

UNHCR Observations on the proposal to enact a law on temporary measures
Hallituksen esitys eduskunnalle laiksi väliaikaisista toimenpiteistä välineellistetyn maahantulon torjumiseksi

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) welcomes the opportunity to provide observations on the “Government’s proposal to the parliament for a law on temporary measures to combat instrumentalized immigration” (*Hallituksen esitys eduskunnalle laiksi väliaikaisista toimenpiteistä välineellistetyn maahantulon torjumiseksi*), hereafter “the Bill”.¹
2. UNHCR provides these observations in light of its supervisory responsibility in respect of the 1951 Convention relating to the Status of Refugees² and its 1967 Protocol (hereafter collectively referred to as “1951 Convention”), to which Finland is a State Party. Under the 1950 Statute of the Office of the UNHCR (annexed to UN General Assembly Resolution 428(V) of 14 December 1950), UNHCR has been entrusted by the United Nations (“UN”) General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions for the problem of refugees.³
3. Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,⁴ whereas the 1951 Convention obliges State Parties 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 (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union (“EU”) law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the EU. The UN

¹The full presentation of the Bill by the Ministry of the Interior, including explanatory notes and proposed legislative text (in Finnish), is available at, Maahantulon välineellistämisen torjuminen ja rajaturvallisuuden vahvistaminen, Hankenumero SM004:00/2024, <https://intermin.fi/hankkeet/hankesivu?tunnus=SM004:00/2024>.

² 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”.

³ 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”).

⁴ 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.

General Assembly has also entrusted UNHCR with a global mandate to provide protection to stateless persons world-wide and for preventing and reducing statelessness.⁵

4. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international and regional refugee and human rights instruments, including 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”).⁶ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection of and durable solutions for forcibly displaced and stateless people.

II. The Scope of the Bill

5. The stated overall purpose of the Bill is to “effectively counter pressure on Finland in the form of instrumentalization of immigration, strengthen border security, proactive preparation for hybrid threats” in accordance with the Government Programme of June 2023.⁷ The proposed Act would apply if Finland’s national security is seriously threatened, “in a situation where a foreign State or other actor tries to influence Finland by exploiting immigrants” according to proposed Section 2.⁸
6. The Bill lays down the conditions for restricting “the reception of applications for international protection in a limited area on Finland’s national border and in its immediate vicinity”.⁹ A decision to restrict the reception of applications for international protection may be taken if:
 - 1) *there is knowledge or a justified suspicion that a foreign state or other actor is trying to influence Finland by exploiting immigrants;*
 - 2) *influence seriously endangers Finland’s sovereignty or national security;*
 - 3) *restriction is necessary to prevent influence directed at Finland and to ensure Finland’s sovereignty or national security; and*

⁵ UN General Assembly Resolution A/RES/50/152, 9 February 1996 <http://www.unhcr.org/refworld/docid/3b00f31d24.html>, reiterated in subsequent resolutions, including A/RES/61/137 of 25 January 2007, <http://www.unhcr.org/refworld/docid/45fa902d2.html>, A/RES/62/124 of 24 January 2008 <http://www.unhcr.org/refworld/docid/47b2fa642.html>, and A/RES/63/148 of 27 January 2009 <http://www.unhcr.org/refworld/docid/4989619e2.html>.

⁶ 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>.

⁷ Finnish Government, “A strong and committed Finland – the Government’s vision” Programme of Prime Minister Petteri Orpo’s Government, 2023:60, 20 June 2023, <https://urn.fi/URN:ISBN:978-952-383-818-5>, p. 220.

⁸ Bill, p. 5.

⁹ Proposed Section 4.

- 4) *other means are not sufficient to combat influence and ensure Finland's sovereignty or national security.*¹⁰
7. In such situations, asylum-seekers would be prevented from accessing Finnish territory, be removed from the country and re-directed to a different place of entry in Finland where applications for international protection are accepted.¹¹ Applications for international protection can still be submitted outside the area referred to in the Government's decision.¹² The decision to activate the measures could be made for a maximum of one month at a time according to proposed Section 4.
8. In case of activation of the Act, the Finnish Aliens Act would not apply according to proposed Section 3. This means that the procedural safeguards in the Aliens Act would not be applicable. For instance, no legal aid or interpretation would be provided. Furthermore, no separate administrative decision would be made on the prevention of entry and there would be no possibility to appeal the measure.¹³
9. The Act would only apply to arriving individuals who, according to the competent authority's reasoned assessment, are used as an “instrument of influence”. Where the authority has “a justified understanding” that the person is not related to the phenomenon of instrumentalized immigration, their entry to the country would be processed in accordance with the Finnish Aliens Act and the Schengen Borders Code.¹⁴ This implies that restrictions would target specifically asylum-seekers, and borders could remain open to other types of border movements.¹⁵
10. According to proposed Section 5 of the Act, applications for international protection would be accepted in certain exceptional cases where:

“according to a case-by-case assessment made by the competent authority, it would be necessary to protect the rights of a child, a disabled person or another person in a particularly vulnerable position, or if it can be assessed with sufficient certainty that

¹⁰ Bill, p. 55

¹¹ Bill, p. 59.

¹² The Bill states that principles of necessity and proportionality would guide the decision in each given situation. The general session of the Government would have the obligation to regularly assess the content and scope of the decision based on the development of the situation in cooperation with the authorities. The decision should be repealed or amended if it is no longer necessary for the purpose stipulated in subsection 1, the Bill, p. 55.

¹³ Bill, p. 54.

¹⁴ Bill, p. 59.

¹⁵ “The proposed regulation would make it possible in these situations to secure the freedom of movement of non-asylum seekers and would promote the protection of family life and the implementation of the best interests of the child in situations where, for example, a family member of a person living in Finland lives abroad”, Bill, p. 43.

the person is in real risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”¹⁶

11. The Bill also sets forth that the assessment of the person’s real risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment would be based on an “interaction” with the competent authority.¹⁷ The competent authority should ensure that the person has had a real opportunity to provide information regarding their claim.¹⁸ The Bill, however, does not explain in which manner and with which procedural safeguards this interaction would take place. The Bill further sets out that the identification of vulnerabilities would be based primarily on physical features, but that the person's age or physical or psychological condition would also be relevant during the assessment. It is not clear which authority would be responsible for making the assessment.
12. A person whose application for international protection would exceptionally be accepted, would be directed or transported to another place for the registration of asylum applications such as another border crossing point or an organization center. The adjudication of asylum applications would continue in accordance with the Finnish Aliens Act.¹⁹

III. Observations

13. UNHCR acknowledges the challenges faced by Finland and shares the concerns of the Government about the dangers of politicization of asylum and migration. However, the fundamental right to seek asylum and the non-derogable principle of non-refoulement should be observed at all times and seeking to curtail those rights will not of itself address this problem.
14. UNHCR appreciates the thorough presentation in the Bill of the current legislative framework in Finland and in the EU, including the references to jurisprudence of the regional courts. However, UNHCR finds that the Bill is not in line with international and regional refugee and human rights law, including the universal and fundamental right to seek asylum and the principle of non-refoulement (see further below). In particular, UNHCR is concerned that the Bill provides for the denial of access to the territory of asylum-seekers without a prior examination of their international protection needs, which would be inconsistent with Finland’s obligations under the 1951 Convention.
15. National security concerns dominate the reasoning in the Bill and appear to override considerations relating to the international protection of refugees. While States have the sovereign right to manage and control their borders, they should also conform to their

¹⁶ Bill, p. 37.

¹⁷ Bill p. 62.

¹⁸ Bill p. 62.

¹⁹ Bill, p. 62.

international obligations to allow asylum-seekers access to their territory to seek asylum in a safe country promptly, and without obstruction.

a. The principle of non-refoulement is binding, universal and non-derogable

16. UNHCR appreciates the references in the Bill to the principle of non-refoulement, which is a norm of customary international law²⁰ and a non-derogable obligation for all States under international law.²¹ The prohibition of refoulement precludes any State conduct which results in removing any person in any manner whatsoever to territories where he or she is at risk of persecution, torture, or other forms of serious or irreparable harm.
17. UNHCR recalls that the principle of non-refoulement is not only contained in international human rights instruments as recognized in the Bill but is also a cornerstone of international refugee law and set out in Article 33(1) of the 1951 Convention. The principle of refoulement under international refugee law refers to the universal and binding obligation of States not to return an asylum-seeker or refugee in any manner whatsoever to a territory where his or her life or freedom would be threatened on account of one of the five 1951 Convention grounds, namely race, religion, nationality, membership of a particular social group or political opinion.²² In addition, international and European human rights law prohibits removal of any person to a territory where she or he would face torture, inhuman or degrading treatment or punishment.²³
18. The prohibition of refoulement is applicable to any form of removal or return, including non-admission at a land border, ‘push-backs’, deportation, expulsion, extradition, informal

²⁰ UNHCR, In the Court of Final Appeal of the Hong Kong Special Administrative Region Civil Appeals NOS. 18, 19 & 20 of 2011 between C, KMF, BF (Applicants) and Director of Immigration, Secretary for Security (Respondents) and United Nations High Commissioner for Refugees (Intervener) - Intervener's Case, 31 January 2013, available at: <http://www.refworld.org/docid/510a74ce2.html>. UNHCR, Note on the Principle of Non-Refoulement, November 1997, available at: <http://www.unhcr.org/refworld/docid/438c6d972.html>; UNHCR, Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees, 16 January 2002, HCR/MMSP/2001/09, para. 4, available at: <http://www.unhcr.org/refworld/docid/3d60f5557.html>; and UNHCR, The Scope and Content of the Principle of Non-Refoulement (Opinion) [Global Consultations on International Protection/Second Track], 20 June 2001, 87 at 163-164, available at: <http://www.unhcr.org/refworld/docid/3b3702b15.html>.

²¹ Under international human rights law the principle of non-refoulement is formulated in absolute terms, i.e. not allowing for any exceptions for reasons of public interest or national security, and for which no derogations are permitted in times of war or public emergencies, see CAT, Article 3(1); ICED, Article 16(1); ICPPR, Articles 6 and 7; ECGR, Articles 2, 3 and 6(1).

²² 1951 Convention, Article 1A(2).

²³ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984, <https://www.refworld.org/legal/agreements/unga/1984/en/13941>, Article 3; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984, <https://www.refworld.org/legal/agreements/unga/1984/en/13941>, Article 7; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5, 4 November 1950, <https://www.refworld.org/legal/agreements/coe/1950/en/18688>, Article 3.

transfer or ‘extraordinary renditions’. Importantly, including in the context of non-admission at a land border and areas such as ‘no man’s land’ or ‘green borders’, the principle of non-refoulement under international law requires that, where a State is not prepared to grant asylum to persons who are seeking international protection on their territory or at a specific border entry point, they must adopt a course that does not result in their removal, directly or indirectly, to persecution, a risk of torture, or other forms of serious or irreparable harm.²⁴

19. The expression “in any manner whatsoever” in Article 33(1) of the 1951 Convention means that the concept of non-refoulement must be construed expansively. Given its absolute nature, recognized by international and regional refugee and human rights instruments and courts, the principle of non-refoulement cannot be derogated from even in times of emergency or ‘instrumentalization’.²⁵
20. Furthermore, while in exceptional circumstances, certain rights may be derogated from pursuant to Article 15 of the European Convention on Human Rights (ECHR), this provision precludes derogations from the principle of non-refoulement enshrined in Articles 2 and 3 of this Convention²⁶. The European Court of Human Rights (ECtHR) has reiterated that States are in principle free to control the entry, residence and expulsion of aliens. However, this cannot justify a State having recourse to practices which are not compatible with its obligations under the Convention.²⁷
21. Thus, under international law, it is not possible to justify a deviation from the principle of non-refoulement due to a situation of instrumentalization of asylum-seekers and it would be contrary to international law to exclude people who are assessed as “instruments of influence” from the right to seek asylum and from the protection under Article 33(1) of the 1951 Convention and international human rights law.
22. The Bill provides that asylum-seekers who meet certain criteria set out in Section 5 would be admitted to Finland and allowed to submit an application for international protection. These proposed exceptions are not consistent with either the inclusion clauses contained in Article 1 or the principle of non-refoulement in Article 33 of the 1951 Convention. While UNHCR appreciates the attention afforded in the Bill to vulnerable asylum-seekers,

²⁴ This could include, for example, removal to a safe third country or some other solution such as temporary protection or refuge under certain circumstances. See E. Lauterpacht and D. Bethlehem, “The scope and content of the principle of non-refoulement: Opinion”, in E. Feller, V. Türk and F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, Cambridge University Press, Cambridge (2003), para. 76.

²⁵ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 12

²⁶ European Court of Human Rights (ECtHR), *Guide on Article 15 of the European Convention on Human Rights*, updated on 30 April 2021, available at: https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf.

²⁷ See ECtHR, *Georgia v Russia (I) Hirsi Jamaa and Others*, § 179, and *Sharifi and Others* § 224; European Court of Human Rights (ECtHR), *Grand Chamber judgment N.D. and N.T. v. Spain*, 13 February 2020, para. 209 and 232, available at: <https://bit.ly/2YkPwni>.

including children and people with disabilities, and that their applications for international protection may be accepted, there is no basis in international law for limiting the application of the principle of non-refoulement or access to asylum procedures for the purposes of determining international protection needs, including under Article 1 of the 1951 Convention, to people in vulnerable situations only. The prohibition of refoulement applies to all people without discrimination, including refugees, asylum-seekers whose status has not been determined, and others in need of international protection or at real risk of serious harm if removed. Further, proposed Section 5 also sets out an excessive standard of proof inconsistent with well-established standards.²⁸

23. According to the Bill, the assessment of whether an asylum-seeker would be admitted would be “primarily examined in relation to the country from which the person is trying to reach Finland”.²⁹ UNHCR notes in this respect that the principle of non-refoulement applies not only with respect to return to the individual’s country of origin, but also to forcible removal to any other – third – country where a person has reason to fear persecution, serious human rights violations or other serious harm, or from where they risk being sent to their country of origin (indirect or chain refoulement).³⁰
24. Prior to any removal to a third country, there must be a designation of the country as safe; based upon precise, reliable, objective, and up-to date information from a range of credible sources. An objective assessment of the risk of “chain refoulement” must also be undertaken in each individual case, prior to removal to a third country. No asylum-seeker should be returned to a third country for determination of their claim without sufficient guarantees, in each individual case. This should include guarantees that the person will be admitted to that country; will enjoy protection against refoulement; will have the possibility to seek asylum; and will be treated in accordance with accepted international standards. The prohibition of indirect or “chain refoulement” has been recognized by the European Court of Human Rights (ECtHR)³¹ in jurisprudence which binds all European States Parties to the ECHR, including Finland.

²⁸ See, for instance, UN High Commissioner for Refugees (UNHCR), Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, <https://www.refworld.org/policy/legalguidance/unhcr/1998/en/23696>

²⁹ Bill, p. 61.

³⁰ For a recent restatement of the Court’s general principle that ‘chain refoulement’ is prohibited, see ECtHR, D.A. and Others v. Poland, Appl. No. 51246/17, 8 July 2021, www.refworld.org/cases,ECHR,60fae2984.html, para. 58 and ECtHR, M.K. and Others v. Poland, Appl. Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020, <https://hudoc.echr.coe.int/eng?i=001-203840>, para. 171, and sources cited there (ECtHR, M.S.S. v. Belgium and Greece (GC), 30696/0921 January 2011: www.refworld.org/cases,ECHR,4d39bc7f2.html, paras. 286, 298 and 321; ECtHR, T.I. v. The United Kingdom, 43844/98, 7 March 2000, <http://www.refworld.org/docid/3ae6b6dfc.html>, p. 15). See also UNHCR interventions in D.A. and Others v. Poland, Submission by the Office of UNHCR in the case of D.A. and Others v. Poland (Appl. No. 51246/17) before the European Court of Human Rights, 5 February 2018: www.refworld.org/docid/5a9d6e414.html, para. 3.1.7. and in N.D. and N.T. v. Spain, 15 November 2015, www.refworld.org/docid/59d3a81f4.html, para. 3.1.4.

25. The non-refoulement obligation is binding on all organs of a State, as well as any other person or entity acting on its behalf and is not subject to territorial restrictions; it applies wherever the State in question exercises jurisdiction or “effective control”, including at national frontiers.³² It thus applies also in situations where the applicant is deemed not to have entered the country, for instance, during a border procedure, where the person is physically in the territory of the State and within the scope of the application of the law. UNHCR underscores that the responsibility of a State to protect a person from refoulement is engaged wherever its conduct exposes that person to a risk of being subject to persecution or proscribed ill-treatment in another country, in particular if the person has expressed a fear of such nature, or the individual circumstances or characteristics of the person or group to which she belongs indicates a risk of which the State is or ought to be aware.³³
26. Even in cases when borders are closed, States must safeguard the rights of those seeking international protection by implementing protection-sensitive entry systems. As such, they must provide access to their territory for those who have indicated an intention to seek international protection, regardless of the wording or language in which they may do so, in order to give effect to their non-refoulement obligations.

b. States are obliged to provide genuine and effective access to legal entry

27. According to the ECtHR, States have an obligation to provide effective and genuine access to legal entry, in particular to procedures for those who have arrived at the border. The Court has further found that “[t]hose means should allow all persons who face persecution to submit an application for protection, based in particular on Article 3 of the Convention, under conditions which ensure that the application is processed in a manner consistent with the international norms”.³⁴

T.I. v. the United Kingdom, 7 March 2000, Appl. No. 43844/98, in which the Court stated that “the indirect removal in this case to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention.” See also *K.R.S. v. United Kingdom* Appl. No. 32733/08, 2 December 2008, as well as in *Abdolkhani and Karimnia v. Turkey*, 22 September 2009, Appl. No. 30471/08, paras. 88-89, as well as in *M.K. and Others v. Poland*, 14 December 2020, Appl. No. 40503/17, 42902/17 and 43643/17, as well as in *M.A. and Others v. Lithuania*, 11 March 2019, Appl. No. 59793/17.

³² See Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

³³ See UNHCR's oral intervention before the European Court of Human Rights in the case of *Hirsi and Others v. Italy*, Application no. 27765/09, 22 June 2011,

<https://www.refworld.org/jurisprudence/amicus/unhcr/2011/en/78562>, p. 4. See also, UNHCR's oral intervention before the ECtHR Grand Chamber hearing in the case of *N.D. and N.T. v. Spain*, 26 September 2018, www.refworld.org/docid/5bb3873b4.html, p. 6; UNHCR, Submission in the case of *R.A. and Others v. Poland* (Appl. No. 42120/21) before the European Court of Human Rights, February 2022, <https://www.refworld.org/docid/621ccfde4.html>, [3.1.2].

³⁴ *CASE OF N.D. AND N.T. v. SPAIN* (Applications nos. 8675/15 and 8697/15) (Grand Chamber), ECLI:CE:ECHR:2020:0213JUD000867515, Council of Europe: European Court of Human Rights, 13 February 2020, <https://www.refworld.org/jurisprudence/caselaw/echr/2020/en/123134>. See also ECtHR, Second

28. Denying an asylum-seeker access to territory at a closed land border point, in an area between States' border facilities ("no man's land") or between official border points (at the "green border") and advising the asylum-seeker to request asylum at a different border entry point, amounts to refoulement if the authorities fail to implement logistical arrangements such as transport to ensure that the asylum-seeker can safely reach that border point without risk of refoulement.
29. UNHCR is concerned that practical obstacles in reaching and entering Finland from the restricted areas of the border will make it excessively difficult, if not impossible, to access asylum procedures in designated locations. Obstacles include the 1300 km long border and long distances between international border crossing points combined with natural barriers such as swamps, rivers, lakes and forests. As of late March 2024, no border crossing points at Finland's eastern land border were open.
30. The fact that Finland in such circumstances would maintain sea- or airports open for submission of claims for international protection is irrelevant. The central question is what the Finnish authorities do in practice when someone is seeking or in need of international protection, whether on its territory, at the border or when the authorities have effective control. Should the authorities deny the asylum-seeker access to its territory, this would amount to refoulement.

c. Pushback practices can lead to serious harm and are illegal

31. UNHCR is concerned that because of pushback practices asylum-seekers are effectively removed from the territory of the country of asylum before an application for international protection has been made or examined. In UNHCR's experience, pushbacks observed in other countries have resulted in injury, loss of limb and death.
32. As held by the UN Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, pushback practices may violate the right to life, where the State intentionally and knowingly exposes refugees or migrants to life-threatening circumstances.³⁵ UNHCR has similarly on several occasions expressed its position with respect to pushback practices at land borders, including green borders or in 'no man's' land, considering that intercepting and leaving asylum-seekers without water, food and under extreme weather conditions for days, shows unacceptable disregard for human life. These

Section, M.K. and Others v. Poland, App. Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020: <https://hudoc.echr.coe.int/fre?i=001-203840>; ECtHR, First Section, D.A. and Others v. Poland, App. No. 51246/17, 8 July 2021: <https://hudoc.echr.coe.int/fre?i=001-210855>; ECtHR, Fifth Section, O.M. and D.S. v. Ukraine, App. No. 18603/12, 15 September 2022: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-219197%22%5D%7D>

³⁵ See for instance, Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, Unlawful death of refugees and migrants, 15 August 2017, A/72/335: www.refworld.org/docid/59b923524.html, paras. 33 and 51.

practices violate obligations under international and European law. Such practices expose refugees and asylum-seekers to grave human rights risks, including potential violations of the right to life and the principle of non-refoulement, contrary to obligations under Articles 2 and 3 of the ECHR.³⁶

33. As also recognized in the Bill, pushbacks are illegal according to the current EU asylum *acquis*. The right to make an application for international protection, including at the borders of a Member State, must be ensured, even if the applicant is staying irregularly on the territory and irrespective of the prospects of success of such a claim. As recently held by the Court of Justice of the European Union, pushback practices and detention at border control posts are incompatible with EU law and constitute serious flaws in the asylum procedure and in the reception conditions for applicants.³⁷
34. The proposed EU Regulation addressing Situations of Crisis and *Force Majeure* in the Field of Migration and Asylum will not allow pushback practices in situations of crisis, instrumentalization or *force majeure*. The Regulation provides for a suspension of registration up to four weeks. However, applicants will be entitled to safeguards and guarantees, including in relation to reception conditions and asylum procedures, regardless of when the registration takes place.³⁸ Consequently, pushbacks of asylum-seekers are incompatible with both the current and foreseen future EU legal framework.

d. Asylum-seekers should not be rejected or denied admission without reference to a central authority

35. The Finnish Border Guard Service, with the support of other authorities, will be responsible for implementing decisions under the Bill. The responsibility sharing between the authorities concerned is not further clarified in the Bill.

³⁶ UNHCR, Submission in the case of H.Q. v. Hungary (Application no. 46084/21) before the European Court of Human Rights: <https://www.refworld.org/jurisprudence/amicus/unhcr/2023/en/124247>, UNHCR, Submission in the case of S.A.A. and Others v. Greece (No. 22146/21) before the European Court of Human Rights, <https://www.refworld.org/jurisprudence/amicus/unhcr/2022/en/120427>; UNHCR, Submission in the case of R.A. and Others v. Poland (Appl. No. 42120/21) before the European Court of Human Rights, <https://www.refworld.org/jurisprudence/amicus/unhcr/2022/en/124037>; UNHCR, Submission in the case of S.S. and Others. v. Italy (Appl. No. 21660/18) before the European Court of Human Rights: <https://www.refworld.org/jurisprudence/amicus/unhcr/2019/en/120594>.

³⁷ EU, Court of Justice, Judgment of the Court (Fourth Chamber), Case C-392/22, 29 February 2024, CURIA – Documents (europa.eu). See also EU, Court of Justice, Judgment of the Court (Fourth Chamber), Case C-823/21, 22 June 2023: <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-823/21&jur=C>. EU, Court of Justice, Judgment of the Court (Fourth Chamber), Case C-36/20 PPU, 25 June 2020: <https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-36/20%20PPU>, paras 63, 72, 79 and 93-94.

³⁸ Article 10, para. 1 and 5, Proposal for a Regulation addressing Situations of Crisis and *Force Majeure* in the Field of Migration and Asylum: https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2024/02-14/07.Crisisandforcemajeure_EN.pdf.

36. As UNHCR understands, this will involve making a wide range of important and complex assessments and decisions at or near the border, including whether the asylum-seeker is “used as a means of influence” as well as whether the asylum-seeker will be admitted or refused entry or removed according to the criteria set out in proposed Section 5. In line with EU standards, front-line authorities in charge of border and migration controls, such as border guards, are normally required to facilitate asylum-seekers’ access to the asylum procedure, by referring their cases to the central, specialized determining authority.

37. UNHCR would in particular like to recall that:

*“The body responsible for examining and deciding on applications for refugee status in the first instance should be **a single, central specialized authority**. If an initial interview is made by a border official, there should be provision that an applicant is not rejected or denied admission **without reference to a central authority** [emphasis added].”³⁹*

Hence, an applicant should not be rejected or refused admission without reference to a central, specialized determining authority.

e. Asylum-seekers have the right to procedural safeguards, including a personal interview

38. UNHCR is further concerned that the authorities would have to make legal and credibility assessments with serious consequences for the applicant without appropriate procedural safeguards.⁴⁰ The Bill lacks information, for instance, about fundamental safeguards to secure confidentiality and privacy of the interaction, as well as access to an interpreter and to legal aid.

39. UNHCR is further concerned that the interaction appears to replace regular screening and initial interviews, for which well-established procedural safeguards have been developed and administered. Without a genuine and effective possibility for asylum-seekers to submit and present their protection claims and having those arguments examined in an appropriate manner with procedural guarantees and adequately trained authorities, their protection needs may be overlooked.

40. In UNHCR’s view, the implementation of protection-sensitive procedures at the border, in particular for vulnerable asylum-seekers, as well as accelerated and simplified asylum

³⁹ UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), 31 May 2001, EC/GC/01/12, para. 50 (i), <http://www.refworld.org/docid/3b36f2fca.html>.

⁴⁰ The Bill sets forth that the asylum seeker is expected to present information to allow the authority to assess with sufficient certainty (“riittäväällä varmuudella”) the real risk of danger (“vaaran todellisuus”) and the authority would take into consideration known credible elements (“uskottavia seikkoja”) as well as credible documentary evidence (“uskottavaa asiakirjanäyttöä”) in reference to the need to receive their application for international protection. Bill, p. 61.

procedures can guarantee quick access to international protection for those who need it, and help facilitate return of those who do not.⁴¹

f. The right to family life and unity applies at all stages of displacement

41. According to the Bill, family members of particularly vulnerable individuals exceptionally admitted according to proposed Section 5 may also be admitted on a case-by-case basis. However, the Bill does not explain the criteria for this assessment. UNHCR sees a risk that, for instance, children may be admitted while the parents or guardians of the child may be refused entry, leading to family separation at the border.
42. UNHCR wishes to recall that the right to family life and family unity is enshrined in international human rights, humanitarian, and refugee law, and it applies to all individuals, including asylum-seekers and refugees, and throughout displacement, including at admission, in reception, where expulsion is threatened, and other stages. International law recognizes the family as the natural, fundamental group of society, and it ascribes to family units a right to protection by States.⁴²
43. Children enjoy special protection relating to their right to remain with their families. International law provides that children generally shall not be separated from their parents or other caretakers against their will, except if necessary for the best interests of the child.⁴³ Given the gravity of the impact of separation, even if only temporary, separation should be

⁴¹UNHCR, Practical considerations for fair and fast border procedures and solidarity in the EU, 15 October 2020, <https://www.refworld.org/docid/5f8838974.html>.

⁴² UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948, <https://www.refworld.org/legal/resolution/unga/1948/en/11563>, art. 16(3); UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, <https://www.refworld.org/legal/agreements/unga/1966/en/17703>, art. 23(1); UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966, <https://www.refworld.org/legal/agreements/unga/1966/en/33423>, art. 10(1). See also U.N. G.A., UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, A/RES/59/262, UN General Assembly, 3 March 2005, <https://www.refworld.org/legal/resolution/unga/2005/en/11841>, art. 44; UN Commission on Human Rights (46th sess. : 1990 : Geneva), Convention on the Rights of the Child., E/CN.4/RES/1990/74, UN Commission on Human Rights, 7 March 1990, <https://www.refworld.org/legal/resolution/unchr/1990/en/47325>, art. 3; U.N. G.A., UN General Assembly, Convention on the Rights of Persons with Disabilities, A/RES/61/106, Annex I, 13 December 2006, <https://www.refworld.org/legal/agreements/unga/2006/en/90142>, Annex I; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), E/C.12/GC/19, 4 February 2008, <https://www.refworld.org/legal/general/cescr/2008/en/41968>; Kate Jastram and Kathleen Newland, Family Unity and Refugee Protection, Cambridge University Press, June 2003, <https://www.refworld.org/reference/research/cup/2003/en/49731>. Related rights, such as the right not to be subject to arbitrary or unlawful interference with family (among other matters), are also protected in several of those instruments. See ICCPR, art. 17(1); CRC, art. 16; CMW, art. 14.

⁴³ See also UNHCR, 2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, May 2021, <https://www.refworld.org/policy/opguidance/unhcr/2021/en/122648>.

a measure of last resort, and other reasonable efforts must be made first to attempt to address the situation.⁴⁴

IV. Recommendations

44. Based on the above observations, UNHCR recommends that Finland amend the Bill as follows:
- a. Abstain from introducing provisions that deny admission to the territory and the asylum procedure to persons who seek or may be in need of international protection;
 - b. Ensure application of the principle of non-refoulement to all people without discrimination and that all asylum-seekers are able to present their asylum applications, not only children and people with disabilities;
 - c. Refrain from shifting responsibilities that normally lie with the asylum authorities or other central specialized authority, to border guards;
 - d. Ensure that appropriate procedural safeguards are in place for making assessments related to international protection needs, including access to an asylum interview, effective remedy and to legal aid and interpretation; and
 - e. Consider the implementation of fair and efficient processing and the use of accelerated procedures for manifestly unfounded and manifestly well-founded claims with due process guarantees in place so as to ensure access to protection for those who need it.
45. UNHCR remains committed to a continued constructive dialogue with Finland and stands ready to support the Government in addressing the current situation in line with international and regional refugee protection standards.

UNHCR
Representation for Nordic and Baltic Countries
25 March 2024

⁴⁴ Ibid, pp 166-170.