The Categories Granted Asylum and Protection under the Revised 1989 Swedish Aliens Act before the Transposition of the EU Qualification Directive

SATO, Ikuko

佐藤 以久子
Abstract

Since the late 1980’s to the present, Swedish asylum law and practice have been significantly modified in roughly two phases, firstly when Sweden ratified the Amsterdam treaty in 1997 and secondly when it transposed the European Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (hereinafter the Qualification Directive)\(^1\), into the Swedish asylum law which started from 2004 and it was completed in 2010. In this article I will take up the first phase of the modification of Swedish asylum law, analyse newly created categories granted asylum and protection under the 1997 Aliens Act (1989:529) with amendments in October 1997\(^2\), and offer some appraisal at the end.

The newly created categories more or less later formed the core part of the EU Qualification Directive which is now the EU common standard legislation for asylum, though its interpretation and application remain varied amongst the member states. The first phase Swedish asylum law was perceived as an advanced asylum law is formed at that time, and it is still worth knowing as it can be useful to understand how a newly created category, subsidiary protection under the Qualification Directive interprets and may provide a hint to the most contentious issue: how de facto refugees should to be treated in a country of asylum other than EU.

Keywords: Swedish asylum law, the 1997 Aliens Act (1989: 529), categories granted asylum and protection, de facto refugees, a person need of protection

1. Introduction

In the first-phase of the modification of the Swedish asylum law, the 1997 Aliens Act (1989:529) with amendments in October 1997 (hereinafter the 1997 Aliens Act), three new categories were introduced. The underlying causes behind the first modification of Swedish asylum law were the end of the cold-war era and the heavy strain on the financial and administrative systems. Triggered by the massive influx of asylum seekers from the former Yugoslavia, the introduction of restrictive immigration controls in line with other EU countries and the gradual implementation of EU asylum-related treaties such as the Schengen and Dublin Conventions\(^3\) had led to a marked decrease in the reception of asylum applicants. Significant features of the 1997 Aliens Act were the introduction of three new categories of ‘a person in need of protection’, which replace the previous categories of de facto refugees and war-resisters, and to some extent political-humanitarian grounds which was earlier the most common alternative protection outside of the 1951 Convention relating to the Status of Refugees (hereinafter the 1951 Refugee Convention)\(^4\). Other aspects are the broadening of
temporary status and consideration of the special needs of women and children.

This article is to examine the meaning of these categories by articles. To begin with, the features are explain and then each category is examined.

1.1. Features of the 1997 Aliens Act

Under the 1997 Aliens Act, Chapter 3 (asylum and protection), asylum is limited to a Convention Refugee defined in Article 1 of the 1951 Refugee Convention, compared with the former section 1 (3) which was repealed in Chapter 3 which provides that “asylum could also be granted to a person who, because of the political situation in his or her country of origin, was unwilling to return there and who was able to present convincing grounds for his or her wish to remain in Sweden.” A person who had been granted asylum for reasons of the political situation as mentioned above was previously regarded as a “de facto refugee”. The Government view on this limitation of asylum not only means technical changes in terminology, but also implies that the Swedish definition of refugees should coincide with the definition of the 1951 Refugee Convention5.

The previous categories of asylum: ‘de facto refugees’ and ‘war-resisters’ under Chapter 3, Section 1 of the previous Aliens Act (1989:529) was removed since Sweden thought that they were beyond international obligations. Moreover, granting asylum to ‘war-resisters’ was outside the other European countries’ practices6. The 1997 Aliens Act prescribes three new protection categories of ‘a person in need of protection’. The primary concept of these categories, however, has a similar context and treatment as the former de facto refugees in the sense that both are outside the scope of a Convention Refugee but in particularly great need of protection, and are more protected from expulsion than persons granted residence permits on humanitarian grounds (Ch.2, Sec.4.2). Furthermore, the standards for qualifying for protection under each status are as high as for de facto refugees7. Besides these similarities, the bases of protection under each status are clearer and slightly different from ‘de facto refugees’ in that political persecution elements are not required in each of those categories.

One of the significant aspects under the three categories is that protection might be temporary in case of a specific group in mass influx, which is most likely to happen under ‘internal and external armed conflicts and environmental disasters (Ch.3, Sec.3-2). Temporary protection itself is not new since it was introduced in 19948 in response to the humanitarian crisis in the former Yugoslavia in co-operation with other EU countries and the United Nations High Commissioner for Refugees (UNHCR), but temporary protection has been extended9 and more frequently used. According to Chapter 2, Section 4a, from 1 April 1994 by virtue of the Chapter 2, Section 4-2 and Chapter 3 of the 1989 Aliens Act, a person applying for temporary need of protection may be granted a time-limited residence permit if that person has been granted a time-limited residence
permit, a time-limited residence permit may also be granted to an alien who is the spouse or children under 18 of the person granted a temporary need of protection, and also the same applies to parents of children under 18 who have been granted a residence permit under a temporary need of protection. It can be construed that refugee protection in Sweden is no longer solely based on permanent resettlement, although as long as the person concerned is protected under Chapter 3 (asylum and protection), in principle a permanent residence permit is issued. Officially, a three year residence permits is issued, and that renews normally automatically.

A further feature is that in accordance with the 1997 Amsterdam treaty, ratified in Sweden and came into force in 1999, the Swedish asylum law and practice must respect the European asylum-related instruments more fully than previously, bearing in mind that Sweden incorporated the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR) into its national legislation in 1995. Therefore, the European Court of Human Rights decisions directly affect Sweden and takes precedence over national law, even though Sweden stands on the dualistic principle of international law, i.e. non-self-executing, the Swedish Aliens Appeals Board must follow the Court’s decisions. The ECHR is a guiding principle of the European Union defined in Article 6 of the European Community Law and hence the European Court of Justice (ECJ) needs to hand down preliminary rulings regarding, in this case, the Qualification Directive in accordance with the ECHR when the domestic court of the EU member states refers its interpretation through a living case. The ECJ may, however, not overrule decisions that are made according to existing national law.

2. Categories Granted Asylum and Protection

2.1. Convention Refugees

A refugee is defined in the 1997 Aliens Act, Chapter 3, Section 2 in the same terms as in the first sentence of Article 1 of the 1951 Refugee Convention (the so-called a Convention Refugee):

An alien who “is outside the country of his nationality owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”. This applies irrespective of whether persecution is at the hands of the authorities of the country or these [the applicant who satisfies the conditions] cannot be expected to be offered protection against persecution by private individuals.

A stateless person who for the same reason is outside the country of his former habitual
residence and who is unable or, owing to such fear, is unwilling to return to that country, shall also be deemed a refugee.

In Swedish practice, Convention Refugee status is applied to persons who have been subject to long incarceration and maltreatment and who have held leading positions in opposition movements. Moreover, it includes persons who have been harassed for an excessive period by the authorities whereby the actions of the latter have amounted to persecution on cumulative grounds. It also includes persons who for reason of their religious beliefs are not accepted by the authorities, or persons whose opposition activities against the authorities of their own country while in exile have made their return impossible.

The Swedish interpretation of persecution is, firstly, that the threat of persecution has to be individual. A general threat of violence does not constitute sufficient grounds for a right to asylum. Secondly, as mentioned above, agents of persecution are either state authorities or non-state agents when a state fails or is unwilling or unable to protect its citizens. This interpretation of agents of persecution is in accordance with the international standards of the UNHCR guidelines, and entails a broadening of the refugee definition as it includes persecution grounds in ‘the non-functioning state’ situations.

The issue of non-state agents of persecution had been brought up in a number of cases prior to the 1997 Aliens Act, for example, according to the Aliens Appeals Board assessments of the issue of agents of persecution, the Government made a number of decisions of principle concerning Russian Jews who were exposed to extensive harassment supported by the State powers. They were normally granted de facto refugee status. There are however, since that Somali case, no cases yet which elucidate the concept of ‘non-state agents’ of persecution. The Somali case was based on fighting between clans under the non-functioning state, and the asylum claim was rejected on 1 September 1993 as Convention Refugee status because persecution by a clan under the non-functioning state fell outside the 1951 Refugee Convention. At that time, The Aliens Appeals Board interpreted agents of persecution under the 1951 Refugee Convention as follows: “The State, that is, the government or some state-organ, is directly or indirectly responsible for the persecution. The State itself can actively exercise persecution but persecution can also be inflicted by someone else with the consent of the government or when that the State is unable to provide protection against persecution”.

Another practice, for example, is the case from Bosnia-Herzegovina which could be construed as illustrating the broadening of the scope of non-state agents of persecution. In the 1993 Government guideline decisions for Bosnia-Herzegovina did not consider non-state agents persecution where the state power was failing and permanent residence permits were mainly granted on humanitarian grounds. Later in 1996, some Bosnians were granted Convention
Refugee status since they would suffer harassment from the local populace in minority areas, for example Muslims in Vlasenica and could not seek the so-called ‘internal flight alternative’ (IFA) in the whole territory as the official authorities refused or were unable to offer effective protection. From this decision, ‘the local populace’ can be construed as a non-state agent in the terms of the 1951 Refugee Convention, although the basis of the decision does not clearly refer to the agent of the persecution.

In effect, the scope of the agents of persecution has been construed as the government or some State agency engaged with the exercise of public authority or the governing political party. Persecution may exist either with the tacit support of the government powers or without it taking any measures and also when the State does not intend to provide protection to its nationals. Moreover, the scope of the non-state agents of persecution could include situations where there is no recognised or central government such as in the Somali case above, and also situations where the state power still exists but cannot control the country or prevent persecution emanating from individuals, for example the Bosnia-Herzegovina cases above. The latter concrete situation is also illustrated in Afghan cases, but not in the case of Algeria where statehood exists without proper protection by the State being available.

Although there are quite a few cases linked with non-state agent persecution, in the majority of cases, crucial strands of determination of refugee status weigh on suspected links with, or being a member of, a non-state political active agent, or the existence of the risk of serious persecution from the agent. Moreover, crucial elements have been whether protection by the State is provided or not, and/or the existence of substantial individual persecution the above-mentioned Bosnia-Herzegovina case.

In a case of non-state agent persecution by insurgent groups, a few of the agents are considered to be connected with terrorist groups and involved with activities which fall within the meaning of Article 1 F (a) to (c) of the 1951 Refugee Convention defined for persons considered not to be deserving of international protection. Moreover, according to the 1997 Aliens Act, once an asylum application is suspected of involving national security elements where ‘from the applicant’s activity or for some other reasons [it] can be assumed that he or she will engage in sabotage, espionage or illicit intelligence activities in Sweden or in any other Nordic country (Ch.3, Sec.4-1 and Ch.4, Sec.2-4)’, the case is not considered under the normal asylum procedures, accordingly the Government examines and decides on the case (Ch.7, Sec.11-2).

An example is a number of Peruvian cases involving members, or suspected members, of the so-called ‘terrorist groups’: Sendero Luminoso (the Communist party of Peru, Shining Path) and Tupac Amaru (MRTA) illustrate this situation. The 1992 Government guideline was that asylum should not be granted to persons who “in one way or another” had been involved in, inter alia, the activities of Sendero Luminoso which means that even if a person has not participated in any of the
acts mentioned in Article 1F but the fact that the person belonged to one of these groups which did was sufficient to apply the exclusion clause\(^{26}\). For instance, a Peruvian man, J.A. Paez who was a member of the *Sendero Luminoso*, applied for asylum in Sweden on 4 March 1991 and whose mother and two sisters who also applied for asylum in Sweden on 6 August 1990 were granted asylum as de facto refugees on 16 February 1996, was denied his asylum application because his armed political activities were considered to fall under Article 1 F of the 1951 Refugee Convention by the Immigration Board, and that decision was later forwarded to the Government which confirmed the Immigration Board decision referring to the 1992 Government guideline\(^{27}\).

A change in practice regarding such Peruvians, however, was taken place in line with the international human rights treaties, Article 3 of the ECHR and in particular the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)\(^{28}\). In fact, the above-mentioned Peruvian case (J.A. Paez) under the European Commission and later to forwarded to the ECHR Court and the case of his brother (G.E.T. Paez) under the UN Committee against Torture, both decisions were reversed to grant permanent residence permits and to repeal the relevant expulsion order made to the J.A. Paez case on 23 June 1997 in response to his fresh request, when Sweden acknowledged that the findings on 28 April 1997 by the UN Committee against Torture made statement that Sweden should not deport the applicant pursuant to the CAT Article 3, and that the ECHR Court followed\(^{29}\). In another example, a Peruvian woman who was accused of being a member of MRTA obtained Convention Refugee status in 1997 despite previously being excluded through reference to Article 1 F (a). The Government’s decision was based on the difficult circumstances for deportation to Peru since there was a risk of her being tortured or subjected to other inhuman treatment according to the reports from the UN Commission against Torture in 1994 and the UN Human Rights Committee in 1996\(^{30}\).

It was quite challenging for the Government to make decisions because like other asylum countries, in Sweden it is a well-established view that the standard of proof to obtain Convention Refugee status is traditionally high. For instance, the absence of travel documents is one of the crucial aspects which can disqualify from Convention Refugee status since this is considered as withholding important facts that weaken an applicant’s credibility\(^{31}\), although this view is not always taken automatically\(^{32}\).

In effect, the recognition rate of Convention Refugee status has been very low. In 1997, however, the recognition rate of Convention Refugees increased to 13.7 per cent (1,310 persons out of 9,538 persons), the majority of whom were Bosnians (903 persons, 69 per cent)\(^{33}\). It showed a positive start and might be a positive indication of a broader interpretation of the 1951 Refugee Convention since the 1997 Aliens Act removed de facto refugee and war-resister status\(^{34}\) and the broadening of the scope of *non-state agent* persecution, as shown to some extent in the Bosnia-Herzegovina cases, as a result the recognition rate of Convention Refugee status to Bosnians has
increased from some 130 persons in 1996 to 903 persons in 1997. Although according to this practice it is not clear in every case that the granting of protection is based on ‘non-state agent persecution’.

2.2. A Person in Need of Protection

A person in need of legal protection is defined in Chapter 3, Section 3, paragraphs 1 to 3 of the 1997 Aliens Act as follows:

1. An alien who has a well-founded fear of being sentenced to death or corporal punishment, of being subjected to torture or other inhuman or degrading treatment or punishment.
2. Due to an external or internal armed conflict, needs protection, or on account of an environmental disaster, cannot return to his country of origin.
3. An alien who has a well-founded fear of persecution on account of his or her sex or homosexuality.

Well-founded fear of torture

The first provision (Ch.3, Sec.3-1) corresponds to Article 3 of the ECHR defined as “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” and Article 3, para.1 of the CAT defined as “No State party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Paragraph 2: For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. Both provisions prohibit torture in absolute terms and contain the principle of non-refoulement.

According to the Government Bill (1996/97:25), pursuant to the ECHR, Sweden intended to clarify full respect for Article 3 of the ECHR. Under the previous Act (1989:529), Chapter 8, Section 1 holds the obligation not to return a person to a country where he or she is likely to suffer capital or corporal punishment or be subjected to torture, but does not mention other inhuman or degrading treatment or punishment. Therefore, in the first provision of Chapter 3 and Chapter 8, Section 1, these uncovered actions are added. Moreover, the existing Chapter 8, Section 1 protects from the principle of non-refoulement defined in Article 33 of the 1951 Refugee Convention but does not provide either asylum or protection, therefore the new provision (Ch.3, Sec.3-1) was introduced. Earlier a person under this category was protected on humanitarian grounds. Protection under this provision is the strongest amongst other categories of a person in need of
protection in that the principle of *non-refoulement* must be ensured according to the non-derogation clause pursuant to Article 3 of the ECHR and its jurisprudence, for instance, as in the cases of *Chahal v. UK* and *Ahmed v. Austria* which cases involved violation of Article 3 of the ECHR, even though these cases were concerned with national security elements\(^{37}\).

The Swedish interpretation of this provision (Ch.3, Sec.3-1) is said to be closer to the ECHR rather than the CAT in terms of substantiation\(^{38}\). Similarities to the ECHR in substantiality are that neither of the provisions requires any concrete situation. Indeed, the first provision does not clarify any concrete applicable situation. However, a conceivable case would be the situation stated under Article 3, paragraph 2 of the CAT. It states that ‘the competent authorities shall take into account a consistent pattern of gross, flagrant or massive violations of human rights’. Considering that as a background, a case could arise where a state regime or a law per se is considered wrong and unacceptable in Sweden according to international human rights standards, for example the International Covenants on Human Rights\(^{39}\). For instance, a war-resister may face corporal punishment or the death penalty if he refuses imminent war service. Another example is when an action of a person in itself is in disobedience of a state regime, custom or law in his country or region, he may as a consequence be in peril of being severely punished without elements of objective evidence being present.

As with Article 3 of the ECHR, the new provision does not require persecution, although persecution exists alongside a risk of severe punishment. Theoretically, persecution must be distinguished from punishment for a common law offence, as such an offence does not normally lead to recognition as a refugee since a refugee is a victim or potential victim of injustice, but not a fugitive from justice\(^{40}\). In practice, persecution often emanates from risks listed under this provision. Therefore, this theoretical distinction is occasionally obscured because a person guilty of a common law offence may be liable to excessive punishment tantamount to persecution as defined in the 1951 Refugee Convention\(^{41}\). This is somewhat paradoxical since severe punishment is quite a common form of persecution. In effect, quite a few cases revealed\(^{42}\) a subject of persecution alongside a risk of severe punishment. Such cardinal elements of persecution may emanate from political and religious opinions and/or activities, ethnicity and flagrant violation of laws and customs, as well as from others listed in the definition of the 1951 Refugee Convention. Therefore, the new provision may cover a broader range of circumstances whose basis does not involve any persecution or weaker forms of persecution than those required for Convention Refugee status.

Furthermore, the provision (Ch.3, Sec.3-1) does not elucidate the subject of the agents of execution. It states ‘sentenced to death or corporal punishment’, which implies a state court. It continues to state ‘or being subjected to torture or other inhuman or degrading treatment or punishment’, which does not elucidate who is the subject; therefore, the subject can be a government or non-authorised agents, for example dissidents, religious groups, individuals.
With regards to the limits of required proof under the provision (Ch.3, Sec.3-1) are ‘reasonable grounds’ for believing that he would be in danger of being sentenced to capital punishment or subject to torture or to inhuman or degrading treatment or punishment upon return to the country. This level of proof is higher than that required by the CAT, which states ‘substantial grounds’ and is limited to situations where a danger of being subjected to torture exists. That provision is similar to the ECHR, which also states ‘substantial grounds’ must be shown to the ECHR organs as standard of proof, in essence the applicant must furnish consistent and credible prima facie evidence, which seems to indicate quite a high burden of proof for the applicant.\textsuperscript{43}

In practice, the necessary substantiation is high as is shown by the need for medical certificates that prove scar tissue consistent with the author’s claims of torture or ill treatment, often prepared by the Centre for Torture and Trauma Survivors in Stockholm, for instance the CAT cases of the Zairian woman (Kissoki) and the Iranian man (Tala).\textsuperscript{44} Even when such medical certificates are presented it is not always the case that they are considered to be sufficient proof of the need for asylum or protection, for instance, on the Zairian woman's case (Kissoki), her subsequent application to the Aliens Appeal Board was rejected, judging that the information submitted could easily have been submitted earlier, thereby decreasing the trustworthiness of her claim.\textsuperscript{45} Another example is a Ugandan woman who claimed asylum in Sweden with medical proof of being tortured who was refused asylum and protection in 1995, but later granted Convention Refugee status in Canada, based on the same medical evidence.\textsuperscript{46} It is the risk of future torture that is the key and the basis of a decision on whether protection is needed or not. The aim of the amendment was to underline that the level of proof must not be so high regarding claims on the basis of the existence of listed risks under the new provision, the Government stating that the provision is less strict and slightly wider than the previous concept in the 1989 Aliens Act since full proof that clearly establishes such a risk can seldom be presented. In reality, it would be reasonable to accept an asylum applicant’s account if it appears credible and likely.

The cases fallen on the issues of the level of proof were, for example, the case mentioned above widely reported Peruvian woman case; a Peruvian man who was a member of the ‘Shining Path’; a Zairian woman who was an active member of the UDPS, the opposition party to the Government (the late president Mobutu); an Iranian man who was an activist of the People’s Mujahedin Organisation of Iran and Sri Lankan citizens who were members of the guerrilla movement Liberation Tigers of Tamil Ealam (LTTE). These cases involved high risks of persecution and well-founded fear of torture and severe punishment by the authority or/and the groups they adhered to. Most of these cases were once rejected in decisions on asylum, and expulsion orders were made because of the lack of credibility of the applicant and inability to attain the necessary level of standards of proof. Later, some of these decisions were reversed to grant permanent residence permits because of the risk of torture or other severe punishment if they
return home. The final decisions were taken more likely based on the desire to abide by the notices and recommendations of the UN Commission against Torture and the country reports from the UN Committee for Human Rights, rather than applying the new provision, as explained in the above-mentioned CAT cases, i.e. the Zairian woman (Kissoki) and the Iranian man (Tala).

In practice, however, gradually applying the new provision to cases similar to previously most of them granted principally on humanitarian grounds or at most de facto grounds, resulted in 1997, 667 cases were granted in the category. The majority of them were Iraqi citizens (483 cases, mostly not new arrivals), ethnic Kurds or Arabic-speaking Iraqis who fled from the south of Iraq where ethnic uprisings took place and where President Saddam Hussein did not fully govern.

**Armed conflicts and environmental disaster**

The second provision (Ch.3, Sec.3-2) applies to situations based on two grounds: one is for a specific group which flees from an external or internal armed conflict, for example the case of the former Yugoslavia, which was the basis for the introduction of this provision. Therefore this provision provides protection for victims of an internal armed conflict (civil war) in a better manner since previously it was granted on political-humanitarian grounds. The other is an environmental disaster, which does not require any political persecution elements, for example, the aftermath of a nuclear accident. However, the grounds for assessing a case under the latter provision are obscure in the commentary.

The provision (Ch.3, Sec. 3-2) has somewhat extended admissible protection outside the scope of the 1951 Refugee Convention which makes no expressly stated reference to mass exodus situations in internal armed conflict and an environmental catastrophe. Although the background or nature of the internal conflict often has a link to the 1951 Refugee Convention, for example in the case of the former Yugoslavia, particularly Bosnia-Herzegovina, with conflicts using genocide-like means under the ‘ethnic cleansing’ policy. In practice, a person in a specific group may, however, not be granted Convention Refugee status unless he can prove an individual risk of persecution based on the reasons stated in Article 1 A (2) of the 1951 Refugee Convention. The scope of internal armed conflict could be the same as under Convention Refugees (Ch.3, Sec.2).

If there is an alternative place where protection may be obtained in the country of origin concerned, the so-called Internal Flight Alternative (IFA), a certain group may not be granted protection under this provision. IFA presupposes that the territory in question offers asylum seekers reasonable protection against persecution, and also other regions can afford the chance of maintaining some sort of social and economic existence, which might require them to put up with certain difficulties, for example, in finding suitable employment. IFA was applied firstly to cases from the former Yugoslavia when the country was in a state of war. Other examples were the case of the Colombian man on 25 June 1992 which was rejected on another account that was a lack of
credibility regarding direct persecution\textsuperscript{59}, and a Sri Lankan case in 1995\textsuperscript{60}. As to an environmental catastrophe situation involved IFA case, there was the case of 25 Polish Roma whose asylum claims were partly based on the flooding in southern Poland in July 1997 and that were not granted protection under that new provision since the geographically limited flood was not considered as falling within the concept of environmental catastrophe as stated in the new provision\textsuperscript{61}.

A benefit of a person granted protection under that category is that he/she is entitled to have a permanent residence permit. However, individuals in a specific group who flee from internal or external conflicts in a case of a mass influx, for instance the Somali cases may enjoy less lasting security and social rights, more concretely, social rights under temporary protection are limited in fact such a person with less than a one-year temporary residence permit or with special temporary protection cannot access the social welfare system. According to the Act concerning the Reception of Persons Seeking Asylum and Others, basic needs, however, are provided for in reception centres or in some cases by the local communities. The right to family reunification is not normally provided until a permanent residence permit is given, except in Bosnian cases. Furthermore, a condition to obtain Swedish citizenship is five years residence in contrast with four years residence for a Convention Refugee.

In effect, reception circumstances vary as the case may be and benefits are given according to the grounds for the temporary permit\textsuperscript{62}. Since their protection is principally on a temporary basis (Ch.3, Sec, 4-2), accordingly the given social rights can be denied at any time if the situation in their country of origin changes so that safe return is possible. If protection is on a temporary basis, a person concerned is not protected under this new category (Ch.3, Sec.3-2), but under the residence permit criteria (Ch.2, Sec.4a). Such permits may be granted within three months of giving notice to the Parliament. Moreover, in a mass influx situation, a residence permit might be granted or rejected with reference to lack of reception capacity. Earlier, asylum seekers in an internal conflict situation were granted permanent residence permits on political-humanitarian grounds. Therefore if a person concerned is granted permanent residence permits under this category, protection is stronger than in previous practice.

The first guiding case on temporary protection involved Croatian citizens (Bosnians with Croatian passports and Croats): 3,107 persons (out of a total of 3,571) in 1995 to 1997\textsuperscript{63}. Their further protection, when the fixed term ends, depends on a case-by-case assessment\textsuperscript{64}, which in principle can lead to granting permanent residence permits on humanitarian grounds\textsuperscript{65} primarily based on the length of stay in Sweden, for instance, the age of the children and attendance at school, and also the existence of available protection in Croatia\textsuperscript{66}.

In 1997, 61 persons out of a total of 62 persons from Afghanistan were granted permanent residence permits under this new provision, on account of internal conflicts that occurred between the Taliban militia and the former government in Kabul from September to October 1996\textsuperscript{67}. With
regards to related to the most recent cases, Syrian asylum seekers have been granted protection since 2013 to the present 2015 in principle under this category which is presently named as subsidiary protection.

**Gender-related persecution**

The Government does not view this third group as a particular social group within the meaning of the refugee definition of the 1951 Refugee Convention, i.e., neither women in general nor even a group of women with a certain similar background. Previously, gender-related persecution was not addressed expressly in the Aliens Act and such a person was awarded a residence permit principally on political-humanitarian or de facto refugee grounds depending on the circumstances of the case. Therefore, Sweden showed for the first time an awareness of the issue of gender-related fear of persecution by protecting its asylum claimants in a better manner as well as showing a strict interpretation of the 1951 Refugee Convention.

The Swedish interpretation of the 1997 Aliens Act is closer to the other EU countries in that they have not yet made clear interpretations that consider gender-related persecution per se as the basis for convention status, with the exception of Denmark, Norway and the Netherlands at the time of the modification. In practice, in 1997, this new category was applied to 8 persons in 2 cases, all from Togo who also could have been granted protection under ‘well-founded fear of torture’ (Ch.3, Sec.3-1). One of the cases concerned a Togolese woman with three children whose two daughters risked being subjected to female genital mutilation in accordance with the well-established and ubiquitous custom in their tribe. In December 1997, there was one pending case of ‘Iranian homosexual persecution’ at the Government which the Aliens Appeals Board had an opinion of that being a homosexual is not in itself ground for fear of persecution in Iran. Since the application of this provision is limited and no clear commentary available since there were only two negative cases by the time when this provision was introduced, taking a look at this issue of gender-related persecution based on protection from the international perspectives would help to comprehend what extent Sweden intended to provide protection.

Firstly as to the violence against women such as infanticide, genital mutilation, forced marriage, forced abortion and compulsory sterilisation, it has been a common practice for quite some time and that is legal under the national law of the country of origin, and this was considered to be domestic, individual and non-state acts, and not part of a state political structure, and was therefore, not perceived in the traditional refugee domain. There were only a few cases where women who faced harsh or inhuman treatment for having transgressed social mores excessively where the State concerned was unable to provide effective protection, and where it was presumed to be a political matter so that the State or state penalties should be involved, as a result raising the question whether international protection should be provided. Quite often cases of such female-
specific violations have been insufficient to justify Convention Refugee status. Sweden was not exceptional from this point of view, though such situations, since this time, have increasing come to attention at the international level\(^77\).

The growing awareness of women’s human rights violations together with gender-related persecution have been paralleled in the guideline approaches to their asylum claims taken at international and national level emerging firstly from Canada, then the United States, followed by Australia\(^78\). The international and national instruments around 1997 and still important ones\(^79\) were: EXCOM (UNHCR Executive Committee) Conclusion No. 79, paragraph (0), which calls on States to adopt an approach that is sensitive to gender-related concerns and which ensures that women whose claims to refugee status are based upon a well-founded fear of persecution for reasons enumerated in the 1951 Convention and its 1967 Protocol, including persecution through sexual violence or other gender-related persecution, are recognized as refugees;\(^80\) the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) \(^81\) which prohibits discriminative actions and requires States to take affirmative steps to eradicate discriminatory treatment of women; the UN World Conferences in particular, the 1995 Fourth World Conference on Women declared Beijing Declaration and Platform for Action that States agreed to recognised as refugees those women who claim refugee status based upon a well-founded fear of persecution, including sexual violence or other gender-related persecution\(^82\), and the 1996 Canadian Immigration and Refugee Board (IRB) guideline which supports the interpretation that gender-based persecution can in itself be defined as ‘membership in a particular social group’\(^83\). These have contributed to the development and formulation of a model for gender-based asylum adjudication drawing up the following criteria: if an account of gender-related persecution can be linked to enumerated grounds in the 1951 Refugee Convention, the person concerned should be entitled to refugee status, in that violations of women should be perceived as a serious violation of a fundamental human right guaranteed by international human rights instruments\(^84\), in effect, a women with a gender-violation case can be regarded as a ‘particular social group’ under the 1951 Refugee Convention.

Concrete cases regarding the gender-persecution often have a substantial linkage with one or more of the convention grounds when women fail to comply with cultural or religious norms or social mores, for instance, by marrying outside of an arranged marriage, wearing make-up, showing their hair or choosing certain types of clothing. Reasons of nationality can also be relevant in that under a discriminatory national law a woman can lose her nationality or citizenship as a result of, for instance, marriage to a foreign national in which she may suffer where such a law does not apply to men. Women’s independent expressions or opinions on political or social matters in a male dominant society may lead to a well-founded fear of persecution. Moreover, such violence against sex or gender may be covered within the meaning of ‘torture’ defined in Article 1 of the CAT and Article 3 of the ECHR. Examples are rape or sexual abuses during imprisonment, in times of war.
or terror, during flight or arrival in a first country of asylum, as well as accusations in the home country whose consequences could be stoning to death or decapitation.

With regard to Sweden, it took a narrower view of the above-mentioned interpretation, although Sweden recognises gender-related violation as a breach of fundamental human rights. If a case were severe, then it would be protected in order of severity of the violation. The highest level of protection is Convention Refugee status (Ch.3, Sec.3-2), then, protection grounded on ‘risk of torture’ (Ch.3, Sec. 3-1), then the other new categories (Ch.3, Sec.3-2/3). A significant differentiation is that Sweden has proposed a ‘limiting’ approach to social group based on gender-related persecution under the 1997 Aliens Act. The common grounds concerning women have been sexual violence, female genital mutilation, homosexuality, and for the last fifteen years until this new category was introduced the majority of cases have concerned Iranian women who were harassed because of their refusal to wear a veil.

Besides the previously mentioned Togolese cases, ‘family ties’ cases might, however, be protected under the new category, although the Government proposes the introduction of a new provision, Chapter 2, Section 4e to protect a woman concerned according to her nationality, which means that according to the commentary of the Government proposal, if a woman is from one of the EU countries, she may obtain a residence permit faster and easier than from in a third country. In effect, one can say that the admission rules based on nationality are very discriminatory in manner. In the mentioned-above Government proposal, it is recommended that before granting a residence permit to a woman, a more thorough investigation should be made by the Immigration Board, i.e., informing about a man’s background, e.g., his criminal register for charges of assault and in the case of a battered woman and her children residing in Sweden they should be granted a permanent residence permit earlier than the current mandatory, two years. There are problems seen in some ‘family ties’ cases, for instance, women who come to Sweden for marriage and are ill-treated by men while holding deferred status with temporary residence permits, which subsequently become a permanent permit if the relationship lasts at least two years. These women suffer while residing in Sweden, and also may risk a future of fear of severe discrimination and degrading treatment because an unsuccessful marriage led the end of their relationship break up within two years, then they must return home. Therefore, those women should be within the scope of this category.

On the issue of ‘homosexual persecution’, according to the UNHCR Handbook it can fall within the scope of the meaning of membership of a particular social group that comprises persons of similar habits, who as a result of these habits are discriminated and subjected to persecution by a society. Under the Swedish civil law, there is no distinction between a homosexual person and others, in that homosexual persons are recognised as the same subject as non-homosexual citizens. That might be one of the possible reasons why Sweden regards ‘homosexual persecution’
as grounds for protection. One thing is clear, in determining a case based on persecution for being homosexual, such a personal matter might be difficult to assess and to prove as persecution, and for that a well-developed jurisprudence on gender-related persecution is needed.

2.3. Quota Refugees

Under the Swedish asylum law, ‘Quota refugees’ are not strictly in the formal sense of the term refugees in that the majority of those who are fleeing from, or are in a particularly vulnerable situation, also include those who have functional impairments such as war injuries and torture victims. All quota refugees are normally granted permanent residence permits but their protection status varies as the case may be. However they are often generously granted Convention Refugee status. The generous tendency and the basis of selection of quota refugees has not changed in the asylum criteria under the 1997 Aliens Act.

In practice, Sweden has been receiving quota refugees since 1950, with the number varying from year to year according to the annual fiscal programme of the Government approved by the Parliament. In the period of 1993-1996 there was a quite high number of quota refugees, predominantly from the former Yugoslavia. When the Government imposed visas on Bosnians in 1993, and it increased the annual quota to over 6,000 as a compensatory measure to facilitate family reunification. As a result, in 1997, 1,180 persons were granted permanent residence permits, the majority of whom were Iranians (686 persons) and Iraqis (330 persons). The Immigration Board (SIV) makes the selection in close co-operation with UNHCR and arranges transportation to Sweden with assistance from the International Organisation for Migration (IOM). Quota refugees are normally selected in two ways: a SIV officer visits a camp in the first country of asylum for an interview, or examines application files from UNHCR. Sometimes a few cases are selected in their country of origin as well.

2.4. Humanitarian Grounds

A residence permit on humanitarian grounds had been the most common alternative way of protection outside of the 1951 Refugee Convention. In Chapter 2, Section 4 (5) of the 1997 Aliens Act, its principles of application are only to exceptional cases in which the personal circumstances are of an extraordinary nature, especially regarding ‘political-humanitarian grounds’. The other grounds under the previous Aliens Act (1989: 529, Ch.2, Sec.4-2) such as ‘gender and homosexual persecution reasons’ and also ‘the provision of inhuman measures of punishments’ that are deemed criminal in Sweden, for instance violence by force, for example mutilation without political dimensions, are removed to Chapter 3 under Protection.

The main guidelines for residence permits on humanitarian grounds under the 1997 Aliens Act can be summarised as follows.
(1) Medical humanitarian grounds

A person suffers physical illness, for instance terminal illness, serious handicap, or other personal circumstances.

(2) Inhumane conditions

The grounds are not covered by the rules on asylum but it appears inhumane to force them to return to a particular country by reason of the chaotic situation there (OAU cases).

(3) Situations when unable to deport

A person who is refused entry or is to be deported is in circumstances where enforcement cannot take place by reason of there not being any country where the person can be received.

(4) Temporary ordinance

The Government issues ordinances which grant residence permits during the transitory period of the new law or policy.

The first category: (1) medical humanitarian grounds require stronger reasons on the basis of psychological and physical illness, which are often related to child asylum seekers, for example, a Kosovo-Albanian family whose children suffered from diabetes, and there was another case of Kosovo-Albanian family whose son needed brain surgery but could not obtain such medical treatment at home, both of which were granted temporary residence permits. Psychological illness in asylum cases can appear after arrival in Sweden. In cases of adult asylum seekers who suffer from psychological illness, there must have occurred a serious attempted suicide, or a continuous risk of suicide, a requirement which is said to be higher than in previous Government practice.

The basis of the second category: (2) inhumane conditions, the so-called ‘political-humanitarian grounds should be differentiated from ones on asylum under Chapter 3 of the 1997 Aliens Act, although both situations are somewhat similar since a person cannot be deported to the country of origin. The context of ‘political-humanitarian grounds’ under the 1997 Aliens Act is defined as ‘chaotic situations in a country with serious disturbance of public order in either part or the whole of the country of origin making it difficult or inhuman to deport a person’, and that is similar to the so-called OAU cases since the provision of this category is similar to the 2nd paragraph of the OAU Convention. The situation under this provision was previously exemplified by the existence of a state of war e.g. Lebanon in the 1980’s, and presently that of chaotic general conditions in the country concerned, for example the former Yugoslavs (i.e. Bosnians before the Dayton Agreement entered into force on 14 December 1995). In the future, this provision is to only be applicable to the limited situations directly linked to the individuals and conditions in the country of origin similar to the OAU cases above.
The third category: (3) situations where Sweden is unable to deport have arisen from time to time when rejected asylum claimants are refused entry to their own country. The reasons for the refusal to admit them are beyond their control, for instance, chaotic circumstances in the aftermath of civil conflicts, regime changes, and proof of citizenship. It is often the case that re-admission agreements and diplomatic negotiation solve the problems.

The last category is the so-called (4) amnesties by the Government. Since 1989 amnesties have been given to quite a number of asylum cases which have been in determination procedures for a long time. Amnesties have been issued primarily to families with children, without providing any specific reasons other than the length of stay. For example, an asylum-seeking family living in Sweden for 18 months with children under 17 attending school for one year in the period of 31 May 1989 to December 1991 was granted a permanent residence permit. This policy was later transformed into the rule of three-school term attendance, which applied until 1 January 1992.

Due to the above reasons, the scope of ‘political-humanitarian grounds’ is diminished theoretically leading to fewer people staying with weak needs of protection. Other ordinary humanitarian grounds called ‘particularly distressing circumstance’ such as kinship links and medical reasons, for example, serious illness, high risk of suicide remain as the primary applicable basis as in previous practice. In practice, it is difficult to assess the reason for the dropping figures for permits on asylum-related humanitarian grounds since the details of asylum-related grounds were unavailable from the SIV statistics by 2006. From 2007 to 2008 onward, however, ‘political-humanitarian grounds’ appears to be decreasing. According to the latest statistics (1980-2014) the numbers of ‘refugee of humanitarian grounds’ decreased from 2008 onwards, and that numeric data excluded from the impediments to enforcement cases which appeared in the statistic since 2007.

2.5. Family Reunification

Family unification under Chapter 2, Section 4 of the 1997 Aliens Act stipulates that a husband and wife or cohabitant, and unmarried children under the age of 18 (the previous age-limit was 20) of a person granted asylum, or who obtained a residence permit, are entitled to residence permits. The change in family reunification rules under the 1997 Aliens Act resulted in the requirement on a family becoming stricter in that the family concerned should prove that they lived together in the same household immediately prior to leaving for Sweden. As soon as a residence permit has been granted in Sweden, an application for family reunification must be handed in. Close relatives such as a single parent, elderly parents, other relatives who must be ‘closely related’, for instance in an immediate household or a key person in the family, where there is great difficulty in living apart, can also be granted residence permits.
2.6. Special Care of Children

It has been quite common in Sweden that more than a third of the refugees who come to Sweden are children under 18 years of age. Special care is needed for asylum-seeking children who suffer from traumatic experiences, and this has been emphasised in Sweden. Complying with Articles 3 and 9 of the Convention on the Rights of the Child (CRC) which came into force in Sweden without any reservations on the same day of the CRC entry into force on 20 September 1990. Sweden stresses *the best interests of the child* under the introductory provisions of the 1997 Aliens Act (Chapter 1, Sec.1, 2nd paragraph), stipulating that ‘the Act shall be applied in such a way that the liberty of aliens is not restricted more than is necessary in each individual case. In cases where a child is involved, special attention shall be given to what is required bearing in mind the child’s health and development and *the best interests of the child otherwise*. As a result, the number of humanitarian grounds granted based on the best interests of the child has increased, for instance, temporary protection to a Bosnian-Croats family with children has a greater chance of being granted a residence permit than a single person. *The best interests of the child are not always, but usually of paramount since they are weighed against Sweden’s need to regulate immigration*.

Other improvements under the 1997 Alien Act are that unaccompanied minors under the age of 18 may be granted temporary residence permits while completing paternity investigations or executing care orders under the 1990 Act on Special Provisions on the Care of Young Persons (1990:52). Children under the age of 18 (previously it was 20) holding temporary protection permits are allowed to join parents. Under the 1997 Aliens Act, if an alien is prosecuted who came to Sweden before the age of 15 and has lived in Sweden for at least five years before being charged then that person may not be expelled on criminal grounds (Ch.4, Sec.10). Moreover, education for children of asylum-seekers of compulsory school age is organised by the municipality, and improvements have taken place at the upper secondary school level where appropriate education is normally offered.

3. Conclusion

The modified categories granted status of refugees under the 1997 Aliens Act can be construed as broader protection but narrower asylum than previous categories since asylum is limited to a Convention Refugee under the 1997 Aliens act. On the other hand, it stipulates a clearer and broader definition of the 1951 Refugee Convention in that *non-state agent* persecution is included in the case of a failed state and in the case of a state with weak power which is unable to control the country or to present persecution of individuals. That inclusion seems a more appropriate response to the current refugee producing situations, such as internal war and indiscriminate violations commonly seen in a country of origin.
Besides Convention Refugees, the newly laid down protection categories might protect a greater number of asylum seekers in a better manner rather than in previous practice, namely granting permanent residence permits on the basis of political-humanitarian grounds. Indeed, the scope of the basis, for instance, civil war situations, environmental disaster situations, well-founded torture cases, and gender-related persecution incorporated into the new categories, have become the basis of protection, and from that modification can be construed more cases decided by law other than by the discretion of the government. In practice, the scope of the basis for political-humanitarian grounds has narrowed and accordingly cases applying on this basis decreased although a marked change appeared nearly 10 years later.

Moreover, the new category, ‘well-founded fear of torture’ is also a broader basis for protection since it not only guarantees the principle of non-refoulement as an absolute under Article 3 of the ECHR and Article 3 of the CAT, but also provides protection. Before the modification, there were few cases granted asylum whose asylum application was rejected and brought before the ECHR Commission and the UN Committee against Torture. Therefore it is significant legislation in that it offers protection, and it can be construed that ‘a Refugee’ other than a Convention Refugee is protected not only in international refugee law based on the 1951 Refugee Convention, but also in international human rights law as well.

Another positive aspect is that the greater awareness of the special needs of children and women asylum seekers is enhanced from previously. Although the case of women’s specific human rights violations should be more readily recognised as Convention Refugee in cases related to gender-related persecution linked with the State’s policy derived from customs, religious and political domain, the results in the States concerned often fail to or are unwilling to, protect them. Such an interpretation is rational and appropriate from international refugee protection perspectives.

Some pro-active measures have emerged. For example, temporary protection in the case of mass influx, which offers time-limited residential permits, and less access to social and economic rights. This has led to paying more attention to the category of protection asylum seekers obtain and this could lead to a change in the Swedish concept of refugee protection from solely permanent resettlement to both permanent and temporary based protection.

Other significant aspects were seen in the determination procedures of which categories are eligible, that is a certain hierarchy of norms exists: topmost is Convention Refugee status, then secondly persons in need of protection, then thirdly permanent residence permits on humanitarian grounds. These norms seem to apply to all cases except ‘environmental disaster’ and also ‘well-founded risk of torture’ cases. The former does not overlap the basis listed in Convention Refugee grounds and the latter implies that pursuant to Article 3 of the ECHR, protection against the principle of non-refoulement which is even stronger than Convention Refugee status.

A rebuttal aspect of the hierarchy norms is that refugee determination procedures are taken
according to credibility, verification of proof, severity of persecution or punishment and human rights abuses, which leads to quite a strict interpretation of the 1951 Refugee Convention. To make it more justifiable and transparent in application of protection status, particularly ECHR and CAT cases need to clarify what the dividing line from a Convention Refugee is when excessive punishments and inhuman treatments emanated from political persecution. In terms of the burden of proof by the applicant, as it said to be high and strict, Sweden needs to share this burden, for example in a case of ‘well-founded torture’ the existence of the factual torture elements should be sufficient as is stated in Article 3 of the CAT.

In practice, the consequences of the modification of categories granted asylum and protection were not clearly evident until 2007 to 2008 when the EU Qualification Directive came into play in the Swedish asylum law, and that resulted in an increase of the recognition rate of a Convention Refugee as much as over 20% compared to its earlier much lower rate, and also in the replacement of humanitarian grounds to persons in need of protection.\(^\text{113}\) Compared to the EU Qualification Directive with the 1997 Aliens Act, contents of protection of “refugees” are alike except for the environmental disaster category which was not included in the eligibility of subsidiary protection under the EU Qualification Directive; that is, “a person in need of international protection” in the Swedish version. Therefore the 1997 Aliens Act can be construed as the starting point of laying the foundation of the EU Qualification Directive.

* The earlier of the draft of this article was written at the Wallenberg Institute attached to the faculty of law, the University of Lund in Sweden from September 1996 to March 1998. The information contained in this article is primarily based on research work on Swedish Asylum System undertaken as my MA thesis at Lund University. Special thanks are given to Michel Williams, refugee counsellor, diocese of Västerås Church of Sweden and the former representative of FARR for his willingness to provide me much useful information, translation and editing.

Notes


3 The Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic
on the gradual abolition of checks at their common borders, signed on 19 June 1990, entered into force on 1 September 1993 (OJ L 239, 22.9.2000, 19); Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (97/C254/01) (OJ No C254/1-12, 19.8.1997).


6 Ibid.

7 The requirements for ‘de facto refugee’ status were originally not set as high which become apparent after a certain period of practice. Somewhat stronger grounds were demanded than what were initially considered (cited SOU 1994:54, Utvärdering av praxis i asylärenden, ‘Summary’, Stockholm, p.25).

8 SFS 1994: 138, Chapter 2, Section 4a, (1 April 1994) states “an alien applying for a residence permit by virtue of Chapter 2, Section 4-2 and Chapter 3”.

9 The legislation under the 1997 Aliens Act comprises four different grounds: 1) A person in need of protection (Ch.3, Sec.3-2 and Ch2, Sec.4a), 2) A person who has committed a crime in Sweden (Ch.2, Sec.4b), 3) Humanitarian reasons (Ch.2, Sec.4-5, 4). Other reasons such as obstacles to rejection (only applied to Somalis). Besides the category 1) above, the rest of three are not considered under protection although their basis is asylum claim.

10 The European Convention for Protection of Human Rights and Fundamental Freedoms was signed on 4 November 1950 and entered into force on 3 September 1953, the Council of Europ Treaty Series No.5.


12 On 2 October 1997, the EU member States agreed that the ECJ would be in charge of ruling on primary reference regarding a question of the interpretation of asylum policies and rules stated in Title IV of the Amsterdam Treaty (Article 68/ex Article 73p).


15 Ibid.


19 Ibid., and SOU 1994:54, op. cit., p.27.

20 For example, see the case in the Utlänningsärenden, Praxis 1995 års utgåva, op. cit., reg 11, Bosnia-Herzegovina, 21 June 1993, pp.569-572.

21 See details in section: Armed conflicts and environmental disaster in this article.

22 The Government decision on 28 November 1996 and its commentary by Lars Johan Lönnback, senior administrative officer, Migration Policy Section, Ministry of Foreign Affairs. See a similar case
decided by the Aliens Appeals Board on 12 November 1997: a Catholic minority fled from Semizovac where the majority is Muslim.

23 Interview with Håkan Sandesjö, assistant director general at the Aliens Appeals Board, 10 February 1998.


25 Article 1 F of the 1951 Refugee Convention: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”


27 ECtHR, Case of *Paez v. Sweden*, Judgment on 30 October 1997, paras.9, 10, and 11.


31 This view was put forward by the Government in late 1989, in the so-called ‘Absence of Documents Decision and the 13 December Decision’. This view has been advanced further by the Aliens Appeals Board (cited in SOU 1994:54, *op. cit.*, pp.27-28. And SIV Praxisredovisningen, Fallredogörelser, Fall 1, 14 June 1991).

32 For instance the case in 1993, *Utlänningsärenden, Praxis 1995 års utgåva, op. cit.*, U.N. 29, p. 529. It stated that destroyed or discarded documents did not lead directly to the denial of refugee status.


34 Interview with Håkan Sandesjö, *op. cit.*, 10 February 1998.


41 Ibid.

42 For instance, see the Peruvian woman case mention in section 1.1. Convention Refugees.

43 The interpretation of standards of proof under the ECHR is cited in Walter Suntinger, ‘The Principle of


46 Interview with Michael Williams, refugee counsellor, diocese of Västerås Church of Sweden and the Swedish Network of Asylum and Refugee Support Group (FARR), 6 January 1998.


50 UN doc., *op. cit.*, CAT/C/16/D/41/1996.

51 UN doc., *op. cit.*, CAT/C/17/D/43/1996.

52 In February 1998, there is one pending case at the Government regarding an LTTE member who is believed to be facing a high risk of persecution on his return but where the exclusion clause, 1F (a) may come into play (information from Michael Williams, *op. cit.*, at FARR and in an interview with Henrik Surell, Ministry of Foreign Affairs, who previously handled Sir Lanka cases at the Aliens Appeals Board from 1992 to 1996).

53 For example, the Peruvian man, Napoleon Aponte Inga was admitted as a de facto refugee for the second time he applied for asylum in Sweden in July 1996 after having previously been *refouled* to Peru and subjected to torture on his return (Human Rights Watch/Helsinki, *Sweden- Swedish Asylum Policy in Global Human Rights Prospective*, Vol.8, No.14 (D), September 1996, p. 31.

54 Interview with Hans Emanuelsson, asylum interviewing officer at SIV in Malmö, 12 December 1997.

55 3,094 Yugoslavians were granted temporary protection on humanitarian grounds in 1995.

56 See further details about *non-state agents* in section 2.1. Convention Refugees.


60 Ibid., UN 94, p.758.

61 Immigration Board bulletin 24 July 1997 (See the Immigration Board's website: <www.siv.se/om/vilka/ut_f.htm>).

62 Access to the social welfare system has been much discussion in the Government (interview with Bengt Ranland, deputy assistant under secretary of Immigration and Migration Section, Ministry of Foreign Affairs, November 1997), and would be modified since it gives rise to problems and criticisms.


64 Utlänningsnämnden, Pressmeddelande, ‘Enenig Utlänningsnämnd fattar principbeslut avseende
Bosnien-Hercegovina och Kroatien’, 12 November 1997, p.1. For instance, 5 cases of Bosnians with Croats were all granted permanent residence permits on humanitarian grounds, 8 cases of Bosnians were granted as follows: 5 cases as convention refugees, 1 case on humanitarian grounds and 2 cases were rejected.


66 Utlänningsnämnden, Pressmeddelande, op. cit., p.2.

67 SIV statistics (1998-02-04), op. cit., Table 3 1997.


69 The official translation of the original Swedish word kön is sex. Kön itself in Swedish means both sex and gender. The meanings of sex and gender are different in sociological terms, but the Swedish term under Ch.3, Sec. 3-3 can be construed as not distinguishing between the two. In this article, it includes both meanings.


72 The previous provision was in the 1989 Aliens Act, Ch.2, Sec.4-2, and drafted in the SFS1983/84:144 (cited in the SIV, TOM 1, 9.4. ‘Politisk-Humanitära Skäl’ (1996 Immigration Procedural Handbook).


74 Since December 1996, the Aliens Appeals Board had referred the case to the Government and the Government was waiting for a report from the Swedish embassy in Iran before it makes its decision (cited in the Summary of cases pending at the government 12 December 1997, Ministry of Foreign Affairs PM 1997-12-12/BR and information from Henrik Surell, Ministry of Foreign Affairs).

75 There were two negative cases under the previous law: an Iranian man (UN 8 October 1996) whose claim was rejected since there was no risk of a severe sentence, the death penalty or corporal punishment. The other case concerned a Cuban male (UN 31 October 1996).

76 Goodwin-Gill, op. cit., p.363.


79 International instruments are overviewed from the US memorandum of 26 May 1995, op. cit., pp.701-702.

80 General Conclusion on International Protection No. 79 (XLVII) , EXCOM Conclusions (11 October 1996) is based particularly on the following two conclusions: No. 39 (XXXVI) in 1985 and No.73 (XLIV) in 1993. Conclusion No. 39 (k) did not state the State party’s obligation to interpret women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores
of the society in which they live as a “particular social group” within the meaning of Article 1A (2) of the 1951 Refugee Convention. Refugee status based upon a well-founded fear of gender-related persecution has been pointed out since Conclusion No.73 (1993)(d).


82 The 1993 World Conference on Human Rights (Vienna Declaration on the Elimination of Violence against Women) recognises violence against women as per se a violation of human rights; the 1995 Fourth World Conference on Women (Beijing Declaration and Platform for Action) cited in the U.N. Doc. A/CONF. 177/20 (1995), para.136 and 147 (h)). Furthermore, States pledged to support and promote efforts toward the development of criteria and guidelines in response to persecution specifically aimed at women (cited, ibid., para. 148 (i)).


84 Instructive yardsticks of International human rights instruments are; the International Covenant on Civil and Political Rights (Art.3), the International Covenant on Economic, Social and Cultural Rights (Art.3), and the CEDAW (Art.1, Art.2).

85 According to the views of G.Noll, research fellow at Faculty of Law, Lund University (1997).


88 Ibid. This proposal can enter into effect at the earliest on 1 January 1999 (cited in News & Views 41/97 3 December 1997).

89 UNHCR Handbook, op. cit., paragraph 77 (e) Membership of a particular social group, p.19.

90 A general view from the Ministry of Foreign Affairs, op. cit., p.223, and Immigration and Refugee Policy 1995, op. cit., p.27.


92 Interview with Hans Emanuelsson, op. cit., 12 December 1997.

93 Information from Michael Williams, op., cit., February 1998.

94 SIV statistics (1998-02-04), op. cit., Table 3.

95 Interview with Ahlvin (Refugee Quota Coordinator), Sandström (Legal Advisor), and Vestin at the Immigration Board (SIV) on 2 November 2005 taken place as a part of the fact-finding research mission’s work organised by the Refugee Assistance Headquarters (RHQ, Tokyo).


98 Overviewed from the SOU1994: 54, op. cit., p.28 and ibid., SIV, TOM 1, 9.7 and op. cit., 9.4.

pp.99-104 (Government decision on 17 February 1994).

100 See the case, *ibid.*, reg 26 (pp.58-60): Somali man who obtained a 6 month temporary residence permit (Government decision 17 March 1994).


102 One case: A woman holding a Soviet Union passport issued in Latvia who grew up in Ukraine was refused admission by Ukraine upon deportation by the Swedish police since Ukraine passed a law stating that persons who had left the country before 1991 cannot be seen as Ukrainian citizens (*Svenska Dagbladet* 19 December 1996). Other case is, for example, the former Yugoslavians before a re-admission agreement was agreed upon unofficially in March 1997 (signed officially later on 16 January 1998).

103 The SIV statistics (Tabell 1 Bevlljade uppehållstillstånd 1980-96) does not have a numeric date on amnesty cases, though cases in which decisions handed down by the Government with footnotes, falls on this category.

104 However, there were disqualification grounds such as criminality.


112 There were 12 individual communications from Sweden under the CAT Article 3 from 1995 to 1997 and only one case against Sweden under the ECtHR Article 3, *Cruz Varas and Others v. Sweden* (Judgment of 20 March 1991, Application No. 15576/89), which was amongst 10 important jurdicial precedents relating to Article 3 of the ECHR by 2000.