



UNHCR

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

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Stockholm, 6 June 2014

Notre/Our code: 91/RRNE/2014

Dear Mr Vuorio,

Re: **Comments by the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Northern Europe to the Finnish Ministry of the Interior on the draft Law Proposal of 8 May 2014, amending the Act on Reception of Applicants for International Protection of the Republic of Finland**

The UNHCR Regional Representation for Northern Europe is pleased to submit to the Ministry of Interior its comments on the draft Law Proposal amending the Act on Reception of Applicants for International Protection.

As always, UNHCR appreciates the constructive relationship between Finland and UNHCR, and we thank you for your consideration of this important matter.

We remain at your disposal for any clarifications required.

Yours sincerely,

Pia Prytz Phiri

Regional Representative

Jorma Vuorio
Director General
Ministry of the Interior
PO Box 26
FI-00023 Government
Finland

**Comments by the United Nations High Commissioner for Refugees
(UNHCR) Regional Representation for Northern Europe on the draft
Law Proposal of 8 May 2014, amending the Act on Reception of
Applicants for International Protection of the Republic of Finland**

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (RRNE) is grateful to the Ministry of the Interior of Finland for the invitation to comment on the draft Law Proposal of 8 May 2014, amending the Finnish Act on Reception of Applicants for International Protection (hereafter 'Reception Act') based on the recast Directive laying down standards for the reception of applicants of international protection¹ of the European Union (hereafter 'RCD').
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 refugees². According to its Statute, UNHCR fulfils its 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[.]"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 Relating to the Status of Refugees (hereafter '1951 Convention'). Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ('UNHCR Handbook') and subsequent Guidelines on International Protection⁴. This supervisory responsibility is reiterated in Article 35 of the 1951 Convention, and in Article II of the 1967 Protocol relating to the Status of Refugees⁵.
3. UNHCR's supervisory responsibility 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 ("TFEU")⁶, as

¹ 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>

² 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").

³ *Ibid.*, paragraph 8(a).

⁴ UN High Commissioner for Refugees (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, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

⁵ According to Article 35 (1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of the 1951 Convention".

⁶ 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:

well as 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”⁷.

II. Observations on proposed amendments

4. UNHCR welcomes initiatives aimed at bringing national legal frameworks in line with international and regional standards in the area of asylum and refugee protection and notes that the draft Law Proposal seeks to transpose parts of the RCD. UNHCR notes that the provisions in the RCD concerning detention are planned to be transposed in connection with law amendments to the Aliens Act and the Act on the Treatment of Detained Aliens and the Detention Unit. UNHCR submitted law comments to these proposed law amendments in April 2014.
5. UNHCR would like to convey the following observations on specific proposals for amendments to the Finnish Reception Act.

Section 6. Application of the law on vulnerable persons

6. The Reception Act is proposed to be amended adding a provision stating that vulnerabilities and special needs based on the vulnerabilities have to be assessed individually and within a reasonable time after an application for international protection has been submitted. The assessment would be done, as is the case currently, by a professional within the social and health field. Section 6 is further proposed to be amended introducing a provision stating that special needs stemming from vulnerabilities are to be taken into consideration throughout the asylum procedure.
7. UNHCR welcomes the amendments imposing an obligation to take the situation of vulnerable groups into consideration and to establish mechanisms for identifying vulnerable persons. UNHCR also welcomes the clarification in the *travaux préparatoires* that the assessment will be done by relevant professionals. This provides a valuable tool for ensuring in practice that the claims of vulnerable asylum-seekers can be presented effectively, with all information and evidence required to enable the authorities to render an informed and accurate decision. Identification of vulnerable asylum-seekers is a core element without which the provisions aimed at special treatment of these persons will lose any meaning. Early identification of vulnerability and special needs, at the earliest practicable stage, is critical to the quality of the asylum determination.⁸ UNHCR also welcomes the clarification in the *travaux préparatoires* that, in practice, vulnerabilities can be addressed also if they are discovered at a later stage.

<http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

⁷ European Union, *Declaration on Article 73k of the Treaty establishing the European Community*, OJ C 340/134 of 10.11.1997, available at:

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

⁸ UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers*, July 2012, (COM (2011) 320 final, 1 June 2011), p. 16 – 17, available at: <http://www.refworld.org/docid/500560852.html>.

Section 16. Accommodation in Reception Centres

8. According to the draft law proposal, the age and gender of asylum-seekers are taken into consideration when accommodation is provided to them in reception centres and a provision explicitly guaranteeing that the age and gender of the asylum-seeker is taken into consideration when arranging the accommodation in reception centres is now proposed to be introduced. UNHCR welcomes this clarification in the Reception Act, which could prevent any possible incidents of sexual and gender based violence⁹.

Section 40. Qualifications of Guardians

9. According to the RCD there must be no conflicts of interest between the guardian and the unaccompanied or separated child he or she represents. The current legislation in Finland lacks such a safeguard which is now proposed to be introduced in the Reception Act. UNHCR welcomes this proposed amendment. The corresponding provision in the RCD is based on UNHCR's recommendation¹⁰. In light of the decisive role guardians can play in ensuring the protection of unaccompanied and separated children and in upholding their best interests, UNHCR would support the development of further tools at practical level, such as guidelines defining the appropriate qualifications and roles for guardians¹¹.

III. Additional observations

Article 5 RCD. Information

10. No amendments are proposed based on article 5 of the RCD. According to Section 15 of the Reception Act information is given in writing or, where necessary, orally, in the applicant's mother tongue or a language the applicant can reasonably be expected to understand, which corresponds to the requirement in article 5 of the RCD. UNHCR has learned through its monitoring work and during participatory assessments in some Member States that asylum-seekers often do not understand the asylum procedure, because it was not explained to them in a language they understand or in an age and culturally appropriate manner.¹² In order to ensure that information is effectively provided in practice in ways that can ensure full comprehension of and engagement in the asylum procedure, information on reception conditions should be provided in a language that the applicants actually understand and in a manner which consider their individuals circumstances including age.

⁹ 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, Guideline 9.3, available at: <http://www.refworld.org/docid/50348953b8.html>

¹⁰ UNHCR Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers, July 2012, p. 18, see footnote 8.

¹¹ *Idem*, p. 17.

¹² *Idem*, p. 5.

Recommendation: UNHCR proposes strengthening of the wording of Section 15 of the Reception Act to ensure that the information is in writing and in a language the applicants understand. Where needed this information should also be supplied orally with the help of a qualified interpreter.

UNHCR Regional Representation for Northern Europe
June 2014