



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Comments by the UNHCR Regional Representation for Northern Europe on the Finnish Government’s draft proposal on amendments to the Aliens Act and the Act on the Treatment of Detained Aliens and the Detention Unit

Introduction

1. UNHCR would like to express its appreciation to the Finnish Ministry of the Interior for the invitation to submit comments on the proposal for amendments to the Aliens Act and the Act on the Treatment of Detained Aliens and the Detention Unit (“Treatment Act”). The proposed amendments have consequences for persons of concern to UNHCR.
2. UNHCR has been entrusted by the United Nations General Assembly with a mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees¹. According to its Statute, UNHCR fulfils this mandate, *inter alia*, by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”² UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention relating to the Status of Refugees (“1951 Convention”) and its 1967 Protocol. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection.³ UNHCR’s supervisory responsibility is reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol⁴. Finland is a party to the 1951 Convention since 10 October 1968.

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.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (“UNHCR Statute”).

² *Ibid.*, paragraph 8(a).

³ UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at:

<http://www.unhcr.org/refworld/docid/4f33c8d92.html>

⁴ According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of th[e] 1951] Convention”.

3. UNHCR's supervisory responsibility is reflected in European Union law, including through Article 78 (1) of the Treaty on the Functioning of the European Union, which stipulates that a common policy on asylum, subsidiary protection and temporary protection must be in accordance with the 1951 Convention. Its role is also reaffirmed in Declaration 17 to the Treaty of Amsterdam, which provides that "consultations shall be established with the United Nations High Commissioner for Refugees (...) on matters relating to asylum policy."⁵ Consequently, UNHCR has a direct competence to advise Member States and EU institutions in relation to EU legislative proposals affecting persons of concern, and thus an interest in the transposition of EU regulations and directives impacting on the rights of persons of concern to UNHCR.

The proposed amendments

4. The proposed amendments to the Aliens Act are based on the Government's platform, stating that detention of unaccompanied asylum-seeking children will be banned and alternatives to detention introduced, as well as on issues that have arisen in the detention unit and the requirements presented in the EU acquis. In 2012, the proposal to introduce a general ban on the detention of unaccompanied minors was never introduced to the Parliament. The current proposal has been amended to enable detention of unaccompanied minors in certain circumstances. Namely, detention of unaccompanied minors who have sought, but been rejected international protection would be possible after a return decision has become enforceable. Detention would, according to the proposal, in these cases be in accordance with the Directive on common standards and procedures in Member States for returning illegally staying third-country nationals⁶. The proposal still contains a ban on detention of unaccompanied minors with claims pending in the asylum procedure, as long as they do not have an enforceable return decision. According to the proposal, the proposed law amendments are more restrictive on the use of detention than the Directive laying down standards for the reception of applicants for international protection (recast)⁷ ("recast RCD"). Article 11, paragraph 2 of the recast RCD stipulates that minors shall be detained only as a measure of last resort, whereas the proposal proposes a ban on minors applying for international protection. The detention of unaccompanied minors who do not apply for international protection would be possible under certain circumstances. Detention of children in police premises would be banned.

⁵ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities, 2 September 1997, *Declaration on Article 73k of the Treaty establishing the European Community* [OJ C 340, 10.11.1997] available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML>.

⁶ European Union: Council of the European Union, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008, 2008/115/EC, available at: <http://www.refworld.org/docid/496c641098.html>

⁷ European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html>

5. The provision in the Aliens Act concerning grounds for detention, information to detainees and placement of detainees will be amended based on the recast RCD. The obligation to report will also be amended in order to constitute a better functioning alternative to detention.
6. The Treatment Act will be amended to improve the situation of vulnerable detainees, as required by the recast RCD. Other amendments are proposed in order to improve the security of detainees and the staff of the detention Unit.

UNHCR's general observations

7. During the last years, UNHCR has delivered the following comments relating to detention to the Ministry of the Interior: 1) Statement on provisions on detention in the Aliens Act and the Act on Treatment of Detained Aliens and on the Detention Unit of 17 January 2012; 2) Comments on the draft amendment to the Aliens Act concerning the detention of children of 11 May 2012; 3) Comments on the proposal to improve statistics on detention of 3 August 2012. 4) Comments by the UNHCR Regional Representation for Northern Europe on the Finnish Government's draft proposal on amendments to the Aliens Act and the Act on the Treatment of Detained Aliens and the Detention Unit of 2 December 2013. Reference is made to these previous comments. However, since UNHCR in the autumn of 2012 has issued Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention⁸ (2012 Guidelines on Detention), only the comments submitted on 2 December 2013 are based on the 2012 Guidelines on Detention.
8. UNHCR notes that the proposal refers to the UNHCR revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers from 1999. UNHCR has however, as mentioned above, in the autumn of 2012 issued new guidelines, the 2012 Guidelines on Detention, that supersede the guidelines from 1999.
9. According to the draft law proposal, the Ministry of the Interior intends to continue to examine new forms of alternatives to detention after these law amendments have been made. UNHCR would like to take this opportunity to express its preparedness to be helpful in this process. Annex A of the 2012 Guidelines on Detention contains a non-exhaustive list of alternatives to detention, many of which are already known in the Finnish legislation. Later this year, UNHCR will also launch a Global Detention Strategy 2014-2018 which will have alternatives to detention as one of its areas of focus.

UNHCR's detailed observations

Grounds for detention and alternatives to detention

⁸ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/50348953b8.html>

10. Section 118 of the Aliens Act is proposed to be amended so that an alien can be obliged to report not only to the police or to border guards, but also to a reception centre. The amendment is introduced in the hope that this would broaden the use of the obligation to report as an alternative to detention. According to the 2012 Guidelines on Detention, the consideration of alternatives to detention is part of an overall assessment of the necessity, reasonableness and proportionality of detention. Such consideration ensures that detention of asylum-seekers is a measure of last resort, rather than the first resort. It must be shown that in light of the asylum-seeker's particular circumstances, there were not less invasive or coercive means of achieving the same ends.⁹ Thus, consideration of the availability, effectiveness and appropriateness of alternatives to detention in each individual case needs to be undertaken.¹⁰ The addition of the words "general requirements for the use of security measures" in the name of the section strengthens this approach in the Aliens Act. The 2012 Guidelines on Detention notes the risk of non-cooperation through inability to fulfil the conditions, for example if it requires an individual and/or his or her family to travel long distances and/or at their own expense¹¹. The addition of the option to report to a reception centre, aimed at mitigating this risk, is thus welcome. However, UNHCR wishes to stress that alternatives to detention should not become substitutes for normal open reception arrangements that do not entail restrictions on the freedom of movement of asylum-seekers¹².
11. Section 121 of the Aliens Act is proposed to be amended to strengthen the role of alternatives to detention as primary security measures. According to the 2012 Guidelines on Detention, the necessity, reasonableness and proportionality of detention are to be judged in each individual case. The general principle of proportionality requires that a balance be struck between the importance of respecting the rights to liberty and security of person and freedom of movement, and the public policy objectives of limiting or denying these rights.¹³ The

⁹ See *C v. Australia*, HRC, Comm. No. 900/1999, 28 October 2002, available at: <http://www.unhcr.org/refworld/docid/3f588ef00.html>.

¹⁰ See, for example, *Sahin v. Canada*, (Minister of Citizenship and Immigration) [1995] 1 FC 214 available at: <http://www.unhcr.org/refworld/docid/3ae6b6e610.html>. See, also, WGAD, Opinion No. 45/2006, UN Doc. A/HRC/7/4/Add.1, 16 January 2008, para. 25, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm> and WGAD, Legal Opinion on the Situation regarding Immigrants and Asylum-seekers, UN Doc. E/CN.4/1999/63, para. 69: "Possibility for the alien to benefit from alternatives to administrative custody." available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=1520 and WGAD, Report to the Thirteenth Session of the Human Rights Council, A/HRC/13/30, 15 January 2010, para. 65, available at: <http://www.unhcr.org/refworld/docid/502e0fa62.html>

¹¹ UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, May 2011 (Global Roundtable Summary Conclusions), para 22, available at: <http://www.unhcr.org/refworld/docid/4e315b882.html>.

¹² *Idem*, para. 19.

¹³ See *Vasileva v. Denmark*, (2003), ECtHR, App. No. 52792/99, para. 37, available at: <http://www.unhcr.org/refworld/docid/502d4ae62.html> and *Lokpo and Touré v. Hungary*, (2011), ECtHR, App. No. 10816/10, para. 21 (final decision), available at: <http://www.unhcr.org/refworld/docid/4e8ac6652.html>.

authorities must not take any action exceeding that which is strictly necessary to achieve the pursued purpose in the individual case. The necessity and proportionality tests further require an assessment of whether there were less restrictive or coercive measures (that is, alternatives to detention) that could have been applied to the individual concerned and which would be effective in the individual case.¹⁴ The amendment aiming at strengthening this approach is thus welcome.

12. Section 121 is further amended to accommodate Article 8(3) of the recast RCD. The possibility to detain based on public order is proposed to be regulated more strictly. This amendment is welcome. A reference is made to detention based on the Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection¹⁵ (“Dublin III”). UNHCR has expressed concerns that the possibility remains that Member States take a wide view of what constitutes a risk of absconding¹⁶. According to the wording of the Dublin III Regulation the risk should be significant. It should not be possible under such a formulation to determine that the mere fact of being subject to the Dublin Regulation creates a risk of absconding that justifies detaining the applicant.

Detention of children

13. Section 122 regulates the detention of children. Before a child can be detained the child has to be heard and a social worker has to be reserved an opportunity to submit a statement on the detention of the child. A child can only be detained together with his or her primary caretakers if it is necessary for the family unity between them.
14. It is UNHCR’s strong view that - in principle - children¹⁷ should not be detained at all. The United Nations Convention on the Rights of the Child¹⁸ (CRC) provides specific international legal obligations in relation to children and sets out

¹⁴ UNHCR’s 2012 Guidelines on Detention, Guideline 4.2, see footnote 8 above.

¹⁵ European Union: Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU)No 604/2013, available at: <http://www.refworld.org/docid/51d298f04.html>

¹⁶ See UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008)*, 18 March 2009, p. 18, available at: <http://www.refworld.org/docid/49c0ca922.html>

¹⁷ A child is defined as “a human being below the age of 18 years”, Article 1, United Nations Convention on the Rights of the Child (CRC), 1990.

¹⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

a number of guiding principles regarding the protection of children, which are relevant to the context at hand: The best interests of the child shall be a primary consideration in all actions affecting children, including asylum-seeking and refugee children (Article 3 in conjunction with Article 22, CRC). Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6, CRC). Children have the right to family unity (*inter alia*, Articles 5, 8 and 16, CRC) and the right not to be separated from their parents against their will (Article 9, CRC). Article 20(1) of the CRC establishes that a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. Article 22 of the CRC requires that States Parties take appropriate measures to ensure that children who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance. Article 37 of the CRC requires States Parties to ensure that the detention of children be used only as a measure of last resort and for the shortest appropriate period of time. Where separation of a child or children from their parents is unavoidable in the context of detention, both parents and child are entitled to essential information from the State on the whereabouts of the other unless such information would be detrimental to the child (Article 9(4), CRC).¹⁹

15. Overall an ethic of care – and not enforcement – needs to govern interactions with asylum-seeking children, including children in families, with the best interests of the child a primary consideration. The extreme vulnerability of a child takes precedence over the status of an “illegal alien”.²⁰ States should “utilize, within the framework of the respective child protection systems, appropriate procedures for the determination of the child’s best interests, which facilitate adequate child participation without discrimination, where the views of the child are given due weight in accordance with age and maturity, where decision makers with relevant areas of expertise are involved, and where there is a balancing of all relevant factors in order to assess the best option.”²¹ All appropriate alternative care arrangements should be considered in the case of children accompanying their

¹⁹ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 51.

²⁰ *Muskhadzhiyeva and others v. Belgium* (2010), ECtHR, App. No. 41442/07, available at: <http://www.unhcr.org/refworld/docid/4bd55f202.html>, in which it was held *inter alia* that detaining children in transit facilities designed for adults not only amounted to inhuman or degrading treatment in contravention of Article 3 of the ECHR, it also rendered their detention unlawful.

²¹ UNHCR ExCom Conclusion No. 107 (LVIII) – 2007, on *Children at Risk*, para. G (i), available at: <http://www.unhcr.org/refworld/docid/471897232.html>. UNHCR *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08 (UNHCR Guidelines on International Protection on Child Asylum Claims), available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

See, also, International Detention Coalition, *Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum-Seeking and Irregular Migrant Children Affected by Immigration Detention*, 2012,

<http://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>;

IDC, *Child Sensitive Community Assessment and Placement Model*, available at:

<http://idcoalition.org/ccap-5step-model/>.

parents, not least because of the well-documented deleterious effects of detention on children's well-being, including on their physical and mental development. The detention of children with their parents or primary caregivers needs to balance, inter alia, the right to family and private life of the family as a whole, the appropriateness of the detention facilities for children,²² and the best interests of the child.²³

16. Section 122 further stipulates that an unaccompanied child seeking international protection cannot be detained before a removal decision has become enforceable. UNHCR notes that the general ban on detention of unaccompanied children has been removed from the proposed law amendment and been replaced with a ban on detention of unaccompanied children seeking international protection until the removal decision has become enforceable. UNHCR wants to stress that, as a general rule, unaccompanied or separated children should not be detained. Detention cannot be justified based solely on the fact that the child is unaccompanied or separated, or on the basis of his or her migration or residence status.²⁴ A primary objective must be the best interests of the child.²⁵
17. The proposal notes that age assessments can be conducted on children applying for international protection if their age is doubted. The assessment is subject to approval from the individual concerned. If the individual concerned refuses to undergo the assessment he or she will be treated as an adult. UNHCR wants to stress that ensuring accurate age assessments of asylum-seeking children is a specific challenge in many circumstances, which requires the use of appropriate assessment methods that respect human rights standards.²⁶ Standards and procedural safeguards on age assessments are contained in several legal instruments and guidelines, including the CRC General Comments No. 6²⁷ and the UNICEF Technical Note on Age Assessment²⁸. Inadequate age assessments can lead to the arbitrary detention of children.²⁹ It can also lead to the housing of

²² *Popov v. France*, (2012), ECtHR, App. No. 39472/07 and 39474/07, available at: <http://www.unhcr.org/refworld/docid/4f1990b22.html>.

²³ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 53.

²⁴ *Popov v. France*, (2012), ECtHR, App. No. 39472/07 and 39474/07.

²⁵ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 54

²⁶ UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, May 2011 (Global Roundtable Summary Conclusions), para 7, available at: <http://www.unhcr.org/refworld/docid/4e315b882.html>.

UNHCR *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, available at: <http://www.unhcr.org/refworld/docid/3ae6b3360.html>.

UNHCR *Guidelines on International Protection on Child Asylum Claims*, above note 13.

²⁷ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>

²⁸ UN Children's Fund (UNICEF), *Age Assessment: A Technical Note*, January 2013, available at: <http://www.refworld.org/docid/5130659f2.html>

²⁹ UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, *ibid*

- adults with children. Age- and gender-appropriate accommodation needs to be made available.³⁰ According to the proposal there will be more suitable premises for children when a new detention unit opens in Joutseno at the end of 2014.
18. UNHCR still wants to stress that children who are detained should benefit from the same minimum procedural guarantees as adults, but these should be tailored to their particular needs. An independent and qualified guardian as well as a legal adviser should be appointed for unaccompanied or separated children. An adult who is familiar with the child's language and culture may also alleviate the stress and trauma of being alone in unfamiliar surroundings. During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release.³¹
 19. According to the proposed Section 122, an unaccompanied child has to be released after 72 hours. This period can for special reasons be prolonged with another 72 hours. All efforts, should, in the view of UNHCR, be made to allow for the immediate release of children from detention and their placement in other forms of appropriate accommodation.³² The introduction of time limits is thus welcome.
 20. The right to be informed about the grounds of detention is in Section 123 proposed to be complemented with the right to receive information in language that they understand or can be expected to understand about the handling of the detention decision and the possibilities to receive legal aid. UNHCR wants to stress that during detention, asylum-seekers are entitled to be informed at the time of arrest or detention of the reasons for their detention,³³ and their rights in connection with the order, including review procedures, in a language and in terms which they understand.³⁴ The amendments are thus welcome.
 21. In the proposed Section 123a, the placement of a detained person in police premises will be allowed only in exceptional circumstances. A ban on placing children in police jails will be introduced. UNHCR is well aware that because the detention unit in Metsälä is often full, placement of detained persons in police jails is more a rule than the exception in Finland. It is UNHCR's view that detention can only lawfully be in places officially recognized as places of

³⁰ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 55.

³¹ *Ibid*, para 56.

³² See CRC General Comment No. 6: *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para. 61, available at: <http://www.unhcr.org/refworld/docid/42dd174b4.html>.

³³ See Article 9 (2), ICCPR; Article 7 (4), ACHR; Article 5 (2) ECHR and Article 6, ACHPR.

³⁴ See, further WGAD, *Report to the Fifty-sixth session of the Commission on Human Rights*, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5 available at: <http://www.unhcr.org/refworld/pdfid/3b00f25a6.pdf>.

- detention. Detention in police cells is not appropriate.³⁵ UNHCR thus welcomes the proposed ban on detention of children in police premises.
22. The Treatment Act will be amended by adding a section about disciplinary regulations for the detention units. The amendments further concern the use of phone and other means of communication, age and gender specific accommodation, personal property, the right to primary health care, observation, security and control measures.
23. It is UNHCR's position that asylum-seekers in detention should be able to make regular contact (including through telephone or internet, where possible) and receive visits from relatives, friends, as well as religious, international and/or non-governmental organisations, if they so desire. Access to and by UNHCR must be assured. Facilities should be made available to enable such visits. Such visits should normally take place in private unless there are compelling reasons relevant to safety and security to warrant otherwise. In co-sex facilities, men and women should be segregated unless they are within the same family unit. Children should also be separated from adults unless these are relatives.³⁶ Where possible, accommodation for families ought to be provided. Appropriate medical treatment must be provided where needed, including psychological counseling. Detainees needing medical attention should be transferred to appropriate facilities or treated on site where such facilities exist. A medical and mental health examination should be offered to detainees as promptly as possible after arrival, and conducted by competent medical professionals. While in detention, detainees should receive periodic assessments of their physical and mental well-being. Many detainees suffer psychological and physical effects as a result of their detention, and thus periodic assessments should also be undertaken even where they presented no such symptoms upon arrival. Where medical or mental health concerns are presented or develop in detention, those affected need to be provided with appropriate care and treatment, including consideration for release.³⁷ UNHCR thus welcomes the amendments giving detainees the right to stay in contact with the outside world through e-mail and other forms of communication. The amendments concerning age and gender sensitive accommodation - including of families - are also welcome. The broader regulation of the right to health care is another improvement UNHCR wants to welcome.
24. The Treatment Act introduces the right for children to recreational activities. According to UNHCR, provisions should be made for children's recreation and play, including with other children.³⁸ This amendment is welcome.

³⁵ See *Abdolkhani and Karimnia v. Turkey* (No.2), (2010), ECtHR App. No.50213/08, available at: <http://www.unhcr.org/refworld/docid/4c5149cf2.html>, which found a violation of Article 3 of the ECHR on account of the detention of refugees for three months in the basement of police headquarters.

³⁶ See *Muskhadzhiyeva and others v. Belgium*, (2010), ECtHR, App. No. 41442/07, available at: <http://www.unhcr.org/refworld/docid/4bd55f202.html>, in which it was held *inter alia* that detaining children in transit facilities designed for adults not only amounted to inhuman or degrading treatment in contravention of Article 3 of the ECHR, it also rendered their detention unlawful.

³⁷ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 48.

³⁸ *Idem.*, para. 56.

Conclusion

25. UNHCR expresses its sincere appreciation for the opportunity to provide comments on this legislative proposal. UNHCR welcomes the general principle guiding the law amendments which aims at fulfilling the international rules and recommendations concerning detention through basing the principles used for detention on the principles of social work. UNHCR further welcomes the proposed law amendments restricting the detention of children, but reiterates that, in principle, children should not be detained at all. This last, strong, principal recommendation is not fulfilled in this law proposal.

**UNHCR Regional Representation for Northern Europe,
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