

## **Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the Law Proposal (Ds 2016:21) concerning activities for asylum-seekers and municipality placements of unaccompanied children**

### **I. Introduction**

1. The United Nations High Commissioner for Refugees (hereafter “UNHCR”) Regional Representation for Northern Europe (hereafter “RRNE”) is grateful to the Ministry of Employment for the invitation to provide its observations on the Law Proposal (Ds 2016:21) concerning activities for asylum-seekers and municipality placements of unaccompanied children, amending the Act (1994:137) on Reception of Asylum-seekers and others, and the Swedish Work Environment Act (1977:1160) (hereafter “the Proposal”).
2. UNHCR has a direct interest in law proposals in the field of asylum, 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.<sup>1</sup> Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,<sup>2</sup> whereas the 1951 Convention relating to the Status of Refugees<sup>3</sup> and its 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Convention”) oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). It has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (hereafter “TFEU”).<sup>4</sup>
3. 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. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and

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

<sup>2</sup> *Ibid*, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. The UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, *UNHCR’s supervisory responsibility*, October 2002, available at: <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

<sup>4</sup> European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

subsequent Guidelines on International Protection (hereafter “UNHCR Handbook”).<sup>5</sup> UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

## II. Observations

4. UNHCR will in these observations follow the order in which the amendments are presented in the Proposal.

### **Municipality placement of unaccompanied children (Chapter 2 of the Proposal)**

5. The Proposal suggests that the regulation concerning municipality placement of unaccompanied children in Article 3, paragraph 2 of the Act on Reception of Asylum-seekers and others, be amended so that unaccompanied children who are assigned to a certain municipality are also placed in accommodation in that municipality. The Proposal states that in 2015, 34 per cent of the unaccompanied children were accommodated in a municipality other than the one to which they were assigned.
6. As UNHCR understands, the purpose of the Proposal is to ensure an even distribution of the responsibility for the reception of unaccompanied children between the municipalities in Sweden, in order to improve the quality and durability of the municipalities’ reception capacity. According to the Proposal, when unaccompanied children are accommodated in the municipality to which they are assigned, the possibility to maintain a coherent responsibility for the child is improved.
7. The Proposal also suggests that a municipality designated to receive an unaccompanied child will only be able to transfer the child to a different municipality if the municipalities in question have entered into a separate agreement. Exceptions will be made for placements under the Act (1990:52) with Special Provisions Regarding the Care of Youth, or with the support of the Social Services Act (2001:453), regarding children with corresponding care needs, or in case of special circumstances. For certain placements in a different municipality, the prior authorization of the County Administrative Board will be necessary.
8. Although the Proposal does not mention it explicitly, UNHCR believes that the proposed amendments would strengthen the reception conditions for unaccompanied children through increased stability and predictability in their lives. Stress and uncertainty surrounding the municipal placement was, for example, identified as a core concern by the unaccompanied children taking part in a recent study conducted by Human Rights Watch.<sup>6</sup> UNHCR also believes that the proposed amendments could lead to a better control of the whereabouts of unaccompanied children, and thereby strengthen the efforts made by municipalities, County Administrative Boards and other stakeholders to prevent trafficking and disappearances of unaccompanied children. UNHCR recently undertook a study of unaccompanied children from Afghanistan<sup>7</sup> in the course of which UNHCR found that there were concerns as to the registration and control of the

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<sup>5</sup> UNHCR, *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, (hereafter “UNHCR, Handbook”), available at: <http://www.refworld.org/docid/4f33c8d92.html>.

<sup>6</sup> Human Rights Watch, *Seeking Refuge: Unaccompanied Children in Sweden*, 8 June 2016, available at: <http://www.refworld.org/docid/575910a54.html>.

<sup>7</sup> The study is a demographic survey of the unaccompanied children from Afghanistan who applied for asylum in Sweden in 2015, the reasons for their flight and their experiences of the flight. The study is called “This is Who We Are” and will be published in August 2016, available at: [www.unhcr-northerneurope.org](http://www.unhcr-northerneurope.org).

whereabouts of unaccompanied children. In the study, UNHCR identified a need to ensure a comprehensive and holistic responsibility for the children and their needs.

9. UNHCR notes that no explicit references are made in the Proposal to the obligations under Article 3 of the Convention on the Rights of the Child (hereafter “CRC”),<sup>8</sup> to ensure that the child’s best interest is “a primary consideration” in all actions concerning the child (the principle of the best interests of the child). Considering that the Government of Sweden is currently in the process of incorporating the CRC as a whole into domestic law, UNHCR would encourage including an explicit reference to the CRC also in the amendments considered under this Proposal.
10. In this context, UNHCR wishes to underline that the principle of the best interests of the child should guide all actions affecting the child, including decisions about the child’s accommodation and care. The principle also entails an obligation to provide children in vulnerable situations with a stable environment, where they can form meaningful attachments and feel secure.<sup>9</sup> UNHCR thus recommends that the placement or transfer of an unaccompanied child is informed by a Best Interests Assessment (hereafter “BIA”) of the individual child.<sup>10</sup> The BIA should also be guided by the child’s right to be heard (CRC, Article 12) and the child’s right to information (CRC, Article 17). As noted by the UN Committee on the Rights of the Child, “Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.”<sup>11</sup>
11. In this particular context, UNHCR would also like to emphasize the added value of the so-called participatory approach. The practice, aiming at engaging with, and listening to unaccompanied children, and all other persons of concern, when designing policies concerning their lives, is one UNHCR encourages the Government of Sweden to strengthen and expand upon. In 2016, the Children’s Ombudsman released a report,<sup>12</sup> also with findings derived from information obtained through discussions with unaccompanied children, which may serve as a practical example in this regard. Further guidance can also be sought from the UNHCR tools for participatory assessments.<sup>13</sup>
12. Further, the UN Committee of the Rights of the Child has emphasized the need for and added value of participatory efforts, noting that the children themselves need to have a role in the decision-making process, and the importance of ensuring their full participation in the assessment of their best interests.<sup>14</sup> Respect for a child’s best interests also requires that where competent authorities have placed an unaccompanied or separated child in a municipality that “the State recognizes the right of that child to a

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<sup>8</sup> 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>.

<sup>9</sup> See e.g. UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14, available at: <http://www.refworld.org/docid/51a84b5e4.html> (hereafter “CRC, *General comment No. 14*”), paras. 71-76, and UNHCR, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>, (hereafter “UNHCR, *Safe and Sound*”), pp. 41-43.

<sup>10</sup> UNHCR, *Safe & Sound*, pp. 19-20; CRC, *General Comment No. 14*, para. 20.

<sup>11</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12, available at: <http://www.refworld.org/docid/4ae562c52.html>, para. 28.

<sup>12</sup> Barnombudsmannen, *Barn på flykt: Barns och ungas röster om mottagandet av ensamkommande*, 2016, available at: <https://www.barnombudsmannen.se/globalassets/dokument-for-nedladdning/publikationer/barn-pa-flykt--barns-och-ungas-roster-om-mottagandet-av-ensamkommande.pdf>.

<sup>13</sup> UNHCR, *UNHCR Tool for Participatory Assessment in Operations*, May 2006, First edition, available at: <http://www.refworld.org/docid/462df4232.html>. Concerning participatory assessments with children, see also UNHCR, *Listen and Learn: Participatory Assessment with Children and Adolescents*, July 2012, available at: <http://www.refworld.org/docid/4fffe4af2.html>.

<sup>14</sup> CRC, *General comment No. 14*, para. 54.

‘periodic review’ of their treatment and ‘all other circumstances relevant to his or her placement’<sup>15</sup>.

13. UNHCR would welcome the proposed amendments, should they lead to more stability for unaccompanied children, improve their right to be heard and ensure that their best interests are given primary consideration. UNHCR understands that the amendments would in such case correspond with Sweden’s obligations under the CRC.

#### **Recommendation**

UNHCR recommends to

- 1) Include a reference to Article 3 of the Convention on the Rights of the Child (CRC) in the Act on Reception of Asylum-seekers and others, to ensure that the best interests of the child are a primary consideration in all decisions under the Act.
- 2) Explicitly provide for a Best Interests Assessment (BIA) to be part of the decision to place a child in a municipality.
- 3) To provide the child an opportunity to be heard and to give due weight to his or her views, in accordance with the age and maturity of the child.

#### **Responsibility of the Swedish Migration Agency (SMA) in providing activities to asylum-seekers and others. (Chapter 3.1 of the Proposal)**

14. The second part of the Proposal concerns the current system where the SMA is responsible for providing asylum-seekers with meaningful activities, such as language courses and other activities, while waiting for the adjudication of their asylum claim. The Proposal recommends to end the current responsibility of the SMA, in order to streamline the tasks of the SMA to focus on asylum case processing, and to transfer the responsibilities to provide activities for asylum-seekers to other actors. The SMA will retain a more general duty of providing information to asylum-seekers, for example, about the asylum procedure, basic civic information and about the rules at the accommodation centre where they live. According to the Proposal, the Government has in the spring budget proposal of 2016 allocated funds for the County Administrative Boards to act as coordinators of activities aiming to improve asylum-seekers’ skills in Swedish and other activities aiming to front-load integration. The County Administrative Boards are to take up the new responsibility starting 2017.
15. UNHCR welcomes the intention to improve the activities for asylum-seekers. In its comments to the EU Reception Conditions Directive, UNHCR noted that “Where practicable, the delivery of basic services to applicants should not be self-contained, but integrated into existing community services. This should be supplemented, as required, by targeted support structures that address the special needs of asylum-seekers (e.g., language training, orientation and cultural awareness programs, social and legal counselling, community development etc.)<sup>16</sup> Expanding the role of actors who are already providing services for asylum-seekers may thus be positive, as long as the services provided are equal and of consistent quality throughout the country. UNHCR would in this regard recommend that asylum-seekers are involved in the design and

<sup>15</sup> 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, available at: <http://www.refworld.org/docid/42dd174b4.html>, para. 22.

<sup>16</sup> UNHCR, *UNHCR Annotated Comments to 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)*, April 2015, available at: <http://www.refworld.org/docid/5541d4f24.html>.

implementation of activities provided for them (see paragraphs 11 and 12 above concerning participatory approaches).

16. At the moment, it is unclear to UNHCR how the transition of the responsibilities from the SMA to other actors will take place. Although the Government has decided that the County Administrative Boards shall be responsible for the coordination of activities provided to asylum-seekers, to UNHCR's understanding, there is still no decision on who the other actors will be. During the transition period, UNHCR would recommend to continuously aim to provide asylum-seekers with opportunities to engage in activities that make their wait as meaningful as possible and prepare them for the next step, whether it is integration in Sweden or return to their country of origin.

**Recommendation**

UNHCR recommends to continue to proactively aim at identifying meaningful activities for asylum-seekers, in a participatory process, both during the transition period and following the expected entry into force of the Proposal on 1 January 2017.

**UNHCR Regional Representation for Northern Europe  
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