

## UNHCR Observations on the legislative proposals in the interim report “A new order for the accommodation of asylum-seekers”

### I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) is grateful to the Government of Sweden for the invitation to provide observations on the legislative proposals in the interim report “A new order for the accommodation of asylum-seekers” (“En ny ordning för asylsökandes boende”, SOU 2022:64) – hereafter the “Proposal”<sup>1</sup> which proposes several amendments to the Act on the Reception of Asylum Seekers and Others.<sup>2</sup>
2. UNHCR has a direct interest in law proposals in the field of asylum, as the agency entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.<sup>3</sup> Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,<sup>4</sup> whereas the 1951 Convention relating to the Status of Refugees<sup>5</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).<sup>6</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 subsequent Guidelines on International Protection (“UNHCR Handbook”).<sup>7</sup> UNHCR also

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<sup>1</sup> Full report (in Swedish): <https://regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2022/11/sou-202264/>.

<sup>2</sup> For detailed information on the proposed legislative text to the various acts, see pp. 33-78 of the Proposal.

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

<sup>4</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. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002, <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

<sup>5</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, <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>6</sup> UNHCR’s supervisory responsibility has also been reflected in European Union (“EU”) law, including by way of general reference to the 1951 Convention in Article 78 (1) of the Treaty on the Functioning of the EU.

<sup>7</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, <https://www.refworld.org/docid/5cb474b27.html>.

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. General Observations

4. At the outset, UNHCR would like to express its gratitude for Sweden's long tradition of providing sanctuary to persons in need of international protection, and for its well-established and high-quality asylum and reception system. UNHCR further appreciates that the Proposal aims to improve the conditions for refugees' integration, and to promote an efficient and sustainable asylum process.
5. Specifically, the purpose of the proposed measures is to encourage more asylum-seekers to live in the Swedish Migration Agency's (hereafter "SMA") and the municipality's accommodation (hereafter "asylum accommodation"<sup>8</sup>), introduce an obligation for asylum-seekers to participate in the introduction to Swedish society arranged by SMA, and to analyse the need for possible sanctions in the event of misconduct in asylum accommodation.<sup>9</sup> According to the Proposal, the option for asylum-seekers to select their own accommodation with continued benefits will be removed, as the assumption of the authorities is that private accommodation might increase the risk of social exclusion and segregation.
6. Adequate reception conditions are an important part of a functional and sustainable asylum system and a precondition to an applicant's ability to present his or her application for international protection.<sup>10</sup> In line with their international human rights law obligations, States must provide an adequate standard of living that includes adequate food, clothing and housing, and the continuous improvement of living conditions.<sup>11</sup> The UNHCR Executive Committee has referred to the need to provide a "safe and dignified environment for asylum-seekers" and recommends that "while there is scope for flexibility in the choice of reception arrangements to be put in place, it is important that the various reception measures respect human dignity and applicable international human rights law and standards".<sup>12</sup>
7. The recast EU Reception Conditions Directive (RCD), for its part, foresees not only "minimum standards", but aims to ensure improved reception conditions. The RCD also encourages Member States to interpret the provisions in the Directive in a positive and generous spirit in line with international and EU law.<sup>13</sup>

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<sup>8</sup> According to the Proposal, the term 'asylum accommodation' is used as an umbrella term for all types of accommodation provided for asylum-seekers, and includes both corridor accommodation, as well as ordinary apartments.

<sup>9</sup> Proposal, p. 23.

<sup>10</sup> See, for instance, 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, <https://www.refworld.org/docid/5541d4f24.html>, (hereafter UNHCR, Annotated Comments to Directive 2013/33/EU") p. 41.

<sup>11</sup> UN General Assembly, ICESCR, 16 December 1966, United Nations, Treaty Series, vol. 993, article 11 (1), <http://www.refworld.org/docid/3ae6b36c0.html>. See also, Article 25, UNGA, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), [www.refworld.org/docid/3ae6b3712c.html](http://www.refworld.org/docid/3ae6b3712c.html); ICCPR, 16 December 1966, A/RES/2200, [www.refworld.org/docid/3b00f47924.html](http://www.refworld.org/docid/3b00f47924.html).

<sup>12</sup> 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>.

<sup>13</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) or Reception Conditions

8. UNHCR understands that the Proposal seeks to locate and design asylum accommodation in a way that provides an incentive for asylum-seekers to stay in this form of accommodation. This includes locating the asylum accommodation in urban areas with access to public transport and services, designing them in a way that promotes personal responsibility and self-determination, as well as for the authorities to consider individual requests to accommodate asylum-seekers close to relatives or friends. If correctly implemented, through measures aiming to ensure all asylum accommodation have adequate standards including for vulnerable individuals and individuals with specific needs, UNHCR believes that these changes could lead to improved reception standards for many applicants for international protection in Sweden.<sup>14</sup>
9. Adequate reception standards need to be guaranteed throughout the duration of the asylum procedure. UNHCR recommends that in case the current transit centres are used as asylum accommodation for the entire duration of the asylum process, some measures need to be put in place to ensure suitable conditions for longer stay.
10. Although not addressed in the Proposal, UNHCR would like to reiterate its concerns that the level of the daily allowance for asylum-seekers and beneficiaries of temporary protection in Sweden is very limited and does not always allow for an adequate standard of living. Good practice suggests that adequate reception conditions in fact reduce the likelihood of absconding and onward movement, as well as the risk of abuse and exploitation. Moreover, if asylum procedures are swift and efficient, with the requisite safeguards in place, reasonable levels of material assistance should not represent an excessive burden on the asylum state, nor an incentive for misuse of the system.<sup>15</sup>

UNHCR recommends the Swedish Government to:

- 1) In case the current transit centers are used as asylum accommodation for the entire duration of the asylum process, put in place measures to ensure suitable conditions for longer stay.
- 2) Raise the level of the daily allowance to ensure that all asylum-seekers and beneficiaries of temporary protection are provided an adequate standard of living.

### III. Specific Observations

11. In the following sections, UNHCR will highlight specific observations on select elements of the Proposal, that is, a) Allocation of asylum-seekers to asylum accommodation, b) Condition to live at asylum accommodation in order to receive benefits, c) Implicit withdrawal or abandonment of the application, d) Serious misconduct in asylum accommodation, and e) Special considerations regarding beneficiaries of Temporary Protection.

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Directive (“RCD”), for instance, refers to the Charter of Fundamental Rights of the European Union, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as well as obligations under instruments of international law, notably the 1951 Convention, the 1989 United Nations Convention on the Rights of the Child (CRC), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

<sup>14</sup> Cf. RCD, Articles 21-22.

<sup>15</sup> UNHCR, Annotated Comments to Directive 2013/33/EU, p. 43.

### **a. Allocation of asylum-seekers to asylum accommodation**

12. Section 4.2 of the Proposal provides that asylum-seekers must be allocated a place in an asylum accommodation. The Proposal foresees that placement in asylum accommodation is for the entire duration of the asylum procedure.<sup>16</sup> The proposed measures will not apply to unaccompanied and separated children.
13. In UNHCR's view, applicants who have the opportunity to stay with relatives or friends or who have sufficient economic means should not be required to live in collective accommodation centers.<sup>17</sup> In addition, in UNHCR's view, staying in collective accommodation should generally only be the case for a limited period of time, allowing applicants to move to smaller scale housing as soon as possible. Such arrangements during the initial months following their arrival can, for instance, facilitate efficient dissemination of information and advice.<sup>18</sup>
14. UNHCR is concerned that the proposed measures that direct, rather than offer, asylum-seekers to stay at collective asylum accommodation may in some cases, lead to further isolation, marginalization and worsened reception conditions, particularly for families with children and vulnerable individuals.

UNHCR recommends the Swedish Government to:

- 3) Ensure that living in collective accommodation generally should only be for a limited period of time, allowing applicants to move to smaller scale housing as soon as possible.
- 4) Maintain the possibility for applicants who have the opportunity to stay with relatives or friends or who have sufficient economic means to stay in private accommodation with benefits.

### **b. Condition to live at asylum accommodation in order to receive benefits**

15. Section 4.3 of the Proposal provides that staying at SMA's asylum accommodation is one of the conditions for asylum-seekers to receive a daily allowance and special grant.<sup>19</sup> Additionally, section 4.4. of the Proposal provides that staying at an asylum accommodation will be a condition for exempting asylum-seekers from the work permit requirement. This means that asylum-seekers must live in their allocated asylum accommodation to be permitted to work in Sweden. According to section 4.6 of the Proposal, SMA and municipalities providing asylum accommodation will be authorised to enter and inspect the living quarters of asylum-seekers to verify whether they are staying at the address provided.

<sup>16</sup> See for instance, paragraph 8.3.2 of the Proposal.

<sup>17</sup> UNHCR, Annotated Comments to Directive 2013/33/EU, p. 43.

<sup>18</sup> UNHCR, Annotated Comments on Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers, July 2003, <https://www.refworld.org/docid/3f3770104.html>, at Article 14.

<sup>19</sup> The daily allowance should cover costs for food, clothes and shoes, leisure activities, hygiene items and other consumables as well as expenses for certain healthcare, dental care and medicines. When food is provided at the asylum accommodation, the daily allowance is reduced. The special grant covers costs that are not covered by the daily allowance and which are necessary for a tolerable subsistence, such as glasses or baby equipment.

16. As UNHCR understands the Proposal, asylum-seekers will not *per se* be forced to stay at asylum accommodation, such as collective centres. However, if they live in their own independently organised accommodation, they will, as a general rule, not receive a daily allowance or special grant, and they will not be able to take up lawful employment. UNHCR thus sees a risk that many asylum-seekers, in practice, may not have any other option but to stay in (collective) asylum accommodation. While Article 7(3) of the RCD permits States to make provision of the material reception conditions subject to actual residence by the applicants in a specific place, UNHCR recalls that measures that restrict asylum-seekers' right to move freely in the territory of their host State must be necessary and proportionate to the aim.
17. According to Article 20 of the RCD, States “may reduce or, in exceptional and duly justified cases, withdraw material reception conditions”, such as, where an applicant “abandons the place of residence determined by the competent authority without informing it or, if requested, without permission”. In its comments to the recast RCD, UNHCR noted that “Reception conditions may only be withdrawn temporarily in the individual case where the applicant abandons his or her place of residence in the circumstances described in paragraph 1 and should be restored promptly upon his or her return subject to conditions set out in the last part of paragraph 1.”<sup>20</sup> UNHCR cautions that any such reduction or withdrawal must ensure an adequate standard of living for applicants in line with international human rights law.<sup>21</sup> Decisions to withdraw or reduce daily allowance are to be taken on the merits, individually, objectively and impartially and taking into consideration the particular situation of the person concerned, especially applicants with special reception needs.<sup>22</sup>
18. UNHCR considers that imposing a condition to reside in designated accommodation in order to be able to work legally could affect applicants' ‘effective access’ to the labour market, as per Article 15(2) RCD. In practice, if the assigned accommodation is far from employment opportunities or an individual is expected to give up employment due to being assigned accommodation in another part of the country, such a condition could hamper an applicants' effective access to employment. UNHCR further believes that the condition is unnecessarily obstructive.
19. UNHCR welcomes that according to the Proposal there will be exceptions from the condition to stay in asylum accommodation in order to receive the benefits. According to the Proposal, this applies to two categories: a. asylum-seekers who have the opportunity to stay with close family (for example, a partner or child) as it would be unreasonable to demand that they live separated in order to receive benefits, and b. asylum-seekers who, due to their personal circumstances, have exceptional grounds for not living in asylum accommodation.<sup>23</sup> UNHCR would welcome a flexible interpretation and application of these exceptions.<sup>24</sup>
20. UNHCR is, however, concerned that families with children, for instance, will not generally be exempted. Moreover, UNHCR questions the assumption in the Proposal that

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<sup>20</sup> UNHCR, Annotated Comments to Directive 2013/33/EU, p. 47.

<sup>21</sup> 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: <https://www.refworld.org/docid/59a6d6094.html>, p. 13.

<sup>22</sup> Ibid. p. 13.

<sup>23</sup> Proposal, p. 25.

<sup>24</sup> Proposal, p. 24-25. UNHCR, Annotated Comments to Directive 2013/33/EU, p. 43.

it is generally in the best interests of the child to stay at asylum accommodation and would welcome clarifications in this regard.<sup>25</sup> The best interests of the child need to be examined on an individual basis, taking into account the specific circumstances of each case.<sup>26</sup>

UNHCR recommends the Swedish Government to:

- 4) Reflect in the Proposal that the reduction or withdrawal of financial allowance and other benefits where an applicant abandons his or her place of residence should only be temporary and restored promptly upon his or her return.
- 5) Implement the exemptions from the condition of living in asylum accommodation in order to receive benefits in a flexible manner, taking into consideration the individual circumstances and needs of the asylum-seeker.
- 6) Interpret and apply the concept of “close family” in a flexible manner to, for instance, encompass adult children or the parents of an adult, and same sex couples.
- 7) Exempt families with children from the condition of living in asylum accommodation in order to receive benefits.
- 8) Assess on an individual basis, whether to stay at an asylum accommodation is in the best interests of child, taking into account the specific circumstances in each case.

### **c. Implicit withdrawal or abandonment of the application**

21. According to section 4.7 of the Proposal, asylum-seekers and applicants or beneficiaries of temporary protection not living in asylum accommodation will be required to inform SMA of their residential address. If an adult asylum-seeker does not provide a residential address, or if it can be assumed that the asylum-seeker does not live at the address provided, SMA should be able to assume that the asylum application has been withdrawn. This means that the asylum case can be dismissed. Nevertheless, the asylum-seeker will retain the right to apply for asylum again.<sup>27</sup>

22. In general, UNHCR considers that an application can only be rejected where there has been a full examination of all relevant facts and circumstances, based on which the determining authority has established that the applicant is not a refugee or does not qualify for subsidiary protection. UNHCR is concerned that rejecting an asylum application as abandoned is punitive in character and may lead to incorrect decisions, that is, wrongly rejecting an application of a person in need of international protection. In UNHCR’s view, an applicant may fail to register a correct address for a variety of reasons, including issues of miscommunication, procedural errors, or service of post, which do not necessarily indicate the absence of international protection needs, or prevent the determining authority from examining the application.<sup>28</sup>

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<sup>25</sup> Proposal, p. 161.

<sup>26</sup> UNHCR, Annotated Comments to Directive 2013/33/EU, p. 7.

<sup>27</sup> Proposal, p. 188.

<sup>28</sup> UNHCR, Comments on the European Commission’s Proposal for an Asylum Procedures Regulation, April 2019, COM (2016) 467, <https://www.refworld.org/docid/5cb597a27.html>, p. 33.



UNHCR recommends the Swedish Government to:

- 7) Refrain from introducing a possibility to dismiss an asylum application when an asylum-seeker does not provide a residential address, or if it can be assumed that the asylum-seeker does not live at the address provided.

#### **d. Serious misconduct in asylum accommodation**

21. According to section 6.2.1 of the Proposal, it should be possible to reduce the daily allowance for asylum-seekers and beneficiaries of temporary protection who are “guilty of serious misconduct in asylum accommodation”. This will apply to all types of misconduct, encompassing both criminal offences and violations of the rules of conduct.<sup>29</sup> Less serious misconduct, however, such as indoor smoking or incorrect use of cooking stoves, can normally only lead to a reduction of the daily allowance if the conduct is repeated by the asylum-seeker and after getting an order. A decision to reduce the daily allowance will apply for two or four weeks on each occasion, depending on the seriousness of the misconduct. If the person in question repeatedly engages in serious misconduct, the daily allowance can be fully suspended. According to the Proposal, SMA should provide clear rules of conduct and inform residents about the rules upon arrival, including possible sanctions.
22. UNHCR notes that according to the RCD, Article 20(4), “Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour”. UNHCR recommends developing clearer criteria for the sanctions and specify in national law or policy the sanctions for serious breaches of the rules of the centre, including seriously violent behaviour and to ensure information is readily available about the appellate process.<sup>30</sup>
23. UNHCR would also encourage the administration of the asylum accommodation to maintain a full record of all decisions imposing disciplinary measures. Such records shall be available to senior managers and monitoring bodies.

UNHCR recommends the Swedish Government to:

- 8) Specify in national law or policy the sanctions for serious breaches of the rules of the centre, including seriously violent behaviour and to ensure information is readily available about the appeal process.
- 9) Establish provisions explaining the rules and procedures in cases of serious misconduct governing access to the appeal process.
- 10) Require the administration of the asylum accommodation to maintain a full record of all decisions imposing disciplinary measures which shall be available to senior managers and monitoring bodies.

#### **e. Special considerations regarding beneficiaries of Temporary Protection**

24. The proposed provision on asylum accommodation as a condition for daily allowance and special grant will also apply to persons covered by the EU Temporary Protection Directive

<sup>29</sup> Proposal, pp. 242-244. According to the Proposal, violations of the rules of conduct could, for example, include disturbing noise at inappropriate hours, smoking indoors, unauthorized use of stoves/cooking plates and measures aimed at weakening fire protection.

<sup>30</sup> UNHCR, Annotated Comments to Directive 2013/33/EU, p. 49.

(TPD).<sup>31</sup> While Sweden's response to people fleeing war in Ukraine has been overwhelmingly positive, UNHCR is concerned that people fleeing Ukraine are not provided the same rights as other refugees in Sweden. Hence, UNHCR recommends Sweden to ensure the same level of social support and access to health services to beneficiaries of temporary protection as other refugees in Sweden.<sup>32</sup>

25. Article 13 of the TPD requires that beneficiaries of temporary protection have access to suitable accommodation or, if necessary, be provided with the means to obtain housing. In this context, the TPD highlights the need to provide assistance to people with special needs, such as unaccompanied children and people who have experienced torture, rape or other serious forms of psychological, physical or sexual abuse.
26. In Sweden, there is no systematic identification or screening procedure in order to identify applicants or beneficiaries of temporary protection with specific needs. The identification of specific needs is confined to unaccompanied and separated children. In UNHCR's view, procedures to identify persons at heightened risk should be included as part of registration procedures for temporary protection, as well as procedures to renew residency and other associated documentation to enhance opportunities for the identification of this group.<sup>33</sup>

UNHCR recommends the Swedish Government to:

- 11) Ensure the same level of social support and access to health services to beneficiaries of temporary protection as other refugees in Sweden.
- 12) Introduce procedures to identify applicants of temporary protection at heightened risk as part of registration procedures for temporary protection, as well as procedures to renew residency and other associated documentation to enhance opportunities for the identification of this group.

27. UNHCR stands ready to discuss these recommendations with the Swedish authorities.

**UNHCR Representation for the Nordic and Baltic Countries**  
**30 June 2023**

<sup>31</sup> Proposal, for instance, pp. 147, 163, 184, 186, 199, 226, 248. See, also, EU, Council of the European Union, Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001 (EU TPD) <https://www.refworld.org/docid/3ddcee2e4.html>. UNHCR, Guidelines on Temporary Protection or Stay Arrangements, February 2014, <https://www.refworld.org/docid/52fba2404.html>.

<sup>32</sup> UNHCR, Recommendations to Sweden on strengthening refugee protection in Sweden, Europe and globally, September 2022, <https://www.unhcr.org/neu/85579-unhcr-recommendations-to-sweden-onstrengthening-refugee-protection.html>, p. 2.

<sup>33</sup> UNHCR, The Implementation Of The Temporary Protection Directive - Six Months On, October 2022, <https://data.unhcr.org/en/documents/details/96266>.