Unaccompanied children –
The effects of asylum process

A study on the effects of the waiting process of asylum seeking in Sweden for unaccompanied children

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Abstract

This thesis provides a qualitative research of asylum seeking of unaccompanied children in Sweden. Children who find themselves traveling borders without company of a family member are in a very vulnerable position. In this thesis, the experience of unaccompanied children undergoing an asylum process in the Swedish jurisdiction is presented and the consequences of this process are also presented. With the creation of territorial boundaries embodied with an institution of state sovereignty, unaccompanied children finds themselves in a position of statelessness which produces a situation of rightlessness as they find themselves outside their own territories. This research suggests that, the territorial system provides great examples of unaccompanied children in a situation of statelessness even when they find themselves inside a new community. Even in this new state they do not automatically gain access to the community, instead through migration system, they must undergo investigations and procedures to prove that they have the rights to belong to that current community, a procedure that contributes to stress and other negative factors to the health of these children. From the findings of the interviews with unaccompanied children undergoing the process of seeking asylum and also unaccompanied children in hiding, it is seen that the asylum seeking process in the condition of unaccompanied children is characterized by the paradoxical system of national states, territorialism, totalitarianism, state sovereignty and an effort of maintaining human rights. The suggestion is that, the paradigm of territorialism and state sovereignty deprives unaccompanied children from what one in the Arendtian sense would call the right to have rights. As their journey to a new community starts off as a position of statelessness and with a 50% chance of returning back to that position. Their position slowly emerges from unaccompanied children, to a stateless adultescence and lastly to a forgotten undocumented adult.

Keywords: Unaccompanied children, statelessness, rightlessness, undocumented, totalitarianism, state sovereignty, national states, territorialism, discrimination, children’s rights, alienation.
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<tr>
<td>UN</td>
<td>The United Nation</td>
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<td>CRC</td>
<td>the Convention on the Rights of the Child</td>
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<td>EU</td>
<td>European Union</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>Child rights committee</td>
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CHAPTER ONE

1.1. Introduction

Every human being deserves the right to have rights, it should not matter if they are part of a community or not. Unfortunately, this is not the case in societies today. When individuals no longer find themselves in their recognized territory, their rights as human beings automatically become nonexistent. The United Nation’s guideline on protection and care for refugee children introduced that more than half of any refugee population are children.¹ The number of refugee children that risk their lives in journeys of a search for a new life are increasing with every year. Majority of the children that undergo these dangerous journeys do so alone, without the company family or guardians. The children who manage to make the journey and safe arrival within the territorial boundaries of a new state are granted the chance to seek asylum under the category - unaccompanied children.

1.2. Problem statement

Where conflicts are involved, people are bound to flee in search for a better and safer life – amongst them are children. Political debates on the topic of refugee children are not new. The Swedish migration board registered that a statistics of 1,051 unaccompanied children have sought asylum between the periods of January to February 2015 in Sweden. This is 70% higher than the registered statistics from the same period in 2014.² The escalation continues; the number is expected to double by the year 2016. The number of refugees including unaccompanied children seeking refuge in European countries has increased tremendously, which has also increased the focus on the topic of unaccompanied children. Unaccompanied children are granted the rights to apply for asylum, but asylum cannot be granted to them at point, like adults, they must go through the process of investigation.

The migration board states that their aim is to make sure the cases of unaccompanied children are prioritized and the goal is for a decision-making to take place within three months. Due to the increasing numbers of new arrivals, the time an investigation of a case fluctuates depending on the condition of the case, but a period of three months to over a year can be expected for majority of the cases. The effect caused by the waiting period in the asylum seeking process could cause several problems for these children; these problems are psychological like (stress and refusal syndrome) and child disappearance, meaning that the children choose to run away. The later of these problem has caught an immense focus in both the media and political discussion, also the fact that a great majority of the runaway unaccompanied children have not been found. This leaves them in the most vulnerable state and fear that comes with the consequences of “statelessness”. This is a very important view in Arendt’s theory, she highlights that, statelessness is created by the construction of national-states, territorialism and state sovereignty. Furthermore the case of “refusal syndrome” is also a topic that has caught media’s attention and discussed as a symptom that can be found amongst unaccompanied children and is developed during the waiting period of a decision and fear of deportation.

Article 22 of the Convention on the Rights of the Child assigns states the duty to ensure refugee children and children seeking asylum access to adequate protection. Yet the question remains the same – are states taking every possible measures including physical and psychological attention to ensure unaccompanied children the protection of which they so desperately are in need of? Are they protected in the same level as regular Swedish children are?

1.3. Aim of study

Discussions about unaccompanied children disappearing with only speculations as to why these children are running away from their institutional homes are being made. Nobody seems to have a concrete answer and one of the speculations is that, these children are disappearing because they cannot handle the pressure of the asylum process and fear of deportation. An interest for this topic came about, when a news piece was publish in the Swedish channel Svt 3

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4 I define the asylum process as the period from the submitted application until the applicant receives a decision.
5 Joelsson, L, Asylprocess grogrund för apati hos vissa barn; Klinik och vetenskap, nr48, volym 102, 2005.
6 Olsson, L, Nytt system, gamla brister?, Elanders, 2008, p.5.
about two unaccompanied boys that has gone missing from their institutional home and nobody was making an effort to find them.

Topics on refugees and asylum seekers are taking immense expansion in the European political debates and children are no exception. This research has been designed to give an understanding to the barriers that unaccompanied children seeking asylum in Sweden face and the affect the asylum process inserts on the children. The initial interest of this research is also to evaluate how effective the Swedish state is in its role in assuring the safety and well-being of unaccompanied children seeking asylum in its territory. The purpose is to find out how unaccompanied children seeking asylum experience their situation and particularly the process of waiting for a decision on whether they will be staying in Sweden or deported. Furthermore how the Swedish government deals with the situation of these children, the consequent side effects of the situation and if the system is in accordance with the Convention on the Rights of the Child (CRC), (articles 2 – that describes nondiscrimination and 12 – that describes rights to participate, in particular).

Though many people have done studies on unaccompanied children, there are still very limited publications that have been done on this section, not many studies can be found on how the waiting process affects these children, emotionally and physically.

1.4. Research questions

In order to gain an understanding and knowledge on this work, a qualitative research was cultivated, to proceed with this method these research questions were constructed:

- Is the asylum seeking process in Sweden that unaccompanied children are submitted to in accordance with articles 2 on non-discrimination and 12 on respect for the view of the child of the CRC?
- How do the unaccompanied children seeking asylum in Sweden describe the effect of the waiting process?
- Is the phenomenon of territorialism and Sovereign State a threat or are their existence an essential precondition in order for refugee children to have their rights recognized?
1.5. Outline

The outline of this thesis has been created to help the reader orientate themselves in the research. To make this possible a uniformed basis has been created through chapters and the plan is to use this system throughout the thesis. Chapter one is created to introduce the reader to the introduction of the study, including the formulation of the problem, aim of study and the research questions. Chapter two consist of the background, the intention is to provide information and background knowledge of the different definition of asylum seekers, including which category unaccompanied children falls under. This chapter is also intended to explain the situation of unaccompanied children seeking asylum in Sweden and how the asylum process is executed. Chapter three composes the methodology that was applied. In this chapter the explanation of the route taken to gather materials is presented, including qualitative methods, discussions on ethical considerations, limitation of the study and participants, transcription and the difficulties faced in the methodology process. In chapter four the first half of the theoretical framework will be presented. A discussion on the Arendtian view of man’s right to have rights and the restrictions this rights face through territorialism will take place. The aim is to show how human beings in general are restricted from their rights once they find themselves outside their territory, be it a child or an adult; they all fall under the same category when they find themselves in the position of statelessness. Chapter five contains the legal acquirement and instruments for protection of refugees and asylum seeker in both the Swedish and international context, emphasizing the child’s right’s aspect. In Chapter six, a discussion of the Swedish interpretation of the chosen articles (2 and 12 of the CRC) will be presented. Also the shortcomings of this interpretation and if there are faults and failures to meet the standards of these articles specifically in the case of unaccompanied children seeking asylum. Analysis from the performed interviews will be used as evidences to conclude the answer to the first and second question of this thesis. Chapter seven comprises of the second half of the theoretical concept; here an emphasis of the philosophical and ethical views of this thesis will take place. The reader is also introduced to the connection between Arendtian theory on “the right to have rights” and the position of a children’s right to have rights, which explains the sporadic link between national-state, state sovereignty and human rights. This chapter also considers earlier research by Sigvardsdotter who has introduced her readers to statelessness as a consequence of the increasing number of asylum seekers in Sweden and the rejection of asylum applications. Here the Swedish system
is also criticized for creating a society where stateless people are many but yet very invisible to the societies they live in. She also emphasizes the consequences that the asylum seeking process can have on individuals, including unaccompanied children seeking asylum. This will help view a more effective perception of the circumstances of unaccompanied children seeking asylum. The Arendtian theory will be use to come to a conclusion on the third question of this thesis. Chapter eight covers the discussion and concluding thoughts on the information gathered from the interviews that were performed for the sole purpose of this project and encompasses final arguments and thoughts of the results of the research as a whole.
Chapter two – background

2.1. Unaccompanied Children in Sweden

Children seeking asylum in other countries is not a new phenomenon, traces of children seeking refuge in other territories can be seen since the 1930s. During World War II, approximately 70,000 children were evacuated to Sweden from Finland. Same event happened in Spain during the Spanish civil war in 1936. Since the beginning of the 1980s, the number of refugees from third world countries has increased immensely along with other kinds of immigration. According to the UN Refugee Agency, almost half of the world’s forcibly displaced people are children and many of these children spend their childhood away from their homes. Whether they carry the status as refugees, internally displaced, asylum-seekers or stateless, children are at a greater risk of abuse, neglect, violence, exploitation, trafficking or forced military recruitment. In 2010 up to 15,000 children applied for asylum in Europe.

As long as there are unresolved conflicts like war and poverty, there will always be children fleeing from their country to search for a better life, some of them with family and many alone without company, these children are scattered in different countries in the world, and Sweden is one of the countries where they find themselves in. In 2012, a figure of about 3,578 unaccompanied children applied for asylum in Sweden, in May 2015 a statistics of 5,010 unaccompanied children were registered in the Swedish migration board’s system. According

to a forecast made by the migration board to the Swedish government, an estimate of 7,800 unaccompanied children are expected to apply for asylum before the end of 2015.\textsuperscript{11}

In 2001, The UN Secretary General sent a report to the General Assembly defining an unaccompanied as a person below 18 years who has been separated from both their parents and legal guidance and is seeking asylum in another country. The EU also added a paragraph in the definition of unaccompanied children, categorizing them also as “a third-country national or stateless person below the age of eighteen, who arrives on the territory of the member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or a minor who is left unaccompanied after they have entered the territory of the Member States”.\textsuperscript{12} Over the years they have been an increased number of unaccompanied children seeking asylum in Sweden and over the past years, this numbers have increased tremendously. Majority being boys between the age of 15 and 17 from Syria, Afghanistan, Eritrea and Somalia.\textsuperscript{13} The group of unaccompanied children arriving in Sweden is dominated by the male gender, in the 2014 statistics presented by the migration board, it showed that only 16% of the group was of the female gender.\textsuperscript{14}

### 2.2. Asylum process in Sweden for unaccompanied children

A person filing an application for a residence permit in need of protection is called an asylum seeker and as a rule anyone who is applying for residence permit in Sweden due to need of protection has the right to get one. Principally a resident permit should be applied and granted before an entry to Sweden, but there are exceptions to this rule. Generally this rules does not apply to a person who is entitled to a residence permit in need of protection or due to


\textsuperscript{12} Regeringskansliet, Mottagande av barn från annat land som kommer till Sverige utan medföljande legal vårdnadshavare (s.k. ensamkommande barn), Ds 2004:54, Stockholm, 2014, p.19.


particularly distressing circumstances. In the definition of a person in need of protection, refugees are included, also people in need of other kinds of protections as for example a person who is not considered a refugee but finds themselves out of their country because they are in need of protection due to an external or internal armed conflict or due to other severe conflicts in the home country that causes fear of being subjected to severe abuse. A person may also be in other need of protection if the person is unable to return to their homeland due an environmental disaster.

Article 14 of the Universal Declaration of Human rights states that “everyone has the right to seek and to enjoy in other countries asylum from persecution”. A person having the right to seek asylum in another territory, does not mean that the asylum seeker gets their permit automatically. It is up to a state to decide after undergoing an investigation whether or not asylum can be granted. The high number of unaccompanied children that arrive in Europe, especially Sweden which is one of the countries that receives the highest amount of unaccompanied children, has reflected on the asylum process as well, putting more pressure on the process.

Like everyone else, unaccompanied children are subjected to a process of investigation when applying for asylum. Unaccompanied children seeking refuge in Sweden can apply residence permit for reasons like being refugees in need of protection or other reasons for need of protection. Children seeking asylum without company are first sent to the migration board, where the child is interviewed to tell their reasons for fleeing to Sweden and seeking asylum. The child is later assigned to a lawyer to help the child throughout their application and also assigned an interpreter if necessary. The migration board continues with the child’s case by investigating on the information that they have received to consider if it is a legitimate reason to grant the child a residence permit. At the beginning of the investigation, unaccompanied children are also assigned a (gode man) who works as a legal guardian for the children and is to help these children throughout their asylum process, especially during interviews at the migration board. The migration board investigates the child’s situation and also takes to account the child’s state of health both physically and psychologically. Unaccompanied children often travel without identification documents and in some cases evidence of their age

17 Lag (2005:429) 2; om god man för ensamkommande barn.
is missing. In this case, if the migration board suspects that the age of the child does not seem reliable, the migration board will then require a medical age assessment, where a doctor performs a dental x-ray to estimate the child’s age.

According to the migration board, their goal is to prioritize the cases of unaccompanied children seeking asylum, therefore putting a goal of maximally three months per case, but due to the increasing application that is received every year, it could take between three months to more than a year to come to a decision on a case. The processing time has vary over the past years due to factors such as high numbers of application that the migration board receives every year and possibly lack of resources. In 2015, the average time taken for cases regarding unaccompanied children has been up to 5 months, which is two months more than the stated time given by the board. This is an issue that could be seen amongst the interviewees of this project as some of their cases has been going on for up to 10 months and they still have not received a decision. According to the migration board, 457 unaccompanied children have been granted asylum in Sweden between Januarys to March of this year, which makes 74 % of the cases decisions have been made on. The time frames also depend on the situation of the case. At the end of the investigation, a decision is made, in the case of rejection the children with the help of their assigned legal guardian can either appeal or accept deportation.

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18 Migrationsverket, Aktuellt om ensamkommande barn och ungdomar, 2015-03-03, [link](http://www.migrationsverket.se/download/18.39a9cd9514a34607721343b/1425399445527/Aktuellt+om+ensamkommande+barn+och+ungdomar+mars+2015.pdf),
Chapter three – Methodology

3.1. Qualitative research

“The qualitative research interview is seeking to understand the world from the investigated person’s point of view, develop a sense of their experiences, reveals the world they live in as it was before the scientific explanations”\(^{19}\). Bryman describes the qualitative research method as an inductive view of relationship between theory and research, whereby the former is generated out of the later\(^{20}\). A qualitative approach was used as a method in gaining results for this project. The first approach was finding different ways of collecting relevant data to use as guidelines in gaining knowledge to the area of research. Kvale and Brinkmann noted that, thematization is an important factor in a research project, the “why” and the “what” of the research should be clarified before the question of how\(^{21}\). This helps the researcher develop a theoretical understanding of the phenomena in the study in order to establish new knowledge. Upon taking the role of the researcher, one needs to be familiar with their research relevant questions. The search of materials started online through search engine google scholar, which provided me with digital copies of verity of articles related to the research project. Both academic publications and journals on the subject regarding unaccompanied children seeking asylum were found, but these publications where focused on the child’s rights to education, integration or the system of using x-rays to determine a child’s age. Though this materials where not so closely related to this thesis, it was still of important scoop to use the broadness as factors.

To gain knowledge in the investigation on the well-being of the unaccompanied children seeking asylum in Sweden, the interviewing process was set to motion as soon as enough pre-knowledge was collected on the subject. Although I would have loved the interview subjects to be the first to be heard in this research process and proceed from this stage, the pre-knowledge on the research subject was not enough to perform a successful interview. With

the help of recommendation of literatures from previous thesis on similar subjects, a greater amount of knowledge was gain on the research subject and I could proceed to interviewing the main characters of this thesis. At this point, better specifications of the research questions could be formulated.

For the legal aspect of this thesis, an examination on how the Swedish government interprets certain laws regarding unaccompanied children seeking asylum in Sweden was made, a limitation to literatures and data on the specific laws that are connected to the chosen articles (articles 2 and 12 of the CRC) was made. Administrative interviews were not made as the focus point of this thesis is unaccompanied children and the Swedish government’s level of implementing articles 2 and 12 of the CRC.

3.2. Interview subjects

“I want to understand the world from your point of view. I want to know what you know as you know it. I want to understand the meanings in your experience, walk in your shoes, and experience things as you experience them, explain things as you explain them. Do you want to become my teacher and help me understand?” – Spradley

When interviewing adults, it is easier to get detailed and concrete answers to one’s questions, while with children it is a bit harder because they are more careful when they do not feel comfortable with the interviewer. Interviewing a subject is not just questions about gathering a natural discourse, it is important to construct this discourse scientifically so that it brings forth the elements necessary for it to explain itself. The scene that the interviewer presents to the subject is a crucial part of an interview. The interview subject often wants a perception of what kind of person the interviewer is before the subject decides if he or she will be comfortable enough to reveal their experiences and feelings to this person – “a stranger” as Kvale and Brinkmann calls it. Which is why it is very important to be extremely clear from the beginning to the interview subject about what one wants from him or her.

When interviewing children on sensitive issues, the interviewer must be extremely careful with the sense of approach that he/she uses. It is understandable that issues regarding asylum

can be touchy for children going through the asylum process, especially children without any blood-band legal guardians or someone they trust to advise them. To create a comfortable scene as explained previously, a visit was made to an institutional home for unaccompanied children seeking asylum – after getting the permission to proceed with an interview from the administration. During this research process, an understanding was concluded, these children are in a vulnerable position and do not yet understand the system; anyone interviewing them is often associated with the migration board. Which is why a visitation was made to an institutional home for unaccompanied children before performing interviews. This was also done to create a certain familiarity and personally explain to the interview subjects the purpose of the research and the importance of their role. Almost half a day was spent with the interview subjects, as a plan of getting them to relax and to feel comfortable enough to reveal their honest feelings during the interviews.

Two weeks later, a dual-structure of semi-structured and unstructured interviews was performed, based on open questions that normally lead to follow-up questions. The unaccompanied children that have been interviewed for the purpose of this thesis have been in Sweden for a period of 4 months to a year, some of them spoke very little Swedish, two spoke fairly good English and one could hold a fair conversation in Swedish. Although we had manage to hold a good conversation through a mixture of Swedish mix with English and some sign gestures during my first visit, there was still a need to use a translator for a trustworthy validity to the data. Three of the interviews were conducted through the help of an interpreter in Tigrinya. The research project was explained to the interpreter, the purposed of the interview and the interview questions were viewed to the interpreter to get familiar with the questions. The interpreter translated throughout the interview and also with her help, followed up questions were asked. Another meeting was set with the interpreter during the transcription of the recorded interview, yet again for the sake of the validity of the research. Question on the background of the interview subjects’ journey to Sweden was avoided during the interviews, simply because the focus of the research project is to create an understanding of how these children experience the common situation of waiting for an answer on their asylum process. Their background was a topic that came from the interview subjects in their effort to make me understand what they were feeling – To make you understand what going back home would do to me, I have to start from the beginning.23

23 Field notes no.1 – Hallex Berry.
For ethical reasons, the sensitivity of the subject and the fact that the interview subjects are children under the law, anonymity has been promised to preserve their integrity. The fact that the interview subjects are still in a vulnerable position whereas their cases are still undergoing processing in the Swedish migration board, therefore their names shall not be presented in this thesis. “In a qualitative interview study in which participants’ statements in an individual interview can occur in public reports, one must look to protect the interviewees' private integrity”\textsuperscript{24}.

3.3. Limitation of study

The Swedish migration board’s statistics shows that majority of the unaccompanied children seeking asylum in Sweden are males between the ages of 15 – 17 years. Therefore, the research has been limited to this group. The statistic also showered that these majorities are often from Somalia, Eritrea, Syria, and Afghanistan – the initial idea was to interview this specific countries but realized that this could be in favor of the research project. For that reason the interview objects have been chosen randomly from the institutional homes for unaccompanied children seeking asylum. The subjects were asked about their age and every male between the ages of 15 – 17 who agreed to an interview was interviewed, regardless of their country. The only requirement was that they were still undergoing their asylum process.

3.4. Limitations in methodology

The first set of limitations faced in this project was finding a concrete earlier researched that a direction could be based on. There was a limitation to this area, even numeric statistics were hard to find. Instead articles, similar thesis and literature materials based on subjects regarding unaccompanied children were used. The second limitation was finding as many as possible unaccompanied children to interview. The interview subjects that are planned for this thesis are children under the law and even more difficult, in this case, they are children who have arrived in Sweden without parents or guardians. It is a requirement that someone contacts the

\textsuperscript{24} Kvale, S and Brinkmann, \textit{Den kvalitativa forskningsintervjun}: Lund, studentlitteratur AB, 2009, p.89.
legal guardians that have been appointed by the state for these children before performing sensitive interviews, it was hard getting in contact with the legal guardians of these children and majority of them declined an interview. Applications where sent out to numerous institutional homes in Stockholm and an opportunity of 6 interviews were performed. Enough pattern were found in this interviews to be able to proceed further. I am truly on the opinion that these interviews are fair and reliable because I presented the exact point of view that these children gave during the interview sessions.
Chapter four – Theoretical Framework “the right to have rights”

This chapter is going to consist of a theoretical discussion on refugees, statelessness and rightlessness, the aim is to show that behind every problem there is a source and in the case of refugees, stateless, undocumented and unaccompanied children – they all have one thing in common, they are all fleeing their homes and fighting for a new one. In this section more of Arendt’s theory will be presented but in the view of my own personal references relating to this thesis. This arguments will later be use in chapter seven to discuss the rights of children to have rights and how territorialism and state sovereignty limits these rights. Arendt’s theory on man’s right to have rights is considered relevant to this thesis because she seeks to argue that the rights own by humans are granted to humans by one condition, which is belonging to a territory (a community as she refers). A community with a commander that is assigned to help the citizens recognize their rights and also protect these rights for its citizens – but only as far as one is a part of this community. Those who find themselves outside their own community are in a position of rightlessness, and even getting themselves inside a new community does not automatically grant them back the rights they once lost in the position of statelessness. A certain rights might be granted to them as strangers but even these rights are still temporary, be it adults, families or unaccompanied children.

4.1. Territorialism – a limitation of man’s rights

Benhabib describes that different levels of being undocumented by stating that, “One becomes a refugee if one is persecuted, expelled and driven away from ones homeland; one becomes a minority if the political majority in the polity declares that certain groups does not belong in the supposedly “homogeneous” people; one is a stateless person if the state whose protection one had hitherto enjoy withdraws such protection, as well as nullifying the papers it has granted; one is a displaced person if, having been once rendered, a refugee, a minority or a
stateless person, one cannot find another polity to recognize one as its member, and remains in a state of limbo, caught between territories, none of which desires one to be its resident”.25

Arendt explains the paradoxical elements of territorialism and the system of state sovereignty. Arendt highlighted that, where politics is involved statelessness will always accompany it and this is a problem that is going to continuously be a major issue into centuries to come. She argues that it is the disintegration of the non-state system in Europe that occurred during the First and Second World War that can be blamed for the cause of totalitarianism26. Meaning that with the emerge of totalitarianism and territorialism, human beings were being treated as nonessential and many people were forced to take a new role – statelessness. With this title, Arendt means that one was then denied the rights to have rights as being stateless means loss of nationality, which also meant that citizenship rights were redrawn and this is equivalent to losing all rights. Benhabib also contribute to this argument by stating that, “The rights of man and rights of the citizen, which the modern bourgeois revolutions had so clearly delineated, where deeply imbricated. The loss of citizenship rights, therefore, contrary to all human rights declarations, was politically tantamount to the loss of human rights altogether”.27

Arendt’s theory on right to have rights speaks up for the position of statelessness and rightlessness of vulnerably groups like refugees, immigrants and displaced people created by the boundaries of territorialism and the needs of citizenship in other to be accepted into a community. Arendt states:

“Something more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to a community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the rights to freedom, but of the rights to action; not of the rights to think whatever they please, but of the rights to option”.28

26Totalitarianism is a political system in which the state holds total authority over the society and seeks to control all aspects of public and private life.
Once a person is stateless, even a criminal has more human rights than that person, because criminals can be seen and can act under the law. With territorial boundaries comes totalitarianism but this does not stop humans from being themselves and having the freedom to think, but it does stop them from being able to participate and take actions in decisions that effects them, simply because they do not belong to a community. This is where someone loses their human rights because in the sovereignty system that states are based on today, someone recognizes and is reminded of their rights through actions and participations.
Chapter five – Legal instruments

5.1. International and Swedish legal instruments

Many people who seek refuge status in Europe consider themselves as refugees, but the countries they find themselves in do not comprehend the same recognition to all and those who are not regarded under this status by the state are not regarded as refugees with a recognized right to protection. This situation in many instances makes it difficult to distinguish the line between asylum seekers and illegal immigrants. Consequently these cause problems for asylum seekers in areas of visibility, recognition and proper protection and also is a situation that makes it difficult for children to be recognized in their own right. The authors of the book “The Asylum-seeking Child in Europe” express that even though the rights of asylum seeking children are protected by international conventions and laws such as the CRC, the European Convention on Human Rights and the Geneva Convention, the rules of the conventions are still being tested by the different policies that are practiced in different countries when it comes to handling refugees and asylum seekers.29 The debate on asylum seekers is a political issue that have developed a certain key concept within international laws, whereas as much as there are protections for refugees and people seeking asylum under different statuses, there still remains the tension between the fact that an individual has the rights to be given asylum but at the same time it is up to the state to decide if they want to grant asylum just as much as the rights to withhold (refuse giving asylum) to the individual. This tension can be found in article 14 of the 1948’s Universal Declaration of Human Rights which states that: “Everyone has the right to seek and enjoy in other countries asylum from persecution”.

Instead of incorporating the CRC into the Swedish law, Sweden has chosen a transformation method that ensures that the national law changes and adapts to the provision of the Convention, this method does not apply the Convention as Swedish law today, and the

Convention does not have the same status as other Swedish laws.\(^{30}\) From Unicef point of view, the Swedish government has undergone numerous criticisms from the UN committee for not incorporating the CRC into the Swedish law. In 2013 the government started an investigation, headed by court lawyer Anita Wickström, to investigate into how the application of law and regulations are consistent with the CRC, to analyze the advantages and disadvantages in incorporating the Convention.\(^{31}\) It is believed that incorporating the CRC into the Swedish law can be beneficial in ways that will give the Convention a powerful meaning and affect, especially when it comes to dealing with refugees and children seeking asylum.

In this chapter, the legal instrument use to protecting the rights of refugees and asylum seekers will be introduced while emphasizing the rights and protection of children in general but focusing on unaccompanied children. International standard in the treatment of issues regarding unaccompanied children seeking asylum, for example the 1951 Convention relating to the Status of Refugees and 1989 Convention on the Rights of the Child will be introduced and discussed. Information and analysis on the Swedish Alien Act in regards to unaccompanied children will also be discussed.

5.2. **The UN Convention relating to the status of refugees**

The first security of rights of a refugee can be found in article 14 of the 1948 UDHR which states that “everyone has the right to seek and to enjoy in other countries asylum from persecution”. Also in the United Nations Convention relating to the Status of Refugees which was adopted in 1951 as a focus point for international refugee protection, one can find in article 22 that the needs of children are mentioned in connection with education. It states that “The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education” and should be at least as favorable as possible as, not less favorable than that accorded to aliens generally in the same circumstances”. What is problematic with this articles is that as much as they advocate for refugees and even though the UN Convention relating to the status of refugees can be seen as the core of refugee law,
there turn to be silent when pointing to children seeking asylum. The generalization of refugees is so vast that the articles does all its description without mentioning children. This is important to emphasize due to the fact that children are more vulnerable than adults, they need to be given attention as a specific group and therefore force states parties to pay attention to them.

It is in the 1997 Geneva Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum that one is introduced to specific guidelines on handling unaccompanied children. Regarding access to territory it states that: “because of his/her vulnerability, an unaccompanied child seeking asylum should not be refused access to the territory and his/her claim should always be considered under the normal refugee determination procedure. Upon arrival, a child should be provided with a legal representative. The claims of unaccompanied children should be examined in a manner which is both fair and age appropriate”.

5.3. UN Convention on the Rights of the Child

An additional step taken in the effort of trying to pay extra attention to vulnerable groups like children can be found in the CRC. The Convention on the Rights of the Child was the first instrument to incorporate the complete range of international human rights. This convention can be seen as a step forward in viewing children as individual actors in need of protection. One could establish that the CRC in details offers a higher elaboration of legal guidance regarding the treatment of children. Even though children seeking asylum as refugee are protected in the refugee law, in the CRC they are protected as both refugees and children in general.

In the CRC one could clearly see relations to protecting the rights of children who are seeking asylum. Article 2(1) is a non-discrimination provision that urges states to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, this could be seen as a great step in protecting refugee children and children who finds themselves outside their territory. Article 3 (1) urges states to in all

actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. Article 12 urges states to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, with the views of the child being given due weight in accordance with the age and maturity of the child. This article is very important as it gives children as individual a voice.

Article 22 is the only article in the CRC that states clearly and in details the rights of asylum seeking children in particular. It states that, “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present convention and in other international human rights or humanitarian instruments to which the said States are Parties”. 33 This imposes state obligation in focus to this specific group of children.

Despite the support of children in this Convention, just like every other legal frame work, there are limitations in the CRC. Söderbergh argues that these limitations can be found on how the Convention sometimes are applied to children who are seeking asylum. Meaning that in the view of the “best interests” organizations like Amnesty Internationals have experienced that much time and force is laid out in the consideration of the child’s age. A person is considered a child only if they are below the age of 18 and this could be seen as a “best interests” engender and could generate the migration authorities to focus on questioning if the applicant is a child or not. This has caused a lack of understanding for children’s asylum claims. 34 This also can lead to the lack of recognition of the necessity of for example interviewing a child without the presence of their parents.

5.4. The Swedish Aliens Act

In the mid-1990s, there was an intense debate in Sweden, which questioned whether Sweden was fulfilling its obligations under the CRC. The Swedish Aliens Act and its application were subjected to particularly severe criticism. In a number of cases, which attracted much attention, adverse remarks were made about the applied practice, as it was considered in aliens matters such as lawyers, medical experts, psychologist and others, objected to the application of the law. The Aliens Act is meant to provide rule on residence permit, expulsion and citizenship and the Act provides regulation of entitlement of residency in Sweden.

The 2005:716 Aliens Act defines a refugee as a person or an alien who is outside the country of the alien’s nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country. Stateless people have been included in this description. Meaning that anyone who is considered to be a refugee, should automatically be given refugee status.

In the first chapter 2§ of the Aliens Act, the word “child” is mentioned as regarding to the age whereas a child is considered according to the law a person who is under the age of 18. One is visited in 10§ of the same section on the topic of children and even introduced to the topic of the best interest of the child, whereas it states “In cases involving a child, particular attention must be given to what is required with regard to the child’s health and development and the best interests of the child in general”. Which is based on articles 3 in the CRC, furthermore, 11§ introduces the principle of the child’s rights to be heard, “in assessing questions of permits under this Act when a child will be affected by a decision in the case, the child must be heard, unless this is inappropriate”. This paragraph also shows a reflection and a connection with article 12 of the CRC. Account must be taken of what the child has said to the extent warranted by the age and maturity of the child. In the fifth chapter 6§ the vulnerability of a child is taken in account as children are granted extra concern. Referring

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37 Aliens Act (2005:716), chapter 1, section 10.
38 Aliens Act (2005:716), chapter 1, section 11.
that in exceptional distressing circumstances regarding state of health, children may be
granted residence permits even if their circumstances do not have the same seriousness and
weight that is required for a permit to be granted to adults. The purpose of this provision is to
give strength in protecting children. Even so, Nilsson argues that the normative content of the
rules is not clear, as the preparatory work provides little guidance on how the rules are to be
interpreted or applied in the individual case. This is due to the legal construction, which aims
to make it possible to take individual considerations into account in each case. In addition,
case law has primarily considered children in connection with humanitarian grounds. The
precedent value of these cases is, in most cases, limited because of their individual
Chapter six – Article 2 and 12 of the CRC in the Swedish context

In this section we are going to dwell mainly on Articles 2 and 12 of the CRC which will be discussed in the Swedish context. A discussion on how the Swedish government is living up to this articles from the view of the Child rights committee will also be discuss. This chapter will also be used to analyze the interviews that have been performed for the purpose of this thesis. The analyzed interviews will be incorporated as a sourced to enhance or decrease the validity on the discussion on whether or not, the Swedish government is living up to its implementation of articles 2 and 12. Therefore answers to the first and second questions of this thesis will be revealed. With a concluded analysis of the results.

6.1. Article 2 of the CRC – the principle of non-discrimination

The child rights committee has defined non-discrimination as a fundamental principle of importance for the implementation of the entire Convention. The first paragraph of article 2 in the CRC urges states to ensure non-discrimination to any child in their jurisdiction due to race, color, religion, nationality, disability, ethnic or social origin. Meanwhile the second paragraph of the same article vindicates the need to protect children from all forms of discrimination on the basis of the position of their parents or other relatives. The child rights committee has emphasized the importance of collecting disaggregated data for example, age or sex to monitor the extent of discrimination. The principle of non-discrimination does not prevent vigorous action in individual cases or legitimate differences in how individual children are treated. The Committee has consistently emphasized the need to pay particular attention to vulnerable groups and children who are disadvantaged. Unaccompanied and separated children face greater risks of; sexual exploitation, other types of abuse, military recruitment, child labor (including in their foster families) and detention. They are often discriminated against and denied access to food, shelter, housing, health services and
education. Unaccompanied girls are at particular risk of gender-based violence, including domestic violence. In some situations, such children have arrive most times without identification documents that can help with their investigation process with, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied children are routinely denied entry to or detained by border or immigration officials. In other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender-sensitive manner. What is being interpreted in article 2 is the stress of states having a positive obligation to prevent discrimination of all forms most especially for children. Another importance of article 2 is that it emphasizes the fact that all the rights in the CRC must include every child that finds themselves in the states territory, whether it is children seeking asylum, children whose parents are on short-term visas, children who finds themselves in the territory illegally or children who are just visiting.

In the Committee’s general comment number six regarding the treatment of unaccompanied and separated children who finds themselves outside the boundaries of their territory, the Committee urges the states to emphasize the importance that all aspects of the principle of non-discrimination applies in all cases involving unaccompanied and separated children. It prohibits in particular possible discrimination on the basis of the child’s status as unaccompanied or separated, or as refugees, asylum seekers or migrants. Once the principle is understood properly, it does not prevent, it rather calls out, different treatment based on different protection, for example because of age or gender. Measures should also be taken to deal with misconception and stigmatization of unaccompanied or separated children in the community.

Since 2005, the Swedish Constitution’s 1974 Instrument of Government (regeringsformen) states that “The public institutions shall promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded. The public institutions shall work against discrimination of persons on grounds of gender, color, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual”. In this sense one can find where the Swedish

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40 Committee on the Rights of the Child, General Comment, No. 6 (2005), p.5.
41 Committee on the Rights of the Child, General Comment, No. 6 (2005), p.8.
42 The Instrument of Government, Chapter 1, section 2.
government linked the obligations of article 2 of the CRC into the Swedish law. Although the rights of hidden children are clearly included in article 2 of the CRC, stating that all states are obligated to protect all children under their jurisdiction, even so, the Swedish government has not come to a concrete agreement on what rights these hidden children have, e.g. children who have received a negative reply on their asylum decision and have decided to remain in Sweden through hiding.

Every year the migration board registers a great amount of people as absconding and amongst them are no shortage of children, children that have disappeared from their institutional home after a decision of deportation or due to a stressful asylum process. While some regain contact with the migration board eventually, a great majority are still missing and hidden. Between 2011 and 2014, up to 1,387 unaccompanied children were registered missing or as runaways and out of this number only 2% have regained contact with the migration board. In the case of Sweden, the Committee has emphasize a concern in matters regarding hidden children, they worry about the fact that the non-discriminating principle is not fully extended to hidden and missing unaccompanied children. This criticism from the Committee was repeated in their third conclusion observations.

Mikkelsen and Wagner argues that, “when a child disappears, the incident put the community in emergency preparedness. The police do not save on their resources. Hundreds of people sign up voluntarily to search, help, comfort, and if an offense had been committed, condemn. The media portrays events and are quick to criticize if the tracing process does not lead to rapid results. Unfortunately this is not the case when the child that disappears is an unaccompanied refugee child and – adolescents”.

A topic that has caught the attention of the media and political figures are unaccompanied children who have disappeared from their institutional home. The main topic is about the increasing numbers of disappearance amongst these children and the issue that the government is not using maximum resources to find these children. Out of the 347 unaccompanied children that went missing in 2014, only 9% children regained contacts with

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the migration board. This debate has even led to discussions regarding discrimination against unaccompanied children seeking asylum in Sweden, meaning that Sweden is not leaving up to its obligation to protect unaccompanied children in its territory, as they would a residence child.

In this scenario one can connect Arendt’s argument on territorialism, these children do not belong to the Swedish community, they are not part of the Swedish territory, therefore the Swedish government does not see it its obligation to find these children or take every single measure necessary to make sure these children are found. Therefore their rights to safety and rights to enjoy the necessities of life is neglected. Being part of a community means having citizenship in a territory is the key to enjoying any rights, be it adults or children, it is the same requirement.

In the book *De förlorade barnen*, journalist Mikkelsen and Wagner follows the journey of several hidden and runaway unaccompanied children. Children that have applied for asylum in Sweden but decided to go into hiding or runaway after getting a negative decision on their asylum case or because they were not able to handle the stress of the asylum process. The authors came to a conclusion that, the Swedish government is not living up to its obligation when matters concerns these particular children and they also presented different factors as to why. One of the factors simply being that these children are not Swedish. For example the story of Muna, who during her asylum processes ran away from her foster family, despite the family’s efforts to get the police to take the case of Muna seriously, they did not get any serious help. “The family’s Consultant Monika Attoff call the police several times. Surely five to six times. Several times they were told that they (the police) did not know about Muna’s case. That no one had done listing or communicated to them (the police) about Muna. The police office had then failed to record the information given by Muna’s foster family, information suggesting that Muna’s disappearance was not voluntary”.

What this portrays is that the Swedish police does not put down resources in searching for hidden or unaccompanied children as they would do if these children were Swedish, neither does the media or the rest of the community. In the case of Muna, Commissioner Göran Wigermo of the Malmö police district, states that it is hard to find unaccompanied children

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that go into hiding because they do not have the same access to the every day’s life that otheresidence have, like tracing a bank card for example. He also states that he cannot speculate as
to where these children run away to, but he believes that most of them choose to run away
because they come to Sweden, finds the country to be uncomfortable and choose to go
somewhere else. 48 This views the must vague reason for why a child would run away, a
reason that one could never find in the case of a Swedish child.

In the interview cases performed for the purpose of this thesis, all the interview subjects
expressed feelings of running away if they were to get a negative decision on their asylum
case. “I would try to run away to another country, I do not know where, but I will either run
away or even kill myself if they tell me that I cannot stay here, because death is better than
the life that is waiting for me at home”. 49 Majority of the interview subjects express the asylum
process as stressful, they express always having the urge to shut down and the difficulties of
eating at times, “it is very stressful, especially waiting for a decision, but we find ways to push
through because our strength is all we have”. 50 Majority of them also talk about the
difficulties to interact with other children of their age. “I play football and everybody is nice
to me, but it is hard to accept kindness or even make friends when you do not know for sure if
you will be able to keep the friends”. 51

In many cases when Swedish children go missing or runaway, the case is reported in a register
that the police can go back to and search if the missing child was to be found. The police
usually contacts the parents of the missing child and even hospitals in an effort of locating the
child. In some cases, a physical description is sent out to police officers in an external service
to help have a look out and occasionally the police goes out for a search. Mikkelsen and
Wagner argues that this is not how it works in cases regarding missing or runaway
unaccompanied children. These children often lack contacts, parents or other adults to protect
them and although notifications describes these children’s situations as “living under very
extreme stress” and doctors evaluating many of these children as depressed and suicidal, yet
the police majority of the time chooses to write these cases off as “no operational measures”.
Police-calls to the missing unaccompanied children’s appointed legal guardians, staff of
institutional homes or social services who are responsible for this children are very rare and

49 Field notes no.2 – Hallex Berry.
50 Field notes no.3 – Hallex Berry.
51 Field notes no.4– Hallex Berry.
almost never made. A research that included 50 appointed legal guardians that have worked with unaccompanied children that have either disappeared or ran away concluded that only 1 out of 50 had received a call from the police regarding an investigation on a missing unaccompanied refugee children, making it only 2 %.\textsuperscript{52}

These missing children are only searched and registered in the police system nationally for a few months and thereafter the case is written off. There are however exceptions that applies to those who have been refused asylum applications and are to be deported from Sweden, those who are known as “the illegals” to the police. There are searched in a different way because the border police wants to find them and make sure they returned to their country or to the country that is supposed to cover their cases. These seems to be the only time that the police and especially border police put in extra resources to find missing refugee children. “Border Police goes a long way in its pursuit of these illegals”.\textsuperscript{53} There is therefore a better chance in finding a hidden unaccompanied child who is facing deportation, than finding a runaway unaccompanied child who has disappeared due to the stress of the asylum process or the fear of a negative decision.

Amongst the interviewees, some of them expressed a suspicion of discrimination. All the interview subjects from Uganda expressed a confusion as to how the system works. They did not understand why some of the unaccompanied children from certain countries gets their decisions faster than others. “It adds stress to the situation which we already are in, it is very hard staying here and watching people get their decision before mine and having to pretend like it does not bother me”.\textsuperscript{54} This is a situation that creates frustration for these children but they are too scared to ask the authorities for an explanation, fearing that it might deteriorate the chances of their process. Situations like this can even come to create a certain division within the institutional homes these unaccompanied children. The conclusion is that, some of these children feel they are being discriminated in their asylum process because of where they come from. “Some of them get their decisions very quick and I do not know why, like for example the four Eritrean boys, they all met us here, they all came after us, yet they got their asylum before us and are enjoying it, while we watch and wait”.\textsuperscript{55}

\textsuperscript{54} Field notes no.5 – Hallex Berry.
\textsuperscript{55} Field notes no.6 – Hallex Berry.
In a discussion with a Somalian male raised in Kenya who had come to Sweden as an unaccompanied child, he expressed the knowledge of having found out from friends that the asylum process goes much faster if a child is from a certain country. “When I came from Kenya, I knew that my process would go much faster if I told the migration board that I was from Somalia instead of Kenya. Luckily, I knew a little bit of Somali that I had learned from my parents so it wasn’t hard to convince them. I was lucky. One of my friend that came from Kenya with me is a Somalian from Kenya, but unfortunately he could not speak Somali and my case went much quicker than his, later on he found out that his application was declined. He did not know what else do except go into hiding, if only he had learned Somali, it is much easier to get if you are from countries with war”.56

6.2. Article 12 of the CRC – the principle of participation

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.57 These are the statements of article 12 of the CRC.

The convention encourages state parties to take measures in creating strategies in making sure children are heard in their opinions and are also involved in decision-makings regarding them. The second paragraph of the article expresses the child’s rights to be heard in a judicial and administrative proceedings that the child is subscribed to. The rights of all children to be heard and taken seriously constitutes one of the fundamental values of the convention. The Committee has identified article 12 as one of the four general principles of the convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child’s best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and

56 Field notes no.7 – Hallex Berry.
implementation of all other rights. The committee also commented that there is a need for a better understanding of what article 12 entails and how to fully implement it for every child. One could express that this article stresses the states to recognize the child’s position as an individual with fundamental human rights with his or her own feelings and opinion. It is important to observe that the rights set forth in article 12 does not give the child the rights to self-determination, but it is about participating in decisions.

As safeguards for children, in the CRC Article 19 provides for various measures to ensure that children are protected against all forms of violence and abuse. In each case, both before and during any protective measures and in planning, implementation and review of the protection of children, it is essential that the views of the child are respected. A statutory duty to determine the child’s views and to measure them due importance should be included in the laws governing the protection of children and should be applied in all decision-making. The Committee refers to the recommendations adopted by the general discussion on “The child's right to be heard” the right to participate in court proceedings for child victims of violence. The Committee has welcomed the development of free helplines where children of confidence can express their concerns and to seek advice and help.

In regards to the connection of article 12 and the treatment of unaccompanied and separated children outside their country of origin, the Committee comments that “Pursuant to article 12 of the convention, in determining the measures to be adopted with regard to unaccompanied or separated children, the child’s views and wishes should be elicited and taken into account. To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin. In guardianship, care and accommodation arrangements, and legal representation, children’s views should also be taken into account. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the

procedure”. The Committee emphasizes the importance of informing and listening to these children. In addition to this, the Guidelines on Protection and Care for refugee children emphasizes the need of the potential contribution of refugee children not to be overlooked in the stress of trying to be careful because of their vulnerability. The UNHCR urges the states to recognize these children as people in their own rights with ability to participate, because often efforts on behalf of refugee children fall short if they are perceived only as individuals to be fed, immunized or sheltered, rather than treated as participating members of their community.

Arendt argues about means of participation when an individual does not belong to a territory. When children enters a new territory, even when they are able to partially participate in their asylum cases, the participation is limited to just their reasons for fleeing to that community. After that they can do nothing to change the situation of which they are in. At this stage, they are individuals who do not belong to that community, they are just visiting until a decision is made on their cases.

In regards to Sweden, article 12, in regards of children’s rights to be heard and participate can be found in multiple Swedish laws in different areas. That the law expresses a certain principle does not automatically mean that the principle certainly applies in the case. In Stern’s research where she examines the question of whether children’s right to participate in relation to Article 12 really is a right, both in practice and in theory. The conclusion of her thesis showed that the principle in Article 12 has not been implemented satisfactorily. Children’s right to participation is usually more about rhetoric than practice, both of western states and in states clearly marked by traditional attitudes and cultures. This is because the traditional view of children which prevails and that is contrary to Article 12, which requires another child perspective which is, children as whole, competent people whose words and participation has a value in itself.

To reach the level of importance of article 12 the Swedish government have had to do some readjustment of this article in its Alien act. In the 1989 law, instead of the word “heard”, the

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word “be clarified” was used. Meaning that the law only aimed to clarify what a child had to say, also this provision in 1989’s Aliens Act could be found as far as the eleventh chapter of the law. It changed in connection with the 2005 revision of the Aliens Act as the word was changed to “heard” to give it the same level of importance as the article 12 in the CRC. It was also moved and placed in the first chapter of the law. These can be seen as the first step of the Swedish government making an aim to raise the importance of article 12.\textsuperscript{65} Despite this efforts, with time, the child’s Committee has expressed a certain concern regarding the Swedish government’s implementation of this article, they express that some children still do not feel the rights of complete influence regarding matters concerning them in society.

This suggests that although the Swedish government has come a long way regarding the implementation of children’s rights to be heard, there is still more work to be done. In matters regarding unaccompanied children, it is very easy for the government to forget the recognition of these children’s rights to be heard and rights to participate in decisions regarding them. Unaccompanied children often comes from vulnerable backgrounds and in the process of trying to investigate their cases and trying to come to a decision at a fast pace, authorities and administrators can tend to forget the guidelines of how to include these children in the decision makings and the importance of their opinions. This is an issue that the Child Committee has addressed in their comments to Sweden as they state that “The Committee recommends that Sweden continue to promote and facilitate, including through legislation, respect for the views of children and their participation in all matters affecting them, ensure that adults who work with children are trained to effectively ensure that children capable of expressing their views are provided with adequate opportunities to do so and ensure that all municipalities meet the requirements for active participation by children and regularly review the extent to which children’s views are taken into consideration, including their impact on relevant policies and programs”.\textsuperscript{66}

In regards to article 12, half of the interview subjects expressed the feeling of having the chance to make themselves heard (this half contained a group of unaccompanied children who have come from countries of well-known conflicts like Somalia and Eritrea). Meanwhile the rest expressed that they do not feel like they have been given the full luxury of expressing

\textsuperscript{65}UNICEF, Håndbok om barnkonventionen; Malmö AB, Malmö, 2008, p.137.
\textsuperscript{66}Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, 31 August 2012.
themselves. “They make us feel stupid, in the interviews they ask stupid questions as if they are talking to babies, they ask too many questions, they also ask some questions multiple times as if they are hoping and expecting us to answer wrongly or hoping for us to change our answers, I can only speak for myself but when they do that, it makes me feel like they are not listening or they don’t want to listen to me, They only want to hear what they are looking for”. 67

Another interview subject expressed irritation of not knowing what is going on in his case due to a non-communicative relationship with his appointed legal guardian and lawyer, “It is really hard just sitting around for months not knowing what is going on or how it is going with my case. My legal guardian is too old, we don’t have anything in common or anything to talk about, she barely comes around and she cannot answer most of the question that I ask her. Like when my LMA-card expired and I needed a new one, I reminded her several times and it took almost a month before I got a new one and I had to go do it myself. I would like a new guardian but I feel sorry for her because she is old. I have also been trying to contact my lawyer to ask her how things are looking and I have not been able to get a hold of her for a whole month, even right now that I am talking to you, I still have not gotten a hold of her, I keep getting her office and they say she will call me back and I still haven’t heard from her. I told my legal guardian and she said she would take care of it but she has not done anything, the staff at the institutional home are trying to help me as much as they can. It really put extra stress to an already stressful situation when one gets no information and does not know how one’s chances are looking. It makes me want to give up, but I have to put my faith in God’s hands”. 68

6.3. Debating summary

In the beginning of this thesis, I was unsure as to which articles in the CRC I was going to base my research on. Then I saw on the news about the disappearances of unaccompanied children, and the interview subject Christian Frödén, a police officer at Stockholm’s CityPolice commented that most of these children run away and disappear because of the stressful asylum process. He also confirmed discrimination in the government’s lack of efforts

67 Field notes no.8 – Hallex Berry.
68 Field notes no.9 – Hallex Berry.
when it comes to finding these children.\textsuperscript{69} These news piece sparked the idea to investigate how well the Swedish government is implementing article 2 on non-discrimination and 12 on participation.

In conclusion, among the interviews that have been performed I see a trend of fear among these children. They fear loving and letting in friendship because they do not know the outcome of their cases. Majority of them are mentally preparing for the worst and preparing for an escape plan if they were to face deportation. One of them expressed rather facing suicide than being sent back home and at the same time feels unheard. At a position like this, without no one to care, no relative to grasp the attention of the media or the Swedish authorities, when unaccompanied children run away or go into hiding, there is a high probability that they will not be found. If they are found, if the police puts the effort to find them, it is often because they are facing deportation. Majority of the interviewees expressed that the asylum process is very stressful, mostly the part of not knowing the outcome of their cases, because of this, they stress about everything going on in their everyday life. Plans of what to do if facing deportation is constantly running through their minds and even though they try to be strong and think positive, the stress does take over majority of the time. \textit{“It feels like I cannot even be close to the other kids here, because I do not want to create relationships that might not last”}.\textsuperscript{70}

In the case of article 2 on non-discrimination, 50\% of the interviewees expressed a suspicion of discrimination, as they have watched certain specific groups of unaccompanied children get their asylums at a faster pace. In the view of these children one could state that the Swedish government is not fully living up to its implementation of article 2. The observation of the interviews shows that the asylum process summons these unaccompanied children to stress that have led and could continuously lead to different consequences, for example suicidal thoughts and running into hiding – these are plans that these children have expressed as an end result if their application gets denied, \textit{“sometime I get scared that the reason it is taking so long is because I have not been granted an asylum, so I consider strongly about running away but then I convince myself that I should at least wait for a decision first before running away”}.\textsuperscript{71}

When it leads to this consequence, the Swedish government fails to do its obligations in

\textsuperscript{69} SVT, Gomorron Sverige, Försvunna flyktingbarn, 12-02-2015. \texttt{http://www.svtplay.se/klipp/2675941/forsvunna-flyktingbarn}.

\textsuperscript{70} Field notes no.10 – Hallex Berry.

\textsuperscript{71} Field notes no.11 – Hallex Berry.
finding this children as they would with a Swedish child – the government does not search intensively for these children and only search at a national level.

In view to article 12 on the rights to participation and respect for the view of the child, 50% of the interview subjects express that they felt they were not being heard. They express a lack of understanding during their interviews as the interviewer “ask questions as though she is hoping for the wrong answers”. The Committee has expressed and urged Sweden to emphasize promotion in this area, they urged the Swedish government to make sure that adults working with children are effectively trained, especially those working in ensuring children’s capability of expressing their views. In regards to the interviews, the Swedish government is failing in its implementation of article 12 due to the fact that there seems to be a lack of communication skills at the administrative level. A common threat among the interview subjects is that majority of them feel that, they are not included in their asylum cases. They describe their interview sessions with the migration board as cold with many unnecessary questions being asked as repeatedly and this makes them nervous. They also describe the waiting process as silent and worrying and this is the part that triggers fears and the feelings of wanting to run away from their institutional homes. A better communication between the Swedish authorities, the legal guardians and the lawyers are needed towards these children.
Chapter seven – Children’s right to have Rights

This chapter is the second half of the theoretical framework of this thesis. With the help of Arendt’s theory on the right to have rights, I will proceed in arguing if the construction of nation states/ state sovereignty is a threat to the rights of children refugees/ unaccompanied children seeking asylum. My focus will move from the position of unaccompanied children seeking asylum and the processing of their case to how state sovereignty can be or not be the cause of the effects enhanced by this process. With the help of the Arendtian theory I seek to explore how the restriction of national states and state sovereignty can interfere with the rights of refugees, displaces and people in the position of statelessness.\textsuperscript{72} I seek to discuss the paradoxical complexity of national state contra the rights of outsiders (people outside their community) and the limitation of the right of children to have rights. With Arendt’s theory I argue that, national states and state sovereignties are a limitation to the rights of refugees and people who finds themselves outside their own territory especially children. Analytic examples will be given to show that due to territorialism unaccompanied children finds

\textsuperscript{72}In this chapter, I refer to statelessness as any person who finds themselves outside their territory against their will, this includes refugees, displaced and stateless people. I choose to unify them in the term of stateless because they all have one thing in common and that is; they all find themselves outside their territory for different reasons in search of a new community and a better life.
themselves in vulnerable positions in their search for a better life, with fully protected rights – rights that can only be fully granted through citizenship.

7.1. Territorialism – a limitation to a children’s rights?

Before unaccompanied children arrives in the territory where they seeks refuge, these children at one point undergoes the position of statelessness. As for a period of time during their travel, they are at a stage where they can neither act nor participate in any decision that could affect them. Even when unaccompanied children manage to successfully enter a community, certain human rights are still deprived from them. While they go through the process of waiting on a decision on their asylum case, they are still not a part of the community, they have not been accepted and are still undergoing a stage of investigation as to whether they will fit in – in the community or not. An investigative process that sometimes could stretch so long that the child decides to leave the community and look to belong somewhere else. The reason why unaccompanied children undergo a certain high level of stress when during their asylum process is because even when they find themselves in a new state, these children are in a position which falls under Kant’s principle of “hospitality”. Kant states that: “Hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another. One may refuse to receive him when this can be done without causing his destruction, but so long as he peacefully occupies his space, one may not treat him with hostility. It is not the right to be a permanent visitor that one may demand. A special contract of beneficence would be needed in order to give an outsider a right to become a fellow inhabitant for a certain length of time. It is only a right of temporary sojourn, a right to associate, which all men have”.73 To Kant, hospitality is a right that all human beings should possess and every community should show hospitality to strangers that enters their territory, but he limits this concept to the conceptuality of visitation. In the case of unaccompanied children seeking asylum, it is merely a situation of hospitality as, their stay in the territory is uncertain, and they could have the luck to be accepted into the community or sent back to their state of origin. In other cases send back to another community which is according to the law to be responsible for these children. Belonging to a community means one’s human rights

are automatically secured due to being under a territorial protection. Not belonging put one at not having the rights or ability to participate in matters that might effects ones existing rights.

Children are more vulnerable in a group of statelessness than adults. Even children who belongs to a community and are protected under the laws of that community do not enjoy all the rights that are set forward as one would as an adult. Decisions that are being made regarding children, even if children are required to participate in this decisions, at the end, they are not participating in the decision making. They are only giving a chance to voice their opinions, because the end result of the decisions are being decided by adults. If children who belongs to a community have certain rights being reserved from them, one can only imagine how the situation children in a position of rightlessness is. No rights belongs to them and even in a new community they are restrict from all the rights enjoyed by a child who belongs to that community, because once again their time in this new community is counted as temporary. At this time they are undergoing a process that might lead to a decision as to whether or not they will be giving the privilege of staying in that new community, and in this sense gaining back their rights to have rights.

We lost parts of our humanity with the emerge of territorialism and state sovereignty, because trying to put ourselves in other human beings position – especially those who have lost their entitlement of rights like people in the position of statelessness, refugees and displaced people – has become a very distinct emotion. Arendt presented that we must remember that the first thing a person in a position of rightlessness suffers is the loss of their homes. This means the loss of the world of which they have established themselves their whole life, the place where they were born. This is definitely not just because forced migration is a phenomena of our ongoing time, caused by political or economic conflicts. In the situation of rightlessness, the problem is not just the loss of their homes but the total hopelessness and impossibility of finding a new home. For these people, there is no place on earth for them to go without being met by grievous restriction and no territory where they could build or find their own community. Arendt argues that statelessness is not a problem of space or overpopulation but a problem of political organizations.\textsuperscript{74} Nobody had been aware that mankind, for so long a time considered under the image of a family of nation, had reached the stage where whoever was

thrown out of one of these tightly organized communities found himself thrown out of the family of nations altogether.\textsuperscript{75}

In Arendt’s theory, she clearly argues for the rights of those who are forced to risk their lives in the pursuit of happiness and she blames the creation of nation states and territorialism which has led to state sovereignty that also in some cases also led to totalitarianism. Arendt connects her argument to the times of the colonization of Africa, when Africa was just Africa in whole. She argues that, in their encounter with Africa, the Dutch, Brits, German and the French divided Africa in the most hash way, where brothers became strangers and sisters became enemies. They raped, burned, loot and plundered the people who they encountered in this continent and there was no moral limit to the level of inhumanity that they showed. When colonization took place in Africa, boundaries were created, when boundaries are created, some territories are bound to have more resources than others, while some are bound to revolt, others are ready to go to the extremely. This is how conflicts are created, this is how war start and this is how some keep their rights and others are forced to flee their community and with this action, leave behind their rights.

The problem with the refugees, the stateless and the displaced is not that life is taken from them, or their liberty and even their pursuit of happiness, and they have not lost their equality before the law or their freedom of opinion, these are all mechanisms that are delineated to elucidate problems within communities. The problem here is that these people do not longer belong to a community where they can exercise these rights. Even though they keep their equality before the law, at the state of which they find themselves, no law exist for them, “not that they are oppressed but that nobody wants even to oppress them”.\textsuperscript{76} This is a pattern that has established itself in history, Arendt argue that depriving some one of their legal status is the start of rightlessness. Like the German Nazi did to the Jews, they deprived them of their legal statuses as citizens of the state by cutting them off as part of society and before the plans of gas chambers were set to motion, the Nazis had made sure to test the grounds and found the satisfaction of executing this minorities, as no other country, state or territory would claim or accept these people. The condition of complete rightlessness was created before the right to live was challenged.\textsuperscript{77} It does not take much to deprive children of all their rights, adults have

reach a certain stage of maturity where in the position of rightlessness, they can still find ways to defend their humanity. This is different for children, it does not take much to stripe them off their rights, they are at their most vulnerable position when every string of rights is been deprived from them, especially unaccompanied children, without any company, family or adult to protect them, they are a bait to a cruel world. Sigvardsdotter states that, “To act is to take part in and be a constituting part of the human community and a human community where humans speak and interact will, always be a political community. In today’s global regime, membership in the current political communities is citizenship. A recognized member of a community has the power to act and to define public space. Without the possibility to appear in front of others, to act and speak, it is impossible to claim any rights, whatever they may be”.78 No matter how hard states try to implement the participation act for children, children still do not have full rights in their position, like stated above, this rights become limited at the end because it still is adults that takes the end decisions for children in matters concerning children. There is always a clash to the fact that children are still children. Unaccompanied children undergoing an asylum process still does not have the luxuriousness of participating, they can neither choice or change their situation. They cannot claim their rights as a citizen of the territory they find themselves in, as they have not yet been granted citizenship, all they can do is tell their stories and wait while someone else decides if their story is believable.

Sigvardsdotter addresses this in a Swedish context in her PhD thesis. Even though she bases her argument on undocumented people, this category still falls under the field of rightlessness, not only are these people hidden, they are also in a position of statelessness. Her argument shows one is not only effected by the title of statelessness outside a state, but a person can continue to carry this tittle after entering a new territory. She talks about a system where the state contributes in the deprivation of the rights of stateless people, a system that can be found in the Swedish system of population register (folkbokföringsregistret) which is an important tool in the functioning of the welfare state. This system is done through what is known as a (personnummer), a personal number that functions as an ID and is meant to serve as a basis for administrations like tax collection, health care provision, voting, school attendance and social benefits – administrations and organizations that are responsible for the Swedish citizens. It contains data on names, personal number, address and family relations of all

78Sigvardsotter, E, Presenting the Absent – An account of undocumentedness in Sweden; Edita Västra Aros, Västerås, 2012, p.25.
persons resident in the country. This system excludes undocumented people in ways that, everybody who is considered a Swedish citizen must purchase a personal number to be able to have access to any type of institutions, even a bank card. To be able to maintain any communication as a residents with a public institution and even in a private context, one must have a personal number, without this, communication is almost impossible. This proves that even when one is within a community, as a stateless person, one is still restricted from all rights. She describes these interaction by stating: “The comprehensive welfare system providing for its residents is at the same time creating an extreme gap between those who are inside the welfare system and those who are out. A context where a person lacking the ten personnummer-digits cannot communicate with institutions, be they public, private or civic, is a daunting environment in which to be undocumented. This is further heightened by the tendency toward general high-tech reliance in Swedish society. Medical registers, membership registers and customer registers, that earlier were kept on paper, are increasingly being computerized. The intimate connection between the individual and the state, and the general acceptance of the use of picture ID and personnummer as identification are two facets of a less tangible feature that is important when discussing the undocumented condition in the Swedish context”. Entering a community is not enough, there are many challenges that stateless people must face within the borders, like the restrictions created by the Swedish system of having a personal number.

What she argues is that even when one finds themselves inside a community, being does not make you accepted, you must be part of the system before one is fully accepted. Unaccompanied children who run away into hiding are effected harshly by this system. When their mind is not develop enough, they cannot find their way around the system as an adult might do. For example when they fall sick, they have no security, some adults might find ways to get around the system, but children cannot, as an individual under the age of 18, majority of the time, one needs the consent of a guardian to get medication, hospital treatment etc. many of the necessities needed by humans. Without a personal number or a guardian, unaccompanied children who have run into hidden ceases existence in every aspect. Even when unaccompanied children are undergoing an asylum process, they do not get a personal number, instead they are given a similar number through an LMA-card that is set to expire.

occasionally and needs to be renewed. Yet again another example that distinguishes the rights of a refugee/temporary visitor and the rights of a fully granted citizen.

7.2. World State / world citizenship

Arendt solution to the problems of statelessness and loose of one’s human right is an abolishment of national states and therefore a reconstruction of state sovereignty by suggesting a new world reformations – namely world citizenship and world government. Even so, she still contemplate and battle paradoxical thoughts to the fact that even world governance might not be a solution because it is doubtful if it would work. She argues this by stating: “For, contrary to the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organizations, it should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and for the time being, a sphere that is above the nations does not exist. Furthermore, this dilemma would by no means be eliminated by the establishment of a “world government”. Such a world government is indeed within the realm of possibility, but on may suspect that in reality it might differ considerably from the version promoted by idealistic-minded organizations. The crimes against human rights, which has become a specialty of totalitarian regimes, can always be justified by the pretext that rights is equivalent to being good or useful for the whole in distinction to its parts. (Hitler’s motto that “Right is what is good for the German people” is only a vulgarized form of a conception of law which can be found everywhere and which in practice will remain ineffectual only so long as older traditions that are still effective in the constitutions prevent this.)”.\(^{81}\) When law is only dictated by what is good for the individual or what is good for the people and mostly what is good for the majority, the danger becomes absolute. Even though minorities and refugees have treaties to protect these rights that are lost during the state of not belonging to a community, it puts implication in the working nation-state system, that only nationals could be citizens, only people of the same national origins could enjoy the full protection of legal institution, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origins.\(^{82}\)


The treaties that are set forth for the protection of these different groups’ works in the favor of the national state, territorial system. This is the paradox of having nation states and state sovereignty and cover it up by creating treaties and Conventions to protect refugees and minorities because the creation of states in itself created diversity and it continues to do so today. Just like the refugee convention and CRC is meant to protect children, this is not fully the case, these Conventions creates attention to these children, but at the end of the day, state sovereignty rules. National state system will never achieve equality for all and in achieving justice is not looking bright either. The Dublin Regulation is an example, Article 3 of the regulation states that, “Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible”. The second paragraph goes on; “Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it”. While the first paragraph of article 13 states that, “Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013, that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place”.

The Dublin regulation is supposed to protect the rights of refugees and stateless people, but at the same time it limits these same people in the articles above. By stating that the first state of which an asylum seeker is documented to have arrived is the state which is supposed to be responsible for the applicant’s application, puts these asylum seekers in a limbo. Instead of states taking all possible measures to make sure that these people in their territory are secured and safe, they start investigating as to who is responsible for what, once again proving that nobody really care or wants these people in their community. Even unaccompanied children undergo this treatment, as they are limbo back and forth between different states as to which state is responsible for these children. Ironically, most of the time these children arrive at a

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boarder, their finger prints are collected without their knowledge that this action is equivalent to applying for asylum in that particular country. As to say, sometimes these children are heading for a certain country but to get there, they must pass through another border, where their finger prints are taken and they are then forced back to that country as the second country refuses responsibility for them. Mikkelsen and Wagner state that the consequences of the Dublin regulation is the reason why thousands of unaccompanied children are running around the streets in the EU, without anyone willing to take responsibility for them.\textsuperscript{84} Many unaccompanied children have chosen to run away from their institutional homes because of the Dublin regulation. Some choose to go into hiding for 18 months until the time of the regulation transfer expires and they can come out of hiding and once again apply for asylum in Sweden.

The doubt in Arendt’s discussion on world citizenship / world government can be connected to the fact that, our world has become too dependent and too reliable on national state and state sovereignty for a successful reconstruction of this system. Those who have the better lives are too comfortable in their community to offer it for anything other than something better, even if it means creating a better world and a better position for the less fortunate. Territorialism has established and deep-rooted itself in our centuries and no other option seems to be available. Humans would rather donate money and feel good than open up and share their community with the stateless and the displaced and with this act secure the rights of everyone, especially children. The distance between “us” and “them” have become too deep for national states to turn back and create a unified “us” through world state and world citizenship. It would take a great deal of the Kantian understanding of “hospitality” for such a system to shatter. Meaning that, hospitality must stretch itself from temporary visitations to permanent stay, one would have to turn Kant’s beneficence\textsuperscript{85} to hospitality. This is why Arendt turns to humanity as the answer, “this new situation, in which “humanity” has in effect assume the role of formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible\textsuperscript{86}. Arendt finds even this system doubtful. Humanity itself should be the decision taker in the

\textsuperscript{84}Mikkelsen, J and Wagner, K, De förlorade barnen; Natur & Kultur, Stockholm, 2013, p.77.
\textsuperscript{85}For Kant, granting the rights to membership remains the prerogative of the republican sovereign and involves an act of “beneficence”.
recognition of who has the rights to a membership. Humanity should acknowledge membership.

The gap between those who have and those in need gets wider, whereas those in need are much more a majority than those who have. A world state would open doors to refugees, in the case of children, less will die in the treasure hunt of a better life. Less children will have to undergo the process of seeking asylum and stressing for an unknown decision to their asylum process, also falling victims to sex trafficking, drug trafficking, war victims (child soldiers) and even organ trafficking, the vulnerability level would decrease. This discussion will be elaborated in the next chapter, where I discuss and argue a solution that might relieve unaccompanied children from the burden of having to undergo asylum processes caused by territorialism.

The problem is that once a human being is outside their system, they lose existence. One is not wanted no is one needed, one is lingered between being and not existing. Arendt argue that the invisibility created by loss of membership, loss of one’s territory is worse than any compared situation. She suggested slavery as an example, even though slavery was a fundamental offense against human rights, the offense was not because another human being’s liberty had been taken away, but that slavery excluded this human being from fighting for their freedom. Fighting for freedom is a fight that is possible under tyranny and even in conditions of modern terror, but being a slave, one was not given the opportunity to do so, because slavery did not begin by enslavement of ones enemies during defeat, it began when others were considered as born free while another was not. The argument she tried to produce here is that even so, being a slave somehow left one with a certain type of inclusion than what a state of rightlessness would do, because as a slave one still belong to a community and one was needed in this community through their labor and the exploitation that kept them within the pale of humanity. One had a place in society contra to being a person in a position of rightlessness, who belonged to no community and is unwanted in any community, at this stage one is nothing but human, with no community to guarantee any rights. “Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of polity itself expels him from humanity”.87

Arendt states that, “The perversion of the modern state from being an instrument of law into one of lawless discretion in the service of the nation was completed when states began to practice massive denaturalization against unwanted minorities, thus creating millions of refugees, deported aliens, and stateless people across borders. Refugees, minorities, stateless and displaced persons are special categories of human beings being created through the actions of nation-state. In a territorially bounded nation-state system, that is, in “state-centric” international order, one’s legal status is depended upon the protection by the highest authority that controls the territory upon which one resides and issues the papers to which one is entitled”.\textsuperscript{88} Denationalization is consequences of the birth of national-state that has emphasize the differentiation between humans. The right to have right has become an associate of a “must belonging” in a community, we rest on believes that equality can only be produced through organization. We are caught in the hypothesis that man can only build a common world with those he considers his equals. But Arendt argues that “we are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights”.\textsuperscript{89} There is no equality in cases where unaccompanied children have entered a territory to seek for their right to have right, rights that could not be fulfilled by their previous territory. When these children arrive, they are set under stress that leads to different consequences, one of them being running away from their institutional homes and when this occurred, the government does not stress to find these children, because they are not a part of its community and therefore they are relieve of not having the burden of taking care of these children. Human beings have an obligation to one another; this obligation can reach fulfillment by not excluding anyone from the possibility of membership and therefore fulfilling the right to have rights.

7.3. \textbf{Conclusion}

The right to have rights is an access that every human being should be entitle to, when a person loses his community, he ends up in a position of rightlessness due to the difficulties of finding a new community. When unaccompanied children arrives to a new community, the fact that they are child does not automatically grant them acceptance into this community. They must undergo a fearful process of investigation, a process that many of them were not


aware of upon their journey to the new territory. The connection that can be seen between Arendt’s theory and the asylum process that unaccompanied children go through, is that to be able to get into the process of seeking asylum, these children must undergo a stage of statelessness. They must go through a position of rightlessness, caused by territorialism because they do not belong to a community. The negativity of the asylum process is that due to stress, lack of communication, feelings of discrimination and fear of deportation some of these children choose to run away before getting a decision to their case and majority of these children disappear after a negative decision. This decisions are based on state sovereignty, it is every state that decides who gets to become part of their community or who does not. When these children run away, they find themselves once again outside the borders, outside the community and once again stateless without admitted rights, in constant fear and hiding from everyone. This is because of limitations that are put forth by territorialism and state sovereignty. Citizenship is the key to any territorial boundary, but just like every other key, one must have the right luck to have access to this key and it is the community who decided whether or not they can give one the map to the location of this luck.
Chapter eight – Concluding discussion

Sweden has always been praised for its effectiveness in implementing human rights and seeing that these rights are successfully applied to the people within its jurisdiction. On the other hand, human rights has always face difficulties in implementation when children are involved, mainly because children are considered a very vulnerable group. When dealing with children seeking asylum, states are urge to handle the cases with care and with the children’s best interest at mind. The Swedish government is also known for its consideration of these interest during application, but in the midst of this circumspections, the government tend to forget about the children’s rights to participate. Articles 2 on non-discrimination in the CRC and 12 on rights of the view of the child, are both articles that the Swedish government has received critics on from both the child rights committee and the Swedish debating forums. Concluding from the materials and the analysis of the interview performed for the purpose of this thesis, someone could state that, even though Sweden has come a long way regarding children’s rights, there is still flaws in its implementation of these articles. More effort in regards to these articles is needed when unaccompanied children are involved.

The increasing numbers of new arrivals of asylum applications puts states in stressful positions, especially those states that receives the highest amount of these children. This might also be one of the reasons why there are difficulties in fulfilling the implementations of articles 2 and 12. When applications piles up, deadlines are shifted and decisions take longer than the expected time. In the stress of trying to keep deadline, mistakes are being made. The stressful situations that the administration faces due to heavy amounts of new arrivals reflects on the children who are applying, because the hurry of trying to go through as many applications as possible, authorities taking care of these cases forget to include the children in the participation part of the process. The interviewees of this thesis felt exclusion in the sense that, the interviewer at the migration board level did not care to find out reasons for them wanted to stay in Sweden, but instead asked questions and searched for answers that gave these children the impression that, the authorities were looking for negative reasons.
Therefore these children did not feel comfortable during their interview sessions, which later made them nervous about their cases.

I cannot suggest that the Swedish government put more resources in this area because one cannot expect a state to contribute more than it can afford in certain political areas. In this case the suggestion is that, the Swedish government needs to educate its employees in areas that has to do with handling children or cases concerning children. This is an issue that has been addressed by the child committee towards the Swedish government. To make these children feel less stressful during their asylum process, the investigation process needs to change. Concluding from the performed interviews, the authorities dealing with these type of cases have to stop investigating in ways that gives the children the impression that the government is looking for ways to send them home. Instead they need to perform the investigation in ways that gives these children the sense that the government is fighting for their rights to stay. Feeling like one is being fought for makes a situation less stressful than feeling like one is being fought against. One of the interviewees felt mostly scared because the communication between him and his lawyer was very poor, in this action; he felt like the government was fighting against him, against his case and this caused part of his fears during his waiting period.

Participation does not solely mean rights to one’s view, in order for these children to feel the freedom of participation, information must be given to them. Some of the interview subjects felt neglected and discriminated because they watched a certain groups of unaccompanied children from particular countries like Syria and Eritrea received their asylum during a very short period of time. They did not understand how someone else is getting their asylum after a period of 3 months, while they themselves have been waiting for 10 months. Due to misunderstanding, these children connected this action to discrimination, which is adding stress on the waiting period of their asylum decisions. In this case, the Swedish government must educate its employees in matters concerning unaccompanied children. Information must be given to these children about both their rights and the rights of others. They must constantly be told why their asylum process is delayed or taking longer than others, that certain children from certain countries do get their asylum faster due to reasons like war and destructions. The more information given, the more at ease these children will feel in their communication process with the authorities and the less fear they will feel during their waiting period.
In the Swedish society, personal number (personnummer) is what defines one’s inclusion in the community. Two of the interviewees expressed doing activities that makes them feel included, but yet at the end of the day, they must go back to their institutional homes, where they are reminded of their situation. There are many measures the Swedish government can take in making sure the asylum process is a less stressful situation for unaccompanied children. An identification card with a personal number can be one of these stress releasing factors. Allowing these children to have a facility like a personal number that can lead to other facilities can make a difference in this process. The closest thing these children own to an identification card with a number similar to the personal number is an LMA-card. It has the same format and contents as an identification card, but does not work the same way, it is used as a confirmation that these kids have applied for asylum in Sweden and therefore has the rights to stay in Sweden. The problem here is that the LMA-card expires every three months. So when these children start getting used to their environments and feeling included as part of the society, every three months they are reminded that they still do not belong to the community, therefore they should not get too comfortable. In the previous chapters, one of the interviewees expressed the stress he felt when his LMA-card expired and his appointed legal guardian wasn’t responding to this need. He had to go a whole month without this card and therefore he was restricted from all the benefits included in having the card. Without the LMA-card, if he was caught by the police, he would have no evidence of showing that he is permitted on Swedish soil. Giving these children a personal number that can work throughout their process will release part of the stress caused by the asylum process. It will free the children from the reminder of their position and the fear feel every time the LMS-card expires and also give them a sense of inclusion. One could also interpret the system of not having a proper identification number and instead being given a temporary personal number as a way of keeping restrictions towards asylum seekers. It’s the governments’ way of showing the applicants that, they have rights but not the full rights of its citizens. One can also demonstrate that the reason for the temporary LMA-card could also be to make sure that live as a hidden person is as uncomfortable as possible, a position that many unaccompanied children resort to when facing deportation.

Each of the interviewees expressed running away and going into hiding as a last result if facing deportation. This is a common act amongst unaccompanied children seeking asylum, as they either runaway because they cannot handle the pressure of the process or because of
fear of deportation. Sweden is right now facing internal and external criticism for its lack of responsibility in cases regarding children in hiding. The Swedish government is criticized of not using the same amount of effort and resources when it comes to these children as they would if these children were Swedish citizens. The government put very little efforts in finding these children and only search for them at a national level, knowing that there is a possibility that majority of these children are no longer present in the Swedish territory.

The seventh interview for this thesis was performed with an unaccompanied child who is now in hiding, because of fear of exposure, the interview was performed by a secondary source who is an acquaintance to the interview subject. The interview subject expressed that, when he found out that his asylum was denied, his first reaction was running away. “It is not an easy life either, the fear is always there, fear of being caught or fear of acting a certain way among people that will show that I am undocumented, I cannot work, I cannot go to school, and in fact I cannot be anything. I wish I had found out earlier, I got used to being part of the Swedish society, I made friends at school and I was very hopeful, that is the life I was seeking for, instead I have been hiding for 5 years”. 90 This demonstration can be supported by Sigvardsotter’s argument, as a hidden person, one is caught in a limbo of wanting existence but is non-existing in the community they find themselves in. Without a personal number, a person cannot enjoy the rights of the necessary facilities in society, a hidden person can neither act nor participate in anything concerning his or her life. This interview subject arrived in Sweden as an unaccompanied child, who became a hidden unaccompanied child and has now grown into an undocumented adult. The government slowly wrote him off the system, relieved that he no longer is the government’s problem. In the end they are gone forever, hidden, vulnerable and forgotten by the Swedish community.

Sweden has managed to show great commitment to these children in comparison to other countries where unaccompanied children are submitted to sex trafficking, drug recruitments and order types of abuse. Due to the strict laws against these crimes, unaccompanied children are rarely connected to this offence when they find themselves hiding in the Swedish territory. But, the Swedish government still needs to put more effort in its search for these children. It frightening to believe that out of 347 unaccompanied children gone missing, only 2% has been found. These sends a message to these children that, running way is an easy option.

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90 Field note no.12 – Hallex Berry
More resources, efforts and expectations must be put on the police in their search for these children. These would help release the tension of discrimination.

Arendt presented evidence that, the source to the problems that these children are forced to undergo lies in the creation of territorialism. To become unaccompanied children, to undergo the asylum process and be submitted to the stress of this process, these children must first undergo the tittle of statelessness. Without territorial boundaries, these children would not risk their lives, risking; rape, trafficking, death etc. to get over the borders of another territory, having no knowledge of what lies ahead. Arendt with a doubt suggested world state, but world state to me paints a picture of a world without state sovereignty, with one government that decides and set the rules. This seems impossible, the question remains, who will be the leaders of these new reformation?

My suggestion is that, open border could be a better system in reducing the risk these children have to go through in search of a better life. All the interviewees admitted to not having any knowledge or information about Sweden before traveling to the country. The only information they had was the utopian picture that had been painted by relatives, acquaintances, strangers and smugglers. “I had problems with my family and I was living on the streets, then I met a guy that told me about Sweden, he told me that live in Sweden was much better, he painted this amazing picture where everybody is rich and living a good live. He said that if I gave him a certain amount of money, he would help get me here. I do not even know how we got here, all I know is taking a plan in the middle of nowhere, getting dropped off in the middle of nowhere, and changing to an old truck, I was hidden under blankets the whole way. I do not remember much, all I know is that it was a horrible journey and I did not imagine it to be that horrible, I am just happy I arrived safely, I thank God for that”. 

These children get no information from the informant about the risk of the journey and neither are these children told that when they get to Sweden asylum is not automatically granted to

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91 With the term open borders, I refer to a system where close borders does not exist and all man is allowed to move freely within territories. State can keep their sovereignty to some point, but free movement within borders all borders must be allowed. I am not calling for a world where people get automatic citizenship, but a world where human beings can move to another territory and apply for citizenship without risking their lives. Where when a person’s asylum gets deny he or she does not face deportation but instead is allowed to freely move themselves to another territory.

92 Field note no.13 – Hallex Berry.
them, that they must undergo a process constructed of questions and suspicion that causes stress. They are not told that they could be send back home for different reasons. The same place where they risked their lives to run away from. Open borders will help solve these problems. The system of territorialism and close borders that the world functions on today does not work, people are risking their lives to get to Europe, and families are sending their children alone through grotesque journeys that could lead to death, to a place they have no knowledge about. These children face more dangers than adults. Last week April 19th, the top of the news was 950 refugees that are said to have lost their live when a smuggling boat sank at the Mediterranean Sea during a desperate attempt to reach Europe, only 28 people out of all the travelling passengers survived the incident. UNHCR estimates that about 3,419 people drowned last year in the same attempt to make it to Europe and thousands more are expected to try this dangerous journey. Amongst them are children travelling alone.

European countries have the advantages of moving freely all over the world. They have easier access when traveling to other countries and continents. When traveling to Africa as an example, a European citizen can receive their visa within days. Meanwhile when traveling from Africa to Europe an African citizen must either receive an invitation from Europe or go through a long investigating process. This is an unfair system of freedom of movement for some and closed borders for majority. Most people give up everything they own, their jobs, their homes, their family and even put themselves in major debts in a fight to enter the borders of Europe based on stories that they have heard. When they arrive in Europe – if they make it alive, they realize that Europe is not the utopia they imagined and if their application for asylum get denied, they are forced to go into hiding. If unaccompanied children travels to Sweden and things does not go as expected, with open borders, they will have the chance to move on freely to another country and try there. It is understood that unaccompanied children find themselves living in hiding in Sweden because they are too scared of getting caught in an attempt of trying to seek asylum in another jurisdiction. Being able to move freely might decrease the vulnerability level of which children and especially unaccompanied children finds themselves in today.

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The Schengen system that the European Union state members have today can be understood as version of open borders. Schengen is about free movement of persons. This means that members within the Schengen area should be able to move freely without being check by controllers when crossing the borders between Schengen countries.94 The abolishment of border controls between Schengen areas has made it easier for citizens within the areas to move freely in countries with this area, all that is required is that the citizen possess a passport or a national ID when staying in another Schengen country. There have not been complains of overpopulation in any of this countries or economic problems tied to this reason. If this system works for this areas, why should it not work for the rest of the world?

In conclusion, system the world is constructed on today is full of failures. Humans beings live in a world where being a part of a community is what decides if a person is entitle to their rights or not. We live in a world where children have to risk their lives in a fight to run away from conflicts, war and poverty. Even states like Sweden which are known for their high level of implementing rights, including right concerning children, are so overwhelmed by the mass arrivals of asylum applications that mistakes are being made. Unaccompanied children within this jurisdiction undergo a process of investigation that causes stress, suicidal thoughts and feelings of unwanted. The Swedish government needs to take measures in assuring the safety and wellbeing of these children, through participation and inclusion. Authorities working with cases concerning children at this position must be educated and more resources are needed. The government needs to increase its pace in resources to be in accordance with the pace of the increasing applications that are arriving every year. The system of investigating in these children’s cases needs to change it characters in a manner that makes the children feel like their rights are being fought for. Through these actions, unaccompanied children will feel safe and included, they will feel like their individual cases matters, the stress encountered by the asylum process will decrease and running away will no longer be an obvious option.

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