



UNHCR

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

UNHCR Representation for the Nordic and Baltic Countries

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**RE: UNHCR Observations on the proposed amendments to the Finnish Aliens Act
(Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta)**

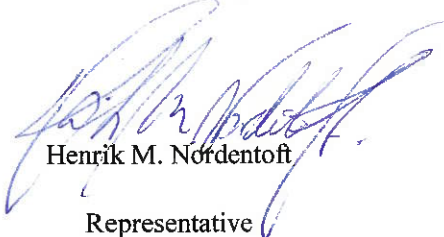
Dear Sir/Madam,

The UNHCR Representation to the Nordic and Baltic Countries is pleased to submit to the Ministry of Interior of Finland its observations on the proposed amendments to the Aliens Act pertaining to family reunification.

UNHCR appreciates the constructive dialogue with the Finnish Government, and we thank you for your considerations of this important matter.

We remain at your disposal for any clarification required.

Yours sincerely,



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Representative

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Senior Advisor
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UNHCR Observations on the proposed amendments to the Finnish Aliens Act *Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta*

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) appreciates the invitation by the Government of Finland to provide observations on the “*Proposal on amendments to the Finnish Aliens Act*” (Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta) concerning family reunification - hereafter the “Proposal”.¹
2. UNHCR has a direct interest in law proposals related to 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.² Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,³ whereas the 1951 Convention relating to the Status of Refugees⁴ and its 1967 Protocol (hereafter collectively referred to as “1951 Convention”) oblige 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 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
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

¹ Hanke perheen yhdistämisen edistämiseksi, SM023:00/202, <https://intermin.fi/hankkeet/hankesivu?tunnus=SM023:00/2020>.

² 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”).

³ 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.

⁴ 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”.

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>.

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 and durable solutions of its persons of concern

II. General observations

4. Finland has a long tradition of providing sanctuary to persons in need of international protection. The Finnish Government has also made ambitious and comprehensive efforts within the area of legal pathways for safe and regulated entry for protection beneficiaries. The Proposal will remove a number of obstacles to family reunification for refugees and other beneficiaries of international protection and those granted residence permit on compassionate grounds.⁷ This will meaningfully contribute towards upholding the right to family life and promote durable solutions for protection status holders and their families.
5. The right to family life is enshrined in the Universal Declaration of Human Rights which refers to families as a ‘natural and fundamental group unit of society’, which is ‘entitled to protection by society and the State’.⁸ This right becomes binding under international human rights law, as foreseen in the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child (“CRC”).⁹ While there is no explicit provision on family reunification in the 1951 Convention, the Final Act of the UN Conference of Plenipotentiaries affirmed “that the unity of the family [...] is an essential right of the refugee” and recommended Governments to “take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the family is maintained.”¹⁰ UNHCR’s Executive Committee (“ExCom”) has further highlighted the “fundamental importance” of family reunification,¹¹ emphasizing the need for reunification

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/IP/4/ENG/REV. 4, available at: <https://www.refworld.org/docid/5cb474b27.html>.

⁷ Aliens residing in Finland are issued with a residence permit on compassionate grounds if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on a discretionary basis on other humanitarian grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position. Aliens Act, 30.4.2004/301, available at, <https://www.finlex.fi/fi/laki/ajantasa/2004/20040301>, art. 52

⁸ Article 16(3), UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III): <https://www.refworld.org/docid/3ae6b3712c.html>

⁹ Article 23(1), UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 <https://www.refworld.org/docid/3ae6b3aa0.html>; Convention on the Rights of the Child (CRC), Convention on Migrant Workers, and International Covenant on Economic, Social and Cultural Rights (ICESCR),⁹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <https://www.refworld.org/docid/3ae6b38f0.html>; UN General Assembly, International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families : resolution / adopted by the General Assembly, 18 December 1990, A/RES/45/158, <https://www.refworld.org/docid/3b00f2391c.html>; and UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <https://www.refworld.org/docid/3ae6b36c0.html>.

¹⁰ Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, www.refworld.org/docid/40a8a7394.html.

¹¹ ExCom Conclusions No. 9 (XXVIII) on Family Reunion, 1977; No. 24 (XXXII) on Family Reunification, 1981; No. 84 (XLVIII) on Refugee Children and Adolescents, 1997; No. 88 (L), 1999 on the Protection of the Refugee’s Family; No. 104 (LVI), 2005 on Local Integration; and No. 107 (LVIII), 2007 on Children at Risk. See UNHCR, Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017, <https://www.refworld.org/docid/5a2ead6b4.html>.

to take place “with the least possible delay.”¹² ExCom has also called on countries of asylum to “apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family”.¹³

6. UNHCR wishes to further note that the Court of Justice of the European Union (“CJEU”) has emphasized that the objective of the Council Directive 2003/86/EC (2003) on the Right to Family Reunification (“FRD”)¹⁴ is to promote family reunification,¹⁵ and with regards to refugees specifically, it has held that “special attention should be paid to the situation of refugees, since they have been obliged to flee their country and cannot conceivably lead a normal family life there”.¹⁶ This has also been recognized by the European Court of Human Rights (“ECtHR”), which has found that family unity is an essential right for refugees and they should benefit from a more favorable family reunification regime than other foreigners.¹⁷ States thus have an obligation not only to refrain from interfering with individuals’ right to family life, but to facilitate access to it.¹⁸
7. UNHCR has consistently held that family reunification is vital for refugees to enjoy the fundamental right to family life. A prolonged separation can have devastating consequences on the wellbeing of the refugees and their families and as such the possibility of being reunited with one’s family is vital for integration.¹⁹ When restrictions to family reunification were proposed in Finland in 2016, UNHCR thus recommended Finland not to introduce income requirements, highlighted the importance of family reunification in supporting the integration process and the need for beneficiaries of international protection to receive accurate and accessible information on family reunification in a timely manner.²⁰

¹² ExCom Conclusion No. 88 (L), 1999 on the Protection of the Refugee’s Family, para. b(i); UNHCR ExCom, Conclusion No. 24 on Family Reunification, note 14 above, para. 2.

¹³ UNHCR ExCom, Conclusion No. 24 on Family Reunification, and UN High Commissioner for Refugees (UNHCR) Statement on family reunification for beneficiaries of international protection issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien (C-560/20), 22 June 2021, <https://www.refworld.org/docid/60d20abe4.html>, para 3.1.2.

¹⁴ European Union: Council of the European Union, Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC, <https://www.refworld.org/docid/3f8bb4a10.html>.

¹⁵ Chakroun, C-578/08, 4 March 2010, <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-578/08>, para. 43.

¹⁶ TB, C-519/18, 12 December 2019, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c519/18>, paras. 49-50; K and B, C-380/17, 7 November 2018, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c380/17> para. 53.

¹⁷ Tanda-Muzinga c. France, Appl. no. 2260/10, ECtHR, 10 July 2014 and www.refworld.org/cases,ECHR,53be80094.html, para. 75; Mugenzi c. France, Appl. no. 52701/09, ECtHR, 10 July 2014, www.refworld.org/cases,ECHR,53be81784.html, para. 54.

¹⁸ Tuquabo-Tekle and Others v. the Netherlands, Appl. no. 60665/00, ECtHR, 1 December 2005,

<https://www.refworld.org/cases,ECHR,43a29c674.html>, para. 42; Jeunesse v. the Netherlands, Appl. no.

12738/10, ECtHR, 3 October 2014, <https://www.refworld.org/cases,ECHR,584a96604.html>, para. 106 and note 13; UN High Commissioner for Refugees (UNHCR) Statement on family reunification for beneficiaries of international paras. 3.1.1. – 3.1.4.

¹⁹ UNHCR, Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection, 4 December 2017, Expert Roundtable, www.refworld.org/docid/5b18f5774.html, para. 1.

²⁰ UNHCR, Comments by the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Northern Europe on the draft Law Proposal amending the Aliens Act of the Republic of Finland, February 2016, available at: <https://www.refworld.org/docid/589c77ba4.html>.

8. UNHCR therefore notes with appreciation that the current Proposal seeks to lift the income requirements for beneficiaries of international protection and persons granted a residence permit on compassionate grounds both for nuclear family members as well as other relatives. Lifting income requirements will strengthen access of beneficiaries of international protection to family reunification.²¹ UNHCR also welcomes that the waiver of the income requirements will not be subject to any time-limits for submitting an application.²² Income requirements presents a significant legal and financial obstacle for refugees, whose particular vulnerability and circumstances must be taken account of, and to whom more favorable conditions for family reunification should be applied compared to other foreigners.²³
9. While UNHCR generally welcomes the Proposal it, however, wishes to put forward specific considerations to ensure that, to the greatest extent possible, Finland upholds the right to family life of refugees and other beneficiaries of international protection. Those recommendations will address the concept of dependency and the systematic assessment of the best interests of the child.
10. UNHCR further notes the continued importance of ensuring that sponsors and applicants have access to information and legal aid on family reunification in a timely manner and in a language and format that is accessible to them.

III. Specific observations

Assessing dependency in the context of family reunification of refugees

11. The current draft Proposal does not seek to lift the requirement of full dependency between the family members falling outside the definition of nuclear family in Article 37 of the Finnish Aliens Act, such as siblings and grandparents.²⁴ According to Article 115 of the Aliens Act, such individuals are considered “other relatives” and must demonstrate full dependency on the sponsor.
12. UNHCR is concerned that, in practice, the concept of dependency has been strictly interpreted by Finnish authorities and Courts, and about the legal obstacles associated with the requirement of *full dependency*. In UNHCR’s experience, an overly restrictive interpretation of the concept of dependency can present significant challenges for applicants’

²¹ UNHCR recommendations to Finland on strengthening refugee protection in Finland, Europe and globally, March 2019, available at <https://www.unhcr.org/neu/wp-content/uploads/sites/15/2019/03/UNHCR-Recommendations-to-Finland-2019.pdf>, p. 2-3.

²² The current legislation applies income requirements for beneficiaries of subsidiary protection and those granted residence permits on compassionate grounds immediately while refugees are waived from income requirements as long as applications are lodged within 3 months from when refugee status is granted.

²³ *Tanda-Muzinga c. France* (No. 17), para. 75.

²⁴ The requirement of full dependency was first introduced into the Aliens Act in 1998. Aliens Act, (No. 7), art. 115. Under Finnish Aliens Act Article 37, the spouse of a person residing in Finland, and unmarried children under 18 years of age of whom the person residing in Finland or his or her spouse has custody are considered nuclear family members. If the person residing in Finland is a minor, the person who has custody of him or her is considered a family member. A person of the same sex is also considered a family member if the partnership has been registered nationally.

access to family reunification.²⁵ The Finnish Refugee Advice Center’s (“FRAC”) study, commissioned by UNHCR, on family reunification practices in Finland (March 2021) found that in practice, it is rarely accepted that the applicant is fully dependent of the sponsor. Mere economic dependency is not considered to meet the threshold of dependency and serious health problems also do not constitute dependency if the required treatment is available in the applicant’s country of residence.²⁶

13. UNHCR promotes an inclusive family reunification policy and encourages States to allow family reunification for family members beyond the nuclear family.²⁷ UNHCR recalls that nuclear family members are generally accepted as consisting of spouses and, their minor or dependent, unmarried children and minor siblings. Nuclear family members also include adopted children, whether adopted legally or on a customary basis, foster children, and unmarried dependent adult children who resided with the parents in the country of origin.²⁸ As for *other family members*, UNHCR considers this to include dependent elderly parents of adult refugees, siblings, uncles, aunts, cousins and other non-blood related persons who lived with and were dependent on the family unit in the country of origin, or whose situation has subsequently changed so as to make them dependent upon the refugee.²⁹

14. Recalling that in many cultures around the world, extended family links can be very strong, UNHCR therefore recommends the application of “a broader definition of family, prioritizing dependency as the primary criterion”.³⁰ UNHCR uses the following definition:

“Dependency infers that a relationship or a bond exists between family members, whether this is social, emotional or economic. [T]he concept of dependency should be understood to be someone who depends for his or her existence substantially and directly on any other person, in particular for economic reasons, but also taking social or emotional dependency and cultural norms into consideration.”³¹

The dependency determination requires a detailed examination of all available evidence, must be culturally sensitive and take into account the specific context of refugees, as well as their personal circumstances which make the reasons for dependency compelling.³² While

²⁵ Finnish Refugee Advice Center, Family Reunification Practices in Finland, 15 March 2021, available at <https://www.unhcr.org/neu/wp-content/uploads/sites/15/2021/04/Family-Reunification-Practices-in-Finland-Report.pdf>, p. 16.

²⁶ Ibid, p. 15-17.

²⁷ UNHCR, Families Together, Family Reunification for Refugees in the European Union (“UNHCR, Families Together”), <https://www.unhcr.org/uk/5f5743f84.pdf>, pp. 12-13.

²⁸ UNHCR, Refugee Family Reunification. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC) (“UNHCR Response to Green Paper”), February 2012, www.refworld.org/docid/4f55e1cf2.html, p. 7-8

²⁹ UNHCR, Resettlement Handbook, 2011, July 2011, <http://bit.ly/2KjLlhm>, pp. 271-274; UNHCR Response to Green Paper, (ibid), pp. 7-8; UNHCR, The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied, January 2018, 2nd edition: www.refworld.org/docid/5a9029f04.html, p. 34, UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdi Ali Mahamud v. the Netherlands (Appl. no. 64534/19) before the European Court of Human Rights, 8 April 2021, available at: <https://www.refworld.org/docid/608146684.html>, para 3.1.3.

³⁰ UNHCR, Families Together (No. 27), p. 35.

³¹ UNHCR, Resettlement Handbook (No. 29), p. 178.

³² UNHCR, Response to Green Paper (No. 28), p. 7-8.

the relationship or bond between the persons in question will normally be one which is strong, continuous and of reasonable duration, dependency does not require exclusive, complete and utter dependence, such as that of a parent and minor child, but can be mutual or partial dependence.³³

15. As regards EU law, the FRD allows EU Member States to expand its scope to other dependent family members,³⁴ and recognizes that dependency can be based on various circumstances whereby family reunification of other relatives is authorized where they are “dependent on the refugee”.³⁵ The Dublin III Regulation also considers siblings to be family members for the purpose of ensuring family unity.³⁶ The European Commission has further encouraged Member States “to use their margin of appreciation in the most humanitarian way”.³⁷
16. The CJEU has held that the status of a family member as *genuinely* dependent is the result of a factual situation characterized by the sponsor’s legal, financial, emotional or material support for that family member and “the extent of economic or physical dependence and the degree of relationship”.³⁸ The CJEU has further required such an examination to take place “on a case-by-case basis [...] [taking] into account, in a balanced and reasonable manner, *all the relevant aspects of the personal situation of a refugee’s [family member]*, such as her age, level of education, professional and financial situation, and state of health”.³⁹ Finally, national authorities must take account of the “special situation of refugees”.⁴⁰
17. Moreover, family life under Article 8 ECHR, is rooted in real personal ties, not formal legal relationships and whether family life exists “is essentially a question of fact depending on the real existence in practice of close personal ties”.⁴¹ The ECtHR has recognized family life between extended family members where more than the normal emotional ties existed.⁴² For example, the Court has found that family life existed between an aunt and her adult

³³ UNHCR, Submission in *Abdi v. The Netherlands* (No. 29), para. 3.2.2.

³⁴ FRD (No. 14), Article 10(2).

³⁵ *Ibid.*

³⁶ European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU)No 604/2013, available at: <https://www.refworld.org/docid/51d298f04.html>, (Dublin III Regulation), Recital 16, Articles 6(4) and (5), 8, 11 and 15; European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: <https://www.refworld.org/docid/4f197df02.html>, (EU Qualification Directive), Article 31(4).

³⁷ European Commission, Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, 3 April 2014, COM/2014/0210 final, www.refworld.org/docid/583d7d0b7.html, p. 22.

³⁸ TB, C-519/18, 12 December 2019 (No. 16) paras. 19 and 52.

³⁹ *Ibid.*, para. 75 [emphasis added].

⁴⁰ *Ibid.*; UNHCR, Submission in *Abdi v. The Netherlands*, (No. 29) para. 3.2.8.

⁴¹ *Kopf and Liberda v. Austria*, Appl. no. 1598/06, 17 January 2012, ECtHR, <http://hudoc.echr.coe.int/fre?i=001-108686>, para. 35.

⁴² *A.W. Khan v. the United Kingdom*, Appl. no. 47486/06, ECtHR, 12 January 2010, www.refworld.org/cases.ECHR.4b4f05c02.html, para. 32 [adult child]; *Javeed v. the Netherlands* (dec.), Appl. no. 47390/99, ECtHR, 3 July 2001, www.refworld.org/cases.ECHR.584a94e44.html [nieces].

niece, who lived with her and was dependent as a result of her vulnerable mental state.⁴³ Where young adults have not yet founded a family of their own, the Court has also accepted family life between them and their parents or other close family members.⁴⁴

18. UNHCR therefore recommends Finland to apply a broad definition of family, prioritizing dependency as the primary criterion whereby a holistic assessment is carried out in family reunification applications without a need for refugee applicants to demonstrate *full* dependency.

Best interests of a child as a primary consideration

19. The background section of the Proposal discusses the best interests of a child, noting that the assessment of the best interests of a child needs to be holistic and take into account the individual circumstances of each child. The Proposal also considers the recommendations set out in FRAC's study on family reunification, including the recommendation to strengthen the best interests of the child assessment. While Article 6 of the Finnish Aliens Act outlines that the best interest of a child is a primary consideration in family reunification applications, in practice, however, the best interests of a child have not always substantially analyzed as elaborated in the study.⁴⁵
20. Based on this, the Proposal puts forward two concrete amendments to existing Finnish law: (1) the age of the child for the purpose of family reunification is to be determined on the date when the application is lodged instead of on the date of the decision⁴⁶ and (2) applications can only be rejected on grounds of "evading entry regulations" where this is expressly *against* the best interests of the child - in response to the issue of "anchor children".⁴⁷
21. UNHCR notes with appreciation the Proposal to strengthen the principle of the best interests of the child for the purpose of family reunification. Refugee children face a situation of heightened vulnerability due to their age and status and States thus have an important obligation to protect refugee children under their jurisdiction, including to facilitate family reunification.⁴⁸ UNHCR considers the best interests of the child to generally be best met

⁴³ F.N. v. the UK, Appl. no. 3202/09, ECtHR, 17 September 2013, www.refworld.org/cases,ECHR,583ff73d4.html.

⁴⁴ Maslov v. Austria [GC], Appl. no. 1638/03, ECtHR, 23 June 2008, www.refworld.org/docid/5852a8b97.html, para. 62; A.A. v. United Kingdom, Appl. no. 8000/08, ECtHR, 20 September 2011, www.refworld.org/docid/583edcfl124.html, paras. 46-49.

⁴⁵ Pakolaisneuvonta, Osa II, lapsen edun arviointi tuomioistuinten perheenyhdistämispäätöksissä, 2014, available at: <https://www.pakolaisneuvonta.fi/wp-content/uploads/LapsenetuPY-160315F.pdf>; Finnish Refugee Advice Center, Family Reunification Practices in Finland, (no. 25) p. 27-28.

⁴⁶ On the date of application being the relevant date, see the three recent CJEU cases of *A and S*, C-550/16, 12 April 2018, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=200965&pageIndex=0&doclang=EN&mode=lst&dir=&oc=c=first&part=1&cid=1327320>; *B.M.M. and Others*, Joined Cases C-133/19, C-136/19 and C-137/19, 16 July 2020, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-133/19>; *SE*, C-768/19, 9 September 2021, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-768/19>.

⁴⁷ Korkein Hallinto Oikeus Appl. No. 2020:98, 22 September 2020, <https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1600669273842.html>; Korkein Hallinto Oikeus Appl. No. 2009:86, 9 October 2009, [https://www.edilex.fi/kho/vuosikirjat/200902457?offset=1&perpage=20&phrase=2009%3A86&sort=relevance&typeIds\[\]=7&typeIds\[\]=8&typeIds\[\]=9&searchKey=463756&quickSearch=true](https://www.edilex.fi/kho/vuosikirjat/200902457?offset=1&perpage=20&phrase=2009%3A86&sort=relevance&typeIds[]=7&typeIds[]=8&typeIds[]=9&searchKey=463756&quickSearch=true).

⁴⁸ CRC (No. 9) Article 22.

when children remain with or join their family.⁴⁹ The CRC reiterates the importance of the family as “the fundamental group of society and the natural environment for the growth and well-being of [...] children”⁵⁰ and specifies that children and parents separated from each other shall have their applications for family reunification dealt with “in a positive, humane and expeditious manner.”⁵¹

22. The primacy of the best interests of a child is clearly established in law and confirmed by various Courts. In line with international and regional law and standards, in all family reunification procedures involving children, including both when the child is the sponsor and/or the applicant, the best interests of the child must be a primary consideration requiring substantive analysis. The CRC explicitly sets out the right of the child to have their best interests taken as a primary consideration in all legislative, administrative or judicial actions or decisions affecting them, directly or indirectly.⁵² The provision corresponds to 24 (2) of the Charter of Fundamental Rights of the European Union (“EU Charter”). Moreover, Article 5 (5) of the FRD sets out obligations for EU Member States with respect to the best interests of children when examining an application.⁵³ ExCom has further stressed that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity.⁵⁴
23. The EU Charter, secondary EU laws⁵⁵ as well as European case law equally oblige Member States to take the best interests of the child into consideration. The CJEU has, for example, found that family reunification requests must be examined even where the family member of an EU citizen is subject to an entry ban, relying on the best interests of the child.⁵⁶ The CJEU has further recognized in the context of family reunification that Article 7 of the Charter ‘must [...] be read in conjunction with the obligation to have regard to the child’s

⁴⁹ UNHCR, 2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, May 2021, <https://www.refworld.org/docid/5c18d7254.html>. See also UNHCR Statement in CR, GF, TY v. Landeshauptmann von Wien (C-560/20), (No. 13), para. 3.2.1.

⁵⁰ CRC (No. 9) p 3.

⁵¹ Ibid, art. 10.

⁵² Ibid, art. 3(1).

⁵³ Finnish Refugee Advice Center, Family Reunification Practices in Finland, (No. 25) p. 27; European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, available at: <https://www.refworld.org/docid/3ae6b3b70.html> art. 24 (2); FRD (No. 14) art. 5 (5).

⁵⁴ ExCom Conclusion No. 47 (XXXVIII) on Refugee Children, 1987, paras. d and h(i).

⁵⁵ Charter, (No. 53), Article 24(2) and (3); FRD (No. 14), Article 5(5); EU Qualification Directive (No. 36), Recitals 18 and 19 and Article 20(5); European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <https://www.refworld.org/docid/51d29b224.html> (Asylum Procedures Directive), Recital 33 and Article 25(6); 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, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <https://www.refworld.org/docid/51d29db54.html>, (Reception Conditions Directive), Recitals 9, 22 and Article 23; Dublin III Regulation (No. 36), Recitals 13 and 16 and Articles 6 and 8; European Union: Council of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, OJ L. 348/98-348/107; 16.12.2008, 2008/115/EC, available at: <https://www.refworld.org/docid/496c641098.html>, (Return Directive), Recital 22 and Articles 5, 10(1) and 17(5); UN High Commissioner for Refugees (UNHCR), CR, GF, TY v. Landeshauptmann von Wien (No. 13) para. 3.2.1.

⁵⁶ K.A. and Others, C-82/16, 8 May 2018, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F.&num=c-82/16>, para. 72.

best interests, recognized in Article 24(2) of the Charter and with account being taken of the need, expressed in Article 24(3), for a child to maintain on a regular basis a personal relationship with his or her parents.⁵⁷ The ECtHR has also confirmed that “in all decisions concerning children, their best interest must be paramount”⁵⁸ whereby domestic courts must place the best interest of the child “*at the heart of their considerations* and attach crucial weight to it.”[emphasis added]⁵⁹

24. UNHCR therefore recommends Finland to further strengthen the best interests assessment in relation to all family reunification decisions concerning children, both where the child is the sponsor and/or the applicant, emphasizing the need to ensure a *holistic* assessment by the State wherein family unity is prioritized and flexibility and discretion in relation to legal, practical and financial obstacles to family reunification is applied.

Practical Obstacles to Family Reunification

25. The Proposal does not put forward any measures to address some of the practical obstacles that families experience in the family reunification procedures. It, however, refers to the FRAC study and notes the legal, financial and *practical* obstacles to family reunification identified by the study. Some of the difficulties documented in the study include travel to embassies to obtain visas, application fees, onerous documentation requirements to proof identity and difficulties to fulfill the requirements of legal stay in the country where the application is lodged.
26. While not addressed in the Proposal, UNHCR would like to take this opportunity to highlight its concerns regarding the many remaining practical obstacles to family reunification, and advocate to have this Proposal address some of these concerns. Considering the particular vulnerability of refugee applicants, they should benefit from a more favorable family reunification regime than other foreigners,⁶⁰ which requires States to implement measures to facilitate effective access to lodging an application. The requirement to travel to a Finnish Embassy in a third country to obtain a visa is one of the major challenges identified.⁶¹ Refugees often lack the required travel documents, have limited financial means to travel, and/or may face security threats associated with the trip.⁶²

⁵⁷ B. M. M. and Others, Joined Cases C-133/19, C-136/19 and C-137/19, 16 July 2020, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=c-133/19>, para. 34.

⁵⁸ Neulinger and Shuruk v. Switzerland, Appl. no. 41615/07, ECtHR, 6 July 2010, <https://www.refworld.org/cases/ECHR.5183e05d4.html>, para. 135; Rahimi v. Greece, Appl. no. 8687/08, ECtHR, 5 April 2011, <https://www.refworld.org/cases/ECHR.4d9c3e482.html>, para. 108; see also H.A. et autres c. Grèce, Appl. no. 19951/16, ECtHR, 28 February 2019, <https://www.refworld.org/cases/ECHR.5c780a0d7.html>, para. 205.

⁵⁹ El Ghatet v. Switzerland, Appl. no. 56971/10, ECtHR, 8 November 2016, <https://www.refworld.org/cases/ECHR.5836a1854.html>, para. 46; CR, GF, TY v. Landeshauptmann von Wien (no. 13) para. 3.2.2.

⁶⁰ Tanda-Muzinga c. France, (No. 17), para. 75; Mugenzi c. France, (No. 17), para. 54.

⁶¹ For example, currently Finland requires Afghan applicants to travel to New Delhi, India; Somali applicants to Addis Ababa, Ethiopia and; Iraqi and Syrian applicants to Ankara, Turkey. Finnish Refugee Advice Center, Family Reunification Practices in Finland (No. 25) p. 5.

⁶² Ibid, p. 6.

27. UNHCR therefore recommends Finland to address the challenges associated with limited access to embassies, grant the sponsor the option to apply on behalf of his or her family, and waive the requirement for family members outside Europe to confirm the application in an embassy. Where personal attendance at an embassy abroad is required, Finland is encouraged to reduce the number of times that family members abroad need to approach an embassy, provide flexibility regarding appointments when individuals miss their appointments because of difficulties crossing borders; and strengthen efforts to ensure appointments are made closer together.
28. Moreover, a greater use of the provisions on bilateral arrangements in the EU Visa Code Regulation is encouraged to enable family members outside of Europe to apply for and collect visas at the embassy of another EU Member State if the country to which they intend to travel has no consular representation where the family members live⁶³

IV. Concluding remarks

29. Based on the above, UNHCR invites Finland to consider potential amendments to the proposal in order to:
- a. Apply a **broad definition of family based on the concept of dependency** which entails a holistic, and culturally sensitive assessment of the emotional and socioeconomic linkages between the sponsor and the family members, without the need for refugee applicants to demonstrate full dependency.
 - b. Strengthen the multi-disciplinary **assessment and determination of the best interests of the child** in all family reunification procedures and ensure that children are reunited with their family in a positive, humane and expeditious manner.
 - c. Carry out an inter-departmental assessment of prevailing **practical obstacles to family reunification** and identify concrete solutions to provide refugee families with *effective* access to lodging an application.
 - d. **Grant the sponsor the option to apply** on behalf of his or her family **in Finland**, and waive the requirement for family members outside Europe to confirm the application in an embassy. Where personal attendance in an embassy is required, exercising flexibility with the appointments is encouraged.
 - e. **Strengthen cooperation with other EU Member States** and partners for the purpose of facilitating issuance of a visas in other Embassies, where the applicant resides

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⁶³ UNHCR, Families Together (No. 27) p. 12-13.