

Stockholm, 15 November 2018

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Re: UNHCR comments on the inquiry “Ett ordnat mottagande – gemensamt ansvar för snabb etablering eller återvändande”, (SOU 2018:22).

The UNHCR Regional Representation for Northern Europe (RRNE) is grateful for the invitation to provide comments on the inquiry “Ett ordnat mottagande – gemensamt ansvar för snabb etablering eller återvändande (SOU: 2018:22) and the additional memorandum “Ett socialt hållbart boende för asylsökande”.

As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek permanent solutions to the problems of refugees,¹ UNHCR has a direct interest in law and policy proposals in the field of asylum and refugee integration.

The following document is divided into two parts. Part I presents UNHCR’s comments as it relates to the inquiry’s proposal (hereafter ‘the proposal’). They are based on UNHCR’s extensive comments² to Directive 2012/33/EU of the European Parliament and Council of 26 June 2013 and the proposal for a recast of the Reception Conditions Directive – COM (2016) 465, which lay down standards for the reception of applicants for international protection³.

¹ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html> (hereafter “UNHCR Statute”).

² UNHCR, *UNHCR comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) – COM (2016)465*, August 2017, available at: <http://www.refworld.org/docid/59a6d6094.html> and UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2012 laying down standards for the reception of applicants for international protection (recast), April 2015, available at: <http://www.refworld.org/docid/5541d4f24.html>

³ European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, 13 July 2016, COM(2016)465 final, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementationpackage/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf

Part II specifically addresses the initial reception of unaccompanied and separated children based on the stakeholder findings and recommendations of UNHCR’s 2018 Co-Lab 2.0 project. This project, based on extensive stakeholder consultations including with children themselves, proposes a restructuring of the current reception system that mainstreams best interest procedures throughout the reception process.

- I. UNHCR observations on the inquiry “Ett ordnat mottagande – gemensamt ansvar för snabb etablering eller återvändande”.

The following observations reflect the comments UNHCR has provided to the European Parliament and the Council to Directive 2012/33/EU of the European Parliament and Council of 26 June 2013 and the proposal for a recast of the Reception Conditions Directive – COM (2016) 465 as they relate to the current inquiry:

Applicable international human rights law and standards in reception policies

UNHCR notes that whilst the proposal makes reference to relevant EU law it would in several areas – such as the use of mandatory arrival centers, reduction in benefits and children’s access to education - benefit from further analysis and consideration to State obligations under international human rights law. The Reception Conditions Directive (2013/33/EU) leaves Member States with a certain margin of discretion concerning the establishment of reception conditions at the national level. However, UNHCR would like to emphasize the centrality of applicable international human rights law and standards in the development and implementation of reception policies. Any system for the reception of asylum-seekers should be developed both with consideration to relevant EU law, including in accordance with the Charter of Fundamental Rights of the European Union⁴ but also the European Convention for the Protection of Human Rights and Fundamental Freedoms⁵ as well as obligations under instruments of international law, notably the 1951 Convention relating to the Status of Refugees⁶ and its 1967 Protocol⁷, the 1989 United Nations Convention on the Rights of the Child (CRC)⁸, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹ and the International Covenant on Civil and Political Rights (ICCPR)¹⁰. UNHCR also recalls ExCom Conclusion No.93 on reception of asylum-seekers in the context of individual asylum systems¹¹.

⁴ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, at: <http://www.refworld.org/docid/3ae6b3b70.html>

⁵ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, <http://www.refworld.org/docid/3ae6b3b04.html>

⁶ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>

⁷ UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>

⁸ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>

⁹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <http://www.refworld.org/docid/3ae6b36c0.html>

¹⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aa0.html>

¹¹ UN High Commissioner for Refugees (UNHCR), Conclusion on reception of asylum-seekers in the context of individual asylum systems, 8 October 2002, No. 93 (LIII) - 2002, <http://www.refworld.org/docid/3dafdd344.html>

Residence and freedom of movement

UNHCR recalls that under Article 26 and 31(2) of the 1951 Refugee Convention, asylum-seekers shall be allowed to move freely within the territory of their host State, subject to restrictions that are necessary and proportionate to achieve a legitimate aim. Similarly, Article 12 (1) of the ICCPR¹² provides for the right to liberty of movement and freedom and to choose one's place of residence for those 'lawfully' within the territory of a State. Punishment for failure to comply with requirements to reside in a specified area is not among the limited grounds that could justify the use of detention as set out in UNHCR's Detention Guidelines.¹³

Furthermore, and without prejudice to the existence of national dispersal systems regulating the equal distribution of applicants across the territory of Member States of the European Union, UNHCR recalls that any such dispersal policy must be implemented fully in line with the principle of family unity as well as respect for special needs that applicants for international protection might have.¹⁴

UNHCR therefore underlines the importance of ensuring that families can be accommodated together at the same arrival center to ensure that the principle of family unit is respected.¹⁵ UNHCR is of the view that the reception policy must also foresee the possibility for an applicant to appeal against decisions on reception which interfere with these above-mentioned rights.

Special reception needs of vulnerable persons

UNHCR welcomes the proposal's intent to maintain specific centers (*trygghetsboenden*) for persons identified with special reception needs. Ensuring tailored reception conditions and adjusted procedures in a timely manner can help to alleviate the situation of persons with specific needs and help them to cope and engage effectively with the asylum procedures. Specific needs should be assessed systematically and as early as possible after the lodging of an asylum application and throughout the procedure. UNHCR's screening tool for assessing vulnerabilities (i.e. specific needs)¹⁶ and EASO's tool on the identification of persons with special needs¹⁷ can assist in identifying applicants who require specific reception conditions and procedural safeguards.

UNHCR notes the expressed intent of the proposal to accommodate as many persons with special needs as possible at the arrival centers. UNHCR recalls Sweden's obligation under Article 18 (3) and (4), including to "take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and at accommodation centers [...]"¹⁸. Gender and age-sensitivity should

¹² UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>

¹³ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 4.2, available at: <http://www.refworld.org/docid/503489533b8.html>

¹⁴ EASO, *EASO Guidelines on Reception Conditions and Operational Standards*, available at: <https://www.easo.europa.eu/sites/default/files/EASO%20Guidance%20on%20reception%20conditions%20-%20operational%20standards%20and%20indicators%5B3%5D.pdf>

¹⁵ UN High Commissioner for Refugees (UNHCR), Conclusion on reception of asylum-seekers in the context of individual asylum systems, 8 October 2002, No. 93 (LIII) - 2002, <http://www.refworld.org/docid/3dafdd344.html>

¹⁶ UNHCR, UNHCR and IDC (2016), *Vulnerability Screening Tool – Identifying and addressing vulnerability: a tool for asylum and migration systems, 2016*, available at: <http://www.refworld.org/docid/57f21f6b4.html>

¹⁷ EASO, EASO Tool on the identification of persons with special needs, available at: <https://ipsn.easo.europa.eu>

¹⁸ Pursuant to Article 18 (4) of the Reception Conditions Directive, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

be reflected in reception arrangements, and address in particular the educational, psychological, recreational and other special needs of children. They should also take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture, as well as of other vulnerable groups. In UNHCR's view the proposal would therefore benefit from further analysis concerning persons with special reception needs in line with Sweden's obligations under Articles 21-25 of the Reception Conditions Directive.

The replacement of material reception conditions in kind or reduction or withdrawal of daily allowances

UNHCR notes that the proposal contains provisions that would allow the State to reduce or completely withdraw daily and special allowances in circumstances where the asylum applicant does not comply with the residence requirements, the mapping of education and work experience or the attend information classes about Swedish society. Whilst States need to ensure the enjoyment of rights, foster a welcoming environment, and address xenophobia, asylum-seekers need to participate in integration programs and comply with the law of their host State. Where negative consequences are foreseen for not complying with integration measures, especially reducing or withdrawing daily allowances, the authorities must ensure that the facilities and means are made available to the applicant to enable him or her reasonably to take part in, for example, compulsory integration classes, language classes or vocational training. These must be readily available, accessible and free of charge.¹⁹

UNHCR emphasizes that any decisions to withdraw or reduce daily allowances must be taken on the merits, individually, objectively and impartially and taking into consideration the particular situation of the person concerned, especially persons with special reception needs. Such decisions should also take into account the principle of proportionality and the possibility of applicants to seek independent review.

UNHCR cautions that any such reduction or withdrawal must nevertheless ensure an adequate standard of living and access to procedural safeguards for the applicant in line with international human rights law.²⁰ Free legal assistance and representation should be made available on request in so far as such aid is necessary to ensure effective access to justice in accordance with relevant EU law.

Reception and asylum processing times

UNHCR recommends further assessment of the impact the proposed initial processing times may have on the asylum-seekers effective access to legal representation, interpretation, ability to gather relevant documents and the legal quality of decisions. UNHCR recognizes the need to establish and apply fair and expeditious asylum procedures, in order to identify promptly those in need of international protection and those who are not, and decrease the overall demands on the reception system but this should not be done at the expense of procedural quality and legal certainty.

¹⁹ Council of the European Union, *EU Common Basic Principles on Integration*, 19 November 2014, p17, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf

²⁰ Pursuant to Article 11 (1) of the Covenant on Economic, Social and Cultural Rights, States Parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>. See too, UNHCR, *Conclusion on reception of asylum-seekers in the context of individual asylum systems*, 8 October 2002, No. 93 (LIII), 2002, available at: <http://www.refworld.org/docid/3dafdd344.html>

Mapping of education and work experience / early access to the labour market

UNHCR welcomes the proposal to provide mandatory information about Swedish society and map education and work experience at the onset of the asylum process to facilitate integration and early access to the labour market. UNHCR recognizes that reception arrangements can be beneficial both to the State and to the asylum-seeker where they provide an opportunity for the asylum-seeker to attain a degree of self-reliance.²¹ Moreover, in cases where the applicant is ultimately granted protection, earlier access to the labour market can facilitate the integration process and his/her earlier positive contribution to society. This feature can also enhance reintegration prospects for those returning home following a rejection of their asylum claim.

Access to education for minors

Access to education shall be granted as soon as possible following the lodging of the asylum claim in order to avoid further interruptions in education, unless the best interest of the child would suggest otherwise.²² UNHCR recalls Sweden's obligation under the Reception Conditions Directive to grant minor children access to the education system under similar conditions as its own nationals for so long as an expulsion measure against them or their parents is not actually enforced. This provision must be read in conjunction with the non-discrimination provision in the Charter of Fundamental Rights of the European Union. UNHCR would strongly encourage that access to education is offered to all children at the reception center – regardless of their length of stay – in such a way that they can benefit from this on the same condition as Swedish children. It would furthermore help children acquire language skills and offer better integration prospects to those finally granted international protection.

Return centers

The Inquiry proposes the establishment of short term return centers for persons with enforceable refusal-of-entry or expulsion orders, as well as persons issued with a transfer order under the Dublin regulation. The proposal states that this will facilitate returns of persons not in need of international protection in Sweden, which in extension will serve to uphold the integrity of the asylum system. Persons that do not comply with the placement lose their right to daily allowances and special benefits. They are also expected to leave the center following the end of the lawful period for their departure and lose their subsistence allowance. Families with children are exempt from this policy.

UNHCR emphasizes Sweden's obligation to pay due regard to the minimum standards prescribed by EU law and its obligations under international human rights law and standards towards all persons under its jurisdiction. This includes ensuring that rejected asylum seekers, who cannot be returned and are at risk of destitution, are treated in a manner that is both humane and human rights compliant so that their basic needs, including shelter, clothes and food, are met.

²¹ UNHCR, *Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems*, 4 September 2001, EC/GC/01/17, available at: <http://www.refworld.org/docid/3bfa81864.html>

²² UNHCR, *Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2012 laying down standards for the reception of applicants for international protection (recast)*, p.37, April 2015, available at: <http://www.refworld.org/docid/5541d4f24.html>

UNHCR further recommends that the Government clarifies how the interest of vulnerable persons will be met in line with its obligations under the Reception Conditions Directive. UNHCR sees a risk for protracted stays in the return centers due to the complications many rejected asylum-seekers experience in obtaining identity documents. Such a situation would be particularly daunting for children. UNHCR therefore urges the Government to adopt active measures and safeguards to avoid children remaining in return centers for periods longer than the original intent. Overall, it is UNHCR's view that the proposal would benefit from closer analysis and empirical evidence to define policies and procedures and determine if such a model would lead to the intended results.

Contingency planning

In UNHCR's view national reception capacity should be flexible and adjusted to the needs of applicants as well as informed by regular contingency planning exercises. UNHCR therefore strongly encourages the Swedish Government to adopt a contingency plan that ensures adequate reception conditions of applicants in a situation where Sweden may receive significantly higher numbers of applicants compared to the regular average. Such a contingency plan should be coordinated within the EU and with all Member States in order to ensure that the EU can respond effectively to possible future arrivals in significant numbers.

II. Reception of unaccompanied and separated children

In UNHCR's view, Sweden has an overall well-functioning reception and asylum system for unaccompanied and separated children on the move. As a main destination country in Europe, Sweden has over the years developed many good reception and protection practices for asylum-seeking children. However, the migration situation of 2015 and early 2016 put significant strain on Sweden's overall reception system, and revealed important structural gaps that need to be addressed in the long term²³. These gaps have been identified by a number of stakeholders in Sweden, including in a UNHCR report from 2016²⁴, and includes *inter alia* the absence of systematic best interest procedures mainstreamed throughout the reception process, family tracing early in the process as well as challenges to access competent guardians in a timely manner and the availability of child-friendly information.

UNHCR has undertaken several initiatives in recent years to both give voice to the experiences of unaccompanied and separated children themselves²⁵ and to propose strengthened child protection policies based on extensive stakeholder consultations with both States and practitioners. UNHCR has published two sets of guidelines to promote the protection of unaccompanied and separated children, *Safe and Sound – What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe (2014)*²⁶ and *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children (2017)*²⁷. Both documents underscore the importance of ensuring the protection of all

²³ These structural gaps existed also before 2015 but were exacerbated due to the unprecedented number of children arriving in Sweden.

²⁴ UNHCR, *This is who we are - Part 2*, October 2016, available at: <http://www.refworld.org/country,,UNHCR,,SWE,,581b4bb74.0.html>

²⁵ UNHCR, *This is who we are - A study of the profile, experiences and reasons for flight of unaccompanied and separated children from Afghanistan seeking asylum in Sweden in 2015*, October 2016, available at: <http://www.refworld.org/docid/581b4b684.html>

²⁶ UNHCR, UNICEF, *Safe and Sound, What States can do to ensure respect for the best interest of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5423da264&skip=0&query=safe%20and%20sound>

²⁷ UNHCR, UNICEF, IRC, *The Way Forward to strengthened policies and practices for unaccompanied and separated children in Europe*, July 2017, available at: <http://www.refworld.org/>

unaccompanied and separated children on the move – regardless of their status – and that they can access procedures and solutions that are child-centered and in accordance with their best interests. They furthermore underscore States obligations in accordance with the CRC to all children on its territory without discrimination.²⁸

The Co-Lab 2.0 project was launched by UNHCR in 2017 for the purpose of building on Sweden’s existing good practices and to develop practical and realistic solutions to identified challenges in the initial reception process²⁹. In partnership with *Förnyelselabbet* this project has used innovative design methods to find out what matters to children – both from the children themselves and through extensive consultations with stakeholders involved in the reception of unaccompanied and separated children. The findings confirm that the child protection system is closely coupled with the asylum system and therefore not accessible to all unaccompanied and separated children on the move³⁰. Furthermore, considerations to the child’s best interest is not systematically applied throughout the various processes to which the child is subject and hinders effective communications between municipalities. Many children, despite support from several different actors, are confused and feel ill-informed about their situation and immediate future. This increases the risk that they abscond when they are transferred to the municipality assigned the long term care, which poses further risks of increased vulnerability, including the exposure to exploitation and abuse. Against this background, the stakeholders have presented solutions which would serve to mitigate the current shortcoming in the reception system and ensure a holistic and child-friendly reception procedure in which best interest considerations and child protection standards are mainstreamed. This includes the establishment of reception centers for the immediate arrival in which all unaccompanied and separated children would be accommodated and supported by several actors, including an on-call guardian; the implementation of the *Barnahus* model, currently used for survivors of or witnesses to sexual exploitation, abuse and violence and human trafficking. Furthermore, the stakeholders recommend the establishment of a three-way conversation between the child and the municipalities of arrival and long-term care to share information and support the child through the transfer. Similarly, the concept of an important adult is recommended to ensure that children understand their situation and can be supported in navigating complex procedures. All with the aim of facilitating a feeling of safety and predictability for the child. The project

[cgibin/texis/vtx/rwmain?page=search&docid=59633afc4&skip=0&query=The%20Way%20forward%20unaccompanied%20and%20separated%20children](https://www.refworld.org/docid/59633afc4&skip=0&query=The%20Way%20forward%20unaccompanied%20and%20separated%20children)

²⁸ State obligations under the Convention shall apply to each child within the State’s territory and to all children subject to its jurisdiction (Art. 2 of the CRC). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State’s territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State’s jurisdiction while attempting to enter the country’s territory. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness. Extract from UN Committee on the Rights of the Child, CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, para 12, available at: <http://www.refworld.org/docid/42dd174b4.html>

²⁹ The initial reception process refers to the timeframe from when the child arrives to when they have been transferred to the municipality assigned the long-term reception responsibility.

³⁰ Unaccompanied and separated children on the move is a collective term used to describe children that are on the move for a variety of reasons which can be voluntary or involuntary, without their parents or a caregiver, and whose movements - while it may open up for opportunities - may also place them at risk (or an increased risk) of economic or sexual exploitation, abuse, neglect and violence. It brings together children seeking asylum, children who migrate (e.g. to seek better opportunities), children subjected to trafficking and children displaced by conflict and disasters.

report will be published in December 2018 and will include the stakeholder's recommendations for the implementation of strengthened child protection practices in the initial reception.

Therefore, UNHCR welcomes the Inquiry's proposal for further research into the reception and care arrangements for unaccompanied and separated children in Sweden and hopes that the outcomes of the Co-Lab 2.0 project can directly inform this work to improve the reception system for this vulnerable group.

UNHCR's Regional Representation for Northern Europe
15 November 2018