# Flawed assessment process leads to under-use of alternatives in Sweden

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**Sweden is often held up as following 'best practice' in legislation with regard to detention and alternatives to detention but research by the Swedish Red Cross highlights a number of flaws.**

Detainees in Sweden's detention centres often express a lack of understanding of why they are being detained. In light of this, the Swedish Red Cross recently examined the implementation of detention legislation, focusing on the justification of the grounds for detention and the preference for detention over supervision.

The majority of the decisions analysed by the Swedish Red Cross pertain to detention pending enforcement of deportation. It is evident from the research that assessment of the risk of absconding has been a key element in determining whether there are grounds for detention – but the findings show that a comprehensive assessment of the various criteria involved in the risk of absconding is often lacking.

Individuals who, through their behaviour,[1] clearly show that they do not intend to comply with the enforcement of a refusal-of-entry or removal order are detained. But in addition there is a significant number of examples of decisions and resolutions in which asylum seekers' statements alone about their reluctance to return to their home country in 'return interviews' (deportation interviews) with the Swedish Police or the Swedish Migration Board are the determining factor in the assessment. At the return interview, information is provided about the various alternatives available regarding return, both voluntary and forced, but as a rule the individual is not informed that a negative response to the question about their willingness to return could lead to them being held in detention.

There may be many reasons why individuals express reluctance to return to their home country in these interviews. Many asylum seekers live under tremendous psychological pressure and an expulsion order can trigger feelings of anxiety, shock or powerlessness. This does not automatically mean that the person will not be willing to comply with the enforcement of the expulsion order. It seems unreasonable that statements expressed under emotional stress can eventually result in the deprivation of liberty, when insufficient information has been provided. Furthermore, in many of the decisions analysed by the Swedish Red Cross, the individual in question had submitted a subsequent application as new circumstances had arisen that could be considered as 'impediments to enforcement' of a removal order; in such cases, it would have been highly contradictory for him/her to express a willingness to return to his or her home country and comply with the enforcement of the expulsion order.

### Supervision as a viable alternative

The study also looked at whether adjudicators systematically consider alternatives before ordering detention. The preferred alternative to detention in Sweden is supervision which, according to Sweden's Aliens Act, may be used instead of detention when deemed sufficient to achieve the stated purpose. However, many more detention orders than supervision orders are issued.

The Aliens Act states that the Act shall be applied in such a way that people's liberty is not restricted more than is necessary in each individual case. It furthermore states that an assessment should always be performed in order to determine whether the mildest measure – i.e. supervision – can be employed instead of detention. However, although the Swedish Migration Board and the migration courts often refer to supervision in their decisions and resolutions regarding detention, evidence shows that often no individual assessment is conducted into whether supervision could achieve the same purpose

as detention. The police authorities do not refer to supervision in any of their decisions, which suggests that they do not consider supervision at all. The law is not being applied as intended.

There should be stringent requirements on due process in terms of decisions regarding deprivation or limitation of liberty. It should not suffice solely to state that there is reason to assume that the alien will abscond, and detention should not automatically be preferred over supervision. The legal and factual grounds for an authority to deprive a person of liberty should be carefully justified and clearly stated in the decision.

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1. For example, having previously gone into hiding, submitted false information, previously violated a re-entry ban, declared intention not to leave, etc.