor, prop. 2006/07:38 p. 31.



Obtaining injured party status brings certain procedural rights and, in some cases, a right to counsel for an injured party. The injured party becomes a party to the proceedings only if he/she decides to support the prosecution, that is, states a claim for liability or damages.

During the implementation process, the Government concluded that Sweden did not have to make any legislative changes to this definition in order to fulfil the obligation deriving from Article 2 of the Directive.⁷ In a European Implementation Assessment study, it was stated that, while the Swedish approach may result in the exclusion of some victims, no evidence of this could be obtained in practice.⁸ However, it would be informative to further study whether substituting the term “injured party” for “victim” affects the information that the Police Authority provides to victims during the interview phase of this project.

According to current legislation, children who have witnessed a crime in a close relationship do not fall within the definition of an injured party. This has been criticised by several NGOs and by the Ombudsman for Children in Sweden (“Barnombudsmannen”), as children who have witnessed violence often experience trauma to the same extent as children who have been subjected to physical violence has appointed a commission of inquiry to assess whether to criminalize the act of making a child witness a crime committed against a family member. The proposals from the commission has been sent out for consultation. In February 2020 we still not have seen the result of this process.⁹

Immigration detention centres

The rules governing immigration detention are laid down in Chapter 10 and 11 of the Aliens Act (“Utlänningslagen 2005:716”). A decision to place a person in immigration detention can be made by the Swedish Migration Agency, the Swedish Police, or the courts.¹⁰ Immigration detention is primarily used to ensure that a person is available for the execution of an expulsion decision. A person may also be held in immigration detention if it is necessary in order to investigate the person’s identity or right to stay in the country.¹¹ The Swedish Migration Agency is responsible for the country’s

⁷ Ministry Publication Series, Genomförande av brottsofferdirektivet, Ds 2014:14 p. 33 ff.; Government Bill, Genomförande av brottsofferdirektivet, prop. 2014/15:77 p. 11 f.

⁸ European Reserch Service, The Victim’s Rights Directive 2012/29/EU, European Implementation Assessment, p. 51.

⁹ SOU 2019:32, Betänkande av Utredningen om skydd för barn som bevittnar våld eller andra brottsliga handlingar och ansvar för uppmaning att begå självmord, Stockholm 2019

¹⁰ Chapter 10 Section 12 of the Alien Act (utlänningslagen 2005:716).

¹¹ Chapter 10 Section 1 of the Alien Act (utlänningslagen 2005:716).



immigration detention centres as well as for the supervision and treatment of detained immigrants.¹²

There is no time limit for appealing a decision to detain. Only when the decision has been appealed will the case be tried in court.¹³ During 2015, fifteen per cent of detention decisions were appealed, and only six per cent of the appeals were successful.¹⁴

Statutory powers to detain

An alien who is 18 years of age or older may be detained if:¹⁵

- His/her identity is unclear, and the right to enter or stay in Sweden cannot be otherwise assessed (“identitetsförvar”);
- Detention is necessary for the investigation of his/her right to stay in Sweden (“utredningsförvar”); or
- It is likely that he/she will be refused entry or expelled, or this is necessary for the enforcement of an existing refusal of entry or expulsion order, and there is a risk that the alien may engage in criminal activity in Sweden, go into hiding, or in some other way hinder the execution of the decision (“verkställighetsförvar”).

A child may be detained if:¹⁶

- It is likely that the child will be refused entry with immediate enforcement, or the purpose is to prepare or execute such a decision, and there is an obvious risk that the child will otherwise go into hiding and thereby jeopardise an enforcement that should not be delayed and it is not sufficient for the child to be placed under supervision; or
- The purpose is to prepare or enforce a decision to refuse entry in cases other than those outlined above, or to prepare or enforce a decision to extradite the child and, on a previous attempt to enforce the order, it has proved insufficient to place the child under supervision.

¹² Chapter 11 Section 2 of the Alien Act (utlänningslagen 2005:716).

¹³ Chapter 14 Section 9 of the Alien Act (utlänningslagen 2005:716).

¹⁴ According to calculations made by the Migration Agency's legal expert Niclas Axelsson, cited in Andersson et al (red), Flyktingfångelser, en antologi om Migrationsverkets förvar, p. 17 note 5.

¹⁵ Chapter 10 Section 1 of the Alien Act (utlänningslagen 2005:716).

¹⁶ Chapter 10 Section 2 of the Alien Act (utlänningslagen 2005:716).



A child may not be separated from both its custodians through detention of the child or its custodian(s). An unaccompanied child may only be detained if there are extraordinary reasons for doing so.¹⁷

Time limits on detention

An adult alien may not be detained for more than 48 hours due to the investigation of his/her right to stay in Sweden. This period may not be prolonged. An alien may not be detained due to the investigation of his/her identity for more than two weeks, unless there are exceptional grounds for an extension. However, the decision may be prolonged various times. An alien may be detained for up to two months due to the execution of a decision, unless there are exceptional reasons for an extension. Even if such exceptional reasons exist, the alien may not be detained for a period exceeding three months or, if it is likely that the execution of the order will take longer due to a lack of cooperation on the part of the alien or because the necessary documents cannot be acquired in a timely manner, for a period exceeding twelve months.¹⁸ The time limits of three and twelve months do not apply if the alien is expelled through a court decision due to a crime.¹⁹ Children may not be detained for more than 72 hours, unless there are exceptional grounds for an extension of up to an additional 72 hours.²⁰

For individuals being released from detention centres in 2017, the average time spent in detention was 31.5 days.²¹ However, several detainees spent considerably longer in immigration detention:²²

Confinement

A detainee who has attained the age of 18 may be held in confinement if this is necessary for maintaining good order and security on the premises or if he/she poses a serious danger to him-/herself or others. The decision shall be reviewed

¹⁷ Chapter 10 Section 3 of the Alien Act (utlänningslagen 2005:716).

¹⁸ The maximum time-limit of 12 months is not necessary counted from the first day at the detention centre. If the detainee was detained on other grounds than the execution of a decision, the 12-month period starts when the decision to expel the detainee entered into force, see The Migration Court of Appeal, MIG 2013:3.

¹⁹ Chapter 10 Section 4 of the Alien Act (utlänningslagen 2005:716).

²⁰ Chapter 10 Section 5 of the Alien Act (utlänningslagen 2005:716).

²¹ The Swedish Migration Agency, Annual report 2017 (Årsredovisning 2017), p. 61-62.

²² E-mail conversation with Sebastian Rosenlund, the Statistic and Visualization Unit (statistik- och visualiseringsenheten), the Swedish Migration Agency, 2018-06-14.



continuously, but at a minimum every third day. A detainee who is being kept in confinement because he/she poses a danger to him-/herself shall be examined by a doctor as soon as possible.²³ In 2017, 344 decisions were made to place detainees in confinement.²⁴

Placement in prison, in pre-trial detention, or under police arrest

A detainee may be placed in prison, in pre-trial detention or under police arrest if:

- The individual has been expelled by the court for committing a crime (“brottsutvisningsplacering”);
- The individual is held in solitary confinement within the immigration detention centre, but can for security reasons do not remain there (“säkerhetsplacering”),
- It is necessary for reasons of transportation (for a maximum of three days) (“transportplacering”); or
- There are other extraordinary reasons.²⁵

Only detainees that have been expelled for committing a crime may be placed together with other inmates. A child may never be subjected to placement in prison, in pre-trial detention, or under police arrest.²⁶ Decisions regarding placement in prison, in pre-trial detention, or under police arrest may be appealed within three weeks.²⁷

The Parliamentary Ombudsmen have criticised the placement of detainees in pre-trial detention on various occasions and emphasised that the Swedish Migration Agency must take measures to ensure that a thorough assessment is made on an individual basis and that the decisions are well grounded.²⁸ As the law does not require that placements for reasons of security are continuously reviewed, the

²³ Chapter 11 Section 7 of the Alien Act (utlänningslagen 2005:716).

²⁴ E-mail conversation with Sebastian Rosenlund, the Statistic and Visualization Unit (statistik- och visualiseringsenheten), the Swedish Migration Agency, 2018-06-14.

²⁵ Chapter 10 Section 20 Paragraph 1 of the Alien Act (utlänningslagen 2005:716).

²⁶ Chapter 10 Section 20 Paragraph 2-3 of the Alien Act (utlänningslagen 2005:716).

²⁷ Chapter 14 Section 10 of the Alien Act (utlänningslagen 2005:716).

²⁸ The Parliamentary Ombudsmen, Protokoll, Opcat-inspektion av Migrationsverkets förvarsenhet i Källared, Göteborg, den 22-23 februari 2017, dnr 1000-2017, p. 1, The Parliamentary Ombudsmen, Protokoll, Opcat-inspektion av Migrationsverkets förvarsenhet i Gävle den 6-7 september 2016, dnr 4831-2016, p. 7, 15.



Ombudsmen have stressed that the Swedish Migration Agency must implement routines for such a reassessment.²⁹

Pre-trial detention centres

The rules governing pre-trial detention are laid down in the Act on Detention (“Häkteslagen 2010:611”), the Regulation on Detention (“Häktesförordningen 2010:2011”), and the Swedish Prison and Probation Service’s Regulations and General Advice on Detention (“Kriminalvårdens föreskrifter och allmänna råd om häkte, KVFS 2011:2”). A decision to place a person in pre-trial detention on the suspicion of committing a crime can be made by the courts.³⁰ A decision to place a person in immigration detention in a pre-trial detention centre can be made by the Swedish Migration Agency.³¹ The authority responsible for pre-trial detention centres as well as for the treatment of persons in pre-trial detention is the Swedish Prison and Probation Service.

Statutory powers to detain

Detention may be ordered for persons suspected on probable cause of an offence carrying a prison sentence of one year or more, if there is a risk of the suspect fleeing, impeding the investigation, or continuing to engage in criminal activity.³² A person may also be detained, regardless of the nature of the offence, if his/her identity is unknown or he/she does not reside in Sweden and there is a reasonable risk of the suspect fleeing.³³ A person under the age of 18 may only be detained in case of extraordinary reasons.³⁴

Decisions of placement in pre-trial detention based on suspicion of an offence must be reviewed by a court; a new remand hearing is required if no legal action has been taken within fourteen days.³⁵ There is no time limit for appealing a detention decision.³⁶

²⁹ The Parliamentary Ombudsmen, Protokoll, Opcat-inspektion av Migrationsverkets förvarsenhet i Gävle den 6-7 september 2016, dnr 4831-2016, p. 1, 15.

³⁰ Chapter 24 Section 5 of the Code of Judicial Procedure (Rättegångsbalken 1942:740).

³¹ Chapter 10 Section 20 of the Alien Act (utlänningslagen 2005:716).

³² Chapter 24 Section 1 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

³³ Chapter 24 Section 2 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

³⁴ Section 23 of the Act on Special Regulations for Young Offenders (lagen med särskilda bestämmelser om unga lagöverträdare 1964:167).

³⁵ Chapter 24 Section 18 Paragraph 3 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

³⁶ Chapter 52 Section 1 of the Code of Judicial Procedure (rättegångsbalken 1942:740).



Placement of immigration detainees in pre-trial detention centres

As outlined above, a person in immigration detention may under some circumstances be subjected to placement in pre-trial detention centres. The OPCAT unit has on several occasions stressed the inappropriateness of placing individuals in immigration detention in pre-trial detention facilities, which are adapted for persons suspected or convicted of committing a crime. Even though detainees in security placement shall enjoy the same right to contact with the outside world as detainees in immigration detention centres since 2012,³⁷ the OPCAT unit has concluded that the Swedish Prison and Probation Service cannot guarantee this right.³⁸ Sweden has also been criticised internationally for its security placements.³⁹

Time limits on detention

Swedish law does not stipulate a maximum for time spent in pre-trial detention, which has received criticism from the Committee Against Torture.⁴⁰ For individuals in immigration detention, the time limits do not apply if the individual is expelled for committing a crime through a court decision.⁴¹

Restrictions

At the request of the prosecutor, the court shall consider whether a person detained on suspicions of committing a crime should have his/her contact with the outside world restricted. Such restrictions may only be issued if there is a risk that the suspect will remove evidence or in other ways impede the investigation.⁴² Restrictions that may be placed on prisoners suspected of committing a crime are regulated and listed in Chapter 6 of the Act on Detention. There is no time limit for appealing such a court decision.⁴³

³⁷ Chapter 11 Section 2 Paragraph 3 of the Alien Act (utlänningslagen 2005:716) and Government Bill, Genomförande av återvändandedirektivet, prop. 2011/12:60 p. 81.

³⁸ The Parliamentary Ombudsmen, Beslut, Initiativvärende om förvarstagnas rättigheter i häkten och anstalter, 2014-05-28, dnr 5529-2012 and Andersson et al, Flyktingfängelser, En antologi om Migrationsverkets förvar, p. 122 note 6.

³⁹ See for example CAT/C/SWE/CO/6-7, p. 10.

⁴⁰ CAT/SWE/CO/6-7, p. 9.

⁴¹ Chapter 10 Section 4 of the Alien Act (utlänningslagen 2005:716).

⁴² Chapter 24 Section 5 a of the Code of Judicial Procedure (rättegångsbalken 1942:740).

⁴³ Chapter 52 Section 1 of the Code of Judicial Procedure (rättegångsbalken 1942:740).



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Restrictions may include limitations on the right to:⁴⁴

- Interact with other inmates;
- Have access to mass media (i.e. TV, radio, and newspapers);
- Receive visits without special permission from the prosecutor;
- Send and receive letters without these first being inspected by the prosecutor (however, letters may always be sent to the public defence counsel, the Parliamentary Ombudsmen, and certain international bodies);
- Make and receive phone calls without special permission from the prosecutor.

In its latest report on Sweden, the Council of Europe’s Committee for the Prevention of Torture (CPT) “regrets that despite 24 years of on-going dialogue between the CPT and the Swedish authorities on the matter, there are no real signs of progress as regards the widespread imposition of restrictions on remand prisoners”.⁴⁵ Also, the Committee Against Torture (CAT) is particularly concerned by the widespread use of restrictions and solitary confinement in pre-trial detention, suggesting that suicide attempts in places of detention may be the result of restraints such as isolation measures.⁴⁶

1.1 Are the rights of detainees enshrined in national law?

The Instrument of Government

1.1.1 The fundamental rights and freedoms are set forth in Chapter 2 of the Instrument of Government (“Regeringsformen 1974:152”). Most rights apply equally to Swedish citizens and non-citizens. Other rights may be restricted, especially for non-citizens,⁴⁷ and some rights do not apply to non-citizens at all.⁴⁸

1.1.2 The Instrument of Government stipulates that everyone shall have a right to freedom of expression and information in his/her relations with public institutions.⁴⁹ According to Chapter 2 Section 6, everyone shall in their relations with public institutions be protected from physical violation, body

⁴⁴ Chapter 6 Section 2 of the Act on Detention (häkteslagen 2010:611).

⁴⁵ CPT/Inf (2016) 1, p. 6.

⁴⁶ CAT/C/SWE/CO/6-7, p. 8.

⁴⁷ See Chapter 2 Section 25 of the Instrument of Government (regeringsformen 1974:152).

⁴⁸ This applies to the protection from being recorded in a public register solely due to political opinion (Chapter 2 Section 3), the protection from deportation or deprivation of citizenship (Chapter 2 Section 7) and the freedom of movement (Chapter 2 Section 8 Paragraph 2).

⁴⁹ Chapter 2 Section 2 of the Instrument of Government (regeringsformen 1974:152).



searches, house searches, and other such invasions of privacy, and from the inspection of mail or other confidential correspondence. Chapter 2 Section 8 Paragraph 1 stipulates that everyone shall in their relations with public institutions be protected from the deprivation of their personal liberty. All Swedish citizens shall also have a right to freedom of movement. According to Chapter 2 Section 12, no law or other provision may imply the unfavourable treatment of anyone who belongs to a minority because of circumstances such as ethnic origin or race, or on account of their sexual orientation.

1.1.3 For foreign nationals in Sweden, special restrictions may be introduced to limit the following rights and freedoms, among others:⁵⁰

- The rights to freedom of expression and information;
- The right to protection from physical violation, body searches, house searches, and other such invasions of privacy, as well as from the violation of confidential mail or other communication;
- The right to protection from deprivation of liberty, and the right to have a deprivation of liberty decision other than such a decision made on account of a criminal act or on suspicion of such an act, examined before a court of law.

The Aliens Act

1.1.4 The rules governing the treatment of detainees in immigration detention centres are laid down in Chapter 11 of the Aliens Act. They can be summarised as follows:

- The detainee shall be treated humanely, and his/her dignity shall be respected. The detention shall be organised in a way that results in the least possible infringement of the detainee's integrity and rights.⁵¹ According to the preparatory work, a part of being treated humanely is to feel safe and secure.⁵²
- The detainee shall be informed of his/her rights and responsibilities as a detainee in the immigration detention centre, as well as of the house rules.⁵³
- The detainee shall be given the opportunity to participate in activities, recreation, physical exercise, and time outdoors. Children shall be offered the opportunity to play and participate in activities adapted for children.⁵⁴

⁵⁰ Chapter 2 Section 25 of the Instrument of Government (regeringsformen 1974:152).

⁵¹ Chapter 11 Section 1 of the Alien Act (utlänningslagen 2005:716).

⁵² Government Bill, Ändring i utlänningslagens förvarsbestämmelser, prop. 1996/97 p. 22.

⁵³ Chapter 11 Section 1 of the Alien Act (utlänningslagen 2005:716).

⁵⁴ Chapter 11 Section 3 of the Alien Act (utlänningslagen 2005:716).



- The detainee shall be given the opportunity to receive visits and communicate with persons outside the premises. A visit by a public counsel or lawyer may only be monitored if the counsel or lawyer personally requests it.⁵⁵
- The detainee shall have access to emergency healthcare, maternal healthcare, care in connection with abortion, and counselling regarding contraceptives. If the alien is under the age of 18, he/she shall have the same right to healthcare as a Swedish national.⁵⁶
- The detainee may keep his/her property, as long as it cannot be used to harm anyone or may be detrimental to good order in the detention centre.⁵⁷
- The written contents of letters and other documents may not be inspected. Mail from public counsel, lawyers, the UN High Commissioner for Refugees, or other international bodies that are competent to consider complaints from individuals may never be inspected.⁵⁸
- A family in detention should be offered separate accommodation.⁵⁹

Right to appeal

1.1.5 According to Chapter 14 Section 10 of the Aliens Act, the detainee may appeal all formal decisions of a restrictive nature.

Right to public counsel

1.1.6 The detainee has a right to a public counsel after three days in detention.⁶⁰ The Committee for the Prevention of Torture has criticised Sweden for not ensuring that all detainees have the right to access a lawyer (regardless of whether they are asylum seekers) from the very outset of the deprivation of their liberty and at all stages throughout the proceedings.⁶¹ The Committee Against Torture has also criticised Sweden on this account.⁶²

⁵⁵ Chapter 11 Section 4 of the Alien Act (utlänningslagen 2005:716).

⁵⁶ Chapter 11 Section 5 of the Alien Act (utlänningslagen 2005:716) and Section 4-5 in the Act on Health and Medical Services for Asylum Seekers (lagen om hälso- och sjukvård åt asylsökande m.fl. 2008:344).

⁵⁷ Chapter 11 Section 8 of the Alien Act (utlänningslagen 2005:716) e contrario.

⁵⁸ Chapter 11 Section 10 Paragraph 3 of the Alien Act (utlänningslagen 2005:716).

⁵⁹ Chapter 11 Section 3 Paragraph 2 of the Alien Act (utlänningslagen 2005:716).

⁶⁰ Chapter 18 Section 1 of the Alien Act (utlänningslagen 2005:716).

⁶¹ CPT/Inf (2016) 1 p. 41.

⁶² CAT/C/SWE/CO/6-7 p. 7.



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1.1.7 The public counsel should assist the detainee in issues regarding the detention order and may also receive reimbursement from the State for work on issues relating to, for example, confinement and security placement in pre-trial detention.⁶³ However, it is not within the duties of the public counsel to represent the detainee in criminal proceedings and it is therefore unlikely that the public counsel will be reimbursed by the State for work relating to such issues. Instead, the State will under certain conditions provide the victim with an injured party counsel.

Regulations governing pre-trial detention

1.1.8 The rules governing the treatment of detainees in pre-trial detention are laid down in the Act on Detention, the Regulation on Detention⁶⁴, and the Swedish Prison and Probation Service's Regulations and General Advice on Detention ("Kriminalvårdens föreskrifter och allmänna råd om häkte, KVFS 2011:2"). These can be summarised as follows:

- The detainee shall be treated with respect for his/her human dignity and with an understanding of the special challenges associated with deprivation of liberty.⁶⁵ The detention order shall be enforced in such a way as to counteract the negative effects of deprivation of liberty. To the appropriate extent and with the detainee's consent, measures shall be taken to give him/her any help and support he/she might need.⁶⁶
- Enforcement of the detention order may not involve restrictions on the detainee's liberty other than those that follow from the Act on Detention or are necessary to maintain good order and security. A controlling or coercive measure may only be taken if it is proportionate to the objective. If sufficient, a less intrusive measure shall be taken.⁶⁷
- The detainee is entitled to be placed in an individual room. However, two or more inmates may be placed in the same room if this is necessary for reasons of capacity or other special reasons.⁶⁸
- The detainee may not be placed together with inmates of the opposite sex.⁶⁹

⁶³ MIG 2009:18.

⁶⁴ Häktesförordningen 2010:2011.

⁶⁵ Chapter 1 Section 4 of the Act on Detention (häkteslagen 2010:611).

⁶⁶ Chapter 1 Section 5 of the Act on Detention (häkteslagen 2010:611).

⁶⁷ Chapter 1 Section 6 of the Act on Detention (häkteslagen 2010:611).

⁶⁸ Chapter 2 Section 1 of the Act on Detention (häkteslagen 2010:611).

⁶⁹ Chapter 2 Section 2 of the Act on Detention (häkteslagen 2010:611).



- A detainee who is under the age of 18 may not be placed together with adults unless this can be considered in his/her best interest.⁷⁰
- In the daytime, the detainee shall be given the opportunity to socialise with other detainees, unless it is necessary to keep the detainee separate from others for reasons of security.⁷¹
- If possible, the detainee shall be given an appropriate occupation in the form of work or some other comparable activity.⁷² The detainee shall also be given the opportunity to participate in recreational activities.⁷³
- The detainee shall be given the opportunity to spend at least one hour per day outdoors, unless for exceptional reasons.⁷⁴
- The detainee shall be given the opportunity to follow events in the outside world in some suitable way (e.g. through access to mass media).⁷⁵
- The detainee may receive and possess books, periodicals, newspapers, and other personal items that do not pose a threat to good order or security.⁷⁶ Items which the detainee may not receive or possess shall be seized.⁷⁷
- Under extraordinary circumstances, the detainee may be granted compassionate temporary release.⁷⁸
- The detainee may receive visits to the extent that this can be conveniently arranged. However, a visit may be refused if it jeopardises security in a way that cannot be controlled (e.g. through staff supervision, the use of a special visiting room, or a body search or superficial body inspection of the visitor).⁷⁹
- The detainee may communicate with another person through electronic communication to the extent that this can be conveniently arranged. However, such communication may be refused if it jeopardises security in a way that cannot be controlled by monitoring (of which the detainee shall be informed in advance).⁸⁰
- Mail correspondence between the detainee and his/her public defence counsel, a Swedish authority, or an international organisation that has been recognised by Sweden as competent to receive complaints from

⁷⁰ Chapter 2 Section 3 of the Act on Detention (häkteslagen 2010:611).

⁷¹ Chapter 2 Section 5 of the Act on Detention (häkteslagen 2010:611).

⁷² Chapter 2 Section 6 of the Act on Detention (häkteslagen 2010:611).

⁷³ Chapter 2 Section 8 of the Act on Detention (häkteslagen 2010:611).

⁷⁴ Chapter 2 Section 7 of the Act on Detention (häkteslagen 2010:611).

⁷⁵ Chapter 2 Section 9 of the Act on Detention (häkteslagen 2010:611).

⁷⁶ Chapter 2 Section 11 of the Act on Detention (häkteslagen 2010:611).

⁷⁷ Chapter 2 Section 12 of the Act on Detention (häkteslagen 2010:611).

⁷⁸ Chapter 2 Section 13 of the Act on Detention (häkteslagen 2010:611).

⁷⁹ Chapter 3 Section 1-3 of the Act on Detention (häkteslagen 2010:611).

⁸⁰ Chapter 3 Section 4-5 of the Act on Detention (häkteslagen 2010:2011).



private individuals shall be forwarded without inspection. However, such mail to the detainee shall not be forwarded but retained if there are reasons to believe that the information about the sender is incorrect.⁸¹ In other cases, the detainee may be refused to send or receive mail if this is necessary for maintaining good order and security.⁸² Mail that is retained may not be inspected without the consent of the detainee unless this is absolutely necessary for security reasons or, if the information about the sender is believed to be incorrect, in order to investigate the identity of the sender.⁸³

- A detainee who needs healthcare shall be examined by a doctor. A doctor shall also be called if the detainee so requests and it is not obvious that such an examination is unnecessary. The detainee shall be treated according to the doctor's instructions and, if necessary, transferred to a hospital.⁸⁴
- The detainee may request within three weeks that a Prison and Probation Service decision be reviewed. If the Prison and Probation Service decides not to overturn the decision in favour of the detainee, it may be appealed to an administrative court.⁸⁵
- Every detainee shall, at the outset of the period of detention, be informed of its implications in a language that he/she understands. Such information shall also be provided whenever needed. A person that is detained for reasons other than on suspicion of have committed a crime shall be informed of his/her right to notify a close one about his/her location.⁸⁶ According to the Prison and Probation Service's Regulations and General Advice on Detention, the detainee shall also receive information about his/her rights. The information shall be provided in a language that the detainee understands.⁸⁷
- If a person that is detained on suspicion of having committed a crime requests a public defence counsel, the request shall be sent to the court without delay.⁸⁸

⁸¹ Chapter 3 Section 6 of the Act on Detention (häkteslagen 2010:611).

⁸² Chapter 3 Section 7 of the Act on Detention (häkteslagen 2010:611).

⁸³ Chapter 3 Section 8 of the Act on Detention (häkteslagen 2010:611).

⁸⁴ Chapter 5 Section 1 of the Act on Detention (häkteslagen 2010:611).

⁸⁵ Chapter 7 of the Act on Detention (häkteslagen 2010:611).

⁸⁶ Section 2-3 of the Regulation on Detention (häktesförordningen 2010:2011).

⁸⁷ Section 10 of the Prison and Probation Service's regulations and general advice on detention (Kriminalvårdens föreskrifter och allmänna råd om häkte KVFS 2011:2).

⁸⁸ Section 22 of the Regulation on Detention (häktesförordningen 2010:2011).



1.2 Are there any prison regulations or manuals governing the conduct and rights of detainees?

Immigration detention centres

1.2.1 No regulations or general advice on immigration detention centres have been found.

“The Swedish Migration Agency’s Detention Units”

1.2.2 The detainee shall be provided with the booklet “The Swedish Migration Agency’s Detention Units during his/her introductory meetings (“inskrivningssamtal”) at the detention centre. The booklet is available in 19 languages⁸⁹ and contains information and regulations governing the rights and conduct of detainees, which may be summarised as follows:

- The detainee has a right to possess a mobile phone (without a camera) while at the detention centre.
- Phones and computers with internet access shall be made available.
- There shall be access to outdoor areas open daily at specified times.
- There shall be weekly meetings with Swedish Migration Agency staff, during which detainees may raise various questions and receive information about current events.
- Men shall not be allowed to enter areas designated for women.
- The detainee is entitled to emergency healthcare free of charge.
- County councils or healthcare regions are obliged to offer detainees a health exam, if not obviously unnecessary.
- The detainee has a right to contact, for example, a consulate or embassy, relatives, and the media.
- The detainee may receive visits. Staff may supervise visits if this is considered necessary for safety reasons. Limitations govern the number of persons permitted in visiting rooms.
- NGOs shall be allowed to visit with detainees.
- The Swedish Migration Agency shall decide which objects the detainee may have in his/her possession on the premises.
- Alcoholic beverages and other intoxicants are prohibited.
- Threats, violence, and sexual harassment directed at staff or other detainees, as well as escape attempts and the refusal to follow staff

⁸⁹ E-mail conversation with Mattias Johansson, Head of a Detention Department in Gävle (enhetschef), the Migration Agency, 2018-06-14.



instructions are considered examples of situations that may lead to confinement or security placement.

- The detainee may be transferred to another detention unit for various reasons.

1.2.3 Besides these general rules, locally-specific information shall be made available at every detention centre.

Instructions for staff

1.2.4 The Swedish Migration Agency issues both general and locally-specific instructions for staff at immigration detention centres. The most relevant instructions cover the following:

- Incident reports
- Security assessments
- Suicide prevention
- Placement within the Swedish Prison and Probation Service
- Enrolment and introduction
- NGOs Visits
- Confinement
- Violent situations
- The detention centres' guidelines against violence and threats

1.2.5 No general or locally-specific instructions have been found that explicitly regulate the Swedish Migration Agency's responsibilities towards the detainee when he/she becomes a victim of violent crime in detention. The General Guidelines against Violence and Threats ("Migrationsverkets riktlinjer vid våld och hot"), the Detention Centres' Guidelines against Violence and Threats ("Riktlinjer för arbete mot hot och våld; Förvarsavdelningen"), and the Security Handbook ("Säkerhetshandboken") exclusively deal with violence against staff. Moreover, there is no official data on the frequency of incidents of violence and threats against detainees at detention centres.

Pre-trial detention centres

Regulations and general advice on detention

1.2.6 The Swedish Prison and Probation Service's Regulations and General Advice on Pre-Trial Detention ("Kriminalvårdens föreskrifter och allmänna råd om



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häfte, KVFS 2011:2”) contains rules concerning the rights and conduct of detainees, such as:

- A security assessment shall be made immediately upon or within three days of arrival.
- The detainee has a right to information about his/her rights and obligations, the laws and regulations governing detention, local routines, video monitoring, healthcare, etc.
- Regulations on food, basic equipment, hygiene, etc.
- The right to access legislation and regulations concerning detention
- The right to speak to the detention centre management
- A remand prison plan shall be established.
- Harassment and other improper behaviour are not accepted.
- Regulations on placement and contact with other detainees
- The right to participate in recreational activities
- Regulations on personal belongings
- Detainees may only use electronic equipment provided by the Swedish Prison and Probation Service.
- Detainees who participate in educational programmes organised by the Swedish Prison and Probation Service may communicate with educators by means of a computer.
- Correspondence sent or received by a detainee shall be forwarded on the same day, if possible.
- A record shall be kept of decisions, significant events, and other important data.

“Information for Detained Persons”

1.2.7 The national booklet “Information for Detained Persons is available in eight languages⁹⁰ and contains information on the rights and conduct of detainees, covering the following issues:⁹¹

- The right to a defence counsel
- Contact person and remand prison plan
- Interpretation
- The right to inform the consulate of one’s native country
- Contact with close relatives

⁹⁰ E-mail conversation with Annica Bodin Petterson, the Swedish Prison and Probation Service, 2018-06-27.

⁹¹ The Swedish Prison and Probation Service, Information for detained persons, order number 9284, 2011.



- Visits
- The use of telephones
- Letters and packages
- Healthcare
- References to relevant laws and regulations

“Information: Detainees Storboda Remand Prison”

1.2.8 The pre-trial detention centre in Storboda (a special department for immigration detainees in pre-trial detention provides special information materials in five languages, covering the following rules and issues:

- Representatives of the Swedish Migration Agency shall visit once per week.
- Putting other persons in danger (e.g. through violence or threats) will be reported to the police.
- The staff contact person may assist in communicating with the authorities.
- The right to healthcare
- The right to participate in physical exercise activities
- The detainee must sign a consent form for the handling and inspection of his/her mail. If the detainee provides his/her consent, he/she will receive his/her mail after the appropriate checks on the day of delivery. If not, mail will not be inspected and instead remain stored.
- Detainees may make calls using the telephones provided by the Swedish Prison and Probation Service. The authority will bear the cost of certain important local calls that concern the detainee’s case.
- Rules concerning visits and visiting activities
- Copies of the laws and regulations concerning detention shall be available on loan.

1.3 Does the national law set out rights for victims of violence committed in detention?

1.3.1 The rights of crime victims (“injured parties”) are laid down in the Decree on Preliminary Investigations⁹² and the Code of Judicial Procedure. However, these laws do not refer specifically to the rights of victims of violence committed in detention, but to the rights of victims of crime more generally. The preconditions to receive a temporary residence permit is described in this

⁹² Förundersökningskungagörelsen 1947:948.



section. Other key rights are outlined in the sections below, but can be summarised as follows:

- Right to information⁹³
- Right to interpretation and translation⁹⁴
- Right to receive written acknowledgement when filing a formal complaint
- Right to information about a one's case⁹⁵
- Right to be accompanied by a person of choice during police interviews and the main court hearing⁹⁶ (N.B., there is no statutory right to be accompanied by a person of choice from the moment of first contact with the competent authority)
- Right to an injured party counsel⁹⁷
- Right to claim damages⁹⁸
- Right to an individual needs' assessment and, in some cases, right to protective measures⁹⁹
- Right to file a complaint in the Member State of one's residence if the offence was committed in another Member State but could not be reported there, or if the offence was serious and the claimant did not wish to report the case in the other Member State¹⁰⁰

Temporary residence permits in connection with ongoing criminal proceedings

1.3.2 Sweden's immigration regulations allow for the issuing of temporary residence permits in connection with ongoing criminal proceedings.¹⁰¹ According to

⁹³ Section 13 a-e and 14 a of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

⁹⁴ Section 13 a Paragraph 3 and Section 13 e of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948), Chapter 5 Section 6 and Chapter 33 Section 9 in conjunction with Chapter 23 Section 16 Paragraph 2 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

⁹⁵ Section 13 a-b, d and 14 of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948), Chapter 20 Section 15 a and Chapter 30 Section 7 of the Code of Judicial Procedure (rättegångsbalken 1942:740) and Section 26 of the Regulation on Cases and Matters in General Courts (förordningen om mål och ärenden i allmän domstol 1996:271).

⁹⁶ Chapter 23 Section 10 and Chapter 20 Section 15 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

⁹⁷ Section 1 of the Injured Party Counsel Act (lagen om målsägandebiträde 1988:609).

⁹⁸ Chapter 22 of the Code of Judicial Procedure (rättegångsbalken 1942:740) and Chapter 2 of the Tort Liability Act (skadeståndslagen 1972:207).

⁹⁹ Section 13 f of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

¹⁰⁰ Section 33 of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

¹⁰¹ Chapter 5 Section 15 of the Aliens Act (utlänningslagen 2005:716).



Chapter 5 Section 15 of the Swedish Aliens Act,¹⁰² a temporary residence permit of at least six months shall be granted to a foreigner staying in Sweden if:

1. It is necessary for the preliminary investigation or main hearing in court;
2. The foreigner has clearly demonstrated that he or she is willing to cooperate with the authorities leading the investigation;
3. The foreigner has cut all contact with the perpetrator(s); and
4. Public policy and national security considerations are not in conflict with the granting of a permit.

1.3.3 It follows from Section 14a of the Decree on Preliminary Investigations that the public prosecutor shall inform the foreigner of the possibility to attain a temporary residence permit in cases where the victim may qualify for such a permit.

1.3.4 An application to the Swedish Migration Agency for a temporary residence permit is made by the prosecutor. The opinion of the prosecutor shall be decisive when the Swedish Migration Agency assesses whether the foreigner's participation in the proceedings is required. As the right to a temporary residence permit is based on the State's interest in investigating serious offences, a permit shall not be issued if the offence may only result in a fine.¹⁰³ If the application is denied, the decision may only be appealed by the prosecutor and not by the foreigner.¹⁰⁴

1.3.5 A temporary residence permit valid for 30 days shall be issued upon the prosecutor's application if criteria 1 and 4 are met and the foreigner needs a period to recover and free him-/herself from the perpetrator's influence in order to make an informed decision regarding whether to cooperate with the competent authorities. The permit may be prolonged. Regarding the criteria to cut all contact with the perpetrator and to cooperate with the authorities, the preparatory work stresses the importance of sympathy with the foreigner's situation if he/she is young and has been subject to trafficking or is dependent

¹⁰² The provision is partly based on the Council directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

¹⁰³ Government Bill, Genomförande av EG-direktivet om offer för människohandel, prop. 2006/07:53 p. 17.

¹⁰⁴ Government Bill, Genomförande av EG-direktivet om offer för människohandel, prop. 2006/07:53 p. 16.



on the perpetrator and may therefore need more time. It is also stated that, if the foreigner is a child, the best interest of the child shall be considered.¹⁰⁵

1.3.6 There is no official data indicating how many temporary residence permits have been issued for detainees in immigration or pre-trial detention (if a detainee receives a temporary residence permit while in immigration detention, detention shall cease immediately¹⁰⁶). However, the number of temporary residence permits granted in 2016 were:

2016	<i>Temporary resident permit, trafficking</i>	<i>Temporary resident permit, other crimes</i>
<i>Children</i>	5	7
<i>Adults</i>	20	28
...whereof men	9	17
...whereof women	16	18
Total	25	35

1.4 What facilities exist to house detainees in immigration or pre-trial detention?

Immigration detention centres

1.4.1 The Swedish Migration Agency is responsible for immigration detention centres as well as for the supervision and treatment of detained immigrants.¹⁰⁷ From 2016 to 2017, the number of individual stays in immigration detention centres increased from 3,700 to 4,400. In 2017, the high occupancy rate was a major challenge, especially in places of detention for men.¹⁰⁸ The Swedish Migration Agency maintains detention centres in five different locations: Åstorp, Göteborg, Flen, Märsta, and Gävle. Together, they have the capacity to accommodate 357 individuals.

¹⁰⁵ Government Bill, Genomförande av EG-direktivet om offer för människohandel, prop. 2006/07:53 p. 22–23.

¹⁰⁶ E-mail correspondence with Lisa Hultin Knutas, Regional Coordinator against Trafficking, the Swedish Migration Agency, 2018-06-22.

¹⁰⁷ Chapter 11 Section 2 of the Alien Act (utlänningslagen 2005:716).

¹⁰⁸ The Swedish Migration Agency, Annual report 2017 (Årsredovisning 2017), p. 61-62.



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Pre-trial detention centres

1.4.2 The Swedish Prison and Probation Service is responsible for pre-trial detention centres. On 1 October 2017, the number of individuals registered in pre-trial detention were 1,831. Of those, 1,509 were detained on suspicion of committing a crime.¹⁰⁹ The authority maintains a total of 32 pre-trial detention centres.¹¹⁰

According to the Swedish Prison and Probation Service, on an average day approximately 100 immigration detainees are present in pre-trial detention centres and prisons (not counting placements for reasons of transportation). About 10 per cent of them are held in prison. Only detainees that have been expelled for committing a crime by a court decision may be placed together with other inmates.¹¹¹ In Storboda, Märsta, a pre-trial detention department with a capacity to accommodate 24 individuals has been dedicated to persons in immigration detention.¹¹²

1.4.3 The Swedish Police Authority is responsible for detention facilities for persons under police arrests.

Accessibility and special needs

1.4.4 Regulations on accessibility in pre-trial and immigration detention centres as well as police facilities are laid down in the Ordinance on Disability Policy (Responsibility of National Agencies for Implementation) (“förrordningen om de statliga myndigheternas ansvar för genomförande av funktionshinderspolitiken 2001:526”). It states that all public venues, information, and activities must be made accessible for persons with limited mobility and capacity to orient themselves. The regulation also stipulates that authorities should outline action plans for their work on improving accessibility. However, there are no obligations to make such accommodating adjustments within detention facilities. Such provisions are also absent in the Act on Detention. Although the act includes provisions concerning the placement of a detained person in its second chapter, it does not specify a necessity to make adjustments for the

¹⁰⁹ E-mail correspondence with Simon Jonsson, Statistic Support, the Swedish Prison and Probation Service, 2018-04-06.

¹¹⁰ The Swedish Prison and Probation Service, “Våra häkten”, <https://www.kriminalvarden.se/fangelse-frivard-och-hakte/hakte/vara-hakten/>, accessed 20 June 2018.

¹¹¹ Chapter 10 Section 20 Paragraph 2 of the Aliens Act (utlänningslagen 2005:716).

¹¹² The Swedish Prison and Probation Service, Annual Report 2017 (Kriminalvårdens årsredovisning 2017), p. 23 and e-mail correspondence with Joakim Righammar, Head of Evaluation and Placement Section, the Swedish Prison and Probation Service, 2018-06-26.



special needs of persons with disabilities.¹¹³ The only pre-trial detention facilities that have been adapted for detainees with physical disabilities is a national department at the Kronoberg remand prison.¹¹⁴

2 RIGHT TO INFORMATION

This section outlines the existing regime governing the notification of victims' rights in the specific context of violent crime suffered in detention. The purpose is to gain an understanding of the means in place to ensure that victims understand their rights during the proceedings, from first point of contact or even before victimisation.

2.1 At what stage are detainees provided with information about their rights?

Right to information from the police/prosecutor

2.1.1 There are no specific regulations governing the right to information for victims in detention. Instead, a general right to information for injured parties is laid down in Section 13a–e and 14a of the Decree on Preliminary Investigations.¹¹⁵

2.1.2 The injured party should receive information about the following as soon as possible:

- Damages and criminal injuries compensation offered by the State;
- The possibility for children who have witnessed crime to receive criminal injuries compensation;
- Restraining orders, special protection measures, and the possibility to obtain an injured party counsel if the offence is of the relevant type;
- The possibility to be accompanied by a support person (“stödperson”);
- European restraining orders;
- Mediation;
- Information about authorities, organisations, and other entities that provide support, help, and medical services;
- Contact details relevant to communication about their case;

¹¹³ Chapter 2 Section 3 of the Act on Detention (häkteslagen 2010:611) and Section 3 of the Regulation on Detention (häktesförordningen 2010:2011).

¹¹⁴ Telephone interview with Annette Warman, Head of Section at the Stockholm Competence Center, the Swedish Prison and Probation Service, 2018-06-29.

¹¹⁵ Förundersökningskungagörelsen 1947:948.



- The proceedings and the role of the injured party;
- The right to interpretation and translation;
- The right to reimbursement for costs incurred in connection with interviews and court hearings;
- Where to turn to file a complaint regarding the procedure;
- The possibility to receive information about developments in the case upon request.¹¹⁶

2.1.3 The officer or prosecutor in charge shall also inform the injured party about the possibility to receive a temporary residence permit in cases where the victim may qualify for such a permit.¹¹⁷

2.1.4 The injured party shall also be asked if he/she wants to be notified of a decision not to initiate a preliminary investigation, to discontinue the investigation, or not to prosecute the suspect, the time and place of the trial, as well as the final verdict.¹¹⁸ If he/she wishes to receive such information, it shall be provided.

2.1.5 The injured party shall receive written acknowledgement of his/her formal complaint. If the injured party does not speak Swedish, he/she shall, upon request, receive written acknowledgement in a language that he/she understands.¹¹⁹

2.1.6 In the Police Authority's system for the registration of formal complaints (RAR), it is possible to register what information the police have imparted to the victim. Some information must be filled in, such as whether the victim wants to be contacted by victim support organisations and receive information about how their case proceeds. A document outlining the information the victim has received or wishes to receive shall be sent to the victim together with written acknowledgement of the formal complaint or with the Police Authority's decision not to open a preliminary investigation or to discontinue it,

¹¹⁶ According to the Swedish Prosecution Authority's guidelines, the prosecutor should, when the crime is serious, be in contact with the injured party or the injured party counsel and give updates on the case. The prosecutor should also be open to the injured party's wish to communicate through phone calls and personal meetings, see The Swedish Prosecution Authority, *Handbok för bemötande av brottsoffer*, 2016, p. 16.

¹¹⁷ Regulated in Chapter 5 Section 15 of the Alien Act (utlänningslagen 2005:716).

¹¹⁸ An injured party that is party to the trial or that is to be heard during the trial will always receive a subpoena with information about the time and place, see Chapter 20 Section 15 and 15 a of the Code of Judicial Procedure (rättegångsbalken 1942:740).

¹¹⁹ Section 13 e of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).



should such a decision be made.¹²⁰ The victim will also receive the booklet “For Persons Who Have Reported an Offence” (“Brottsofferbrev, Till dig som har anmält ett brott”) (see Appendix 4), which includes further written information. At the time of writing, the booklet is only available in Swedish; according to information from the Police Authority, it is currently being translated into fourteen additional languages. Initially, these will not be widely distributed but provided as necessary by officers from the Victim and Personal Security Units (“BOPS, brottsoffer och personsäkerhetssektioner”).¹²¹

Information from the Swedish Migration Agency

2.1.7 The Swedish Migration Agency’s regulations do not specify an obligation to provide detainees with information regarding their rights in the specific context of violent crime suffered in detention.¹²² When asked, the Swedish Migration Agency has confirmed that no such information is provided to detainees in any organised way or in written form.¹²³ However, staff should provide the detainee with the contact details of the Police Authority in case of victimisation.¹²⁴ The agency has a guide on how to treat vulnerable women in immigration detention centres that was produced as part of a project financed by the European Refugee Fund. Among other things, the guide refers to information regarding victims of crime and instructs staff to inform the detainee of the possibility to file a complaint with the Police Authority and receive a temporary residence permit in connection with ongoing criminal proceedings.¹²⁵

2.1.8 As stipulated in Chapter 11 Section 1 of the Aliens Act, the detainee shall be informed of his/her rights and responsibilities as a detainee at the immigration detention centre as well as of the house rules. The Swedish Migration Agency’s guidelines, Enrolment and Introduction (“Inskrivning och introduktion, versionsnr: 18-1”), stipulate that the detainee shall receive certain information during his/her introductory meeting (“inskrivningssamtalet”) at the centre. The

¹²⁰ Ministry Publication Series, Genomförande av brottsofferdirektivet, Ds 2014:14 p. 56 ff.

¹²¹ E-mail correspondence with Lin Nordqvist, analyst at the Victim and Personal Security Section (BOPS), the Swedish Police Authority, 2018-06-09 and 2018-06-15.

¹²² However, other information shall be provided by the Swedish Migration Agency, see below under Section 2.2.

¹²³ The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18, para 5.

¹²⁴ The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18, para. 3.

¹²⁵ The Swedish Migration Agency, Att se och bemöta utsatta kvinnor på förvaret – en bemötandeguide.



booklet “The Swedish Migration Agency’s Detention Units” (see Appendix 1) is available in 19 languages¹²⁶ and shall be distributed at all immigration detention centres. It does not contain any information on the detainee’s rights as a victim. However, it provides some brief information on:

- Interpretation;
- Contact details of the Swedish Migration Agency’s Applicants’ Ombudsman;
- Contact details of the Parliamentary Ombudsmen;
- Threats, violence, and sexual harassment directed at staff or other detainees, which are considered examples of situations that may lead to confinement or external placement; and
- Possession of firearms, drugs, or other illegal objects or substances, which is reported to the police.

Information from the Swedish Prison and Probation Service

2.1.9 The Act on Detention and the Regulation on Detention¹²⁷ do not lay down an obligation to provide detainees with information regarding their rights in the specific context of violent crime suffered in detention. Section 2 of the Regulation on Detention¹²⁸ stipulates that the detainee shall be informed about what his/her stay in remand prison entails. Moreover, Section 10 and 19 of the Prison and Probation Service’s Regulations and General Advice on Detention (“Kriminalvårdens föreskrifter och allmänna råd om häkte, KVFS 2011:2”) states that a detainee shall be informed about his/her rights and have access to the regulations that apply during his/her time in remand prison.

2.1.10 The detainee shall receive general as well as locally-specific information when arriving at the centre or as soon as possible. This includes information about procedures in case of misconduct, where the policy is that all crimes committed in detention shall be reported to the police, especially those committed against another person. A special-information check list is used for young detainees.¹²⁹ The detainee shall also be assigned a staff contact

¹²⁶ E-mail correspondence with Josefine Litherby, Head of a Detention Unit in Märsta (enhetschef), the Swedish Migration Agency, 2018-06-17.

¹²⁷ Häktesförordningen 2010:2011.

¹²⁸ Häktesförordningen 2010:2011.

¹²⁹ E-mail correspondence with Marine Erlandsson, (senior handläggare, avdelningen anstalt och häkte, sektionen för utveckling av verkställighetsinnehåll), the Swedish Prison and Prosecution Service, 2018-07-04.



person, who will give more detailed information on arrival at the centre and upon request.¹³⁰

2.1.11 The general information materials “Information for Detained Persons” (see Appendix 2) is available in eight languages and, though it does not contain information on victims’ rights, covers issues such as the following:

- The right to a public defence counsel
- The right to interpretation
- The right to healthcare
- The right to inform the consulate or embassy of one’s native country
- How to make phone calls and send letters

2.1.12 However, the general information materials do not include information about the Parliamentary Ombudsmen.

2.1.13 The special information materials used at Storboda (see Appendix 3) state that instances of putting others in danger (e.g. through violence or threats) will be reported to the police. They do not contain information about the Parliamentary Ombudsmen.¹³¹ Such information is not provided in any organised way, and only upon request.¹³²

Access to information through digital platforms, etc.

2.1.14 According to information from the Swedish Migration Agency, the agency provides access to a telephone free of charge and there is approximately one computer for every two detainees in detention centres.¹³³ Detainees also have a right to possess a no-camera mobile phone. In pre-trial detention centres, contact with the outside world using electronic devices is much more limited.¹³⁴ Permission is needed in order to use a telephone, only devices provided or approved by the Swedish Prison and Probation Service may be

¹³⁰ The Swedish Prison and Probation Service, Information for detained persons, order number 9284, p. 8.

¹³¹ The Swedish Prison and Probation Service, Information to clients, Information, Detainees Storboda remand prison.

¹³² E-mail correspondence with Petter Wählberg, Director of Prison (anstaltschef), Storboda, the Prison and Probation Service, 2018-07-02.

¹³³ Telephone interview with Johan Lusth, Coordinator of Security, Detention Centres (säkerhetssamordnare förvar), the Swedish Migration Agency, 2018-06-04 and the Migration Agency, Official Response from Josefine Litherby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18.

¹³⁴ See for example Chapter 3 Section 4 of the Act on Detention (häkteslagen 2010:611)



used, and mobile phones and computers are prohibited.¹³⁵ Detainees at Storboda (a special department for immigration detainees placed in pre-trial detention centres) have access to computers.¹³⁶

2.1.15 General information regarding victims' rights can be found on various webpages. However, no website specifically addressing the rights of victims in detention has been found.

The Swedish Police Authority

2.1.16 The Swedish Police Authority provides some information in Swedish, English, French, Dutch, Spanish, Arabic, Bosnian, Farsi, and the Swedish minority-languages on their HYPERLINK "<https://polisen.se/en/victims-of-crime/>" website. Audio, sign language, and an Easy-read version are available in Swedish. There is also some information on the assistance the police are able to offer to persons with various impairments.

The Swedish Crime Victim Compensation and Support Authority

2.1.17 The Swedish Crime Victim Compensation and Support Authority ("Brottsoffermyndigheten") provides information on victims' rights in various languages. Their website is available in fourteen languages and offers the option to download booklets in various languages (such as the "Information to Crime Victims" booklet in English).

Website for victims being launched in 2019

2.1.18 In 2016, the Government assigned the Swedish Crime Victim Compensation and Support Authority ("Brottsoffermyndigheten") the task to investigate victims' need for support during criminal proceedings and to what extent those

¹³⁵ Section 8-9 of the Swedish Prison and Probation Service's regulations and general advice on detention (Kriminalvårdens föreskrifter och allmänna råd om häkte, KVFS 2011:2) and the Swedish Prison and Probation Service, "Telefon och brev", <https://www.kriminalvardens.se/for-familj-och-vanner/telefon-och-brev/>, accessed 27 June 2018.

¹³⁶ Telephone interview with Petter Wählberg, Director of Prison (anstaltschef), Storboda, the Prison and Probation Service, 2018-06-28.



needs can be met through the use of digital platforms.¹³⁷ In their final report, submitted in 2017, the authority proposed the development of a website with information aimed at victims of crime, collecting information from all the relevant authorities in one place. In 2017, it received funding from the EU Internal Security Fund (ISF) to implement the project, and the website will be launched in 2019. The website will allow for the information presented to be adapted to the needs of individual victims and will cover the legal process in its entirety. The information will be easy to view at a glance. In order to design the website according to victims' needs, a life-event analysis has been integrated and the information will be presented from a life-event perspective.¹³⁸

“Court Introduction”

2.1.19 As many victims of crime are nervous ahead of their main court hearing, the Swedish Crime Victim Compensation and Support Authority (“Brottsoffermyndigheten”) has developed the digital Court Introduction toolkit (“Rättegångsskolan”). It has been designed to make the information easily accessible and contains animations, photos, short films, texts, and a voice-over feature. It also offers a longer film that illustrates how a main hearing works. It is available in Swedish and English.

Information for children

2.1.20 In 2013, the Government assigned the Swedish Crime Victim Compensation and Support Authority (“Brottsoffermyndigheten”) together with the Ombudsman for Children (“Barnombudsmannen”) the task to produce information and support materials adapted for children who have become the victims of crime.¹³⁹ Their efforts resulted in the website “I Want to Know” (“Jag vill veta”), where information has been adapted to three different age groups (4–7, 8–13, and 14–17 years). The website has specifically been designed to be accessible to children with cognitive impairments. The website itself is only

¹³⁷ Government Decision, Uppdrag om ett bättre digitalt bemötande av brottsutsatta, Regeringsbeslut Ju2016/03925/KRIM.

¹³⁸ The Swedish Crime Victim Compensation and Support Authority, https://www.brottsoffermyndigheten.se/Filer/Projektkatalog/Slutrapport_digitalt_bemotande.pdf [2018-03-12].

¹³⁹ Government Decision, Uppdrag angående information till barn som brottsoffer, Regeringsbeslut S2013/2348/FST.



available in Swedish but offers five different booklets in various languages. The materials were produced in collaboration with children.¹⁴⁰

Victim Support Sweden

2.1.21 Victim Support Sweden (“Brottsofferjouren”) offers help and support to victims, witnesses, and others affected by crime. Their trained volunteers can offer emotional support, practical help, and information on how to apply for crime victim compensation and criminal injuries compensation,¹⁴¹ and are able to give advice and information to victims in around 20 different languages.¹⁴²

2.2 Is any other type of information provided to detained victims in addition to their rights?

Information from the Swedish Migration Agency

2.2.1 Yes, see sections 1.2.1–1.2.3 and 2.8.1 above.

Information from the Swedish Prison and Probation Service

2.2.2 Yes, see sections 1.2.7–1.2.8 and 2.19–2.1.12 above.

¹⁴⁰ The Swedish Crime Victim Compensation and Support Authority, Information till barn som brottsoffer, <https://www.brottsoffermyndigheten.se/Filer/Böcker/Slutredovisning,%20regeringsuppdrag%20information%20till%20barn%20som%20brottsoffer,%20S2013-2348FST.pdf> [2018-03-12].

¹⁴¹ Victim Support Sweden, “Help for victims and witnesses”, <http://www.brottsofferjouren.se/english/>, accessed 6 June 2018.

¹⁴² Victim Support Sweden, “Contact us in your own language”, <http://www.brottsofferjouren.se/hjalp-och-stod/stod-pa-eget-sprak-support-in-other-languages/prata-med-oss-pa-ditt-sprakcall-us-in-your-language/>, accessed 12 June 2018.



2.3 In what format is the information provided?

Information from the Police Authority

2.3.1 Apart from oral information, victims reporting a crime to the police also receive the booklet “For Persons Who Have Reported an Offence” (“Brottsofferbrev, Till dig som har anmält ett brott”) containing basic information about the proceedings, interpretation, legal aid, protection, compensation, and contact details to support authorities and organisations, etc. The booklet is currently only available in Swedish but is being translated into fourteen other languages.¹⁴³ For information in other languages, at present the police refers to its website which offers information in twelve languages in addition to Swedish.¹⁴⁴ A document detailing what information the victim has received or wishes to receive shall also be sent to the victim, together with written acknowledgement of the formal complaint or with the Police Authority’s decision not to open a preliminary investigation or to discontinue it, should such a decision be made.¹⁴⁵

Information from the Swedish Migration Agency

2.3.2 As explained above, the Swedish Migration Agency does not provide information concerning detainees’ rights as victims of crime. No such information is thus available in writing.¹⁴⁶ However, locally-specific information, of which the detainee has a right to keep a copy, shall be provided in writing in a language that the detainee understands. Other information is provided orally.¹⁴⁷

Information from the Swedish Prison and Probation Service

2.3.3 As explained above, the Swedish Prison and Probation Service does not provide information concerning detainees’ rights as victims of crime. No such

¹⁴³ Initially, they will not be distributed automatically but provided by officers at the Victim and Personal Security Section (BOPS, brottsoffer och personsäkerhetssektionen) when needed, see e-mail correspondence with Lin Nordqvist, analyst at the Victim and Personal Security Section (BOPS), the Swedish Police Authority, 2018-06-09 and 2018-06-15.

¹⁴⁴ The Police Authority, <https://polisen.se/>, accessed 21 June 2018.

¹⁴⁵ Ministry Publication Series, Genomförande av brottsofferdirektivet, Ds 2014:14 p. 56 ff.

¹⁴⁶ The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-0618, para 5.

¹⁴⁷ The Swedish Migration Agency, Instruktion för personal, Inskrivning och introduktion, versionsnr: 18-1.



information is thus available in writing. Only the general information materials, “Information for Detained Persons”, and locally-specific information is provided in writing. Detainees shall also have access to the regulations that apply during their time in remand prison. Other information is provided orally.¹⁴⁸

2.4 What measures do authorities take, if any, to overcome barriers to communication when informing detainees of their rights? (Is the notification procedure adapted to the detainee’s individual circumstances?)

2.4.1 For translation and interpretation, see section 2.5 below.

2.4.2 During the last few decades, Sweden has striven to make the language used in texts provided by the authorities more accessible. Section 11 of the Language Act (“Språklagen 2009:600”) stipulates that the language used in the public sector should be correct, simple, and comprehensible. The provision should be interpreted as requiring information provided in both written and oral language to be comprehensible and, as far as possible, made accessible to the recipient.¹⁴⁹

2.4.3 According to the Ordinance on Disability Policy (Responsibility of National Agencies for Implementation)¹⁵⁰, all government agencies have a responsibility to ensure that persons with disabilities are able to participate in all parts of society. In particular, government agencies shall work to ensure that their facilities, activities, and information are accessible to persons with disabilities. The UN Convention on the Rights of Persons with Disabilities shall direct these efforts.

2.4.4 In 2011, the Government presented its “Strategy for the Implementation of the Disability Policy 2011–2016” (“Strategi för genomförandet av funktionshinderpolitiken”).¹⁵¹ In its new strategy, it assigned the Police Authority the task of improving the organisation’s accessibility, competence, training and internal information on the needs and conditions of people with

¹⁴⁸ E-mail correspondence with Marine Erlandsson, (senior handläggare, avdelningen anstalt och häkte, sektionen för utveckling av verkställighetsinnehåll), the Swedish Prison and Prosecution Service, 2018-07-04.

¹⁴⁹ Government Bill, Språk för alla – förslag till språklag, prop. 2008/09:153.

¹⁵⁰ Förordningen om de statliga myndigheternas ansvar för genomförande av funktionshinderpolitiken 2001:526.

¹⁵¹ The Swedish Government Offices, En strategi för genomförandet av funktionshinderpolitiken 2011-2016, dnr 2012.28, p. 14.



disabilities. In the final results, presented in 2016, barriers to accessibility for people with disabilities remain, specifically hindrances to communicating with the police and accessing information and services.¹⁵²

2.4.5 The Police Authority's guidelines concerning victims with special needs list a number of groups as considered particularly vulnerable. Among those are victims with disabilities, victims whose mother tongue is a language other than Swedish, and children. With regards to children, the guidelines emphasise that the officer must take the child's maturity level into account when providing information and that the information should be provided both orally and in writing, in the most direct way possible. The guidelines also refer to the "I Want to Know" materials.¹⁵³ With regard to victims whose mother tongue is another language than Swedish, the guidelines explain that any potential language barrier must never affect the authority's decision and refer to information in Easy-read Swedish and other languages. The guidelines also state that an interpreter shall be provided when needed and that it is inappropriate to make a family member or friend act in this capacity. The guidelines also refer to Victim Support Sweden and its specially trained volunteers.¹⁵⁴ With regard to victims with disabilities, the guidelines offer a short description of different kinds of disabilities and how they may affect the ability to communicate and access information. The guidelines also explain that the police officer must make an assessment of any barriers to communication and that the information should be provided in an accessible, clear, and direct manner. If the victim has a personal assistant or administrator, the police may turn to him/her for assistance in providing the information in a way that is accessible to the victim. The guidelines also list different technical support tools and stipulate that an interpreter should be hired if the victim has a severe speech or hearing impairment.¹⁵⁵

¹⁵² The Swedish Police Authority, Slutredovisning av Polismyndighetens regeringsuppdrag avseende delmål för "En strategi för genomförandet av funktionshinderpolitiken 2011-2016, dnr A075.608/2016, 2016-03-09.

¹⁵³ See 2.1.20.

¹⁵⁴ See 2.1.21.

¹⁵⁵ The Swedish Police Authority, Metodstöd, Brottsoffer med särskilda behov, dnr A.331.899/2016, 2017-02-03.



2.5 Does the law recognise the right of detained victims who do not understand or speak the language of the criminal proceedings to be provided with interpretation and/or translation?

- 2.5.1 According to Section 4 and 10 of the Language Act¹⁵⁶, Swedish is the language used in courts and by public authorities. Section 13 of the Administrative Procedure Act (“Förvaltningslagen 2017:900”) lays down general instructions for authorities, stating that they shall employ an interpreter and offer translations of important documents if the individual does not speak Swedish and it is necessary for him/her to be able to assert his/her rights. The same applies if the individual has a disability which severely affects his/her ability to see, speak, or hear. The provision does not imply an obligation for authorities to provide assistance in communication with individuals with other types of disabilities, which has been criticised by the Equality Ombudsman.¹⁵⁷
- 2.5.2 It is the authority, and not the individual, that decides whether an interpreter or translator should be provided.¹⁵⁸ The Parliamentary Ombudsmen have emphasised that the authorities must take into consideration the nature and importance of the matter, the extent and nature of the material submitted, and the cost of the translation when making the decision.¹⁵⁹ The Ombudsmen have also underlined that it is inappropriate to let a member of staff act as interpreter in case of a conflict of interest or perceived conflict of interest between staff and the detainee.¹⁶⁰
- 2.5.3 According to the Swedish Migration Agency’s internal procedures, an interpreter with “other qualifications” may be used over the phone during the introductory meeting, which is when the detainee is informed of his/her rights.¹⁶¹ This is the lowest qualification level, meaning that the interpreter is not registered as a trained interpreter with the Legal, Financial and Administrative Services Agency (“Kammarkollegiet”), the agency responsible for supervision

¹⁵⁶ Språklagen 2009:600.

¹⁵⁷ Government Bill, En modern och rättssäker förvaltningslag – ny förvaltningslag, prop. 2016/17:180 p. 86.

¹⁵⁸ The Parliamentary Ombudsmen, JO 2004/04 s. 174.

¹⁵⁹ The Parliamentary Ombudsmen, JO 2007/98 s. 416, JO 2008/09 s. 192, decision 2009-03-19, dnr 305-2008 and decision 2009-04-03, dnr 5203-2007.

¹⁶⁰ The Parliamentary Ombudsmen, Beslut den 22 april 2015 i dnr 1924-2014.

¹⁶¹ The Swedish Migration Agency, Protokoll, Chefen för digitaliserings- och utvecklingsavdelningens instruktion om standard för val av kompetens och form för tolkning vid olika typer av samtal med sökanden, dnr I-17/2018, 2018-06-04 and the Swedish Migration Agency, Instruktion för personal, Inskrivning och introduktion, versionsnr: 18-1.



of interpreters in Sweden.¹⁶² However, interpreters with “other qualifications” must have passed the recruitment test and the supplier’s introduction course. The latter is a new requirement that entered into force on 1 July 2018. The detainee shall also receive a written copy of locally-specific information in a language that he/she understands.¹⁶³

Right to interpretation and translation during criminal proceedings

2.5.4 A victim who reports an offence and who does not speak Swedish may request that an interpreter is appointed, and that the written acknowledgement of the complaint is translated into a language that he/she understands.¹⁶⁴ The police should inform the victim of that right as soon as possible.¹⁶⁵

2.5.5 If the injured party does not speak Swedish, has a speech impediment, or is hearing impaired, an interpreter shall also be appointed for the preliminary investigation and court hearings. An authorised interpreter should be appointed if possible. If not possible, “a suitable person” may fill the role or, if appropriate, technical equipment may be used instead.¹⁶⁶

2.5.6 The victim may also request translations of documents connected to his/her case. Translations of documents, or essential parts of documents, shall be provided if considered necessary in order for the victim to be able to exercise his/her rights. If this is not appropriate, the authority may instead provide an oral translation.¹⁶⁷ However, victims do not have a right to request a translation of the preliminary investigation report (“Förundersökningsprotokoll”).¹⁶⁸

¹⁶² The Legal, Financial and Administrative Service Agency, “Search the national directory of interpreters”, <https://www.kammarkollegiet.se/en/search-authorized-interpreters>, accessed 31 May 2018.

¹⁶³ Compare the old instruction: the Swedish Migration Agency, Protokoll, Kvalitetschefens instruktion om standard för val av kompetens och form för tolkning vid olika typer av samtal med sökanden, dnr I-86/2016, 2016-12-19.

¹⁶⁴ Section 13 e of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

¹⁶⁵ Section 13 a Paragraph 3 of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

¹⁶⁶ Chapter 5 Section 6 in conjunction with Chapter 23 Section 16 Paragraph 1 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

¹⁶⁷ Chapter 33 Section 9 and Chapter 23 Section 16 Paragraph 2 of the Code of Judicial Procedure (1942:740).

¹⁶⁸ NJA 1992 s. 186.



- 2.5.7 It is the officer in charge of the investigation or the prosecutor (“förundersökningsledaren”) who decides whether interpretation or translation should be provided during the preliminary investigation.¹⁶⁴ The right to appeal the decision is not explicitly regulated. However, Chapter 7 Section 2 and 5 of the Code of Judicial Procedure allows for the general possibility to request that a prosecutor’s decision is reviewed. Victims whose mother tongue is a language other than Swedish are listed as a group considered particularly vulnerable in the Police Authority’s guidelines concerning victims with special needs, which also state that it is inappropriate for a family member or friend to act as interpreter.¹⁶⁵
- 2.5.8 It is the court that decides whether interpretation should be provided during the hearing.¹⁶⁹ The court’s decision may only be challenged in connection with an appeal of the verdict or final decision.¹⁷⁰ The right to interpretation is not limited to the injured party’s active participation in the hearing.¹⁷¹

2.6 Is the procedure for providing information applied in practice?

- 2.6.1 The Parliamentary Ombudsmen have on various occasions criticised detention centres for not providing information on rights or local procedures in writing. During an OPCAT visit to the detention centre in Källered, Gothenburg, in 2017 it was discovered that the written instructions for Swedish Migration Agency staff did not clarify that detainees shall receive information about their rights in writing. Even though written materials in various languages were available, these were not used by staff.¹⁷²
- 2.6.2 The Swedish Prison and Probation Service has also been criticised for not providing information that detainees have a right to. During an inspection in Gävle in 2017, for example, it was discovered that there were a number of shortcomings in the staff instructions on how information should be provided, that the available information booklet was not being used, and that there were no special information materials for immigration detainees placed in pre-trial detention.¹⁷³
- 2.6.3 According to a report from the Swedish National Council for Crime Prevention (“Brå”), society generally fails to support victims with a low level of trust in the

¹⁶⁹ Chapter 5 Section 6 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

¹⁷⁰ Chapter 23 Section 3 Paragraph 2 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

¹⁷¹ Ministry Publication Series, Genomförande av brottsofferdirektivet, Ds 2014:14 p. 95.

¹⁷² The Parliamentary Ombudsmen, Protokoll, Opcat-inspektion av Migrationsverkets förvarsenhet i Källered, Göteborg, den 22-23 februari 2017, dnr 1000-2017, p. 5, 14.

¹⁷³ The Parliamentary Ombudsmen, Protokoll, Opcat-inspektion av Kriminalvården, häktet Gävle, den 30 och 31 januari 2017, dnr 418-2017, p. 10.



criminal justice system, victims with neuropsychiatric disabilities, and victims with a mother tongue other than Swedish. It can be assumed that these victims are less likely to turn to the authorities than other victims and that they do not know their rights to the same extent as other victims.¹⁷⁴

Inability to absorb information

2.6.4 A survey from the Swedish Crime Victim Compensation and Support Authority shows that it is the experience of victims not in detention that they do not receive written information when reporting a crime to the police. However, they often realise later that they did receive such information. A conclusion that can be drawn from this is that victims receive information that they are unable to absorb at the time of reporting the crime. It is also possible that the information was irrelevant at the time. The participants in the survey further stated that they want to receive updates on their case and on how long the process is likely to take.¹⁷⁵

Shortcomings in relation to interpretation

2.6.5 A report from the Swedish National Council for Crime Prevention (“Brå”) from 2008 shows severe shortcomings in the way language barriers are dealt with in criminal proceedings. Interviews during preliminary investigations as well as court hearings were sometimes conducted without an interpreter, even when one was needed. In other cases, the quality of the interpretation was insufficient, as the interpreter did not have adequate training or because the only available interpreter did not speak the client’s mother tongue. This obviously increases the risk that the authorities make wrongful decisions.¹⁷⁶

2.6.6 In 2013, stricter provisions regarding interpretation in criminal proceedings were implemented as a result of *Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings*. However, according to a study commissioned by the Swedish Agency for Public Management (“Statskontoret”) in 2015, it was still the case that one third of interpreters

¹⁷⁴ The Swedish National Council for Crime Prevention (Brottsförebyggande rådet), Målsägandens medverkan i rättsprocessen, Rapport 2016:8, p. 88.

¹⁷⁵ The Swedish Crime Victim Compensation and Support Authority, Förslag om bättre digital bemötande av brottsutsatta, p. 6-7, https://www.brottsoffermyndigheten.se/Filer/Projektkatalog/Slutrapport_digitalt_bemotande.pdf, accessed 9 March 2018.

¹⁷⁶ The Swedish National Council for Crime Prevention (Brå), Diskriminering i rättsprocessen, Report 2008:4, p. 10 ff.



employed in court hearings were non-authorised.¹⁷⁷ Limited access to authorised interpreters and a lack of knowledge and procedures in the courts were listed as some of the reasons for these shortcomings.

- 2.6.7 New guidelines regarding interpretation in courtrooms were issued in 2017, but no study indicating whether they have had the desired effect in practice have been found. Limited access to authorised interpreters is still listed as an issue in the Swedish National Courts Administration's ("Domstolsverket") procedures.¹⁷⁸

3 MONITORING OF DETENTION FACILITIES

This section outlines existing mechanisms aimed at preventing harm or victimisation in detention and ensuring adequate detention conditions.

3.1 Does a National Preventive Mechanism (NPM) exist? If not, is there any other mechanism or entity with the mandate to monitor prisons and other places of detention?

- 3.1.1 Yes. On 14 September 2005, Sweden ratified the *Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). In 2010, the Swedish Parliament ("Riksdag") decided to allocate additional funds to the Parliamentary Ombudsmen to allow them to fulfil the role of a National Preventive Mechanism (NPM) pursuant to OPCAT. An OPCAT (NPM) unit was established within the Office of the Parliamentary Ombudsmen on 1 July 2011.¹⁷⁹
- 3.1.2 There are also internal monitoring mechanisms within the Swedish Migration Agency and the Swedish Prison and Probation Service that may conduct inspections.

¹⁷⁷ The Swedish Agency for Public Management, *Sju förslag för effektivare användning av tolkar i domstol*, Statskontoret 2015:1, p. 81.

¹⁷⁸ The Swedish National Courts Administration, "Riktlinjer för tolkanvändning i domstol", file:///C:/Users/emma.moderato/Desktop/Victims%20in%20detention/Översättning%20och%20tolk/Riktlinjer%20för%20tolkanvändning%20i%20domstol.pdf, accessed 30 May 2018.

¹⁷⁹ CPT/Inf (2016) 1, p. 7.



3.2 Are mechanisms such as NPMs allowed access to all places of detention (including pre-trial, police, and immigration detention centres)?

3.2.1 Yes.

3.3 What is the mandate of the NPM or other similar entities?

The Parliamentary Ombudsmen and the OPCAT unit

3.3.1 The main task of the Parliamentary Ombudsmen (“JO”) is to ensure compliance with the law.¹⁸⁰ The Ombudsmen are specifically tasked with ensuring that public authorities and courts abide by the provisions of the Instrument of Government concerning impartiality and objectivity and that the public sector does not infringe on the basic rights and freedoms of citizens. The Ombudsmen’s supervision ensures that public authorities deal with cases and carry out their general tasks in accordance with existing legislation.¹⁸¹ Those supervised by the Ombudsmen are state and municipal authorities; individuals whose employment or appointment involves the exercise of public authority, insofar as this aspect of their work is concerned; officials; and those employed by public enterprises where the Government exercises decisive influence.¹⁸²

3.3.2 The Parliamentary Ombudsmen have the authority to:

- Issue statements if the measures taken by a public authority or public official are in conflict with an existing law or other statute or are incorrect or inappropriate in some other way,
- Issue advisory opinions intended to promote consistent and appropriate application of the law,

¹⁸⁰ The mandate and composition of the Parliamentary Ombudsmen (JO) is laid down in Chapter 13 Section 6 of the Instrument of Government (regeringsformen 1974:152), Chapter 9 Supplementary provision 9.17.5, Chapter 13 Section 2 and supplementary provision 13.2.1, Chapter 13 Section 3 and supplementary provision 13-3-1, Chapter 13 Section 4 and 24 of the Riksdag Act (riksdagsordningen 2014:801), the Act with Instructions for the Parliamentary Ombudsmen (lagen med instruktion för Riksdagens ombudsmän 1986:765), the Administrative Directives for the Parliamentary Ombudsmen (Arbetsordning för Riksdagens ombudsmän) and Chapter 42 of the Public Access to Information and Security Act (offentlighets- och sekretesslagen 2009:400).

¹⁸¹ The Parliamentary Ombudsmen, “A Parliamentary agency”, <<https://www.jo.se/en/About-JO/The-Parliamentary-agency/>>, accessed 23 May 2018.

¹⁸² Section 1 Paragraph 2 and Section 2 of the Act with Instruction for Parliamentary Ombudsmen (lagen med instruktion för Riksdagens Ombudsmän 1986:765).



- Recommend changes to statutes to either the Parliament (“Riksdag”) or the Government, and
 - Refer cases to a regular supervisory authority to prompt action.
- 3.3.3 The OPCAT unit’s mission as an NPM is laid down in Section 5a of the Act with Instructions for the Parliamentary Ombudsmen (“Lagen med instruktion för Riksdagens ombudsmän 1986:765”) and further explained in Section 5–8 of the Administrative Directives for the Parliamentary Ombudsmen (“Arbetsordningen för Riksdagens ombudsman”). It aims to prevent individuals in detention from being subjected to cruel, inhuman, or degrading treatment or punishment. The unit’s mandate empowers it to carry out both announced and unannounced visits to places of deprivation of liberty and to speak with detained persons in private.¹⁸³
- 3.3.4 The unit shall perform the following tasks:¹⁸⁴
- On a regular basis conduct inspection of places where individuals are deprived of their liberty;
 - Present recommendations to authorised authorities to improve the treatment and conditions of individuals deprived of their liberty and prevent torture and other cruel, inhuman, and degrading treatment or punishment;
 - Introduce suggestions and proposals for existing or new legislation concerning the treatment and conditions of individuals deprived of their liberty;
 - Participate in consultations with authorised authorities; and
 - Write reports on the unit’s operations.
- 3.3.5 During the period 1 July 2016 to 30 June 2017, the OPCAT unit completed 18 inspections, all of them resulting in some kind of criticism of the authorities. Among these inspections, only one was conducted in an immigration detention centre.¹⁸⁵

Identified shortcomings

3.3.6 When the Parliamentary Ombudsmen carry out inspections, the activities of the Swedish Migration Agency are evaluated against applicable laws and regulations. A prerequisite for supervision is therefore that there are relevant statutes against which compliance can be controlled. In the context of

¹⁸³ CPT/Inf (2016) 1, p. 7.

¹⁸⁴ Section 5 of the Administrative Directives for the Parliamentary Ombudsmen (arbetsordningen för Riksdagens ombudsmän).

¹⁸⁵ The Parliamentary Ombudsmen, Redogörelse 2017/18:JO1, Justitieombudsmännens ämbetsberättelse, (Annex 1), p. 585.



detainees who become victims of violent crime in immigration detention centres, there are no laws or regulations explicitly stipulating the Swedish Migration Agency's obligations. The OPCAT unit may, of course, monitor the situation within a closed institution against the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, but the detainee's ability to exercise his/her rights as a victim of crime does not appear to be examined in any organised way during these visits.

- 3.3.7 There is no system for the mandatory follow-up of the shortcomings identified by the OPCAT unit in closed institutions. Civil Rights Defenders has recommended that the Government should establish such a system to ensure accountability in case of non-compliance with the recommendations.¹⁸⁶
- 3.3.8 Lastly, the Parliamentary Ombudsmen appear to lack the resources to carry out continuous inspections at immigration detention centres. Although the OPCAT unit could inspect centres more frequently, the scope of the inspections is limited to compliance with the *UN Convention against Torture*. For these reasons, the Swedish Agency for Public Management ("Statskontoret") has recommended that an additional independent monitoring body be instituted with a mission to monitor immigration detention centres more broadly.¹⁸⁷

Internal monitoring mechanisms within the Swedish Migration Agency

- 3.3.9 The Swedish Migration Agency's Supervision Unit ("funktionen för tillsyn") was instituted in 2014 with the purpose of creating a permanent structure for internal control and supervision. It is within the mandate of the Supervision Unit to conduct internal investigations in individual cases and when employees are suspected of committing an offence or violating the rules and regulations. The unit may also conduct inspections ("verksamhetsgranskningar") in cooperation with the legal director.¹⁸⁸ It is not within the mandate of the Supervision Unit to offer any kind of redress to the detainee.

¹⁸⁶ Civil Rights Defenders, Sweden's compliance with the International Covenant on Civil and Political Rights (ICCPR), Joint NGO submission for the UN Human Rights Committee's review of Sweden during its 116 th session, 7-31 March 2016, p. 2.

¹⁸⁷ The Swedish Agency for Public Management, Tillsyn och klagomål inom migrationsområdet, Statskontoret 2014:32 p. 88 ff.

¹⁸⁸ The Swedish Migration Agency, Arbetsordning för Migrationsverket 2018, D-nr: 1.2.2.1-2018-31, p. 10, 17.



3.3.10 Disciplinary proceedings against officials are regulated in Section 14–19 of the Public Employment Act (“Lagen om offentlig anställning 1994:260”). The Migration Agency’s Disciplinary Board (“Personalansvarsnämnden”)¹⁸⁹ is obliged by law to report crimes for prosecution that may be assumed to result in more than fines.¹⁹⁰ An enquiry may also be initiated by the board itself.¹⁹¹ The Disciplinary Board decides whether the employee shall be dismissed or suspended from employment, whether disciplinary action shall be taken, or whether the case shall be reported for prosecution.¹⁹² Thus, it is not within the scope of the disciplinary proceedings to result in compensation for the detainee. According to Disciplinary Board protocols dated from 2015 to May 2018, one case of violence against a detainee, in this case committed by staff, had been reported to the board. The incident was reported for prosecution.¹⁹³ Another case reported to the board concerned the head of a detention unit at an immigration detention centre who failed to act or inform his superior after witnessing violence against a detainee.¹⁹⁴ According to the board’s decision, no action was taken as there was contradictory information as to what the director had actually known about the incident.¹⁹⁵

Internal monitoring mechanisms within the Swedish Prison and Probation Service

3.3.11 The Swedish Prison and Probation Service’s Supervision Section (“Tillsynssektionen”) was instituted in 2015 and is responsible for carrying out continuous inspections. From 2016 to 2017, nine inspections of pre-trial detention centres were carried out. The main purpose of the inspections is to improve and develop the authority’s operations. The Supervision Section may

¹⁸⁹ The obligation to have a Disciplinary Board is stipulated in Section 10 of the Regulation with Instruction for the Swedish Migration Agency (förordningen med instruktion för Migrationsverket 2007:996).

¹⁹⁰ Section 22 of the Public Employment Act (lagen om offentlig anställning 1994:260).

¹⁹¹ Section 9 of the Swedish Migration Agency’s regulations with instructions for the Disciplinary Board (Migrationsverkets föreskrifter med instruktion för verkets personalansvarsnämnd, MIGRFS 01/2015).

¹⁹² Section 25 of Regulation 2007:515 (myndighetsförordningen 2007:515) and Section 1 of the Swedish Migration Agency’s regulations with instructions for the Disciplinary Board (Migrationsverkets föreskrifter med instruktion för verkets personalansvarsnämnd, MIGRFS 01/2015).

¹⁹³ The Swedish Migration Agency, the Disciplinary Board, Sammanträdesprotokoll 2017-10-05, § 2.

¹⁹⁴ Which a manager is obligated to do according to The General Director’s Instruction I-04/2016 (Generaldirektörens instruktion om hantering av oegentligheter och internutredningsuppdraget för funktionen för tillsyn, I-04/2016), see e-mail correspondence with Kent Juhlén, Legal Department, the Swedish Migration Agency, 2018-06-25.

¹⁹⁵ The Swedish Migration Agency, the Disciplinary Board, Sammanträdesprotokoll 2017-10-05, § 3.



not impose any sanctions, but offers recommendations to the management.¹⁹⁶ The Section for Internal Investigations (“Sektionen för särskilda utredningar”), also instituted in 2015, is responsible for carrying out investigations of serious incidents or cases where there are suspicions that employees have committed a crime or otherwise acted improperly. The section is responsible for the national coordination of all incident reporting within the Swedish Prison and Probation Service and may assist regions in the investigation of incidents.¹⁹⁷

3.3.12 Just as in the case of the Swedish Migration Agency, disciplinary proceedings against officials are regulated in Section 14–19 of the Public Employment Act.¹⁹⁸ The Swedish Prison and Probation Service’s Disciplinary Board (“Personalansvarsnämnden”)¹⁹⁹ is obliged by law to report crimes for prosecution that may be assumed to result in more than fines.²⁰⁰ The Disciplinary Board decides whether the employee shall be dismissed or suspended from employment, whether disciplinary action shall be taken, or whether the case shall be reported for prosecution.²⁰¹ Thus, it is not within the scope of the disciplinary proceedings to result in compensation for the detainee. The Disciplinary Board may also decide that the employee shall not be allowed to work in close proximity to inmates while the investigation is ongoing.²⁰² As the protocols of the Disciplinary Board are anonymised and only cite the board’s final decision, it has not been possible to identify cases of violence committed by staff against pre-trial detainees.²⁰³

¹⁹⁶ E-mail correspondence with Marine Erlandsson, (senior handläggare, avdelningen anstalt och häkte, sektionen för utveckling av verkställighetsinnehåll), the Swedish Prison and Prosecution Service, 2018-07-04.

¹⁹⁷ The Swedish Prison and Probation Service, Arbetsordning för Kriminalvården, gäller från den 1 februari 2018, p. 46-47 and the Swedish Prison and Probation Service, Omkrim, Kriminalvårdens personaltidning, 2/2018, p. 8.

¹⁹⁸ Lagen om offentlig anställning 1994:260.

¹⁹⁹ The obligation to have a Disciplinary Board is stipulated in Section 12 of the Regulation with Instruction for the Swedish Prison and Probation Service (förordningen med instruktion för Kriminalvården 2007:1172).

²⁰⁰ Section 22 of the Public Employment Act (lagen om offentlig anställning 1994:260).

²⁰¹ Section 25 of Regulation 2007:515 (myndighetsförordningen 2007:515) and The Swedish Prison and Probation Service, Arbetsordning för Kriminalvården, gäller från den 1 februari 2018 (beställningsnummer 7089), p. 19.

²⁰² Telephone interview with Torkel Omnell, the Swedish Prison and Probation Service, 2018-01-19.

²⁰³ Civil Rights Defenders has reviewed protocols from 2015 – June 2018.



3.4 What is its composition? How are members of the mechanism appointed?

- 3.4.1 The four Parliamentary Ombudsmen are appointed directly by Parliament (“Riksdag”).²⁰⁴ They are elected on an individual basis for a period of four years.²⁰⁵ In the Committee for the Prevention of Torture’s report to the Swedish Government after its visit in 2015, it was concluded that very limited staff resources prevented the Parliamentary Ombudsmen from effectively fulfilling their function of carrying out frequent and unannounced visits to all types of closed institutions across the country. The committee therefore invited the Swedish authorities to take steps toward significantly increasing the financial and human resources made available to the Office of the Parliamentary Ombudsmen and, in particular, its OPCAT unit.²⁰⁶
- 3.4.2 These internal monitoring mechanisms are composed of the authorities’ own employees. The Swedish Migration Agency’s Disciplinary Board consists of the director general, the legal director, the director of human resources, and staff representatives.²⁰⁷ The Prison and Probation Service’s Disciplinary Board consists of the director general, staff representatives, and five additional members appointed by the director general.²⁰⁸

3.5 Is the mechanism empowered to receive complaints from detainees? If so, what is the procedure for handling and responding to complaints received from detainees?

- 3.5.1 The OPCAT unit itself does not accept complaints from detainees. However, complaints may be filed to the Parliamentary Ombudsmen (“JO”). The Ombudsmen’s enquiries may either be prompted by complaints filed by members of the public or initiated by the Ombudsmen themselves.²⁰⁹ The Ombudsmen’s procedure for handling and responding to complaints is outlined below (see sections 4.1.3–4.1.6).

²⁰⁴ Chapter 13 Section 6 of the Instrument of Government (regeringsformen 1974:152).

²⁰⁵ Section 4-3 of the Riksdag Act (Riksdagsordningen 2014:801).

²⁰⁶ CPT/Inf (2016) 1, p. 8-9.

²⁰⁷ Section 2 of the Swedish Migration Agency’s regulations with instructions for the Disciplinary Board (Migrationsverkets föreskrifter med instruktion för verkets personalansvarsnämnd, MIGRFS 01/2015).

²⁰⁸ The Swedish Prison and Probation Service, Arbetsordning för Kriminalvården, gäller från den 1 februari 2018 (beställningsnummer 7089), p. 19.

²⁰⁹ Section 5 of the Act with Instructions for Parliamentary Ombudsmen (lagen med instruktion för Riksdagens Ombudsmän 1986:765).



3.5.2 Complaints to the Swedish Migration Agency's Supervision Unit may be submitted by anyone (such as members of staff, detainees, NGOs, etc.) and anonymous complaints are accepted.²¹⁰ However, no information regarding the possibility to file a complaint has been found on the Migration Agency's website, nor in the information booklet distributed to detainees. A detainee may not file a complaint to the Migration Agency's Disciplinary Board.

3.5.3 It is not possible for a detainee to file a complaint to the Swedish Prison and Probation Service's Supervision Section ("Tillsynssektionen") or the Section for Internal Investigations ("Sektionen för särskilda utredningar"). Nor is it possible for a detainee to file a complaint to the Disciplinary Board.

3.6 Is the monitoring body acting independently from the officials in charge of the detention centre?

3.6.1 Yes. The Parliamentary Ombudsmen ("JO") are independent in their decisions, directly accountable to the Swedish Parliament ("Riksdag") and constitute one pillar of parliamentary control in Sweden.

3.6.2 The Swedish Migration Agency's Supervision Unit answers directly to the general director.²¹¹ When their investigation is completed, the Supervision Unit sends its report to the relevant director together with a recommendation as to whether the incident should be considered by the Disciplinary Board. The recommendation is not binding. However, if a member of staff commits an offence against a detainee, the manager has an obligation to report the incident.²¹² Complaints against members of staff may only be submitted to the Disciplinary Board by the head of the department ("avdelningschefen") at the immigration detention centre or his/her superior.²¹³

²¹⁰ Telephone interview with Johan Lusth, Coordinator of Security, Detention Centres, the Swedish Migration Agency, 2018-06-04.

²¹¹ The Swedish Agency for Public Management, Tillsyn och klagomålshantering inom migrationsområdet, Statskontoret 2014:32, p. 50 ff.

²¹² The Swedish Migration Agency, internal regulation, Generaldirektörens instruktion om hantering av oegentligheter och internutredningsuppdraget för funktionen för tillsyn, (I-04/2016) and e-mail correspondence with Kent Juhlén, Legal Department, the Swedish Migration Agency, 2018-06-25.

²¹³ Section 9 of the Swedish Migration Agency's regulations with instructions for the Disciplinary Board (Migrationsverkets föreskrifter med instruktion för verkets personalansvarsnämnd, MIGRFS 01/2015).



3.6.3 For a higher level of independence, the Swedish Prison and Probation Service's Supervision Section ("Tillsynssektionen") is placed within the Department for Management Support ("Avdelningen för ledningsstöd") at the head office. The Section for Internal Investigations ("Sektionen för särskilda utredningar") is placed within the Security Department at the head office.²¹⁴ After each inspection, the Supervision Section reports and leaves recommendations to the detention centre in question, the regional director, and the head of department. Severe shortcomings are reported to the prison's director ("kriminalvårdschefen") for further action. Complaints against staff may only be submitted to the Disciplinary Board by superiors (e.g. the regional director, the director of pre-trial detention, and the director of security), the Chancellor of Justice, and the Parliamentary Ombudsmen, sometimes after an investigation carried out by the Section for Internal Investigations.²¹⁵ Managers have a responsibility to file a complaint to the Disciplinary Board and to inform their closest superior about incidents that may be subjected to examination by the Disciplinary Board.²¹⁶

3.7 Do local or international civil society organisations have access to places of detention?

Immigration detention centres

3.7.1 Yes, there are several NGOs visiting and arranging activities at immigration detention centres.²¹⁷

3.7.2 There are no general guidelines regulating NGO visits to immigration detention centres. As a consequence, procedures vary at the different centres. According to information from the Swedish Migration Agency, a national NGO

²¹⁴ Section 7 of the Swedish Prison and Probation Service Regulations and General Advice on reporting and investigation of incidents (Kriminalvårdens föreskrifter och allmänna råd om rapportering och utredning av incidenter, KVAf (SÄK) 2016:2).

²¹⁵ E-mail correspondence with Marine Erlandsson, (senior handläggare, avdelningen anstalt och häkte, sektionen för utveckling av verkställighetsinnehåll), the Swedish Prison and Prosecution Service, 2018-07-04 and the Swedish Prison and Probation Service, Arbetsordning för Kriminalvården, gäller från den 1 februari 2018 (beställningsnummer 7089), p. 20.

²¹⁶ The Swedish Prison and Probation Service, Arbetsordning för Kriminalvården, gäller från den 1 februari 2018 (beställningsnummer 7089), p. 20.

²¹⁷ For example, Amnesty, the Red Cross etc.



coordinator was recently appointed and national guidelines for NGO visits are currently being developed.²¹⁸

3.7.3 In general terms, the NGO that wants to visit an immigration detention centre must make contact with management at the centre. The stated purpose of the visit will be assessed by the sectional director responsible for NGOs and an NGO coordinator. If the NGO is allowed to visit, the NGO representatives will be asked to participate in a short introduction course offered by the Swedish Migration Agency.²¹⁹ The visitors will be given the opportunity to meet and speak with detainees, individually or as a group. They may also organise different activities at the centre.²²⁰ Normally, the NGO is not allowed to enter the detention centre itself but may meet with inmates in the visiting room.

Pre-trial detention centres

3.7.4 There are several NGOs that visit with detainees in detention centres. National guidelines for NGO visits are currently being developed and will most likely be implemented from 1 September 2018.²²¹ The local manager shall always be involved in decisions regarding NGO visits. The NGO must share the values of the Swedish Prison and Probation Service and security concerns will be assessed before a decision is made as to whether the NGO and its representatives may visit.²²² The NGO and its representatives may not access detainees' cells without the detainees' consent.²²³ It would be informative to further examine during the interview phase of this project what level of access to the premises NGOs are offered when visiting detention centres.

²¹⁸ The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18.

²¹⁹ The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18.

²²⁰ E-mail correspondence with Innocent Mpambara, NGO-coordinator. and Mattias Johansson, Head of a Detention Unit in Märsta, the Swedish Migration Agency, 2018-04-06.

²²¹ Telephone interview with Vilhelm Grevik, Sectional Director, the Swedish Prison and Probation Services, 2018-06-25.

²²² E-mail correspondence with Marine Erlandsson, (senior handläggare, avdelningen anstalt och häkte, sektionen för utveckling av verkställighetsinnehåll), the Swedish Prison and Prosecution Service, 2018-07-04.

²²³ Chapter 1 Section 20 a of the KVFS 2011:2 (Kriminalvårdens föreskrifter och allmänna råd om häkte, KVFS 2011:2).



3.8 Are there any differences in relation to the above between detainees held in correctional facilities and in pre-trial or immigration detention respectively?

3.8.1 With regard to NGO visits, inmates in correctional facilities are not subjected to restrictions as may be the case for detainees in pre-trial detention.

4 COMPLAINTS

This section covers the existing regime governing the right to file a complaint and the relevant procedure available, if at all, to victims of violent crime suffered in pre-trial and immigration detention. The purpose of this section is to gain an understanding of the mechanisms in place to ensure that detainees are able to file formal complaints after suffering physical, mental, or emotional harm from any party.

4.1 Do detained victims have a right to file a complaint?

4.1.1 A detainee may report a criminal offence to the Police Authority, either by calling the police or, if a police officer arrives at the detention centre, directly to him/her in person.

Discrimination against victims with foreign background

4.1.2 Very little research has been carried out into discrimination against victims of crime with foreign background. Even fewer studies have focused on the situation for victims of crime in immigration detention. According to a report from the Swedish National Council for Crime Prevention (“Brottsförebyggande rådet, Brå”), victims with foreign background are sometimes treated as suspects by the police officers arriving at the scene. Materials from the Equality Ombudsman (“DO”) show examples of police officers making xenophobic comments (such as, “This is Sweden and Swedish laws apply here”) as well as examples of situations when the police fail to turn up at all. Other examples of situations which victims experience as discriminatory include cases when the police show signs of being annoyed or appears to listen more to the perpetrator’s version of the story than the victims. Police officers’ conduct at crime scenes may thus not only affect their ability to adequately investigate the crime but may also increase the risk for secondary



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victimisation if a negative experience is created for the victim.²²⁴ Though the report only concerns victims with foreign background, it is not unlikely that detainees in immigration detention centres experience similar treatment when in contact with the police.

Complaints to the Parliamentary Ombudsmen

- 4.1.3 A complaint to the Parliamentary Ombudsmen (“JO”) can be filed by any person who feels that he/she or someone else has been treated wrongly or unjustly by a public authority, civil servant, or local government officer. There are no fees involved and there is no requirement that the person lodging the complaint is a Swedish citizen or of a certain age. A complaint may thus be filed by the detainee him-/herself or a public counsel, etc. However, anonymous complaints are not investigated by the Ombudsmen and a complaint should, in principle, not concern events that transpired more than two years prior.²²⁵
- 4.1.4 Complaints should be made in writing, by letter or using a form that can be found on the Ombudsmen’s website. A person who has been deprived of his/her liberty may write to the Ombudsmen, without being prevented by any restrictions on sending letters or other documents which may apply to him/her.²²⁶ When a complaint is received, it is registered in the Ombudsmen’s case handling system and assigned a reference number. The case is then handed over to the department of the Ombudsman who is responsible for the supervision of the public authority which the complaint concerns and a lawyer is appointed to the case.²²⁷ An Ombudsman shall without delay inform the person who filed the complaint as to whether it has been rejected, filed, referred to some other agency, or become the subject of an inquiry.²²⁸

²²⁴ The Swedish National Council for Crime Prevention (Brå), *Diskriminering i rättsprocessen*, report 2008:4 p. 37 and 45 f.

²²⁵ The Parliamentary Ombudsmen, “How to complain”, <http://www.jo.se/en/How-to-complain/>, accessed 24 May 2018 and Section 20 of the Act with Instructions for the Parliamentary Ombudsmen (lagen med instruktion för Riksdagens ombudsmän 1986:765).

²²⁶ Section 17 of the Act with Instructions for the Parliamentary Ombudsmen (lagen med instruktion för Riksdagens ombudsmän 1986:765).

²²⁷ The Parliamentary Ombudsmen, “When a complaint is submitted”, <https://www.jo.se/en/How-to-complain/When-a-complaint-is-submitted-to-JO/>, accessed 25 May 2018.

²²⁸ Section 19 of the Act with Instructions for the Parliamentary Ombudsmen (lagen med instruktion för Riksdagens ombudsmän 1986:765).



- 4.1.5 About half of received complaints are dismissed after an initial assessment.²²⁹ Complaints which are not dismissed are investigated. Public authorities are obliged to supply all the information and materials requested by the Parliamentary Ombudsmen and may not refuse with reference to secrecy or confidentiality. If the information collected indicates that no further investigation is required, a decision is issued. Roughly one third of all complaints are dismissed after such an investigation. If the complaint requires further investigation, it is referred to the public authority. This means that the Ombudsmen send a copy of the complaint, including any attachments, to the head of the authority together with a request for a written statement and assessment of how the case has been handled by the authority. If the case concerns the person who filed the complaint, he/she receives a copy of the written statement and is given the possibility to comment on it. When the investigation is concluded, the Ombudsmen make a decision in the case.²³⁰
- 4.1.6 The results of an investigation are documented in a decision or protocol. Decisions and protocols include statements by the Parliamentary Ombudsmen that clarify whether or not the public authority has acted in accordance with the law. If the public authority has acted incorrectly, the Ombudsmen issue criticism that may be directed toward the authority or an individual public official. Of the total number of complaints filed each year, circa 10 per cent lead to some form of criticism. The Ombudsmen's decisions are not legally binding, which means that public authorities have no official obligation to rectify the issue being criticised.²³¹

Complaints to the Chancellor of Justice

- 4.1.7 The detainee may turn to the Chancellor of Justice ("JK") with a written complaint of wrongful or unjust treatment by an official authority or its employees. As the Chancellor of Justice is an "extraordinary supervisory body", it is not obliged to investigate the complaint. Though it is within the mandate of the Chancellor of Justice to act as a "special prosecutor" in cases

²²⁹ For reasons why complaints are not investigated more thoroughly, see the Parliamentary Ombudsmen, "All complaints are not investigated", <<https://www.jo.se/en/How-to-complain/When-a-complaint-is-submitted-to-JO/All-complaints-are-not-investigated/>>, accessed 25 May 2018.

²³⁰ The Parliamentary Ombudsmen, "When a complaint is submitted", <https://www.jo.se/en/How-to-complain/When-a-complaint-is-submitted-to-JO/>, accessed 24 May 2018.

²³¹ The Parliamentary Ombudsmen, "Decisions" <<https://www.jo.se/en/Decisions/>>, accessed 24 May 2018.



where an official has committed a crime, the Chancellor will in principle not investigate complaints of alleged offences as that falls within the competence of the police.²³² However, the Chancellor may report an official to the relevant Disciplinary Board.²³³

- 4.1.8 The detainee may also turn to the Chancellor of Justice with an application for compensation should an authority make a wrongful decision. It falls within the competence of the Chancellor of Justice to reach out-of-court settlements on behalf of the State in actions for damages; this is referred to as “voluntary settlement of claim” (“statens frivilliga skadereglering”). The Chancellor of Justice may also award damages to a person who has been deprived of his/her liberty contrary to the law.²³⁴

Complaint mechanisms within the Swedish Migration Agency

- 4.1.9 As described above, anyone can file a complaint to the Swedish Migration Agency’s Supervision Unit. However, no indications that detainees are informed of this possibility have been found.

Guidelines for cases of crime against a detainee

- 4.1.10 As described above, no general or local guidelines have been found that explicitly regulate the Swedish Migration Agency’s responsibilities towards a detainee who becomes the victim of violent crime in detention. The General Guidelines against Violence and Threats (“Migrationsverkets Riktlinjer vid våld och hot”), the Detention Centres’ Guidelines against Violence and Threats (“Riktlinjer för arbete mot hot och våld; Förvarsavdelningen”), and the Security Handbook (“Säkerhetshandboken”) exclusively deal with cases of violence against staff.

- 4.1.11 Moreover, there is no official data on the frequency of incidents of violence or threats against detainees in detention centres. According to information from the Swedish Migration Agency, this has to do with how the central system for

²³² Section 5 of the Act concerning the Supervision exercised by the Chancellor of Justice (lagen om Justitiekanslerns tillsyn 1975:1339) and the Chancellor of Justice, “Alla anmälningar utreds inte”, <https://www.jk.se/anmalan/alla-anmalningar-utreds-inte/>, accessed 31 May 2018.

²³³ Section 5 of the Act concerning the Supervision exercised by the Chancellor of Justice (lagen om Justitiekanslerns tillsyn 1975:1339).

²³⁴ The Compensation for Detention and other Coercive Measures Act (lagen om ersättning vid frihetsberövanden och andra tvångsåtgärder 1998:714).



reporting incidents (RITA) is set up. If members of staff have not been physically affected or felt threatened it should not be reported in the system, which lacks any category for acts of violence committed against detainees.²³⁵ However, if a member of staff commits an offence against a detainee, the manager must report the incident.²³⁶ Suspected cases of human trafficking must also be reported to the police through a special form.²³⁷

4.1.12 In an official response from the Swedish Migration Agency, the authority confirms that it does not always report offences committed against detainees to the police. However, if there are indications that a crime has been committed, the detainee should be asked if he/she wishes to report it. According to the Swedish Migration Agency, staff will first attempt to stop an ongoing criminal act. The police may be called for assistance if the situation is violent. In dialogue with the detainee, staff will then ascertain whether or not the detainee wishes to pursue his/her case. This often depends on the type of offence and other circumstances, such as whether the offence has been committed by a member of staff or if it falls under public prosecution.²³⁸ If an offence is reported by a person who does not speak Swedish, the police should provide an interpreter if he/she requests it.²³⁹ Whether or not the Swedish Migration Agency assists the detainee with interpretation appears to vary at different immigration detention centres, but according to the authority's official response they should assist with interpretation if it is needed to report an offence.²⁴⁰

4.1.13 The process for reporting incidents in the Migration Agency's internal system (RITA) is explained in Instruction for staff, Reporting of Incidents ("Instruktion för personal, Rapportering av särskilda händelser och incidenter, versionsnr 18-1"). It defines an incident as an unwanted event that may, for example, negatively affect the safety and security of staff or detainees. Incidents shall be classified according to the following three-tier scale: 1) only affects safety

²³⁵ Telephone interview with Johan Lusth, Coordinator of Security, Detention (säkerhetssamordnare, förvar), the Swedish Migration Agency, 2018-06-04 and the Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18, para. 7.

²³⁶ The Swedish Migration Agency, internal regulation, Generaldirektörens instruktion om hantering av oegentligheter och internutredningsuppdraget för funktionen för tillsyn, (I-04/2016) and e-mail correspondence with Kent Juhlén, Legal Department, the Swedish Migration Agency, 2018-06-2

²³⁸ The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18.

²³⁹ Section 13 e of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁴⁰ Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18, para. 4 and telephone interview with Fredrik Mingert, Head of a Detention Unit in Åstorp (enhetschef), the Swedish Migration Agency, 2018-03-15.



and security to a lesser extent, 2) seriously affects safety and security, or 3) very seriously affects safety and security. All incidents shall immediately be reported to a superior and the team leader shall register the incident in the internal reporting system (RITA) within 24 hours. Serious acts of violence or threats, or preparations to commit such acts, shall always be reported – however, as explained above, only if staff have been affected or involved in some way. If classified as a level 3 incident, an investigation shall be conducted. If classified as a level 1 or 2 incident, the sectional director (“sektionschef”) together with the coordinator for security (“säkerhetssamordnare”) shall decide whether or not an investigation shall be conducted. The investigation should include statements from staff and detainees (if considered warranted) and an assessment of whether the incident should be reported to the Disciplinary Board. It should also note whether the incident has been reported to the police and list other actions that have been taken. The instructions also stipulate that the managers in charge shall ensure that “reports are made to the authorities and boards that the Swedish Migration Agency is required to report to in accordance with other regulations”. This could, for example, be the Supervision Unit.²⁴¹ Except in cases of suspected human trafficking or when staff has committed an offence against a detainee, no guidelines stipulating an obligation for the Swedish Migration Agency to report crimes to the police have been found.

Human trafficking

4.1.14 The Swedish Migration Agency has procedures for detecting and handling cases of human trafficking. This includes how to conduct a dialogue with the potential victim, when to send a tip to the police, and when to file a formal complaint. In addition to the national coordinator, there are both regional and local coordinators within the Swedish Migration Agency who are in close contact with the police unit handling cases of human trafficking. There are, for example, two local coordinators at the detention centre in Märsta. If the Swedish Migration Agency receives indications that a person is or has been subjected to trafficking, the potential victim is informed of the above.²⁴²

²⁴¹ E-mail correspondence with Satu Jalonen, the Swedish Migration Agency, 2018-06-26.

²⁴² The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18 and e-mail correspondence with Lisa Hultin Knutas, Regional Coordinator against Human Trafficking, the Swedish Migration Agency, 2018-06-20/22.



Complaints to the Swedish Migration Agency’s Applicant’s Ombudsman

4.1.15 If a person has been mistreated by Swedish Migration Agency staff, he/she can contact the Applicant’s Ombudsman who receives and investigates such reports. The Applicant’s Ombudsman can be contacted either using an online form or via telephone. Detainees are informed of this in the booklet “The Swedish Migration Agency’s Detention Units”.

Complaint mechanisms within the Swedish Prison and Probation Service

4.1.16 Unlike the Swedish Migration Agency, the Swedish Prison and Probation Service has a policy to always report suspicions of threats and violence to the police. Violence towards detainees is reported in the authority’s internal system for incident reporting.²⁴³ However, according to a report from the Swedish National Council for Crime Prevention (“Brå”), offences that may only result in fines are dealt with internally.²⁴⁴

4.1.17 Detainees may complain to the director of prisons (“kriminalvårdschefen”), the regional office, or the head office if they have been mistreated. Staff must always forward complaints to the department they have been addressed to. However, the department may delegate the responsibility to handle the complaint. Unless the complaint is anonymous, it will always be answered, typically in writing. It is up to the department addressed to decide whether any actions shall be taken to remedy the complaint.

4.1.18 The detainee may also appeal a Swedish Prison and Probation Service decision if it concerns his/her rights in accordance with the Act on Detention. If the Prison and Probation Service decides not to overturn the decision in favour of the detainee, it may be appealed to an administrative court.²⁴⁵

4.1.19 The Prison and Probation Service has received a special assignment from the Government (“regeringsuppdrag”) to assess how to improve the situation for

²⁴³ E-mail correspondence with Marine Erlandsson, (senior handläggare, avdelningen anstalt och häkte, sektionen för utveckling av verkställighetsinnehåll), the Swedish Prison and Prosecution Service, 2018-07-04.

²⁴⁴ The Swedish National Council for Crime Prevention (Brå), *Intagnas brott under påföljden, Kortanalys 5/2017*, p. 11.

²⁴⁵ Chapter 7 of the Act on Detention (häkteslagen 2010:611).



detained children; its proposals are due to be presented in August 2018.²⁴⁶ At the time of writing, the report has not been made public.

4.2 Are there any fees involved in filing a complaint? Is legal aid available to individuals seeking to make a complaint? What are the conditions, if any, to accessing legal aid?

- 4.2.1 Theoretically, there are no fees involved in filing complaints to the police, the Parliamentary Ombudsmen, or the Chancellor of Justice. However, due to possible language barriers and a lack of knowledge about the Swedish legal system, it may be advisable to seek legal advice or representation. The public counsel's mandate is to assist the detainee in immigration detention in issues relating to the decision to detain.²⁴⁷ It is therefore unlikely that the counsel will be reimbursed for work relating to other issues, such as the detainee's situation in the detention centre.²⁴⁸ In addition, legal protection, advice, and aid are in principle not available in criminal proceedings and in relation to complaints to the Parliamentary Ombudsmen or the Chancellor of Justice. However, in criminal proceedings an injured party counsel may be provided by the State (see below).
- 4.2.2 Fees and costs for legal representation may be incurred if the detainee decides to pursue civil action for damages. In order to obtain legal protection ("rättsskydd") in civil proceedings, the individual must have insurance that includes a clause on legal expenses. If the issue of damages is not raised during the criminal proceedings, the insurance company may reimburse the individual for the costs of employing legal representation, etc. It is often a requirement that the individual pays part of the costs as excess.²⁴⁹
- 4.2.3 According to the Legal Aid Act ("Rättshjälpslagen 1996:1619"), individuals may be entitled to legal advice (for a maximum of up to two hours) in return for a fixed fee, which may be reduced depending on the applicant's economic situation. This may apply if the prosecutor does not provide assistance or if the

²⁴⁶ Ministry of Justice, Regeringsbeslut, Ju2017/10014/Å, 2017-12-21.

²⁴⁷ The public counsel may be reimbursed for work relating to issues of confinement and placements in prison, pre-trial detention or police arrests, see MIG 2009:18.

²⁴⁸ The Swedish Agency for Public Management, Tillsyn och klagomålshantering inom migrationsområdet, Statskontoret 2014:32 p. 47.

²⁴⁹ The Swedish Crime Victim Compensation and Support Authority (Brottsoffermyndigheten), "Information to Crime Victims" p. 16, <<https://www.brottsoffermyndigheten.se/Filer/Broschyror/Andra%20språk/Information%20to%20crime%20victims.pdf>>, accessed 28 May 2018.



individual needs help negotiating with an insurance provider. If there is a need for interpretation, the cost will be covered by the State.²⁵⁰

4.2.4 When a person does not have insurance covering legal expenses and when the case cannot be pursued solely on the basis of legal advice, legal aid (“rättshjälp”) may be granted based on a needs assessment if it is considered reasonable for the State to cover the costs.²⁵¹ For non-nationals who are not currently residing and have not previously resided in Sweden, the criteria for obtaining legal aid are even stricter. If the legal matter is to be dealt with in Sweden, there must be special reasons for granting legal aid. If the legal matter shall be dealt with abroad, legal aid may only be granted if the person is currently residing in Sweden.²⁵² Special rules apply for EU residents.²⁵³ Concern about the fact that the right to legal aid is tied to the victim’s legal status as an EU resident was expressed in the study *The Victim’s Rights Directive 2012/29/EU, European Implementation Assessment*.²⁵⁴

Injured party counsel in criminal proceedings

4.2.5 For certain types of crime, the injured party is entitled to an injured party counsel (“målsägandebiträde”), whom should be appointed when the preliminary investigation is initiated. This applies to sexual offences, violent crime, and, if the injured party is in need of counsel due to personal circumstances, to other offences that may result in a prison sentence.²⁵⁵ The police shall inform victims who are entitled to legal counsel of that right.²⁵⁶ A counsel shall then be appointed by the court if the victim requests it or it is otherwise considered necessary.²⁵⁷ The injured party may direct the request to the prosecutor, the police officer responsible for the preliminary investigation, or directly to the district court.²⁵⁸

²⁵⁰ Section 5 of the Legal Aid Act (rättshjälpslagen 1996:1619).

²⁵¹ Section 6-9 of the Legal Aid Act (rättshjälpslagen 1996:1619). As mentioned above, victims are in principle not entitled to legal aid in criminal proceedings as the prosecutor may assist them in the claim for damages and they may be appointed an injured party counsel paid by the state.

²⁵² Section 12 of the Legal Aid Act (rättshjälpslagen 1996:1619).

²⁵³ Section 22 a-22d of the Legal Aid Act (rättshjälpslagen 1996:1619).

²⁵⁴ European Parliamentary Research Service, *The Victim’s Rights Directive 2012/29/EU, European Implementation Assessment*, p. 57.

²⁵⁵ Section 1 of the Injured Party Counsel Act (lagen om målsägandebiträde 1988:609).

²⁵⁶ Section 13 a of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁵⁷ Section 4 and 7 of the Injured Party Counsel Act (lagen om målsägandebiträde 1988:609).

²⁵⁸ The Swedish Crime Victim Compensation and Support Authority (Brottsoffermyndigheten), “Information to Crime Victims” p. 15,



4.2.6 The role of the injured party counsel is to look after the victim's interests and give support and assistance during both the preliminary investigation and the court hearing. The counsel may also assist in the prosecution and present the victim's case with regards to damages.²⁵⁹ There are no fees involved, as the cost is covered by the State.²⁶⁰ The counsel's mandate ceases after the court hearing and does not include help in ensuring receipt of damages or other compensation.²⁶¹

Special children's representative

4.2.7 If a legal guardian is suspected of committing a crime against his/her child or if the suspect has a close relationship with the legal guardian, the child may be assigned a special legal representative.²⁶² The special representative shall safeguard the child's rights during the preliminary investigation and hearing and should be "particularly suited" to this role.²⁶³

4.3 What is the name of the competent authority that considers the complaint? (Is that authority acting independently from the chain of command at the authority in charge of the relevant detention centre?)

4.3.1 This depends on the complaint filed by the detainee. The Police Authority, the Parliamentary Ombudsmen, and the Chancellor of Justice all act independently from the Swedish Migration Agency and the Swedish Prison and Probation Service.

4.3.2 The Swedish Migration Agency's Supervision Unit and Applicant's Ombudsman are units within the authority. For how the Supervision Unit handles complaints, see 3.6.2. As for the Applicant's Ombudsman, Civil Rights

<https://www.brottsoffermyndigheten.se/Filer/Broschyrrer/Andra%20språk/Information%20to%20crime%20victims.pdf>, accessed 28 May 2018.

²⁵⁹ Section 3 of the Injured Party Counsel Act (lagen om målsägandebiträde 1988:609).

²⁶⁰ Section 5 of the Injured Party Counsel Act (lagen om målsägandebiträde 1988:609).

²⁶¹ The Swedish Crime Victim Compensation and Support Authority (Brottsoffermyndigheten), "Information to Crime Victims", p. 16,

<https://www.brottsoffermyndigheten.se/Filer/Broschyrrer/Andra%20språk/Information%20to%20crime%20victims.pdf>, accessed 28 of May 2018.

²⁶² Section 1 of the Special Children's Representative Act (lagen om särskild företrädare för barn 1999:997).

²⁶³ Section 3 and 5 of the Special Children's Representative Act (lagen om särskild företrädare för barn 1999:997).



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Defenders notes that despite repeated attempts to attain information on the mandate of the Ombudsman, the Swedish Migration Agency has been able to provide no such information.

- 4.3.3 Complaints to the Swedish Prison and Probation Service's head of prisons ("kriminalvårdschefen"), regional office, or head office are described in 4.1.17.

4.4 Are the victim's particular circumstances (language barrier, gender, vulnerability, age, etc.) taken into account when facilitating the filing of a complaint to the relevant authority? How does this work in practice?

- 4.4.1 Section 13 of the Administrative Procedure Act²⁶⁴ leaves a wide margin of discretion for authorities when deciding whether translation shall be provided or not. According to the Parliamentary Ombudsmen, it is possible to file complaints in languages other than Swedish as these will usually be translated. According to the Chancellor of Justice, it depends on the circumstances of the individual case whether or not a complaint will be translated.

- 4.4.2 In order to report incidents of violent crime, threats, or sexual abuse to the police, one must call the police or visit a police station.²⁶⁵ Calls to the police may always be made in Swedish or English. According to Section 13e of the Decree on Preliminary Investigations²⁶⁶, an interpreter should be provided if the victim reporting the crime does not speak Swedish. Due to a lack of female interpreters and interpreters for certain languages, the victim may need to wait for such arrangements to be made. Notwithstanding the basic principle that authorities should ensure that language barriers do not affect its handling of cases or its decisions, a lack of knowledge of the Swedish language may limit the victim's access to and ability to participate in the process.²⁶⁷

- 4.4.3 Regarding accessibility and interpretation, see also section 2.4 and 2.5 respectively.

²⁶⁴ Förvaltningslagen 2017:900.

²⁶⁵ The Swedish Police Authority, "Gör en polisanmälan", <https://polisen.se/utsatt-for-brott/polisanmalan/>, accessed 1 of July 2018.

²⁶⁶ Förundersökningskungörelsen 1947:948.

²⁶⁷ E-mail correspondence with Lin Nordqvist, analyst at the Victim and Personal Security Section (BOPS), the Swedish Police Authority, 2018-07-02.



4.5 Does the law recognise the right of a victim to file a complaint of abuse that has taken place in another detention centre than the one where he/she is currently detained (including in other countries)?

4.5.1 Yes, it is possible to file a complaint of abuse that has taken place in another detention centre than the one where the victim is being detained. The Police Authority is obliged to accept complaints regarding offences in other countries if:

- The offence was committed in another Member State;
- The victim is currently residing in Sweden; and
- The victim was unable to submit a complaint in the Member State in which the offence was committed or, in the event of a serious offence, as determined by the national law of the Member State where the offence was committed, did not wish to report the crime.²⁶⁸

4.5.2 If there is no reason to initiate a preliminary investigation in Sweden, the complaint shall be forwarded to the competent authority in the Member State where the crime was committed.²⁶⁹ The process is described in “*Metodstöd, Polisens skyldigheter enligt EU:s brottsofferdirektiv om miniminormer för brottsoffers rättigheter, dnr A.331.899/2016, 2017-02-03*”.

4.6 Do complaints normally lead to the opening of investigations into those responsible?

4.6.1 Here is no official data on complaints to the police regarding crimes committed in detention, as data is not organised into any such crime scene category.²⁷⁰

4.6.2 In 2017, eight complaints were made to the Parliamentary Ombudsmen concerning ill treatment in immigration detention centres.²⁷¹ One is still pending and the other seven did not result in any statement or criticism from

²⁶⁸ Section 33 Paragraph 1 of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁶⁹ Section 33 Paragraph 2 of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁷⁰ The Swedish National Council for Crime Prevention (Brå), Klassificering av brott, anvisningar och regler, version 4.1, januari 2016.

²⁷¹ E-mail correspondence with Maria Wilhelmsson and Agneta Engberg, the Parliamentary Ombudsmen’s registry office, 2018-06-04.



the Ombudsmen.²⁷² In one case, the Ombudsmen took part in the Supervision Unit's internal investigation, which resulted in a change of procedures at the centre. In another case, the Ombudsmen decided to conduct an inspection at the detention centre and saw no reason to investigate the complaint further or issue a statement.

4.7 How often are detention officers prosecuted for violence committed against detained victims?

4.7.1 No official data on prosecutions of acts of violence committed by officers against detainees has been found.

4.8 In cases where no investigation and/or prosecution takes place despite allegations of abuse, what are the obstacles preventing such procedures from taking place?

4.8.1 As no official data has been found, it would be informative to investigate this issue further in the interview phase of this project.

4.9 Are there any differences in relation to the above between detainees held in correctional facilities and in pre-trial or immigration detention respectively?

5 RIGHT TO PROTECTION

This section identifies measures available to protect victims and their families from secondary or repeat victimisation, intimidation, and retaliation, including the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and testifying. For example, under the EU Directives the right to protection includes measures to avoid contact between victims and their offenders on the premises, to ensure that interviews be conducted promptly and kept to the

²⁷² The Parliamentary Ombudsmen, decisions dnr 4213-2017, 4328-2017, 4448-2017, 4626-2017, 4749-2017, 6950-2017, 7023-2017 (dnr 4125-2017 still pending).



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required minimum, and to ensure that victims are accompanied by a legal representative, etc.

5.1 Does the law in your jurisdiction recognise the right of detained victims to protection?

Protection in detention

- 5.1.1 The existing legislation on detention does not directly address or recognise the rights of victims to protection from crime or secondary victimisation. Nor does the legislation on protection of victims specifically address victims in detention.
- 5.1.2 According to Chapter 11 Section 7 of the Aliens Act, a detainee may be placed in confinement if it is considered necessary for maintaining good order and security in the detention centre or if the detainee poses a serious threat to him-/herself or others. However, this measure is temporary and may only be used in cases of urgency; it does not provide long-term protection for victims of crime in detention. In pre-trial detention, it is also possible to keep a detainee in confinement for security reasons.²⁷³

Protection during the preliminary investigation

- 5.1.3 Children and injured parties considered in need of special protection²⁷⁴ shall be interviewed by the same interviewing officer throughout the investigation, unless this impedes the work of the authorities or the preliminary investigation. The interviews shall be conducted by an officer of a certain sex if the victim requests it and has a legitimate reason for making such a request.²⁷⁵ Children ought to be interviewed by an officer with special training²⁷⁶ and, if in the best interest of the child, the number of interviews shall be kept to a minimum.²⁷⁷ The injured party may bring a person of choice to the interview for support (“stödperson”), as long as it does not impede the investigation.²⁷⁸ If the injured

²⁷³ Chapter 2 Section 5 of the Act on Detention (häkteslagen 2010:611).

²⁷⁴ For how the individualized needs assessment is made, see below under section 6.

²⁷⁵ Section 5 b of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁷⁶ Section 18 of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁷⁷ Section 17 of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁷⁸ Chapter 23 Section 10 Paragraph 5 of the Code of Judicial Procedure (rättegångsbalken 1942:740).



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party has been appointed an injured party counsel, he/she has a right to be present during interviews.²⁷⁹

Protection during court proceedings

5.1.4 If the individual needs assessment resulted in the conclusion that the injured party is in need of protection measures, this shall be noted in a special document which shall be sent to the court if it may be of significance for its handling of the case.²⁸⁰ This provision was introduced in order to make it possible for the courts to prepare security arrangements for the injured party during hearings.²⁸¹

Witness support

5.1.5 The witness support service is a voluntary service, usually provided by Victim Support Sweden (“Brottsofferjouren”). There is a witness support service established at all district courts and courts of appeal in Sweden. The task of a witness support person is to help witnesses and injured parties by offering support before and after the hearing. This person’s role is to make people feel more comfortable in the public areas of the court, such as the waiting room, and to explain, when necessary, what happens during a hearing. However, the witness support person must not take sides in or even discuss the case itself.²⁸²

Right to bring a person of choice for support

5.1.6 The injured party may bring a person of choice to the court hearing for support.²⁸³

²⁷⁹ Chapter 23 Section 10 Paragraph 5 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

²⁸⁰ Section 21 a of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

²⁸¹ In connection to the implementation of Directive 2012/29, victim support organisations criticized the fact that victims themselves often had to contact the court in order for security arrangements to be made, see

Ministry Publication Series, Genomförande av brottsofferdirektivet, Ds 2014:14, p. 168-169.

²⁸² The Swedish Crime Victim Compensation and Support Authority (Brottsoffermyndigheten), “Support and Help”, <https://www.brottsoffermyndigheten.se/eng/help-for-victims/support-and-help>, accessed 7 May 2018.

²⁸³ Chapter 20 Section 15 of the Code on Judicial Procedure (rättegångsbalken 1942:740).



Court facilities

5.1.7 Most courts have separate waiting rooms. If an injured party or a witness is worried about meeting the defendant, they can wait in a separate room until the court session begins.²⁸⁴

Listening in

5.1.8 If the injured party finds it difficult to describe what happened while the defendant is present in the courtroom, the district court may decide that the defendant should leave the room while the injured party is testifying.²⁸⁵ The defendant may then listen to the testimony on a loudspeaker. This is called “listening in”. It is important that the injured party is informed about this possibility in good time before the trial, as he/she must contact the court to request it.

Irrelevant and improper questions

5.1.9 The presiding judge may interrupt irrelevant or improper questions to the injured party, as long as it does not prejudice the defendant’s right to a fair trial.²⁸⁶

Hearings closed to the public

5.1.10 As a main principle, court hearings are open to members of the public. However, if the case in question is of a particularly sensitive nature – concerning, for example, a sexual offence, human trafficking, or child pornography – the court may decide that the hearing shall be conducted behind closed doors.²⁸⁷ Other examples of hearings that may be conducted behind closed doors include those involving persons under the age of 15 or persons suffering from a mental illness.²⁸⁸

²⁸⁴ The Swedish National Courts Administration (Domstolsverket), “Till dig som är brottsoffer (målsägande)”, www.domstol.se/Till-dig-som-ar/Brottsoffer/, accessed 7 May 2018.

²⁸⁵ Chapter 36 Section 18 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

²⁸⁶ Chapter 36 Section 17 Paragraph 5 in conjunction with Chapter 37 Section 1 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

²⁸⁷ Chapter 5 Section 1 of the Code of Judicial Procedure (rättegångsbalken 1942:740) and Chapter 18 Section 12 of the Public Access to Information and Secrecy Act (offentlighets- och sekretesslagen 2009:400).

²⁸⁸ Chapter 5 Section 1 Paragraph 2 of the Code of Judicial Procedure (rättegångsbalken 1942:740).



5.2 What measures, if any, can be taken to protect a detainee from secondary harm or reprisals (from fellow inmates or authorities) in connection with filing a complaint? (e.g. ensuring confidentiality of the complaint procedure; a possibility of submitting anonymous information or complaints; relocation; etc)

5.3 What is the procedure for requesting or implementing such measures? Which authority is competent to decide on the appropriate measures of protection?

Confidentiality

5.3.1 A person who has been deprived of his/her liberty may always write to the Parliamentary Ombudsmen, without being prevented by any restrictions on sending letters or other documents which may apply to him/her.²⁸⁹ This applies both in immigration and pre-trial detention centres. However, anonymous complaints are not accepted.²⁹⁰

5.3.2 Written letters and documents may not be inspected by staff at immigration detention centres.²⁹¹ Complaints to the Swedish Migration Agency's Supervision Unit can be made anonymously. However, nothing has been found to indicate that detainees are informed of the possibility to file an anonymous complaint.²⁹²

5.3.3 Complaints to the Swedish Prison and Probation Service's head of prisons ("Kriminalvårdschefen"), regional office or head office.

²⁸⁹ Section 17 of the Act with Instructions for the Parliamentary Ombudsmen (lagen med instruktion för Riksdagens ombudsmän 1986:765).

²⁹⁰ The Parliamentary Ombudsmen, "How to complain", <http://www.jo.se/en/How-to-complain/>, accessed 24 May 2018.

²⁹¹ Chapter 11 Section 10 of the Alien Act (utlänningslagen 2005:716).

²⁹² Telephone interview with Johan Lusth, Coordinator of Security, 2018-06-04.



Relocation

5.3.4 According to information from the Swedish Migration Agency, the action taken will depend on the nature of the crime. Generally, there will be a dialogue between “all parties concerned” after which a decision may be made of placement in solitary confinement, security placement in pre-trial detention, or relocation.²⁹³ Relocation is an option in cases of conflict that is not momentary.²⁹⁴ First, relocation to another department within the same centre will be considered, and, second, relocation to another centre. A request for relocation to another centre should be made by a team leader or more senior member of staff or according to local procedure and will be considered by the relocation coordinators (“platssamordnare”).²⁹⁵ If a member of staff is under investigation for having committed an act of violence against a detainee, the Disciplinary Board may decide to suspend the employee while the investigation is ongoing, if the employee’s immediate manager requests it. However, more often the manager reaches an agreement with the employee about swapping duties for the duration of the investigation or about exemption from work (“arbetsbefrielse”).²⁹⁶

5.3.5 Relocation may also be used in pre-trial detention centres. A detainee who has committed an act of violence against another detainee may be placed in a centre with a higher level of security. However, it should be noted that relocations may be hindered by the high occupancy rate of about 95 per cent.²⁹⁷ If a member of staff is under investigation for having used violence against a detainee, the Disciplinary Board may decide that he/she should not work in close quarters with detainees while the investigation is ongoing.²⁹⁸

²⁹³ The Swedish Migration Agency, Official Response from Josefin Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18, para. 6.

²⁹⁴ Telephone interview with Johan Lusth, Coordinator of Security, Immigration Detention Centre Department, 2018-06-04 and the Swedish Migration Agency, Välkommen till Migrationsverkets förvarsenhet I Märsta, 2018-03-19, p. 21.

²⁹⁵ The Swedish Migration Agency, Instruction for Staff, National Relocation Coordination (Instruktion för personal, Nationell platssamordning, versionsnr: 18-2).

²⁹⁶ E-mail correspondence with Kent Juhlén, Legal Department, the Swedish Migration Agency, 2018-06-29.

²⁹⁷ The Swedish Prison and Probation Service, Omkrim, Kriminalvårdens personaltidning, 2/2018, p. 17.

²⁹⁸ Telephone interview with Torkel Omnell, Department of Communication, the Swedish Prison and Probation Service, 2018-01-19 and e-mail correspondence with Joakim Righammar, Head of Evaluation and Placement Section, the Swedish Prison and Probation Service, 2018-06-28.



Notification in case of the escape or release of the perpetrator

5.3.6 If a perpetrator who is seized, arrested, or in pre-trial detention escapes or is released, the injured party shall be informed of this as soon as possible.²⁹⁹

5.4 Are there any differences in relation to the above between detainees in correctional facilities and in pre-trial or immigration detention respectively?

6 INDIVIDUALISED NEEDS ASSESSMENTS

This section covers the right of detained victims to receive a timely and individual assessment to identify specific protection needs and to determine whether, and to what extent, they would benefit from special measures being taken in the criminal proceedings because of their particular vulnerability to secondary or repeat victimisation, intimidation, and retaliation.

6.1 Do authorities carry out a needs assessment in relation to particular vulnerabilities (age, gender, disability, type or nature of the crime committed, etc.) at first point of contact with victims or at a later time?

6.1.1 Only the Police Authority carries out a needs assessment of the particular vulnerabilities of individual victims. The Swedish Migration Agency and the Swedish Prison and Probation Service carry out health exams of detainees with the aim of identifying more acute health conditions.

Health exams in detention centres

Pre-trial detention

6.1.2 The Swedish Prison and Probation Service's Regulations and General Advice on Detention ("KVFS 2011:2") stipulates that an initial safety assessment should be carried out when a suspect or accused arrives at the pre-trial

²⁹⁹ Section 13 c of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).



detention centre.³⁰⁰ It further stipulates that inmates should be asked about their health in connection with being taken into pre-trial detention and given the opportunity to have their health examined by a nurse as soon as possible. A doctor or psychiatrist may be consulted as a next step.³⁰¹ The aim of the health exam is to identify more acute health issues and the focus is not on vulnerabilities due to mental disabilities.

- 6.1.3 A precondition for ensuring the rights of detainees who are not able to understand and effectively assert their rights due to a mental or physical condition or disability is the knowledge that such a vulnerability exists. Following its visit to Sweden in 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated in its report to the Swedish Government that “the procedure for screening newly arrived persons at police detention facilities continued to leave much to be desired.” The initial security assessment in police custody and pre-trial detention remains a basic and routine procedure which may identify more acute health conditions, not an assessment of possible vulnerabilities in relation to inmates’ rights as detainees or potential victims.

Immigration detention

- 6.1.4 Detainees in immigration detention should normally be offered a health exam as soon as possible upon arrival.³⁰² According to the National Board of Health and Welfare’s (“Socialstyrelsen”) Regulations and General Advice (“SOSFS 2011:11”), the purpose of the exam is to conclude what healthcare should be provided in accordance with the Act on Health and Medical Services for Asylum Seekers (“Lagen om hälso- och sjukvård åt asylsökande m.fl. 2008:344”). However, OPCAT records indicate that health exams are not being offered upon arrival at detention centres.³⁰³
- 6.1.5 Questions about the detainee’s health should also be asked during the introductory meeting (“inskrivningssamtalet”), e.g. concerning medications, medical history, and whether the detainee wants further contact with the

³⁰⁰ Chapter 1 Section 9 of the KVFS 2011:2 (Kriminalvårdens föreskrifter och allmänna råd om häkte, KVFS 2011:2).

³⁰¹ Chapter 5 Section 1 of the KVFS 2011:2 (Kriminalvårdens föreskrifter och allmänna råd om häkte, KVFS 2011:2).

³⁰² Section 7 in conjunction with Section 4 Paragraph 1 p. 3 of the Act on Health and Medical Services for Asylum Seekers (lagen om hälso- och sjukvård åt asylsökande m.fl. 2008:344).

³⁰³ See for example, The Parliamentary Ombudsmen, Protocol, Opcat-inspektion av Migrationsverkets förvarsenhet i Flen den 7-8 mars 2016, dnr 843-2016, p. 14.



healthcare services. Indicators of vulnerability with relevance to the detainee's stay at the centre should be noted in his/her records as well as any need of special support.³⁰⁴

- 6.1.6 However, since it is not the purpose of the medical exam offered upon arrival into immigration detention to ensure the detainee's possibility to assert his/her rights, the exam does not safeguard the detainee's right to special protection as a victim of crime.

The Police Authority

- 6.1.7 The Police Authority shall, as soon as possible, conduct an individualised needs assessment in order to determine whether the victim is in need of special protection measures. The severity of the offence as well as the personal circumstances of the victim shall be assessed. A victim under the age of 18 shall always be considered in need of protection measures. The individualised needs assessment shall be reviewed when necessary.³⁰⁵

- 6.1.8 The individualised needs assessment will be based on the results of the initial risk assessment and/or a structured risk assessment as described below.³⁰⁶ To ensure that sensitive data is not shared with the defendant, information concerning the needs assessment shall be shared with the prosecutor and the courts in a separate document and shall not be included in the preliminary investigation report ("Förundersökningsprotokollet").³⁰⁷ The separate document shall also detail what information, notifications, etc. the victim has requested to receive.³⁰⁸

- 6.1.9 If the victim is under the age of 18, the requirement to conduct an individualised needs assessment will be considered fulfilled if concerns are

³⁰⁴ The Swedish Migration Agency, Protokoll vid ankomst till förvar.

³⁰⁵ Section 13 f of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948).

³⁰⁶ The Police Authority, Metodstöd, Polisens skyldigheter enligt EU:s brottsofferdirektiv om miniminormer för brottsoffers rättigheter, A.331.899/2016, 2017-02-03.

³⁰⁷ Section 21 a of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948) and The Swedish Police Authority, Metodstöd, Riskanalys på individnivå – verktyg för bedömning av hot och risk kopplat till riskhantering, dnr A.331.899/2016.

³⁰⁸ The Police Authority, Metodstöd, Polisens skyldigheter enligt EU:s brottsofferdirektiv om miniminormer för brottsoffers rättigheter, A.331.899/2016, 2017-02-03.



reported to the social services in accordance with Chapter 14 Section 1 of the Social Services Act (“Socialtjänstlagen 2001:453”).³⁰⁹

Initial risk assessment

6.1.10 A police officer receiving a complaint or reporting an offence shall make an initial assessment of whether there is an immediate risk that the victim may be subjected to further violence or threats. There are certain mandatory questions regarding risk assessment that the officer must answer in order to be able to register the complaint. The purpose of the initial assessment is to assess the acute need of support or protection measures. It may also indicate that a structured risk assessment needs to be carried out.³¹⁰

Emergency protection

6.1.11 The investigation officer may decide to provide immediate protection measures if necessary. Such measures could include putting the victim up in a hotel, a women’s shelter, or, if considered appropriate, with relatives.³¹¹

Review of the reported complaint

6.1.12 The investigation officer reviewing the reported complaint is responsible for checking that the injured party has received the information he/she is entitled to in accordance with Section 13a–f of the Decree on Preliminary Investigations.³¹² However, the internal regulations of the Police Authority do not stipulate a responsibility to check whether the injured party has received information concerning the possibility of obtaining a temporary residence permit in connection with ongoing criminal proceedings.

Structured risk assessment

6.1.13 If the initial assessment indicates a need for a more thorough analysis, a structured risk assessment will be carried out by staff with special training at the BOP units (“brottsoffer och personsäkerhetsgrupper”). The threat and risk

³⁰⁹ The Swedish Police Authority, Metodstöd, Polisens skyldigheter enligt EU:s brottsofferdirektiv om miniminormer för brottsoffers rättigheter, dnr A.331.899/2016, 2017-02-03.

³¹⁰ The Swedish Police Authority, Metodstöd, Initial bedömning – skyddsbedömning, dnr A.331.899/2016.

³¹¹ The Swedish Police Authority, Metodstöd, Akut riskhantering, dnr A.331.899/2016.

³¹² Förundersökningskungärelsen 1947:948. , The Swedish Police Authority, Metodstöd, Granskning av anmälan, dnr A.331.899/2016.



level are assessed against a national scale and different structured checklists are used depending on the crime committed. The particular vulnerabilities of the victim are also assessed.

Children with neuropsychiatric disabilities

6.1.14 The report “Judiciary Treatment of Children with Neuropsychiatric Disabilities” from the law faculty at Stockholm University takes a “holistic approach” to all stages of the process, from pre-trial to verdict, and notes that the number of prosecutions has been significantly lower for cases in which the victim has a neuropsychiatric disability. This remained true even when the suspect confessed and when there were witnesses and clear evidence of a crime. The study looked at the reasons for the low rate of prosecution and found that the notification of crime was, in general, handled differently when the victim had a neuropsychiatric disability. For example, the study concluded that children with neuropsychiatric disabilities were not heard to the same extent as other children. In addition, information about the child’s disability was usually brought into the investigation after the child had already been heard, instead of before or during his/her hearing.

6.2 What arrangements are made to ensure that officials are able to handle vulnerable detained victims in pre-trial or immigration detention?

Immigration detention centres

6.2.1 Officials in immigration detention centres receive training in low arousal approaches and conflict management.³¹³ Except from the training on human trafficking outlined below, it has not been possible to identify any training for officials on victims’ rights or how to identify and work with vulnerable victims in detention.

6.2.2 The Detention Centre Department (“Förvarsavdelningen”) recently instituted an Education Unit (“utbildningsenhet”) and a new training concept is currently being developed. It will consist of a twelve-week full-time programme for immigration detention centre staff.

³¹³ The Swedish Migration Agency, Official Response from Josefine Listerby, Head of a Detention Unit in Märsta (enhetschef), 2018-06-18, para. 9.



Human trafficking

6.2.3 According to one of the Swedish Migration Agency's regional coordinators against human trafficking, the authority sometimes trains staff at detention centres together with the Police Authority's Unit for International Organized Crime ("Polisens enhet mot internationell grov organiserad brottslighet, IGOB").³¹⁴ Among other things, they cover indicators of trafficking, such as:

- High-risk countries
- Age
- Gender
- Educational level
- Poverty
- Luggage (for example, those most vulnerable often carry all their belongings with them; if sex toys and condoms are found among luggage it may be an indication of prostitution or trafficking)

Guide on how to approach vulnerable women

6.2.4 The Swedish Migration Agency also offers a guide on how to approach vulnerable women in immigration detention centres that was developed as part of a project funded by the EU Refugee Fund.³¹⁵ Among other things, it contains information on:

- What constitutes a vulnerability
 - PTSD and trauma
 - Indicators of trauma and mental illness
- How to work with vulnerable persons at the detention centre
 - How to be supportive, non-judgemental, and respectful
 - How to ask questions
 - Indicators of vulnerability
 - Communication and/or cooperation barriers and how to overcome them

³¹⁴ Telephone interview with Lisa Hultin Knutas, Regional Coordinator against human trafficking, the Swedish Migration Agency, 2018-06-20.

³¹⁵ The Swedish Migration Agency, Att se och bemöta utsatta kvinnor på förvar – en bemötangeguide.



- What to do in cases of vulnerability
 - Prostitution and human trafficking
 - Violence and abuse in close relationships
 - Persons identifying as LGBT
 - Severe illness

- Conversation-method support

- Stories from detained women

Pre-trial detention centres

6.2.5 The basic training provided to those working within the Swedish Prison and Probation Service is 20 weeks long and covers some information on mental illness and healthcare. The authority also offers around 130 additional courses for further training, on topics such as how to approach young detainees, detainees with ADHD, and women in detention. However, there is no course offering training on how to identify or work with victims of crime. Nor is there a course on immigration detainees in pre-trial detention. A new basic training programme is currently being developed; it will span 20 months and consist of a mix of theoretical training and practical work.³¹⁶

The Police Authority

6.2.6 Training to become a police officer in Sweden takes two and a half years and includes a six-months paid traineeship. Further specialist training is also offered. The basic programme at the police academy covers, among other things, training on human rights, ethics, values, behavioural science, victims' rights, and how to approach victims. There is also specific training on violence in close relationships, honour-based crime, hate crime, young victims, and indicators of mental illness.

6.2.7 Within the Police Authority, there are specialist groups investigating violence in close relationships, hate crime, crimes against children, and prostitution.

³¹⁶ Telephone interview with Annette Warman, Head of Competence Center Stockholm, the Swedish Prison and Probation Service, 2018-06-29.



6.2.8 The police identify the following groups as particularly vulnerable (note that detained victims are not included):³¹⁷

- Victims of crime in close relationships
- Victims of honour-based crime
- Victims of human trafficking
- Victims of hate crime
- Children and young victims
- Victims with a mother tongue other than Swedish
- Victims with a disability

BOPS units

6.2.9 Within the Police Authority sit the Victim and Personal Security Units (“BOPS, brottsoffer och personsäkerhetssektioner”). The purpose of the BOPS units is to prevent repeat victimisation and to make victims of crime feel safe. They are responsible for providing information to victims and, if needed, support and protection. As described above, they will carry out a structured risk assessment if there appears to be a risk that the victim will be subjected to further threats or violence. They will also handle complaints if the victim has requested or might be in need of support from victim support organisations. The basic course (120 hours) for police officers working within the BOPS units covers training on honour-based crime, crime in close relationships, the asylum process, trauma support, motivational interviewing, victims’ rights, and how to approach victims.³¹⁸

6.3 Do detained victims have access to a victim support service?

6.3.1 As detainees have access to a phone and computer in immigration detention centres, they may contact the victim support services listed above in section 2. Whether NGOs visiting detention centres provide special support services to detainees as victims remains a point for further examination during the interview phase of this project.

³¹⁷ The Police Authority, Metodstöd, Brottsoffer med särskilda behov, dnr A.331.899/2016, 2017-02-03.

³¹⁸ E-mail correspondence with Lin Nordqvist, analyst at the Victim and Personal Security Section (BOPS), the Swedish Police Authority, 2018-06-28; syllabuses for the Police Academy found at Umeå University, “Enheten för polisutbildningen”, <http://www.polis.umu.se/student/>, accessed 28 June 2018; the Police Authority, Kompetensprofil för Brottsoffer- och personsäkerhetshandläggare, 2018-01-26 and Metodströd, Brottsoffer med särskilda behov, dnr A.331.899/2016, 2017-02-03.



6.4 Are there any differences in relation to the above between detainees held in correctional facilities and in pre-trial or immigration detention respectively?

6.4.1 Since the beginning of 2017, routine ADHD screenings of convicted prisoners are carried out. Exams of such target groups may be more thorough than in general and may identify needs for support.

6.4.2 The Swedish Prison and Probation Service's work on placement and relocation of convicted prisoners is more structured than that with detainees in pre-trial detention. There is a *Handbook on Placement in Prison* ("Kriminalvårdens handbok – om placering i anstalt, 2012:8"), but no such document for detainees in pre-trial detention.

7 COMPENSATION

This section focuses on the right of detained victims to claim compensation from the offender whilst in pre-trial or immigration detention, or later.

There are three different types of compensation available to a person who has been subjected to a crime: damages from the offender, insurance compensation, and criminal injuries compensation from the State. In principle, an offender who commits a crime is obligated to pay for the damage or injuries which the crime gives rise to. The amount of damages to be paid is determined in the hearing. If the offender cannot pay the damages and the victim has insurance, part of the damage or injuries suffered may be covered by the insurance provider. If the victim does not have insurance that covers the injuries in full, and compensation through damages has not been paid, the victim may be entitled to compensation from the State, known as criminal injuries compensation.³¹⁹

³¹⁹ The Swedish Crime Victim Compensation and Support Authority, "Compensation", <https://www.brottsoffermyndigheten.se/eng/compensation>, accessed 30 May 2018.



7.1 Does your jurisdiction have specific legislation establishing a procedure by which victims of violent crime suffered in pre-trial or immigration detention may claim compensation?

7.1.1 There is no specific legislation establishing a compensation scheme for victims of violent crime suffered in detention in Sweden.³²⁰ However, detained victims may seek damages from the offender by means of the general provisions.³²¹ In theory, it is also possible for a detainee to claim compensation from the State for damages caused by state officials through civil proceedings.³²²

Damages

7.1.2 A claim for damages due to an offence is usually assessed by the court at the same time as the charge of criminal liability.³²³ The victim should be informed of his/her right to claim damages and, if the victim requests it, the prosecutor must prepare and present the claim for damages at the hearing.³²⁴ The victim may claim compensation for personal injury, violation of integrity, damage to property, and pure financial loss.³²⁵

7.1.3 Together with the verdict, the victim will receive a booklet with information on the process for collecting damages or compensation. As many defendants are unable or unwilling to pay damages,³²⁶ a copy of the verdict will also be sent to the Swedish Enforcement Authority (“Kronofogden”) when the judicial process has been concluded. The Enforcement Authority subsequently sends a letter to the victim with an application form, which is available in Swedish and

³²⁰ However, there is a specific procedure for compensation for individuals that have been kept in detention

contrary to the law, see the Compensation for Detention and other Coercive Measures Act (lagen om ersättning vid frihetsberövanden och andra tvångsåtgärder 1998:714).

³²¹ Chapter 2 of the Tort Liability Act (skadeståndslagen 1972:207) and Chapter 22 of the Code of Judicial

Procedure (rättegångsbalken 1942:740).

³²² Chapter 3 of the Tort Liability Act (skadeståndslagen 1972:207) and Chapter 22 of the Code of Judicial

Procedure (rättegångsbalken 1942:740).

³²³ Chapter 22 Section 1 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

³²⁴ Section 13 a of the Decree on Preliminary Investigations (förundersökningskungörelsen 1947:948) and Chapter 22 Section 2 of the Code of Judicial Procedure (rättegångsbalken 1942:740).

³²⁵ Chapter 2 of the Tort Liability Act (skadeståndslagen 1972:207).

³²⁶ In almost 50 % of the cases, the perpetrator does not pay damages, see the Swedish Radio, “Svårt för brottsoffer att få ut skadestånd”,

<https://sverigesradio.se/sida/artikel.aspx?programid=106&artikel=6635467>, accessed 15 June 2018.



English on the authority's website.³²⁷ The victim must fill out the form and return it to the Enforcement Authority in order to receive assistance collecting the damages. The matter remains with the Enforcement Authority until the debt has been paid in full. If it comes to light that the party liable for payment is unable to pay, the Enforcement Authority will provide the victim with an investigation report detailing this.³²⁸ Attached to the investigation report sent to the victim will be a booklet informing the victim that he/she may turn to his/her insurance provider or to the Crime Victim Compensation and Support Authority ("Brottsoffermyndigheten") to seek insurance compensation or criminal injuries compensation.

7.1.4 There are no legal obstacles preventing the Swedish Enforcement Authority from collecting damages even if the victim has left Sweden. However, if the perpetrator has left Sweden and has no assets in Sweden, the Swedish Enforcement Authority will not be able to collect damages. If Sweden has entered into an agreement with the perpetrator's country of residence stipulating that Swedish verdicts may be enforced in that country, the victim may turn to the enforcement authority in that country for collection of damages.³²⁹

Insurance compensation

7.1.5 If the defender is unknown or unable to pay the damages, a victim with insurance may be entitled to compensation from his/her insurance provider ("försäkringsersättning").³³⁰

Criminal injuries compensation

7.1.6 If the convicted offender is unable to pay the damages and the victim does not have insurance that covers the full amount, he/she may be entitled to criminal injuries compensation ("brottskadeersättning") from the State.³³¹

³²⁷ The Enforcement Authority, "Application for enforcement (damages)", <https://www.kronofogden.se/Applicationforenforcementdamages.html>, accessed 12 June 2018.

³²⁸ The Enforcement Authority, "Want to get paid – damages", <https://www.kronofogden.se/Wanttogetpaiddamages.html>, accessed 12 June 2018.

³²⁹ Telephone interview with Stefan Andersson, Senior Enforcement Officer (Kronofogde), the Swedish Enforcement Authority, 2018-06-15.

³³⁰ The Swedish Crime Victim Compensation and Support Authority, "Insurance", <https://www.brottsoffermyndigheten.se/eng/compensation/insurance>, accessed 12 June 2018.

³³¹ Section 1 and 10 of the Criminal Injuries Compensation Act (brottskadlagen 2014:322).



- 7.1.7 In order for the victim to receive criminal injuries compensation, the crime must have been reported to the police or the victim must be able to provide a legitimate reason for not doing so. In addition, the victim must to a reasonable extent have contributed to the investigation of the crime.³³² If the offender is unknown, there must have been an inquiry, such as a preliminary investigation, establishing that the victim has been subjected to a crime. A booklet explaining that the victim may be entitled to compensation is attached to all decisions to discontinue a preliminary investigation. If the suspect has been identified, a conviction or the summary imposition of a fine is in principle required.
- 7.1.8 Criminal injuries compensation may be paid if the crime was committed in Sweden, regardless of whether the victim is a Swedish resident or not. If the crime was committed abroad and the victim was a Swedish resident at the time of the offence, compensation may be paid for personal injury and violation of integrity. Compensation may also be paid to a child who has witnessed a crime abroad, if the child was a Swedish resident at the time of the offence.³³³
- 7.1.9 If the victim and the crime have such a weak connection to Sweden that it is considered unreasonable for compensation to be paid by the Swedish State, such compensation shall not be paid. That may be the case if the crime was committed abroad against a person who, at the time of the offence, was a resident, but not a citizen, of Sweden and who has since moved back to his/her home country.³³⁴ This limitation of the right to compensation does not apply to violent crime committed with intent in Sweden, if the victim was a citizen or resident of another Member State at the time of the offence.³³⁵
- 7.1.10 In order to receive criminal injuries compensation, the victim must submit a special application form within three years of the conclusion of the legal proceedings.³³⁶ The application form is available in Swedish and English on the Swedish Crime Victim Compensation and Support Authority's website.³³⁷

³³² Section 16 of the Criminal Injuries Compensation Act (brottsskadelagen 2014:322).

³³³ Section 2 of the Criminal Injuries Compensation Act (brottsskadelagen 2014:322).

³³⁴ Karnov, Lagkommentar 3 § Brottskadelagen, accessed 13 June 2018.

³³⁵ Section 3 of the Criminal Injuries Compensation Act (brottsskadelagen 2014:322).

³³⁶ Section 15 of the Criminal Injuries Compensation Act (brottsskadelagen 2014:322).

³³⁷ The Swedish Crime Victim Compensation and Support Authority, "Criminal Injuries Compensation",

<<https://www.brottsoffermyndigheten.se/eng/compensation/criminal-injuries-compensation>>, accessed 12 June 2018.



7.1.11 Criminal injuries compensation is primarily paid out for personal injuries, which can be either psychological or physical injuries arising from a crime.³³⁸ Some examples of injuries that may be compensated include expenses for medical treatment, pain and suffering, loss of income, and permanent injuries such as scars or impaired hearing. There are also a number of crimes which entitle the victim to compensation for violation of personal integrity. This applies when the crime is considered a serious violation of the victim's personal integrity, private life, and human dignity.³³⁹ Almost all cases of assault or sexual assault entitle the victim to such compensation.³⁴⁰ The chances of receiving compensation for loss of or damages to property or pure financial loss are very limited.³⁴¹

7.1.12 Children who have witnessed violence in a close relationship may be entitled to criminal injuries compensation. In order for the child to qualify for this, the crime must typically be considered to have damaged the child's sense of security and trust in a person close to him/her. In order for compensation to be obtained, it is important that the police documenting the child's observations and reactions at an early stage in the preliminary investigation. According to the general director of the Swedish Crime Victim Compensation and Support Authority, a lack of adequate documentation is the reason behind 30 per cent of rejected cases.³⁴² As a witness to the crime, the child does not have the same right to information as the injured party. Therefore, there is a risk that the child is not informed of the possibility to obtain criminal injuries compensation.³⁴³

Identified shortcomings

7.1.13 The victim must take a very active part in the process of collecting damages or compensation. In addition, the process is protracted and contains many steps. According to a representative from Victim Support Sweden, many victims give

³³⁸ Section 4 of the Criminal Injuries Compensation Act (brottskadlagen 2014:322).

³³⁹ Section 5 of the Criminal Injuries Compensation Act (brottskadlagen 2014:322).

³⁴⁰ The Swedish Crime Victim Compensation and Support Authority, "Criminal Injuries Compensation",

<<https://www.brottsoffermyndigheten.se/eng/compensation/criminal-injuries-compensation>>, accessed 12 June 2018.

³⁴¹ Section 6-7 of the Criminal Injuries Compensation Act (brottskadlagen 2014:322).

³⁴² The Swedish Radio, "Avslag kan bero på polisens bristande dokumentation",

<<https://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6736616>>, accessed 15 June 2018.

³⁴³ The Swedish Police Authority, Metodstöd, Brottsoffer med särskilda behov, dnr A.311.899/2016, 2017-02-03, p. 10-11.



up and never claim the damages or compensation they may be entitled to.³⁴⁴ It is reasonable to assume that undergoing the process is even more difficult for victims whose mother tongue is a language other than Swedish. As the process is lengthy, it is also possible that the victim or the offender may leave the country before damages or compensation is paid.

7.2 Are victims entitled to compensation outside the framework of court proceedings (e.g. through disciplinary proceedings)?

7.2.1 The only way a victim may receive compensation outside the framework of court proceedings is from the Chancellor of Justice. However, the Chancellor of Justice will in principle not investigate criminal offences.³⁴⁵

7.3 Can victims receive compensation even when a perpetrator has not been identified?

7.3.1 Yes, see above. The victim may be entitled to compensation from his/her insurance provider or to criminal injuries compensation in cases where the offender is unknown. The crime must have been reported to the police or the victim must be able to provide legitimate reasons for not doing so. There must also have been an investigation (e.g. a preliminary investigation) establishing that the injury was caused by an offence and not an accident.

7.4 What is the average amount of compensation awarded per case, depending on the harm caused?

7.4.1 The amount depends on the circumstances of each individual case. It is therefore very difficult to make any meaningful comparisons.

Examples of compensation for violation of integrity

7.4.2 Each year, the Swedish Crime Victim Compensation and Support Authority publishes a collection of case law concerning compensation for violation of integrity. In contrast to compensation for personal injury, which is awarded

³⁴⁴ The Swedish Radio, "Svårt för brottsoffer att få ut skadestånd", <https://sverigesradio.se/sida/artikel.aspx?programid=106&artikel=6635467>, accessed 15 June 2018.

³⁴⁵ The Chancellor of Justice, "Alla anmälningar utreds inte", <https://www.jk.se/anmalan/alla-anmalningar-utreds-inte/>, accessed 2 July 2018.



based on subjective factors, compensation for violation of integrity is awarded on more objective grounds.³⁴⁶

Assault and aggravated assault

7.4.3 Cases of assault may range from acts of relatively mild violence to violence of a more serious nature. Circumstances of particular interest in the assessment of compensation claims for violation of integrity is the time frame, the nature of the violence, whether weapons or tools were used, whether there were degrading aspects, and whether the crime was committed with the intent to cause serious fear of life or health. The following are examples of damages or compensation awarded for acts of assault:

- A man received a blow with a closed fist to the face from another man. He was awarded 5,000 SEK for violation of integrity.
- A man received kicks to his upper body from another man while lying down on the ground. He was awarded 10,000 SEK for violation of integrity.
- A man received a blow to the head with a bottle that broke. He was awarded 20,000 SEK.
- A man received a blow with a closed fist and several kicks, even after falling to the ground. After a couple of minutes, the perpetrator returned and resumed the assault. The man was eventually knocked unconscious. The offence was classified as a hate crime. The victim was awarded 40,000 SEK.

Threats

7.4.4 Verbal threats normally result in 5,000 SEK awarded in damages or compensation for violation of integrity. If the perpetrator uses a weapon or an object that is perceived as a weapon, the damages awarded for violation of integrity are typically 10,000 SEK. If there are further aggravating circumstances, the amount awarded will be even higher.³⁴⁷

³⁴⁶ The Swedish Crime Victim Compensation and Support Authority, Referatsamling 2017, p. 10.

³⁴⁷ The Swedish Crime Victim Compensation and Support Authority, Referatsamling 2017, p. 73 ff.



Rape

7.4.5 A victim of rape is usually awarded 100,000 SEK in damages or compensation for violation of integrity. In case of aggravating circumstances, the victim may be entitled to a higher amount.³⁴⁸

Examples of damages awarded for assault in detention centres or police custody

6. received a blow to the head with a closed fist from another detainee. The offender was a professional boxer and the victim fell to the ground and hit his head on the floor. For the victim, the assault resulted in four weeks in hospital, of which two were spent in intensive care. The defendant was convicted of assault and sentenced to eight months in prison. The reason for why he was not convicted of aggravated assault was that the court concluded that his intent did not match the severity of the actual harm caused. The victim was awarded 20,000 SEK in damages for violation of integrity, 47,000 SEK for permanent physical injuries, 10,000 SEK for non-permanent psychological and physical injuries, and 1,500 SEK for medical expenses.³⁴⁹

7. A woman in police arrest was pushed to the floor by staff. The victim was awarded 15,000 SEK for violation of integrity, 2,400 SEK for non-permanent psychological and physical injuries, and damages for destroyed property.³⁵⁰

7.5 Are there any fees involved if the claim for compensation is unsuccessful?

7.5.1 If the claim for damages caused by an offence is assessed by the court at the same time as the charge of criminal liability, i.e. during the criminal proceedings, there are no fees involved. However, there are fees involved in civil proceedings.

³⁴⁸ The Swedish Crime Victim Compensation and Support Authority, Referatsamling 2017, p. 22 ff.

³⁴⁹ District Court of Gothenburg, dom den 1 april 2015 i Mål nr B 1509-15.

³⁵⁰ The Svea Court of Appeal, dom den 10 oktober 2017 i Mål nr B 9846-16.



7.6 Are there any differences in relation to the above between detainees held in correctional facilities and in pre-trial or immigration detention respectively?

No.

8 RESEARCH AND CASE STUDIES

8.1 What information is publicly available regarding the frequency of violent crime in detention facilities?

8.1.1 Detention centres are not listed as a crime scene category.³⁵¹ The Swedish National Council for Crime Prevention (“Brå”) is therefore unable to present statistics of violent crime committed in detention.

Immigration detention centres

8.1.2 There is no available data on violence committed against detainees. The Swedish Migration Agency does not collect data on the frequency of violent incidents against detainees. According to the authority, this is due to the structure of the central system for reporting incidents (RITA). If no Swedish Migration Agency staff has been physically affected or felt threatened, the incident is not to be reported in the system, which lacks a category for violence committed against a detainee.³⁵²

Pre-trial detention centres

8.1.3 The Swedish National Council for Crime Prevention (“Brå”) has conducted an analysis of crimes committed by inmates serving time in prison. Any potential time spent by the inmates in pre-trial detention before their conviction has also

³⁵¹ E-mail correspondence with the Statistics Service, the Swedish National Council for Crime Prevention, 2018-07-01 and the Swedish National Council for Crime Prevention, Klassificering av brott – anvisningar och regler, version 4.1, January 2016, https://www.bra.se/download/18.47fa372d1520dfb2fc549bde/1453456931236/2015_Klassificering+av+brott-v4.1.pdf, accessed 1 July 2018.

³⁵² Telephone interview with Johan Lusth, Coordinator of Security, Immigration Detention Unit, the Swedish Migration Agency, 2018-06-04.



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been included in the study.³⁵³ The report concludes that the number of incidents of violence and threats has increased over the past few years, while the number of prosecutions (“lagföring”) for such acts has not. According to the report, one of the explanations may be that not all acts of violence and threats are reported to the police.³⁵⁴ It is further noted that no survey concerning crimes committed against detainees has yet been conducted.

Reported cases of threats and violence between detainees

8.1.4 *The following data has been published by the Swedish Prison and Probation Service.*³⁵⁵

	2015	2016	2017
<i>Threats</i>	-	20	14
<i>Violence</i>	-	14	15
Total	46	34	29

Reported cases of threats and violence committed by staff against detainees

8.1.5 No data concerning violent crime committed by members of authority staff against detainees has been found.

Prisons

Reported cases of threats and violence between inmates

8.1.6 *The following data has been published by the Swedish Prison and Probation Service.*³⁵⁶

³⁵³ The Swedish Council for Crime Prevention (Brå), *Intagnas brott under påföljden*, Kortanalys 5/2017, https://www.bra.se/download/18.4c494ddd15e9438f8ada633a/1513070389734/2017_Intagnas_brott_under_pafoljden.pdf, accessed 1 July 2018.

³⁵⁴ The Swedish Council for Crime Prevention (Brå), *Intagnas brott under påföljden*, Kortanalys 5/2017, p. 27.

³⁵⁵ The Swedish Prison and Probation Service, *Annual Report 2017 (Kriminalvårdens årsredovisning 2017)*, p. 69.

³⁵⁶ The Swedish Prison and Probation Service, *Annual Report 2017 (Kriminalvårdens årsredovisning 2017)*, p. 69.



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	2015	2016	2017
<i>Threats</i>	-	33	39
<i>Violence</i>	-	67	113
Total	82	100	152

Reported cases of threats and violence committed by staff against inmates

8.1.7 No data concerning violent crime committed by members of authority staff against inmates has been found.

8.2 What research or reporting has been carried out concerning the regimes covering detained victims in your jurisdiction?

8.2.1 Very little research or reporting on detainees as victims of crime has been found.

8.2.2 The article “Criminal, Crime Victim, or John Smith? Constructions of Victimhood and Perpetratorship Among Swedish Probationers” looks closer at criminals who are also victims of crime, that is, the victim-offender overlap. The study focuses on men who have become victims of violent crime, but who are also perpetrators of such crimes. Sixteen Swedish probationers have been interviewed in depth and asked to describe their victimisation as well as their offences. The interviewees clearly choose to distance themselves from ideas of victimhood and describe the victimhood of others as something shameful. Their own victimisation as well as their own violence against others are described in a pared-down, unemotional manner. Victimhood emerges in the study as something so negative that it can be described as shaming in the same way as labelling someone a criminal. Accepting victimhood and taking on the role of the victim are not an option for the interviewees. The role of the criminal, by contrast, is prominent.³⁵⁷

8.2.3 With regards to immigration detention, there has recently been some reporting on how violence and threats are on the increase at the immigration detention

³⁵⁷ Heber, Anita, Criminal, Crime Victim, or John Smith? Constructions of Victimhood and Perpetratorship Among Swedish Probationers, *International Criminal Justice Review* 22(2) 171-191, DIO: 10.1177/1057



centre in Gothenburg. However, the main focus of the reporting has been the situation and work environment for staff:

- Dahlin, Ann, Publikt, "Kraftig ökning av hot och våld på förvaret", 2018-05-16.
- Arbman Hansing, Sanna, ETC Göteborg, "Mer än en polisanmälan i veckan på förvaret", 2018-03-01.

8.2.4 The following reporting on immigration detention, but with a focus on the general situation for detainees, has also been found:

- The book *Flyktingfångelser, En antologi om Migrationsverkets förvar* is a collection of stories from detainees and people who come into contact with detainees through their work or through an NGO. It also describes the legal framework governing immigration detention.
- The documentary *Förvaret* about the situation for detainees and staff at the immigration detention centre in Flen.
- The report *Förvar under lupp, en studie av rättssäkerheten för asylsökande i förvar* by the Swedish Red Cross, which focuses on the lack of legal safeguards in the immigration detention process.

8.3 What, if any, systemic challenges have been identified in the regimes covering detained victims in your jurisdiction?

8.3.1 One conclusion that can be drawn from the correspondence with the Swedish Migration Agency is that detainees are not seen as victims or potential victims of crime. The guidelines concerning violence in detention focus on the situation and work environment for staff. As the system for incident reporting does not offer a category for acts of violence committed against a detainee, there is no data on the frequency of such crimes and thus becomes difficult to follow up on cases.

8.3.2 The Swedish Migration Agency and the Swedish Prison and Probation Service do not inform detainees of their rights as victims in any organised way, and staff generally do not receive any training on victims' rights.

8.4 Have any cases of violent crime in detention been covered in, for example, academic research, state-sanctioned or independent reports, or the media?

Immigration detention



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8.4.1 Very limited reporting has been found.

When the victim leaves the country

8.4.2 Two officers from the Swedish Prison and Probation Service were convicted for assaulting a detainee whom they were transporting from the immigration detention centre in Märsta. The victim could not participate during the preliminary investigation or the court hearing, as he had been returned to Sri Lanka. No agreement between Sweden and Sri Lanka existed that would enable cooperation between the respective police authorities, and the prosecutor had unsuccessfully tried to contact the victim via email. As the victim had applied for asylum in Sweden stating that he was being persecuted by the authorities in his home country, the prosecutor did not try to contact him through the Sri Lankan authorities.³⁵⁸

Pre-trial detention

8.4.3 In all of the following three cases, staff at pre-trial detention centres used violence against detainees. They were not convicted in court, but disciplinary sanctions were imposed by the Disciplinary Board:

- <https://www.svt.se/nyheter/lokalt/uppsala/se-filmen-dar-vardaren-slar-intagen-pa-haktet>
- <https://www.aftonbladet.se/nyheter/krim/a/0R8aB/har-far-vardaren-nog--knuffar-intagen-i-hissen>
- <https://www.aftonbladet.se/nyheter/a/jPz8aw/kriminalvardare-far-loneavdrag-efter-vald-mot-intagen>

APPENDICES

1. The Swedish Migration Agency, “The Swedish Migration Agency’s Detention Units”
2. The Swedish Prison and Probation Service, “Information for Detained Persons”
3. The Swedish Prison and Probation Service, “Information: Detainees Storboda Remand Prison”
4. The Swedish Police Authority, “For Persons Who Have Reported an Offence” (“Brottsofferbrev, Till dig som anmält ett brott”)

³⁵⁸ The Svea Court of Appeal, dom den 4 mars 2016 i mål nr B 9333-15.



9 INTERVIEWS WITH STAKEHOLDERS

9.1 Research methods

Civil Rights Defenders has performed 38 individual interviews and two focus groups with various stakeholders (including detention facility staff, lawyers, civil society organisations [CSOs], police officers, immigration officials, victims, and policy makers), with the aim of investigating and discussing the ability of victims of crimes committed in closed institutions to exercise their rights in practice. The interviews were performed in various parts of the country, including Stockholm, Märsta, Malmö, Gävle, Flen, Göteborg, and Helsingborg.

We found it very difficult to identify victims. One reason was the fact that victims in closed institutions are not seen as victims. We found it particularly challenging to identify and interview respondents from the Swedish Police Authority and CSOs supporting detainees in pre-trial detention. In Sweden, CSOs are more engaged in immigration detention than in pre-trial detention, which made it easier to identify and interview victims in immigration detention centres. Thanks to our contact network in civil society we were introduced to respondents who were of interest to the project.

The respondents were chosen either because of the relevance of their own experiences or because of their perceptions and opinions on victims' rights. In either case, we found it useful to get their general view on the situation in detention centres. By interviewing a range of stakeholders, including more peripheral ones such as former staff in detention centres, we were also able to source advice on where we might find respondents. This was key, especially with regards to victims' participation in the project.

The victims we interviewed already found themselves in vulnerable situations. We therefore met with them in safe spaces and in the presence of people they trust, such as a contact person or family member. Some of the victims are former detainees who were able to provide many of the key insights of this study.

Participating immigration detention centre staff were more prepared and had received permission from their employer to discuss these issues with us during working hours. However, we met with staff in pre-trial detention centres after working hours due to their wish to remain anonymous. As the interview questionnaire was extensive and mainly focused on detained victims, many of the respondents claimed that they lacked the relevant experience of observing, working with, or supporting victims of crime in detention. Because the questionnaire addressed concrete situations of violence, some of the questions thus became irrelevant.



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The interviews followed the structure provided in the Fair Trials interview guide. The interview guide was very helpful in planning for and maintaining focus during interviews. At the same time, we felt it was important not to interrupt the interviewees by asking too many questions. It was sometimes better to let the respondents speak, at least for as long as they continued to speak about something with relevance to the results and goals of the project.

All the interviews must continue to be anonymous, but have been summarised below.

9.2 Detention of migrants

A total of four victims in immigration detention were interviewed, all of whom had been kept in detention for five to ten months. None of the respondents perceived that they had been informed about their rights as victims if exposed to a crime while in detention. This perception has been reinforced by all interviewed stakeholders. Upon arrival, respondents recalled receiving information about the rules at the detention centre and the consequences should they fail to comply with them. They were also given information about receiving visitors, the reasons for why they had been deprived of their liberty, and other decisions that concerned them. Many inmates found that, due to a lack of access to interpretation, it was difficult to understand everything that was being said to them. According to CSOs, oral interpretation often works well but it can still be difficult for detainees to internalise the information, partly because of the psychosocial situation they find themselves in. There are also difficulties with the translation of written information (CSO 1). Several CSO representatives report that many inmates have been beaten by transport staff, causing repeat trauma. Some of the inmates at the centre can thus be deeply traumatised. These representatives report that when you come in from a civil society organisation, explaining that you are not from the police, inmates begin to open. Their trust in the police has been damaged. New things can therefore begin to emerge that they have not had the confidence to tell anyone before (CSO 1).

Detention centre staff do not comment on conditions during transport. Instead, there is a consensus that the biggest risk of violent interference is between inmates. Victims as well as detention centre staff confirm that inmates who have been subjected to a crime are given the opportunity to speak with staff. At the same time, it appears very difficult to have any injuries documented. All respondents who have become victims of violent crime in detention indicate that staff at the detention centre admitted to their right to report the incident but did not take any special action when the crime was brought to attention. For example, injuries were not documented, and doctors were not summoned. Staff did not help victims report the incidents. Instead, the victims were asked to contact their lawyer for assistance. However, most detention centre staff claim that they will assist a person who becomes subjected to a



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crime in various ways and will take steps to prevent the victim from having to be in the same room as the perpetrator. According to detention centre staff, neither is there an official policy nor procedures for protecting victims and helping them exercise their rights as expressed in the directives on victims' rights (staff 1, staff 4).

Even though several of the interviewed members of detention centre staff say that they should and would assist in case of a criminal offence, it seldom happens. On the question "Are you aware of any situation where a member of staff has helped a detainee report an incident to the police?" all interviewed members of staff said no.

The typical response from staff in case of any form of conflict between inmates has primarily been to separate them from each other (staff 1).

The fact that staff do not assist in the reporting of crimes is also confirmed by victims, NGO representatives, and lawyers. Many of the respondents' state that the individual must have personal contacts on the outside to be able to claim his rights as a victim of crime. One lawyer state that the reporting but also the documentation of a crime can come from a number of persons: from the lawyer, from NGOs who meet with the client in detention, or from the client's family. In one particular case, it was only a representative from an NGO who documented the victim's injuries. The same lawyer (lawyer 2) explains that one client lacked any knowledge about how to report an incident and that it was through friends of the client that the lawyer received information about the case. After the incident occurred, it took four days for the lawyer to find out what had happened and for the client to see a doctor about his injuries. It was the contact person who reached out to the detention centre to make them take responsibility.

Several NGO respondents emphasise that it is not uncommon for detainees to be unaware of the fact that they have a public counsel, as some counsels never visit detention centres. Other public counsels only offer their services over phone (NGO 2). NGO respondents would like to see guidelines for civil society on how to act if, for example, a detainee has been exposed to violence and a picture is taken of the injuries. Such guidelines are not currently available (NGO2,3). However, one of the respondents who assisted his agent in reporting a crime tells us that, because the victim had no address registered in the public register, he never received written acknowledgement of the complaint or notification of any decisions concerning the investigation. If an incident has been reported to a police officer, there is also a risk that the crime will not be investigated by the police. One of the lawyers (lawyer 2) describes how, that week, he had been asking the police for updates on a particular investigation for a year. The answer from the police was that the case was not a priority and that the client should still be expelled from the country. The lawyer got the feeling that the police was waiting for an expulsion decision to be executed. Only after a year's time was there a hearing with the client. When the client was finally



interviewed, the police investigator did not have pictures of the client's injuries, despite the fact that the lawyer had sent them to the police Development Center a year earlier. After the interview, the preliminary investigation was resumed.

With regards to training for staff, it has been confirmed that everyone who works in detention receives basic training, including in safety and how to handle physical and verbal violence. Staff is taught to defend themselves with the help of both physical and conversational techniques. On the other hand, there is no training in how to approach victims exposed to crime in detention (staff 1, staff 4).

On the question "Is there any 'whistle-blowing' legislation in place that would allow staff at a detention facility to report abuse committed by other members of detention staff?" the answer was in the affirmative, but it remains unclear how far up the ranks the information will reach. One member of staff answered that he/she did not know how much staff were allowed to say as they are bound by confidentiality agreements (staff 1).

Interviews with representatives from the Parliamentary Ombudsmen's OPCAT unit show that Sweden's NPM is not particularly focused on the content of the EU Directives. After this investigation, however, it is now being emphasised that the issue of victims' rights needs to be lifted in the context of OPCAT reviews. The conclusion is that victims of crime have difficulties claiming and exercising their rights as provided for in the EU Directives. Incidents that occur in custody are rarely treated as crimes, and the detainee as a victim of crime. There are no guidelines for how crime victims should be treated in any of the detention facilities covered by the study. All staff respondents state that individual detainees may come to them if there is a problem, but the absolute majority of interviewed detainees seem to have resisted being seen as victims of crime. In all the detention facilities covered by the study, there are possibilities to separate detainees, but it is difficult to find information about why and how a relocation has been made, as detainees are not treated as victims of crime who may need protection from a perpetrator.

9.3 Pre-trial detention

As it was extremely difficult to identify victims of crime in pre-trial detention centres, it has only been possible to carry out two interviews with detainees who have been exposed to a crime while in pre-trial detention. Both victims describe how they were subjected to violence by members of staff. Both also state that it was very difficult to get to see a doctor and have their injuries documented. Neither of the victims claim to have been informed about their rights as victims, only receiving information about their right to contact a lawyer. Vp 2 states that the Swedish authorities did not even inform him/her that they could press charges; instead, his/her sister had to find out about the procedure through a private lawyer. The fact that detainees receive no



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information about their rights as victims of crime has been confirmed by staff, including prestaff 1.

Detention staff confirms that violence may occur in pre-trial detention, but mainly between inmates. Violence between staff and inmates may occur in cases when an inmate is being asked to move but is not listening. In those situations, staff may resort to violence to move the person. Prestaff 1 explains that this type of force is used by staff who have received training in it. However, prestaff 1 also describes situations which she thought could be solved without the use of force. “You could talk more, make greater use of that tool, before resorting to violence.”

Staff tells us that personnel receive training in handling violent situations. In order to get a permanent position, staff must undergo basic training during which a great deal of focus is placed on such situations. However, the general focus is on physical violence and there is no training in conflict management. All staff respondents state that the main purpose of this training is to teach staff how to protect themselves and how to act towards a person who is violent. There is no training in how to approach a person who has been subjected to a crime while in detention.

There appears to be a procedure for how employees should handle situations where prisoners have been subjected to a crime. All staff respondents state that they inform inmates about how to report crimes, but that they do not assist the individual in filing the actual complaint. If a violent situation has arisen between inmates, the public defender will not be contacted. Instead, detention centre staff will “interrogate” those involved in the incident. If there are no procedure for moving people who are involved, it is the chief of security at the site who has the main responsibility for ensuring that individuals are provided with a safe environment after such an incident. If a detainee has been involved in a conflict, he/she often ends up in confinement, where he/she is considered protected. However, it remains unclear whether it is the victim or the perpetrator or both who are placed in isolation. In these types of situations, staff typically only make internal notifications. Violence between inmates is usually not reported to the police.

Interviews with detention centre staff – including, for example, with prestaff 1 – indicate that there is a risk that inmates in need of an interpreter get caught up in the system. It takes time to find an interpreter and it may sometimes be difficult to understand that the inmate is asking for an interpreter. Preothers 2 emphasises that access to interpreters differs very much depending on the facility or type of detention centre. The vast majority have good access to interpreters and support personnel, while others do not make it a priority. Every time an interpreter is called, there is a cost involved, which ultimately ends up in the department’s budget. And as soon as there is money involved, it will have an effect on how available resources are used. When asked whether he/she had noticed this, preothers 2 answered: “Yes, many



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times.” Preothers 2 claims to have been told that it costs money each time you bring in an interpreter, which is why there are guidelines for when to do it.

One of the staff respondents works in a youth department. The respondent’s experiences are much more positive than those of staff in departments for adults. In the youth department, the staff’s attitude towards the inmates seems to be better. But just like in departments for adults, staff in youth departments receive no training in victims’ rights. Victims appear to be responded to in a similar manner, for example by separating victims from perpetrators, but no additional measures are taken with regards to the victim. Concerning the reporting of incidents, lawyers argue that the fact that victims cannot turn to another police officer but must report any crime to the police who has come to interrogate the inmate for the crime he/she is suspected of committing leads the victim not to report that he/she has been subjected to a crime. The inmate already finds him-/herself in a difficult situation and often feels very exposed. It is not uncommon for inmates to have little or no trust in the police and society at large. The lawyers interviewed confirm that detainees who have been subjected to a crime are entitled to an injured party counsel, but that they generally do not know how this works in practice. Prelaw 1 says: “One problem is that it’s not part of the public defender’s role to help with these issues. If the public defender assists with such issues, it’s because they are human.”

Prelaw 2 says that another difficulty is that, in immigration detention, inmates are part of a collective and can make and receive calls, while in pre-trial detention, with full restrictions, inmates are not allowed contact with anyone other than detention centre staff and the public defender. This means that it is often more difficult to find witnesses to a crime that has taken place in pre-trial detention.

Prelaw 3 believes that rigid bureaucracy and the inertia of the system can be too much for victims of crime. Prelaw 3 describes how clients request phone calls and assert various rights but moving through the slow system proves too much. Prelaw 3 notes that when victims of crime assert their rights, they are still being treated as detainees. The general culture and bureaucracy within the correctional system works to keep people passive, discouraging them from facing conflict head-on. Though rights are not explicitly denied, over-bureaucratisation causes people to feel powerless. This is especially common when inmates become victims of crime.

Several respondents highlight the fact that documents relating to police reports are sent to the address of the public register, which means that they do not reach the detainee.

Finally, there is a consensus among the lawyers who have been interviewed, that crimes against victims who have been deprived of their liberty are of very low priority to police officers.



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