

## **Questioning Fairness in Swedish Asylum Decisions**

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### **Abstract**

This article examines Swedish asylum deliberations regarding families with children with severe apathy, a condition where the child gradually loses all bodily function. The paper outlines the political context and medical evidence that has evolved since the beginning of the 2000s. It uses case studies and frequencies drawing from a case file inventory covering 24 families, many with minority belonging. The asylum process, case law and the decision makers' role in reiterating and interpreting the families' asylum narratives, is explored, analysed and discussed using discourse analysis and interpreted using intersectional theory. Findings suggests that the asylum narratives are greatly reduced and reformulated in a way that seem detrimental to state obligations towards for example rape victims. Findings also suggest that political persecution should be taken more seriously by Swedish migration authorities. Finally, evidence indicates a need for a feminist perspective, and overall strategy, at authority level that does not discriminate.

### **Introduction**

This article explores the asylum process in Sweden. It raise concerns with regards to the rejections on asylum and protection, access to a just process and impact on mental health and social exclusion, in particular for vulnerable persons<sup>1</sup> and ethnic minority groups. This is important because if the systems and institutions fail in their duties to provide protection for forced migrants who have already been victims of serious state crime, this can disempower victims and become secondary victimisation (Bhui 2002) and at worst be a direct risk to life. Thus the focus of the article is on the way the process is administered by the migration authorities, case law, and its relation to migration policy, and it examines the institutions' asylum deliberations of vulnerable persons. Sweden is

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<sup>1</sup> According to the Council Directive (2003) this includes “minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence” (31).

a democratic welfare state<sup>2</sup> and part of the European Union (EU) since 1995. The Swedish Constitution states: “public power is to be exercised with respect for the equal<sup>3</sup> worth of all and the liberty and dignity of the individual” (Ministry of Justice 2013:5) and public institutions should combat discrimination, as outlined in General Comment No. 14 (Article 12.18, UN 2000).

Politically, however, since the 1980s far right extremism has been on the increase. In 2010, a far right party called “Sverigedemokraterna” (“SD”) was elected. This is a racist and islamophobic party with roots in parties with Nazi and fascist ideologies (Lindberg 2013)<sup>4</sup>. One of SD’s goals is to reduce asylum and family reunification by 90 percent (Larsson 2012).<sup>5</sup> The specific focus of this article is on families with “apathetic asylum children” (Bodeård 2013), which refers to a condition of gradual loss of bodily function. The political context of migration policy and medical evidence that has evolved since the beginning of the 2000s is outlined and the reiteration and interpretation of asylum narratives in the migration authorities’ rejection decisions reflected upon. First, however, some constructs will be defined.

Forced Migration Online (2012) defines “*forced migrants*” as persons who have been forced to flee their homes due to armed conflict including civil war, generalized violence and/or persecution on the grounds of nationality, race, religion, political opinion, or social group and where the country’s state authorities are unable or unwilling to protect

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<sup>2</sup> The Swedish Parliament is elected through Proportional Representation whereby to gain representation, a party must receive a minimum of four percent of all votes. Presently, pre-2014 election, there are eight parties in the Parliament, of which four form the ruling right wing coalition.

<sup>3</sup> Sweden was one of the first western countries to implement gender equity policies in employment and childcare; it has been touted as embracing the ideals of class, income and gender equality (Lundberg and Fritzell 2008).

<sup>4</sup> As explained by Schön (2014), at the end of the 1980’s different groups of right wing extremists attempted to join up together. This resulted in the forming of the SD party in Malmö in 1988. Elected onto its board were several persons with clearly expressed Nazi and racist ideologies; one of them was a former SS-veteran and another an active neo-Nazi. In 1991-1994 a xenophobic populist party was voted into Parliament. The present SD leader joined the party in 1995 (Schön 2014). During the 1990’s there were statements made by representatives of the right wing extremist movement to change strategy to become mainstream. Schön (2014) highlights this matter with a reference to another SS-veteran who in 1998 in a Nazi magazine (“*Wärendsbladet*”) called for white supremacy beliefs to be supported more strategically. In the election in 2006, the SD party got 2.9% of votes, in 2010 their support had increased to 5.7% (Expo 2014). Violence and threats also persist: in 2010, two SD Members of Parliament; the economy and the justice spokesmen, and a Stockholm SD politician, filmed themselves with a mobile phone armed with iron bars intending to attack a drunk man who they had racially abused (Roström Andersson 2012; Svenska Dagbladet 2012).

<sup>5</sup> With a far right party elected into Parliament, the risks of extreme right wing ideologies’ influence on state institutions also increases. However, research into far right ideology’s influence on migration policy (e.g. through political propaganda) and practice (such as through technology/health technology), and impact on morbidity and mortality of vulnerable persons and groups, is virtually non-existent.

them. “*Asylum seekers*” are persons who seek asylum for these reasons (ibid.). The SMB (SMB 2013a:1) states that: a) *asylum seeker* is a “person who makes their way to Sweden and applies for protection (asylum) here, but whose application is not yet decided”, b) a *refugee*, is in accordance with “...the UN Convention Relating to the Status of Refugees<sup>6</sup>, Swedish legislation and EU regulations, a person [who] has well-founded reasons to fear persecution due to race, nationality, religious or political beliefs, gender, sexual orientation or affiliation to a particular social group”, c) “*Subsidiary protection*” is in accordance with EU regulations, protection for persons at risk of being sentenced to death, or subject to corporal punishment, torture or other inhumane or degrading treatment or punishment at serious risk of injury due to armed conflict (for civilians), d) “*Other protection*” is, in accordance with Swedish legislation, for persons who are unable to return due to armed conflict, serious opposition or environmental disaster and have a well-founded fear of being subjected to serious violation, and e) residency can be given due to “*exceptionally distressing circumstances*”<sup>7</sup> depending on health status, adaptation to Sweden, and the situation in the country of origin (Lönqvist and Borén 2011).

### **The impact of asylum assessments on mental health and social exclusion**

The specific processes that relate to asylum law and its application is an under researched field (Herlihy and Turner 2009). As is its impacts on mental health. What is known is that the type, extent and frequencies of traumatising events (e.g. violence, torture, etc.) and the context pre-, during and post migration, in which events are experienced all impact on mental health (Johansson Blight 2009 and Johansson Blight et al. 2014). The contexts within the countries of asylum, and the types of restrictions these entail, such as the possibility to move about freely, work, etc. play a major role in mental health. Evidence points towards restrictive border policies being harmful and causing deaths for reasons such as drowning, heat exposure and suffocation during migration journeys (Grewcock 2009; Steel et al. 2011a). Elevated rates of poor mental health including anxiety, self-harm, depression, suicide/attempts, post-traumatic stress disorder (PTSD) have been identified in relation to immigration detention, temporary

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<sup>6</sup> That is, the “Geneva Convention” (1951), which Sweden ratified on 16<sup>th</sup> October 1954 (UN Treaty Collection. Available online at [treaties.un.org/](http://treaties.un.org/)). For more information, see Hathaway (2005).

<sup>7</sup> 5 Chapter. 6 § Swedish Aliens Act 2006. In Swedish: “Synnerligen eller särskilt” “ömmade omständigheter” (called “*particularly distressing circumstances*” in Johansson Blight et al. 2012) replaced “humanitarian reasons” in 2006.

protection, asylum assessments, separation from, and concern for, family members, unemployment, racism and discrimination, housing problems etc. (Søndergaard 2002; Johansson Blight 2009; Robjant et al. 2009; Bhugra et al. 2010; Steel et al. 2011a; Steel et al. 2011b; Fazel et al. 2012).

Conditions such as these with high levels of stress can impact on the ability to recall and recount events and insensitive questioning poses a risk of re-traumatisation and serious emotional reactions; for example, re-experiencing of events, dissociation and worsening of mental health (e.g. Bögnér et al. 2007; Johansson Blight et al. 2012; Herlihy et al. 2012). Inconsistent reporting is a consequence of poor mental health due to traumatic experiences (Herlihy et al. 2002). Moreover, several authors have noted a “culture of disbelief” towards asylum seekers, i.e. attitudes in the environment suggesting that asylum seekers are unwanted or disbelieved (Silove 2006; Grewcock 2009; Herlihy and Turner 2009). Thus, interviewers and decision makers’ own values, prejudices and self- and cultural awareness are important (Bhui 2002). If persons in these positions are unable to cope with stories of human rights atrocities, trivialise accounts, and/or display diminished empathy, avoidance, cynicism, minimisation of asylum seekers’ distress (Herlihy and Turner 2009) etc., this impacts on trust and case law, and can compound social exclusion. One example of such an exclusion process is discussed here. It relates to the situation for rejected asylum seeking families with “apathetic asylum children” in Sweden (Johansson Blight et al. 2012)<sup>8</sup> (Envall 2013). Prior conditions to apathy include depression, self-harm and suicide attempts, anxiety, aggressive outbursts, inconsolable screaming, and a wish to die (Bodegård 2005a, 2006; Godani et al. 2008; Søndergaard et al. 2012; Envall 2013). The condition itself is severely disabling<sup>9</sup> and life threatening.

Bodegård (2005c) has described the condition as a gradual loss of function; a threshold is passed when symptoms start to somatise, and the person loses bodily function,

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<sup>8</sup> As explained by Envall (2013) the medical diagnosis is “Severe Depressive Episode with Psychotic Symptoms” in the International Classification of Diseases (ICD), version 2010 (ICD-10) code: F32.3 “A”. ICD is a standard diagnostic tool for clinical purposes, health management and epidemiology. Available online at [www.who.int/classifications/icd/en/](http://www.who.int/classifications/icd/en/). “A” indicates to that this is a sub-group to “F32.3”, which is a “... state of stupor of a severe grade” and can be used in connection with “Z65.8A: problems in connection with refugees and those seeking asylum”. In the past in Sweden, the condition has also been referred to as “dissociate stupor” and “depressive devitalisation”.

<sup>9</sup> Bodegård (2005b) suggests an important component in treatment is to ensure that the families are not subject to stress above the families’ stress-thresholds.

becomes incontinent, unresponsive to external stimuli including pain, and dependent on daily routines such as hygiene and feeding (through naso-gastric tube or spoon).<sup>10</sup>

## **Theoretical Framework**

Intersectional analysis is used in this article to explore and discuss the asylum process and case law. The theoretical framework is applied here to examine how the asylum narrative is shaped, produced, and reproduced within the *structure* that exists and considers *race/ethnicity and gender* (Olesen 2003). As stated, Sweden has an international reputation for gender equality policies. This, according to Liinason (2011:17), has been considered the result of "... a successful collaboration between the feminist movement and the state." In this context, the questions of interest are: what knowledge is institutionalised? What does it enable and how does race/ethnicity and gender operate within this? (Hill Collin 2011; Liinason 2011). First, with regards to *structure*, Grewcock (2009) suggests that asylum procedures can act as a process of exclusion. However, according to the SMB, it is "... *the Swedish Aliens Act, that decides who will stay in Sweden and who will not*" (Borelius 2011: 14-15). But the existence of a law does not tell us *how* the law is applied (Norström 2004).

Legal practice is part of a cultural construction framed within time-bound perceptions about justice and legal certainty; evidence of discrepancies between the law and case law exists both before and after the Migration Court system was introduced in 2006 (e.g. Norström 2004; Feijen and Frennmark 2011; Johansson Blight et al. 2012; Andersson et al. 2011; Lundberg 2011). The authorities that casework the process exist, and their cultures are formed within, and in relation to, wider society. Decisions about protection are taken within a legal context where decision makers are representatives of, what by law should be, a legal, objective, institution that facilitates just decisions on the basis of presented asylum narratives. Of relevance here is that a new Aliens Act was introduced in Sweden in 2006, together with a possibility to appeal SMB decisions through a Migration Court and the Migration Court of Appeal.<sup>11</sup> The reasons for this court process

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<sup>10</sup> This has been detected through stress-hormone analysis of saliva and blood tests (Söndergaard et al. 2012). Söndergaard et al. showed: associations between apathy and neurobiological markers, and that blood-level cortisol reduced the longer children with apathy needed naso-gastric tube feeding as well as that with treatment and recovery, cortisol levels started to fall into the matched comparison group values.

<sup>11</sup> Migration Court of Appeal deliberations are precedent decisions. Estimates from 2012 suggest very few cases are tried at the Migration Court of Appeal (Johansson Blight et al. 2014).

was to improve on justice in the asylum process and make the process more coherent as it had been found that the legal system was too *ad hoc*, relying too much on written evidence, with refugees not being sufficiently heard (Andersson et al. 2011). In 2009, however, restrictive interpretations of case law were identified by the former President of the Swedish Court of Appeal, Government appointed investigator in the inquiry ‘The New Migration Process’ (SOU 2009:56), which influenced rejections on permissions to stay<sup>12</sup> (Hübinette et al. 2009).

Further, in 2011, a group of lawyers (Andersson et al. 2011) called for greater humanity and justice in the asylum process, highlighting that case law was still far more restrictive than what the legislators of the Aliens Act (2005: 716) intended with a high demand for written evidence being placed on individual asylum applicants who has few possibilities of being heard in the courts. Moreover, many of the families with “apathetic asylum children” are from countries known to have poor human rights records<sup>13</sup> (Hultcrantz and von Knorring 2013). It is known that spouses and children are often targets of persecution (Walter and Bala 2006). High levels of human rights violations have often been directed at the family, the children who later developed apathy, and/or siblings and parents (Söndergaard et al. 2012; Bodegård 2013). Even so, in Sweden these families are often denied protection and live under threats of deportation.<sup>14</sup> As emphasised by the lawyers (Hübinette et al. 2009; Andersson et al. 2011), the abandonment of humanitarian protection, inhumane interpretations and injustice in the asylum process, derive not from what is stated in Swedish law but from the case law applied by the migration authorities.

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<sup>12</sup> Examples given include that policy guidance, SMB and the Migration Court of Appeal have been taking into account the economic consequences on the Swedish economy, which has led to rejections. Despite that this is not what the law states (Hübinette et al. 2009). Further, that the migration authorities rely too much on “objective” measures of time to assess whether the child have become attached to Sweden or not, which also impacts on the outcome on permission to stay. Similarly, that patient journals are in general considered to be of less value as evidence than medical certificates, however, as is emphasised by Hübinette et al. (2009), the “the principle of free proof ” also applies to the Migration Courts; it is the content of any evidence that is important and which should be assessed. Also, the report on “exceptionally distressing circumstances”, states that the total economic costs of health care for some illnesses (it does not say which) can constitute grounds for rejection (Lönqvist and Borén 2011).

<sup>13</sup> Published research and anecdotal reports in Sweden include children from Balkan countries, former Soviet states, Northern African countries, Turkey and Bangladesh.

<sup>14</sup> Despite agreed obligations such as under the Convention of the rights of people with disabilities (see for example Shamilova 2012). Sweden ratified this Convention on 15th December 2008 (UN Treaty Collection. Available online at [treaties.un.org/](http://treaties.un.org/))

Thus, to understand the impact of asylum assessments on mental health, the focus needs to be not only on the asylum seekers themselves but on the asylum interviewers and decision makers (Herlihy and Turner 2009; Bhugra et al. 2011). The legal system is, in other words, a “social determinant of health” which can affect the public health of asylum seekers and other migrants and which matters to social justice, social exclusion (Shaw et al. 1999; Marmot 2012) and relationships (Dawson 2011). The system is studied by exploring the administration of the asylum process and the deliberations of asylum applications by its authorities and decision makers. Secondly, *ethnicity/race*, as mentioned in the introduction, discrimination and racism pose particular risks to forced migrants in general and vulnerable persons in particular in the asylum process. Discrimination and racism may be pushed by national politics and attitudes, thus the social and political contexts where the process takes place need also be explored (Bhui 2002). In the families with “apathetic asylum children”, minority belonging appears to be common<sup>15</sup>. In Sweden, discrimination against minorities; Saami, Roma<sup>16</sup> and Muslims, has been widespread (Hunt 2006; Hultén et al. 2008; UNA 2009). It is, hence, of specific importance to understand institutional and structural racism (Krieger 2000; Kamali 2009; Bhui 2002; Bhui 2009) as part of public health in making sense of rejections of applications for asylum and protection. Thirdly, regarding *gender*. As recognised by Walter and Bala (2006) persecution impacts on both genders. However, vulnerability may be produced in different ways for women and men. Women’s social position and contextual circumstance can affect their experiences (Edgren 2011).

For example, rape is a common experience amongst female asylum seekers. It is used systematically as a tactic of war and armed conflict and is highly prevalent in the context of state insecurity as well as in contexts of social exclusion- including in Europe (Keygnaert et al. 2012; IDC 2013). Rape can impact directly on narration in legal settings (Bögner et al. 2007; Herlihy et al. 2002). Interviews with female rape victims suggest that a number of factors contribute to the ability to report rape without undue distress, and for interviewers to build trust and hear the full asylum narrative. It has been

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<sup>15</sup> Regarding minority belonging, in Johansson Blight et al. (2012) for children with *severe* apathy below 18 years of age: ten children were from eight Romani families from Serbia and Kosovo, four children were from four Uyghur families from Kazakhstan, and 12 children were from 11 families in Kazakhstan (ethnicity not known), Armenia, Azerbaijan, North Ossetia/Russia, Kyrgyzstan, Uzbekistan, and Turkey.

<sup>16</sup> One example of this is the registering of Roma people in Sweden historically, but also presently in Swedish police registers (Orrenius 2013a and 2013b). As reported in the media, the latter includes more than one thousand children and does not highlight if a person has a criminal record or not.

emphasised that unless survivors can trust that the justice system will support them, be safe and just, it is unlikely experiences of abuse will be reported (IDC 2013). As well as the interview setting, factors include being able to recount events at one's own pace, being believed and treated with "caring professionalism", if the interviewer is sympathetic and has understood (for example can accept that there can be potential delays between the rape and the reporting of it), and whether disclosures of intimate details have had to be made to different interviewers (Herlihy and Turner 2009). Further, rejections of asylum claims can produce gender vulnerabilities. "PICUM" (2013), for example highlights that undocumented women exposed to violence because of their immigration status are denied equal access to justice, refused services such as women's shelters, and risk arrest or deportation should they contact the police.

### **Families with children with apathy: the discourse on their need for protection**

"Apathetic asylum children" (and adults) has been identified in the Swedish asylum system for more than 10 years<sup>17</sup>. A key issue that distinguishes cases that include families with "apathetic asylum children" from other asylum seeking families, is the discourse referring to the potential cause of apathy and the subsequent interpretation of the need for these families to be granted protection<sup>18</sup>.

In 2005, the Swedish Migration Minister argued that granting residency for children with apathy could lead to a humanitarian catastrophe (Engström 2005). Put another way, the Minister implied that the number of children with apathy would overwhelmingly exceed Sweden's available economic resources<sup>19</sup> (WHO 2008).

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<sup>17</sup> Cross-sectional data from various points in time suggests the number of children with apathy has varied over the years. This may be due to changes in Swedish migration policy (Söndergaard 2005; Hessle and Ahmadi 2006a; Svenonius 2006; Bodegård 2010). Routine data and follow-ups on persons with apathy who are deported, and not returned to Sweden, is lacking (Envall 2013).

<sup>18</sup> Since the intensified debate starting in the beginning of the 2000s there has been obstruction of medical scientific studies (Bodegård 2013).

<sup>19</sup> Underlying this broader anti-immigrant discourse is, as noted elsewhere, a wish to deter "bogus" refugees, that is, asylum-seekers whose "real" reasons are economic and not persecution (Fekete 2001). Such attitudes are still present. For example, similar to the World Health Organization's (WHO) cartoon aimed at children to inform them about their right to health (WHO 2002), the SMB also produced a cartoon aimed at children (5-12 year olds) (Borelius 2011). However, the SMB aims to inform children about what "the Swedish Law" states. The story tells of a badger family who are deported as their reasons (forced unemployment due to their group membership in their country of origin) are assessed by the SMB to be economic and not for protection. The badger family are met at the airport by relatives and the story has a happy ending. The cartoon has been criticised for its stark contradiction to the reality that many rejected asylum seekers face (Djampour 2011).

A Government inquiry, commissioned in 2006, promoted a theory, which gained large support, that children may copy each other to secure residency, or that they might be malingering, cheating, or poisoned by their parents (Hessle and Ahmadi 2006). The authors suggested that many children with apathy were “far from passive victims”:

*“[C]hildren who are destructive or using their health/ill-health as a method to push their will are active actors rather than traumatised victims paralysed by their sense of hopelessness. This could in part explain the vast spread of the problem in recent years.”* (Hessle and Ahmadi 2006: 94-95)

The inquiry also stated that the police were dealing with the issue of poisoning (Hessle and Ahmadi 2006). However, the authors omitted to say that it was a SMB official who reported this suspicion in the first place, or that they were aware of this (Tamas 2006). Significantly, one of the expert psychiatrists referred to in the inquiry, who proposed a theory of “malingering by proxy”, later joined a Swedish far right party, described by experts as having a Nazi ideology (Hessle and Ahmadi 2006; Vergara 2012). This indicates an involvement of far right ideology in immigration policy, also noted elsewhere (Grewcock 2009). Undoubtedly, there were opportunities for the Government inquiry in 2006/07 to take an alternative stance to one that aimed to undermine the credibility of the children and their parents/families (see also Tamas 2009). There was an extensive medical debate in “Läkartidningen” (the main medical journal) suggesting that exposure to traumatising life events can contribute to apathy. The Migration Minister and the Government investigator also met with clinicians and researchers, who presented evidence from various fields of research.

This included that the condition in itself is not a new phenomenon<sup>20</sup>, that a) high levels of traumatising life events in the families and long-term stress before and during migration as well as after arrival in Sweden exist; b) severe symptoms most often occur after arrival and c) recovery is possible with stability and treatment (Bodegård 2005a;

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<sup>20</sup> Apathy has been described in child psychiatry, catastrophe- and military psychiatry, and refugee mental health, and as similar to “pervasive refusal syndrome” (Steel et al. 2001; Bodegård 2005a; Bodegård 2005b; Bodegård 2006; Söndergaard et al. 2012).

Bodegård 2006; Godani et al. 2008)<sup>21</sup>. Politicians did not consider this evidence for the most part.

The police never found evidence of intoxication (Ascher and Gustavsson 2006; Johansson et al. 2006) and changes in steroid-levels in blood-samples from children with apathy refute theories of simulation and malingering (Söndergaard et al. 2012; Snaprud 2012).

### **Case File Evidence**

In 2011, an inventory included 24 families with a total of 30 children with apathy (26 with severe) who had been rejected protection in Sweden. The present paper focuses on previously unpublished inventory data derived from these decisions. The asylum narratives include severe beatings, rapes, killings, abductions, imprisonments, attacks on homes and threats to life. The perpetrators were often one or more persons external to the family. Single parenthood was common (10 of 24 families, of which 9 were females).

In 20 of 24 families at least one parent was distressed to the extent that the capacity to care was reduced (Johansson Blight et al. 2012). The case-file inventory<sup>22</sup> was undertaken between 30<sup>th</sup> August 2011 and 22<sup>nd</sup> November 2011, to explore the migration authorities' rejection decisions (Johansson Blight et al. 2012).

The empirical data reviewed incorporates a total of 58 decisions included in the 24 families' case files with at least one child with apathy<sup>23</sup>. The files were revisited during two brief periods in 2012<sup>24</sup>. These official documents are hence analysed retrospectively<sup>25</sup>. At the core is the assessments of asylum and protection, how fear of persecution is

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<sup>21</sup> This is in line with the right to remedy and reparation (including rehabilitation) for victims of violations of international human rights and humanitarian law (UN, E/CN.4/2000/62) (Sveaass 2013).

<sup>22</sup> Case files were "snowball" sampled, i.e. advocates across Sweden were approached and asked to ask families for consent to use anonymised text extracts of their files (Johansson Blight et al. 2012). The case files include existing documents, decisions from: 1) the SMB: initial decision and decision to inhibit deportation; 2) the Migration Court and 3) the Court of Appeal, and finally, 4) supplementary information such as medical certificates. A questionnaire was composed together with key experts including lawyers, human rights advocates, clinicians, and professors and used to map this information. To ensure anonymity, the case files were consecutively marked with "Questionnaire 1," 2, 3, etc.

<sup>23</sup> This information derives from the SMB or Migration Court documents or medical certificates.

<sup>24</sup> Four working days in April and two working days in August 2012.

<sup>25</sup> Advantages with analysing existing texts is that the most vulnerable people, the children and their families, are not forced to become personally and/or negatively affected by the political nature of process scrutiny. In this way potential researcher bias is also reduced (Frankfort-Nachmias and Nachmias 1992)

verbalised and interpreted and how this relates to other information, used by the migration authorities, to validate this.

The migration authorities' "retold content" or "interpretation of asylum seekers" personal narratives (Ellis and Bochner 2003) is analysed in relation to contemporary politics and how this may influence administration as well as the feminist presence in these institutions. The intention is to provide insights into the administrative process, to explore the decision makers' gender and ethnicity and whether their attitudes and behaviours are in line with the past debate. The intention is not to generalise to all asylum case files.

The asylum seekers' personal narratives in the asylum process are here considered as "extended accounts" of topically specific descriptions of events involving exposure to persecution and human rights violations, forced migration, and well-founded fear<sup>26</sup> of persecution (Kohler Riessman 2000). Three cases (Case file 1 to 3) have been analysed in detail to explore the qualitative meanings of the decision. Extracts from one further case file is used to highlight specific points in the administrative process.

All four families were rejected permission to stay for reasons of asylum, protection and exceptionally distressing circumstances, initially and on appeal<sup>27</sup>. Discourse analysis (Widdowson 2004) is used to examine the decision makers' reiteration and interpretation of the asylum narratives in relation to the wider social and political context.

The "decision makers" are Rapporteurs and Decision Maker Officials (DMO). Decision-maker frequencies<sup>28</sup> were calculated using MS Excel 2010. Twenty six<sup>29</sup> of these decisions are first instance (SMB) rejection deliberations.

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and other researchers can request the decisions from the migration authorities and validate them in their own analysis.

<sup>26</sup> It is plausible that the threat of forced return can invoke serious distress (Johansson Blight et al. 2014).

<sup>27</sup> The four families arrived in Sweden/sought asylum between 2008 and 2010 and received residency between 2011 and 2012 after inhibition on deportation.

<sup>28</sup> Groups level frequencies of gender and ethnicity based on names and work titles.

<sup>29</sup> Three SMB decisions and four Migration Court decisions were not available on data collection.

The decisions were taken by the SMB between 2004 and 2011. Of all the SMB decisions, 15 (75%) of 20<sup>28</sup> were taken at assessment units in Stockholm, Uppsala, and Gothenburg. Twenty five<sup>27</sup> decisions are Migration Courts', taken between 2008 and 2011<sup>30</sup>. Thirteen decisions (60%) of 22<sup>27</sup> available Migration Court decisions were taken in Stockholm and Gothenburg. One (of two) transcripts of an oral procedure interview is also included. The oral procedure interview transcript is reviewed here as it provides an insight into what types of questions were asked and how they were posed<sup>31</sup>.

### **The Asylum Process**

The SMB is the first point of call for asylum applications<sup>32</sup>. The SMB is not a court, but an authority that considers all residency applications to Sweden.

In terms of the process, the SMB first takes pictures of the asylum seeker, asks for proof of identity, the migration route, family situation and next of kin. Following this, on another day, a one-off two to three hours oral asylum investigation is undertaken to hear the personal asylum narrative<sup>33</sup>. The SMB states:

*Your stories are written down in a record. A record is notes about what you have said. You will read through the record with your public council and custodian. If there are any mistakes it is important that they are corrected - otherwise it will be difficult for you to explain what is correct later on. (SMB 2012b: 1)*

The first SMB interview forms the basis of the asylum investigation. Typically, the meeting is attended by the person/s seeking asylum and a legal representative, appointed and subsidised by the SMB (or who may be selected by the applicant).

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<sup>30</sup> Decisions from the Migration Court of Appeal and decisions on impediments to enforcement were not included due to the small number of documents available in the files.

<sup>31</sup> Analyses of transcripts have some disadvantages, compared with for example an observational study, as influences on the interview such as how the interviewer and interviewee are sitting and speaking, their facial expressions, etc. are lost, thereby limiting claims of representation (Widdowson 2004).

<sup>32</sup> About this institution: The SMB assess all applications for residency in Sweden. In 2011, the SMB (2012a: 3) stated that it "should be a leading actor within the EU and internationally." In this work, as the SMB (2013b) states, the authority: "...is commissioned by parliament and government, who set the Swedish asylum and migration policy. We are thus commissioned by the Swedish people, through the politicians who make decisions on migration policy" (1). The SMB General Director (GD) was appointed in 2012, prior to this he was GD for the Swedish Secret Police.

<sup>33</sup> The asylum narratives are often based on one or both of the parents' situations. The children's situations are less often reiterated (Johansson Blight et al. 2012).

The Rapporteur who holds the asylum investigation and keeps records and the DMO, who is responsible for the decision, can also be present. An interpreter should also be made available.

Areas inquired about include the asylum seeker's age, nationality, information about other members of the family, existing identity documents, how the asylum seeker feels, reasons for leaving the country of origin, what the situation in the country was like, what happened, and why return is not possible (SMB 2012b).

If a case is rejected an appeal can be lodged to the Migration Court. This is a two-party procedure whereby the rejected person/s meet with the SMB in one of the Migration Courts<sup>34</sup>. As in a general administrative court, this procedure commonly takes place in writing (Swedish Courts 2013). An Appeal Judge<sup>35</sup> and a Rapporteur are signatories to the Migration Court decision as well as three lay judges (though not always). In the case of a negative decision, an appeal can be made in writing to the Migration Court of Appeal, where there are no lay judges. There is no further right to appeal subsequent to this. Regarding deportations, decisions can be made to impede enforcement for medical reasons or for "other particular reasons."<sup>36</sup> In relation to the appeal to the Migration Court, an "oral procedure"<sup>37</sup> can be applied for to clarify any misunderstandings or ambiguities prior to a decision.

The pre-negotiation interview transcript for Case file 1 begins with the father's outline of the reasons for seeking asylum. He reports that he has been abducted, detained, and for one year and seven months exposed to threats and torture<sup>38</sup> in his country of origin. Further, he considers himself at risk of being killed if he returns. Following the transcription of the pre-negotiation interview is a battery of focused questions regarding the potential reasons of persecution:

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<sup>34</sup> In the Johansson Blight et al. 2012 case files, all 24 families had been rejected by the SMB in the first instance and all appeals to the Migration Courts were also rejected.

<sup>35</sup> Equivalent to the DMO on the court decision.

<sup>36</sup> Chapter 12, 18 § first paragraph 3 Aliens Act 2005:716.

<sup>37</sup> Oral procedure negotiations (in Swedish: 'muntlig förhandling', SveDom. 2012), or "pre-judgement negotiations" (Johansson Blight et al. 2012). In Johansson Blight et al.'s (2012) study, seven of 24 families had requested negotiation but were not approved. In 11 families no requests had been made. In two where negotiation was requested, it was also held (in four case files it was unclear if a request had been made).

<sup>38</sup> Sweden ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) on 8<sup>th</sup> January 1986 (UN Treaty Collection. Available online at [treaties.un.org/](http://treaties.un.org/)).

*To whom did you say this? To him in person? Who are 'we'? Who are 'they'? Are they members of the party? Are they also leaders? [...]Who phoned you? When did you meet for the first time? Who did you meet? (Case file 1, SMB Oral procedure, Questionnaire 1)*

In response, the father most often provides one to two sentence answers.

The questions in the interview seem to be posed to assess the credibility of the narrative. It is notable however that in many ways the questions come across more like an interrogation.

### **Asylum narration, reiteration and interpretation**

The focus now will be on the case files themselves. Case law is administered through the asylum process. Significantly, exploring the SMB decision documents, provides limited information about the fairness of the investigation.

Instead they describe information about the asylum seeker, an outcome, and a point of law. The structure of the decision is similar to the Migration Court decisions. For example, first the name of the person appealing the decision is stated, followed by the asylum narrative, and then the outcome of the decision. This is followed with a reference to the legal framework in support of or against the case, a discussion of existing evidence, and an assessment of credibility.

The DMO's/ Rapporteurs often refer to their organisation rather than themselves, i.e. for example: "the SMB notes..." or they write "She is not...", "The children cite..." and so on. As such, the more personal elements of the asylum narratives disappear. A reference is often made to the Migration Court of Appeal decision (MIG 2007:12) that states:

*In asylum law it is a basic principle that it is the asylum seeker who should make the need for international protection probable. (SMB decision, Questionnaire 4)*

The DMO's/ Rapporteurs consider what documents are needed and suitable to support or validate the asylum narrative. These are referred to, assessed, and used in the interpretation and contextualisation of the asylum narratives (Johansson Blight et al. 2012; Shamilova 2012). Documents include; proof of identity, evidence of persecution

(such as documents to demonstrate political affiliation relating to political asylum), and medical certificates. In this light, the assessment of probability relies on written documentation.

As seen in this example:

*The SMB notes that no written documentation has been submitted to support [the asylum seeker] identity or the asylum narrative. The SMB finds it particularly notable that the [asylum seeker] has not submitted any documentation with regards to his [political membership] or document from the hospital where he, according to his own statement, would have received treatment for a period of one month. The SMB has thus only the [asylum seeker's] own narrative to rely on. (SMB decision, Questionnaire 1)*

If such documents are not submitted, the narrative events are rendered *improbable*, and as *lacking credibility*. In the worst case, it is judged as a deliberate attempt to mislead the SMB. It seems the focus often is to legitimise and normalise rejections of asylum applications even where narratives include information about exposure to violence and threats in nations where human rights violations are known.

There is considerable variation in the amount of space allocated to the reiteration of the narrative, from a few sentences to one page or more. Consequently, some personal narratives are greatly reduced and migration authorities' interpretations are typically given more room than the narrative itself.

Case file 1 illustrates this. Here, the father had been politically active and the mother had also been involved in political activities and been arrested by the secret police.

In her asylum narrative, she recounts being raped on several occasions by the police in her home with her children present. The SMB (the DMO and Rapporteur) states:

*[The asylum seeker] has cited that she is persecuted by a policeman, who is also blackmailing her. She is also persecuted by the security police due to her political activities and due to her ethnicity. She cites the general situation [for people of her ethnic belonging in her country of origin]. The children cite the same reasons as their mother. (SMB decision, Questionnaire 3)*

The above appears to be the actual reiteration of the asylum narrative. More narrative information is available, however it is interwoven in the rest of the eight-page document with arguments justifying a rejection as well as a description of why the asylum narrative is “*vague*,” “*not probable*”, and “*lacks credibility*.” Andersson et al. (2011) have raised concerns that asylum narratives are often challenged on the basis of unreasonable assessments of credibility; if there is no evidence to support the narrative, it is rejected. If evidence exists, it is questioned with poor justifications. Errors and contradictions are sought in narratives, rather than information that could help to understand the applicant’s background; a kind of contestation that should not be present if the asylum process is to be in line with the Rule of Law (Andersson et al. 2011)). It is also plausible that this could contribute to health deterioration (Johansson Blight et al. 2013).

Moreover, the SMB argues in Case file 1 that the mother’s identity card does not suffice as proof of identity.

The SMB finds that there are no documents to support the narrative such as an arrest order, or any other proof as to why the authorities would suspect her of crime, or any medical certificates to support that the children are ill. Thus, the legal decision rests on the presence or absence of documents beyond the initial asylum narrative. At the same time, the SMB fails to consider and follow-up on important information with respect to persecution, specifically that the mother reports that she has been physically abused and raped by a policeman in the presence of her children who are now ill and in need of health care, and that she belongs to a discriminated against ethnic minority group from a state known to violate human rights.

Following the SMB decision, the mother’s/family’s lawyer submitted several supplementary documents repeating that the mother is a single mother with two small children from a state known to abuse human rights, that her ethnic belonging and political activities put her at risk, and that:

*...for a long period of time [the mother] has been exposed to repeated rapes and abuse by the police in her house, this has also affected the children. The applicants’ fear for continuous persecution is well-founded. The applicant even fears the policeman will kill her. (Legal representative, Case file, Questionnaire 3)*

In 2009, the UN Association of Sweden (UNA 2009) raised concerns about an increase in incidents of sexual violence against women and girls in Sweden, suggesting a need to address underlying attitudes and improve protection.

It is a concern that in Case file 1, although the mother's asylum narrative recounts her political activities and disclosed rape, the Migration Court does not assess her narrative as sufficient for protection. However, rape "...constitutes grave breaches of the Geneva Conventions and their first Protocol" (IDC 2013: 80). It seems the lack of written supportive documentation not only supports the rejection of asylum, but it also serves to side-track the authorities' obligations to rape victims.

In Case file 2, the asylum narrative reiterated in the SMB decision states that the father had been persecuted by a regime, a next of kin had been killed in relation to this, the family's house had been attacked, and the children were also shot at. Once in Sweden, both the father and the mother were receiving telephone threats. The mother and one of the children were victims of domestic violence that started during the asylum process, triggered by the fathers' onset of substance abuse, and the family separated. The mother's asylum narrative is considered vague and not credible:

*Even though [the mother] has reported two of the suspects and showed pictures of the suspects to the police, she is not able to state who killed [her next of kin], or who has threatened her, or in what way the perpetrators related to the regime. [The mother] states that she has been threatened. Even so, she is neither able to provide details of what the threats against her and her children consist of, nor does she know what the original conflict is about. (SMB decision, Questionnaire 4)*

In conclusion, the SMB argues that it is unlikely that the woman has been threatened as she "*apparently doesn't know anything about or have anything to do with the conflict.*"

This is problematic because human rights violations often trigger existential questions such as, why the event took place, why the conflict arose in the first place, or most simply, "why me?"; asylum seekers' themselves may struggle to come to terms with such questions and may never reach conclusive answers (Silove 1999; Johansson Blight 2009). Rather than blaming asylum seekers for their inability to provide answers, the focus should be on how DMO's and Rapporteurs relate to asylum seekers with

traumatising life experiences. Mistrust of asylum seekers and interview situations that are similar to interrogations in a judicial context and aggressive questioning reproduces the stance of the perpetrator by implying that the person is dishonest, weak, and unwelcome. This practice is in itself an abuse of power, and a form of destructive behaviour and civilised aggression (Bhui 2002).

In Case file 3, the SMB's reiterated asylum narrative states that the father had been politically active, had been beaten on repeated occasions by regime supporters in relation to this and had lost one of his next of kin as a result of physical abuse. The father is also wanted by the police in his country of origin. In addition, their daughter had witnessed her parents being physically abused on repeated occasions. Further, she was abducted by two individuals and when the father went to reclaim his daughter he was beaten and told to stop his political activities. The decision states that the daughter is at risk of apathy<sup>39</sup>.

However, the asylum application was rejected because there was no written proof. The decision questioned the credibility of the father's physical abuse and harassment because he had not been able to provide clear information about the beatings, he expressed difficulties in remembering the events, how many times he had been beaten, the different persons threatening him, and who physically abused him in different places. With respect to the mother's asylum narrative, the SMB reiterates the following:

*Her life is threatened due to the husband's political activities. She has been physically abused by the police several times due to the husband's political activities. She had her passport taken and was forbidden to travel by the police in 2008. [Name] is pregnant and is worried about the unborn child. If returned to the home country she fears that she will be killed by the persons threatening her husband. (SMB decision, Questionnaire 18)*

The decision states that reasons for protection are "not made probable," partly because the mother had not been politically active and the mother and the daughter would not face a risk of persecution on return. However, it may not only be a politically active father who is affected, but a mother who may (as in Case file 1) or may not be politically active, or the entire family. As seen in Case files 2 and 3, the mothers have not been

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<sup>39</sup> The daughter showed clear signs of severe apathy prior to the rejection by the Migration Court.

directly involved in political activities but have been targeted together with their children at what seems to be a family level persecution due to the husband's political involvement.

Social exclusion, trauma due to torture or a similarly severe experience should be possible to consider under "exceptionally distressing circumstances" (Lönqvist and Borén 2011) but this was rejected; the decision assumed that there would be no risk of social exclusion or other difficulties upon return and the daughter could access medical care in the country of return. Actually, the fact that the family was in great need of support due to severely poor mental health already put the family at a great risk of social exclusion. If the mother is the main caregiver and pregnant this will greatly influence possibilities of working (NBHW 2012), an income and a home.

### **Decision makers**

Finally, regarding information on the DMO's and Rapporteurs who reiterate and interpret the narratives with regards to gender, women are still under-represented in leadership positions in the public sector in Sweden (Göransson 2006), but the gender distribution at the SMB is even, according to figures from 2010 (Eriksson 2010). Therefore, the gender distribution in the 24 case file decisions was anticipated to be even. At the first instance, according to available information the majority were females: 63% (or 32 of 51) DMOs and Rapporteurs. Of the Rapporteurs who are present at the SMB asylum interview 19 were women and 6 men. At the Migration Courts the majority were also female: 61 % (or 27 out of 44) Appeal Judges and Rapporteurs. Previous experimental research in Sweden evidences systematic discrimination in the labour market by people with "Swedish names" against people with foreign names (Ahmed 2010). This suggests, that though limited, some structural level information can be gained through the use of a name in the Swedish context. Exploring this in the legal decisions, of 51 SMB DMOs/ Rapporteurs, 84 % (n=43) could be categorised as having "Swedish names" (of these, 25 were female).

Of 44 Migration Court Appeals Judges/ Rapporteurs, 80 % (n=35) had "Swedish names" (of these 21 were female). Thus, strikingly, women were overrepresented in the 24 families (Johansson Blight. et al. 2012) as well as amongst the decision

makers/rapporteurs rejecting the cases. Finally, most of the female DMOs/ Rapporteurs have “Swedish names” and most of the 24 families are ethnic minorities.

## **Conclusion**

This paper has explored how knowledge is created and reproduced through the Swedish asylum process. One of the central findings is that the asylum seekers’ personal narratives seem to disappear in migration authorities’ decisions. They are greatly reduced and reformulated to fit within a legal document and asylum decisions appear to rest largely on *what counts*<sup>40</sup> as evidence to support the asylum narrative. The present piece highlights, for example, how disclosed rape is missed in the assessment. Future research should also consider to what extent rape is taken into account by the migration authorities, the compounding effects that rape can have on women and girls in terms of pregnancy and social exclusion, and recognise that men and boys are also exposed to rape and the stigma of rape and related social exclusion.

Another problem is the fact that SMB decisions often appear to be structured *as if* they were court cases where the SMB is one party against the asylum seeker.

This is not meant to be the case. It is worth reflecting on the implications this may have where it seems the asylum seeker is placed in an unequal, unjust position. With regards to ethnicity/race, more attention for example needs to be paid towards the presence of implicit racial bias for example towards minority populations. As explained in this piece, theories of malingering and simulation have been strongly promoted in the political process in Sweden. Though these theories were not explicitly present in the decisions reviewed, decision makers’ did appear to regard the asylum narratives with suspicion. The way that economy is used in reasoning around asylum rejections also deserves further scrutiny. This suggests that justice in the asylum process needs far more attention. As Lundberg (2011) found, practice needs to be in line with ratified human rights conventions.

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<sup>40</sup> There are indications of a presence of a reductionist approach also in the assessment of medical evidence in the asylum process (Johansson Blight 2014). It is important to strongly caution against the testing of illnesses or disorders as a way of providing medical evidence in the asylum process; compulsory testing is a violation of the right to health and it is counter-productive to public health and social inclusion (UN 2013).

Further, in Case files 1 – 3, the mothers are the main caregivers in each family, where at least one child suffers severe apathy. In Case file 1, the father disappeared and after this the mother and children were forced to leave their country. In Case file 2, a family break-down (substance abuse and domestic violence) led to the mother and children separating from the father. In Case file 3, it is likely that the father was suffering from concentration difficulties, a core symptom of post-traumatic stress disorder (Søndergaard 2002). Case files 1-3 suggest three things. Firstly, regarding gender; the mothers are put in situations where they have to manage both their own and their children's difficulties and poor mental health. Secondly, that political persecution should be taken more seriously by the migration authorities. Thirdly, the effects of human rights violations can be seen at the family level in terms of poor health, loss of family members, and ultimately, family break-down.

Further research should explore the recognition of violent oppression by the migration authorities and the institutional knowledge of how violent oppression operates at a family level. This also begs a question; why would Case files 1-3 not fit under "... reasons due to serious antagonisms in the country of origin for persons who have a well-founded fear of serious violations" (Lönqvist and Borén 2011: 315)?

Research and clinical observations suggest that it is important not to push parents over their acceptable stress-levels, as this can fundamentally impact on the mental health of children at risk (Bodegård 2005c; Johansson Blight et al. 2013) as well as other children and the parents' mental health. It also places the family at great risk of social exclusion. It is counterproductive to respond to asylum narratives as opportunistic fictional accounts, and inappropriate because crucial information about experiences related to well-founded fears of return and health risk being left unexplored. As evident too in this article, the very questions decision makers ask, an aggressive stance in interview or in the reiteration/ interpretation of narratives, can contribute to stress and poor health and raise human rights concerns including that of power abuse and risk of secondary victimisation.

Regarding how race/ethnicity and gender appear to operate, it was found that the migration authority staff reiterating the narratives and rejecting protection were predominantly women with 'Swedish names'. Importantly, it suggests that the

narratives of ethnic minority women in need of protection have not been taken seriously, which increases risks for poor mental health, social exclusion and threats to life.

This suggests that having Swedish women decision makers did not ensure that female asylum narratives were heard or that gendered vulnerabilities were sufficiently acknowledged. Given Sweden's feminist ambitions and democratic constitutions that emphasises equality and non-discrimination by public institutions, the findings in the article are particularly surprising. The findings highlight that there is a need to ensure that these welfare institutions do not employ a definition of feminism and overall strategy that discriminates on the basis of gender, nationality, race/ethnicity or disability. The role of the migration authorities and society at large in contributing to institutionalised knowledge and the direct risks to life of persons and groups that this has, needs further research and disentanglement.

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