

UNHCR recommendations to Sweden on strengthening refugee protection in Sweden, Europe and globally

This document sets out a number of recommendations which the Representation for Northern Europe of the United Nations High Commissioner for Refugees (UNHCR) has developed with a view to further strengthen refugee protection in Sweden, as well as to Sweden's engagement in European and international fora where issues of refugee protection and asylum is being discussed. The recommendations are addressed to the Swedish Government, parliamentarians and all other relevant institutional actors and stakeholders and aim at contributing to constructive discussions on improvements of the protection and integration systems for refugees at the national, regional and international level.

UNHCR offers these recommendations 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 for refugees.¹ UNHCR is responsible for supervising the application of the 1951 Convention relating to the Status of Refugees - to which Sweden is a party since 1954. UNHCR thus has a direct interest in policy discussions and legislative initiatives in the field of asylum.

1. Introduction

Sweden has made outstanding contributions to international refugee protection over the past decades, including through a well-established asylum and reception system, a long-standing commitment to refugee resettlement and comprehensive integration efforts. Within the EU, Sweden is a strong voice for greater solidarity and responsibility sharing and for fair EU asylum policies and practices in line with international standards to ensure that refugees receive the protection they deserve in Europe. Globally, Sweden has placed the protection of the forcibly displaced at the top of the international political agenda and championed the empowerment and protection of displaced women and girls.

UNHCR is grateful for Sweden's long-standing commitment and contribution to upholding international refugee protection, supporting multilateralism and demonstrating humanitarian leadership. Sweden is a very important strategic partner and donor to UNHCR and the largest contributor of un-earmarked funding, which enables UNHCR to address critical humanitarian needs of the most vulnerable refugee populations.

The COVID-19 pandemic, unfolding in Europe and beyond since the beginning of 2020, has presented States with an extraordinary and unprecedented public health emergency. In response, States, including Sweden, have been taking necessary and legitimate measures to prevent the spread of the virus and to protect their populations, including asylum-seekers and refugees.²

2. Strengthening protection and integration policies in Sweden

In response to the significant increase in the number of asylum-seekers, the Swedish Government, as many other European Governments, introduced a series of restrictive measures in the area of asylum and family reunification to reduce the number of arrivals. UNHCR appreciates that the Government chose to place these restrictions in a temporary legislation (Temporary Law), which entered into force in 2016 and was extended in 2019, instead of as amendments to the Swedish Alien's Act. This signaled

¹ UN General Assembly, UNHCR Statute, 14 December 1950, www.refworld.org/docid/3ae6b3628.html, para. 1.

² UNHCR, Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic, <https://data2.unhcr.org/en/documents/download/75453>; UNHCR, Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response: <https://www.refworld.org/docid/5e7132834.html>. See also, <https://www.refworld.org/covid19.html>.

the clear intention that the restrictions were not intended to permanently restrict the asylum space in Sweden, but rather were enacted with the aim of providing Sweden with “a breathing space” to cope with the exceptional high number of arrivals in 2015.

At the time when the proposal for the Temporary Law was tabled, UNHCR submitted a set of recommendations expressing concerns about the proposed restrictions, in particular about the shift from permanent to temporary residence permits, differentiated rights to family reunification depending on status, and the risk of gaps created by the removal of the ground “otherwise in need of protection”.³ While UNHCR welcomes the lifting of some of the restrictions on the right to family reunification in conjunction with the extension of the Temporary Law in 2019 (see further below at 2.4.),⁴ UNHCR remains concerned about the introduced restrictions as they present a reduced set of standards and safeguards as compared to the solid legal protection framework which Sweden had developed and administered over decades.

The number of asylum-seekers arriving to Europe has dropped significantly since 2015. Europe – and Sweden - is no longer facing an exceptional high level of arrivals. On the contrary, in Sweden, the number of asylum-seekers has significantly reduced from the peak in 2015 with more than 160.000 new arrivals, to just under 22.000 recorded for 2019, the lowest number since 2005.

UNHCR thus welcomes the establishment of the cross-party Commission of Inquiry to examine a future migration policy for Sweden, that reduces the need for temporary measures and is humane, legally certain and efficient. This provides the Government and all political parties with an important opportunity to review the Swedish asylum traditions and practice and reconfirm Sweden’s commitment to an asylum system that fully respects international standards and provides the foundation for a welcoming and inclusive society for people fleeing war, conflict and persecution.

2.1. Quality asylum and reception system

Sweden has a well-established and high-quality asylum and reception system, which guarantees asylum-seekers the right to have their application processed individually in a fair and efficient asylum procedure. The commitment of the Swedish Migration Agency (SMA) to continuously improve capacity and quality of the reception and asylum procedures serves as a good practice in the Nordic region and beyond. UNHCR welcomes the investments in quality initiatives, such as the “Understanding Asylum” project,⁵ and strongly recommends that this good practice be preserved in any upcoming reform. UNHCR also welcomes the system with channeling of asylum applications in different tracks to make the asylum procedure fair and efficient in line with UNHCR’s recommendations.⁶

UNHCR considers that predictable core funding towards the first and second instance asylum procedures, even at times of decreasing numbers of applications, are essential to ensure the overall quality and timeliness of asylum decisions, which may also reduce the number of appeals. This would in turn reduce the cost of reception conditions, thus saving resources and produce more efficient and fairer decisions for asylum-seekers. UNHCR stands ready to continue to provide its support to the SMA and the Migration Courts in their efforts on quality assurance and fulfilling Sweden’s international obligations.

³ UNHCR, Observations on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden (“Begränsningar av möjligheten att få uppehållstillstånd i Sverige – utkast till lagrådsremiss”), 10 March 2016, <https://www.refworld.org/docid/56e27d7e4.html>.

⁴ UNHCR, Observations on the Law Proposal “Förlänging av Lagen om Tillfälliga Begränsningar av Möjligheten att få Upphållstillstånd i Sverige – utkast till Lagrådsremiss”, 18 March 2019, <https://www.regeringen.se/495171/contentassets/e96731d263df43c39569a3a9998d6741/unhcr.pdf>.

⁵ Swedish Migration Agency, “Asylrättens Kärna”, <https://www.migrationsverket.se/Andra-aktorer/EU-fonder/Beviljade-projekt/Flikar/Asyl/Asylrattens-karna.html>.

⁶ UNHCR, Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union, 25 July 2018, <https://www.refworld.org/docid/5b589eef4.html>; UNHCR, Recommendations for the Croatian and German Presidencies of the Council of the European Union, 9 January 2020, <https://www.refworld.org/docid/5dee08387.html>.

UNHCR takes note of the discussion on a proposal to introduce an indicative threshold for the number of asylum-seekers to be received annually. UNHCR wishes to underline that if such a threshold would lead to the denial of access to territory and to asylum procedures it would be in violation of Sweden's obligations under the 1951 Convention as well as European refugee law. If the threshold would be used as a trigger for a lowering of agreed standards, then it could undermine European solidarity, and lead to shifting rather than sharing of responsibility for asylum-seekers. It may also be inconsistent with the EU framework for determining responsibility among States for examination of a claim, and for offering equivalent levels of treatment as regards reception conditions. In UNHCR's view, a system for sharing of responsibilities for asylum-seekers that is built on incentives rather than sanction is likely to be more effective.⁷

2.2. Reception of children

Sweden has over the years received a large number of unaccompanied and separated children (UASC). In 2015 alone, Sweden received more than 35,000 UASC, including many children from Afghanistan, seeking protection from conflict, war, violence and discrimination.⁸

UNHCR acknowledges that the reception of UASC, due to their special vulnerabilities, protection needs and rights, presents a number of challenges. The experience in Sweden over the past years has pointed to structural and procedural gaps that existed already before the migration situation in 2015. Studies have shown that many children do not feel safe on arrival to Sweden and need more tailored information and support in their meetings with authorities charged to assist them and determine their status.⁹ Concerns have also been identified with respect to a range of child-related measures, including the guardianship system, registration procedure, family tracing, access to services and age assessments. The research also shows that the principle of the best interests of the child is not always treated as a primary consideration in the asylum procedure affecting children.¹⁰

As the Convention on the Rights of the Child (CRC) became Swedish law on 1 January 2020, there is a momentum, in UNHCR's view, to draw on the lessons learned and the many valuable recommendations collected by several actors, and turn them into concrete improvements to the reception system that fully takes into account the rights of children, including the principle of the best interests of the child.¹¹ UNHCR particularly recommends that consideration be given to further exploring the range of pragmatic and principled measures which can be taken to better coordinate and facilitate multi-disciplinary responses to meet children's needs in the reception process, including through a wider

⁷ UNHCR, Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity, December 2016, <https://www.refworld.org/docid/58385d4e4.html>.

⁸ UNHCR, This Is Who We Are – A study of the profile, experiences and reasons for flight of unaccompanied and separated children from Afghanistan seeking asylum in Sweden in 2015, October 2016, <https://www.refworld.org/docid/581b4b684.html>.

⁹ UNHCR, I want to feel Safe: Strengthening child protection in the initial reception of unaccompanied and separated children in Sweden, December 2018, <https://www.refworld.org/docid/5c07cc0a4.html>.

¹⁰ UNHCR, This Is Who We Are Part 2 – Documentation of the secondary findings from the profiling survey of unaccompanied Afghan children arriving to Sweden in 2015, October 2016, <https://www.refworld.org/docid/581b4bb74.html>. UNHCR, Observations on the draft law proposal "Age Assessment Earlier in the Asylum Procedure" ("Åldersbedömning tidigare i asylprocessen"), 7 June 2017, <https://www.refworld.org/docid/5937a8e14>.

¹¹ UNHCR, Observations on the Inquiry "Barnkonventionen blir svensk lag" SOU 2016:19, 14 October 2016, <https://www.refworld.org/docid/580a2e904.html>; UNHCR, The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe, July 2017, <https://www.refworld.org/docid/59633afc4.html>; See also, for example, several reports of the Swedish Ombudsman for Children.

establishment and implementation of the “Barnlanda”¹² and “Barnahus”¹³ concepts.¹⁴

2.3. Length of residence permits

With regard to the nature and length of residence permits for persons recognized as in need of international protection, UNHCR recalls that the ultimate goal of international protection is to achieve durable solutions for refugees. The 1951 Convention foresees a gradual attainment of rights, with the end of the continuum being naturalization in the country of asylum, voluntary repatriation, or in situations of fundamental and durable changes in the country of origin, the possible cessation of the refugee’s protection status. There is no time limit set out in the 1951 Convention, and refugee status remains in place until the criteria in the Convention for ending of refugee status are met.

UNHCR recommends Sweden to consider returning to the previous well-established practice of granting a secure status to persons in need of international protection.¹⁵ Such a measure would support integration and ensure a stable and sustainable foundation for all refugees and their families. Studies show that temporary permits tend to have a negative impact on integration and health.¹⁶ It would also reflect the increasing length and complexity of today’s conflicts where the average duration of protracted refugee situations is 17 years.

Should temporary residence permits nevertheless be considered in certain circumstances, we recommend that they be issued for a minimum period of five years, in line with the practice in a number of EU Member States, and coherent with the time-frames foreseen under the EU Long-Term Residence Directive. Refugees should also have a possibility to access naturalization in line with Article 34 of the 1951 Convention.

While the current EU legislation does not oblige States to grant beneficiaries of subsidiary protection residence permits of the same length as those granted to refugees, UNHCR recommends that the same type and length of permits should be granted to both persons holding subsidiary protection status as well as those recognized as Convention refugees, to avoid discrimination and ensure equal treatment.¹⁷ According to international and European standards, a differentiated treatment according to immigration status is only permitted when the grounds therefore are objectively and reasonably justified.¹⁸ In UNHCR’s experience, these two categories of beneficiaries of international protection have the same protection needs and face the same integration opportunities and challenges, as well as similar return prospects. In practice, beneficiaries of subsidiary protection are generally not able to return home earlier than refugees.

¹² Barnlanda, the arrival center, is a nurturing place where children can be safe, supported and protected. It is a place where they can rest and be informed in a way that they understand, which encourages the making of informed decisions. The venues used for Barnlanda are the group homes for UASC and on-call family homes that exist today..

¹³ Barnahus is a process through which formalized best interest assessment and best interest determination procedures are conducted through a multi-disciplinary approach with relevant actors. The process enables the children to voice opinions regarding decisions and procedures that concern them.

¹⁴ UNHCR, I want to feel Safe: Strengthening child protection in the initial reception of unaccompanied and separated children in Sweden, December 2018, <https://www.refworld.org/docid/5c07cc0a4.html>.

¹⁵ UNHCR, ExCom Conclusion on local integration, No. 104 (LVI) – 2005, <https://www.refworld.org/docid/4357a91b2.html>.

¹⁶ See, for example, Swedish Red Cross, Humanitarian Consequences of the Swedish Temporary Aliens Act, October 2018, available at: <https://www.rodakorset.se/om-oss/fakta-och-standpunkter/rapporter/konsekvenser-av-tillfalliga-utlanningslagen/>.

¹⁷ UNHCR, Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466, February 2018, <https://www.refworld.org/docid/5a7835f24.html>.

¹⁸ Charter of Fundamental Rights of the EU, Art. 21; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Art. 14. For jurisprudence, see e.g. Niedzwiecki v. Germany, European Court of Human Rights (ECtHR), 25 October 2005, <http://www.refworld.org/docid/4406d6cc4.html>; Okpiz v. Germany, ECtHR, 25 October 2005, <http://www.unhcr.org/refworld/docid/4406d7ea4.html>; Biao v. Denmark (Grand Chamber), ECtHR, 24 May 2016, <http://www.refworld.org/cases,ECHR,574473374.html>; Hode and Abdi v. The United Kingdom, ECtHR, 6 November 2012, <http://www.refworld.org/cases,ECHR,509b93792.html>.

Refugee children, just as adult refugees, are entitled to a stable and secure legal status. Article 20 of the CRC specifically provides that “when considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing”. In UNHCR’s view, the fact that a child turns 18 years of age should not routinely prompt the initiation of cessation procedures or discontinuation of residence permit. The protection risks which gave rise to the granting of protection status do not necessarily end because childhood ends.¹⁹

2.4. Family reunification

UNHCR strongly believes that supported and well-managed access to family reunion enables many women and children to safely access protection. Effective and prompt family reunification procedures help discourage communities from resorting to criminal smuggling networks, remove the risk of undertaking dangerous journeys, and ensure more gender equity in terms of access to protection. Family reunion is also a strong element in support of successful integration strategies and programs, as well as an important factor in reducing mental health issues among refugees. Research shows that there is a direct link between family reunification, mental health and successful integration.²⁰

In Sweden, in recent years, the right to family reunification both for refugees and beneficiaries of subsidiary protection has become severely restricted with numerous legal, practical and financial obstacles. UNHCR regrets that the family reunification mechanism, as a legal pathway, has been curtailed to such a great extent. The current legal framework in Sweden may infringe on the rights of the child in the CRC, the ECHR and risk negate the positive right to family reunification provided for in the EU Directive on Family Reunification.²¹

The maintenance requirements on the part of the family member in Sweden to demonstrate that (s)he is able to support his/her family (unless the application for family reunification is submitted within three months of the granting of the residence permit), which were introduced as part of the temporary legislation, has proven to be a major obstacle to family reunion, with onerous demands for high level of income and size of accommodation, sometimes above the national norm. In line with recommendations of the European Commission and jurisprudence of the European Court of Justice, the application of a maintenance requirement has to take into account individual circumstances and should not be applied too strictly.²² There is a risk that a strict maintenance requirement without sufficient individual consideration will leave the most marginalized and vulnerable refugees without the possibility to reunite with their families.

Furthermore, the concept of family has been limited to the nuclear family with extremely narrow possibilities for other family members to reunite. UNHCR would strongly recommend the adoption of a

¹⁹ UNHCR, Guidelines on International Protection No. 8 on Child Asylum Claims 22 December 2009, <https://www.refworld.org/docid/4b2f4f6d2.html>, para. 51.

²⁰ See, for example, Swedish Red Cross, Humanitarian Consequences of the Swedish Temporary Aliens Act, October 2018, <https://www.rodakorset.se/om-oss/fakta-och-standpunkter/rapporter/konsekvenser-av-tillfalliga-utlanningslagen/>.

²¹ For jurisprudence see, Swedish Migration Court of Appeal, MIG 2018:20, 13 November 2018. See also, *Sen c. Pays-Bas*, ECtHR, 21 December 2001, <https://www.refworld.org/cases,ECHR,402a26b74.html>; *Tuquabo-Tekle and Others v. the Netherlands*, ECtHR, 1 December 2005, <https://www.refworld.org/cases,ECHR,43a29e674.html>; *Nunez v. Norway*, ECtHR, 28 June 2011, <https://www.refworld.org/cases,ECHR,4e26e22c2.html>; *Mugenzi c. France*, Requête, ECtHR, 10 July 2014, <https://www.refworld.org/cases,ECHR,53be81784.html>; *Senigo Longue et autres c. France*, Requête, ECtHR, 10 July 2014, <http://www.refworld.org/docid/53be7dc94.html>; *El Ghatet v. Switzerland*, Application, ECtHR, 8 November 2016, <https://www.refworld.org/cases,ECHR,5836a1854.html>; *Hode and Abdi v. The United Kingdom*, ECtHR, 6 November 2012, <http://www.refworld.org/docid/509b93792.html>, para. 45.

²² See, *Chakroun v. Minister van Buitenlandse Zaken*, Court of Justice of the European Union, 4 March 2010, <https://www.refworld.org/cases,EJ,4b962e692.html>; Swedish Migration Court of Appeal, MIG 2016:13, 1 June 2016. See also, EU: 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, <https://www.refworld.org/docid/583d7d0b7.html>, p. 23; UNHCR, Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union, February 2012, <http://www.refworld.org/docid/4f55e1cf2.html>, p. 6.

more flexible definition of family in the refugee context that builds on the international and regional jurisprudence.²³ In UNHCR's view, it is important that there is scope to grant family reunification to other close family members beyond the nuclear family where there is a social, emotional or economic dependency.²⁴

As noted above, UNHCR welcomes the partial reintroduction of the right to family reunification for beneficiaries of subsidiary protection in July 2019. UNHCR would strongly urge against a differentiation in the right to family reunification between refugees and beneficiaries of subsidiary protection. The two categories have the same protection needs, face the same integration opportunities and challenges, and also share similar return prospects. UNHCR further notes in this regard the current requirement for beneficiaries of subsidiary protection to have "reasonable prospects of being granted a permanent residence permit" in order for him/her to benefit from the right to family reunification. For refugees such prospects are presumed to exist, as the duration of their protection needs are considered to last longer.²⁵ In line with the above, UNHCR recommends that such distinction is not maintained in any future revision of the asylum legislation.

Even when the legal conditions for family reunion is met, many families who seek to reunite also face numerous practical obstacles, including difficulties for family members in certain countries to access Swedish consular services and the strict requirements regarding submission of documentation.²⁶ This raises particular protection risks and challenges for UASC waiting to reunite with their family in Sweden. UNHCR welcomes that the processing times have been reduced, however, is concerned that some families still have to wait for long periods of time. Particularly with regard to children, UNHCR would like to recall that children have specific rights to family reunification set out in the CRC, which calls for positive, humane and expeditious procedures. Children and adolescents are in particular need of a stable family environment to ensure the development of their personal and social skills.²⁷

2.5. Other grounds giving rise to protection

When the Temporary Law was introduced in 2016, the protection ground "otherwise in need of protection" became non-applicable.²⁸ At the time, UNHCR expressed concerns that the removal of this ground could create a possible protection gap, in particular in light of the strict application and interpretation of the criteria in the 1951 Convention and for subsidiary protection to individuals fleeing conflict and violence. While acknowledging that this provision was used in a more limited way, UNHCR considers it useful for a Government to be able to extend protection for special categories of individuals who do not meet the criteria of a refugee in the 1951 Convention or fall under subsidiary forms of

²³ For an overview of relevant jurisprudence, see, 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, <https://www.refworld.org/docid/5a9029f04.html>.

²⁴ UNHCR, *Note on Family Reunification*, 18 July 1983, <http://www.refworld.org/docid/3bd3f0fa4.htm>; UNHCR ExCom, *Family Reunification*, Conclusion No. 24 (XXXII), <http://www.refworld.org/docid/3ae68c43a4.html> para. 4; *Protection of the Refugee's Family*, Conclusion No. 88 (L), <http://www.refworld.org/docid/3ae68c4340.html>, para. b(ii). See also 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, <https://www.refworld.org/docid/5cb474b27.html>, para. 185.

²⁵ "Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige", Prop. 2015/16:174, <https://www.regeringen.se/contentassets/075968fdd8c94788977dba14bae16444/forslag-om-att-tillfalligt-begransa-mojligheten-att-fa-uppehallstillstand-i-sverige-prop.-201516174>, pp. 42, 74.

²⁶ See e.g. Norwegian Organization for Asylum-seekers, *Realizing Refugees' Right to Family Unity*, The challenges to family reunification in Norway, Sweden and Denmark, December 2019, https://www.noas.no/wp-content/uploads/2019/11/Realizing_Refugees_Right_to_Family_Unity.pdf.

²⁷ CRC, Art. 9, 10 and 16. UN CRC Committee, General comment No. 6 (2005): *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, <https://www.refworld.org/docid/42dd174b4.html>, para. 83.

²⁸ Swedish Aliens Act 4:3 a (2); Temporary Act, para. 3.

protection, as long as the regime of refugee protection is not undermined.²⁹

UNHCR therefore recommends to consider returning to the previous provisions where residence permits could be granted for humanitarian or compelling reasons also in situations where an expulsion would not necessarily constitute a violation of any of Sweden's obligations under international conventions.

2.6. Integration

Fostering sustainable integration at the local level through social cohesion and equal opportunities is a key objective of the Global Compact on Refugees (GCR, see further below at 4.1). Integration requires appropriate investments of time and resources from States, local authorities, the private sector and civil society that have a key role to play in supporting integration, in addition to the efforts required from refugees in facilitating their integration. Additionally, joint efforts and an increased focus on countering growing intolerance and xenophobia is particularly relevant for asylum-seekers and refugees.

The importance of effective integration has been underlined by all political parties in Sweden as a crucial focus. UNHCR recognizes the enormous efforts and investments that the Swedish Government has made over the years and the impressive work carried out at the level of the municipalities with input from other parts of the administration, as well as from civil society and the private sector.

Integration poses both challenges and opportunities. Building social cohesion, stability and security requires that communities are well-equipped to receive refugees, and that refugees are well-supported to realize their potential in their new environments. Integration systems can be supported by three key elements: increased funding for integration programmes: predictable, harmonized services; and engaging communities, refugees and civil society actors in fostering welcoming communities with a holistic approach.

UNHCR fully endorses the importance of integration policies with a holistic rights-based approach, based on which refugees gain access to education and labour markets, language training, civic orientation and social support and can benefit from national services as a means to become self-reliant and contributing to local economies.

The integration of refugees into Swedish society has been strengthened through comprehensive efforts, including targeted education, inclusive employment policies and tackling segregation. While acknowledging these efforts and challenges, UNHCR encourages Sweden to continue its work to ensure even more effective integration with a focus on fostering welcoming communities and social integration, labour market inclusion of refugees, supporting local authorities and the enhanced involvement of civil society to establish long-term integration policies and continued funding for integration programmes.

2.7. Situation of Stateless persons

The stateless population in Sweden remains considerable in size, mainly consisting of migrants, asylum-seekers, refugees and persons of "unknown nationality". UNHCR appreciates that the Swedish Government has initiated measures to address the identified challenges in reducing and preventing statelessness in Sweden,³⁰ including the establishment of an Inquiry on Nationality. UNHCR is also pleased to note that during the past five years more than 22,000 stateless persons have been granted Swedish nationality. Sweden has also demonstrated its support and commitment by joining the Core Group of Friends of the Global Campaign to eradicate statelessness by 2024 (the #IBelong Campaign) and was also an important contributor to the 2019 High-Level Segment on Statelessness with several pledges.³¹ In this respect, UNHCR particularly welcomes the withdrawal of Sweden of two reservations

²⁹ UNHCR ExCom, Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection No. 103 (LVI) - 2005, available at: <https://www.refworld.org/docid/43576e292.html>.

³⁰ See further, UNHCR, Mapping Statelessness in Sweden, December 2016, <https://www.refworld.org/docid/58526c577.html>.

³¹ See further at <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention).

In order to fully implement its international treaty obligations related to statelessness, UNHCR recommends Sweden to introduce a definition of a stateless person in line with the definition in the 1954 Convention. UNHCR also recommends the establishment of a full-fledged statelessness determination procedure, including the introduction of a statelessness-specific residence permit for stateless persons who, due to their statelessness, have no country to return to, and who today receive residence permits not corresponding to their protection needs as stateless persons.

Further, it follows from the 1961 Convention on the Reduction of Statelessness (1961 Convention) and the CRC, that children born stateless should be granted nationality either automatically or as early as possible – a child should not be left stateless for an extended period of time.³² The requirement in Swedish law of having a permanent residence permit before being eligible for Swedish nationality is not in accordance with the 1961 Convention and CRC provisions. Furthermore, the Temporary Law sets out restrictions on granting permanent residence permits to refugees and persons granted subsidiary form of protection, which prevents some stateless children born in Sweden from acquiring any nationality at birth and expose them to extended period of statelessness and considerably prolonging their naturalization process.

The only durable solution available to a stateless person who has no country to return to is naturalization. As the possibilities to obtain permanent residency in Sweden may continue to be restricted, UNHCR recommends Sweden to consider alternative options in order to provide for a durable solution for stateless persons in Sweden. For adults, this could be done by allowing stateless persons to obtain permanent residency after five years and to acquire Swedish nationality after another four or five years. For children, UNHCR recommends to align the Swedish Citizenship Act with the standards of the 1954 Convention, the 1961 Convention and the CRC so that stateless children born in Sweden will acquire citizenship automatically, through operation of law, regardless of their residence status. If Sweden opts to grant citizenship through notification to otherwise stateless children, the current requirement of permanent residence for acquiring citizenship through notification should be replaced with that of habitual residence as allowed under Article 1 of the 1961 Convention. The relevant time period would need to factor in that a child must be able to acquire a nationality at birth or as soon as possible after birth.³³

UNHCR urges the Government to consider the concerns raised above, in conjunction with the Inquiry on Nationality with a special investigator entrusted to *inter alia* assess to what extent exemptions to conditioning access to naturalization shall apply to stateless children born in Sweden.

³² UNHCR, Observations on the Law Proposal "Förlänging av Lagen om Tillfälliga Begränsningar av Möjligheten att få Uppehållstillstånd i Sverige – utkast till Lagrådsremiss", 18 March 2019, <https://www.regeringen.se/495171/contentassets/e96731d263df43c39569a3a9998d6741/unhcr.pdf>.

³³ CRC, Articles 3 and 7; UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality, 21 December 2012, <https://www.refworld.org/docid/50d460c72.html>, para. 11, p. 3.



UNHCR

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

For improved protection and integration of refugees and stateless persons, UNHCR recommends Sweden to:

1. Uphold the quality and efficiency of the Swedish asylum procedure, including by safeguarding the resources of the Swedish Migration Agency and the Migration Courts;
2. Adopt a holistic and child-sensitive approach to the reception of unaccompanied and separated asylum-seeking children, by exploring the concepts “Barnahus” and “Barnlanda”;
3. Provide a secure and stable residence status to both adults and children who are recognized as in need of international protection to facilitate an early and effective integration process;
4. Grant the same rights to refugees and other beneficiaries of international protection, in particular in respect of length of residence permits and family reunification, in order to avoid discrimination and ensure equal treatment;
5. Remove legal, financial and practical obstacles to family reunification to ensure the earliest possible reunification of families and to protect especially women and children from having to undertake dangerous and risky journeys to reach their loved ones;
6. Extend the right to family reunification to encompass a broader range of family members, beyond the nuclear family, who are dependent on each other;
7. Refrain from introducing an indicative nominal threshold for the number of asylum-seekers to be received in Sweden annually;
8. Continue working towards an effective integration system, with a focus on fostering welcoming communities, social and labor market inclusion of refugees, through enhanced involvement of local authorities and civil society and sufficient funding of integration programmes;
9. Introduce a definition of a stateless person in Swedish law and establish a statelessness determination procedure including the granting of a formal status for those stateless persons who are unable to return to their country of previous habitual residence;
10. Align the Swedish Citizenship Act with the standards of the 1954 and the 1961 Conventions and the CRC so that children born stateless in Sweden will acquire citizenship automatically, or as soon as possible after birth, regardless of their residence status;
11. Provide for naturalization of stateless persons after a five-year period of residence - with a temporary or permanent residence permit.

3. Swedish engagement in strengthening the EU refugee protection regime

UNHCR recognizes the Swedish Government’s strong voice within the EU, advocating for greater solidarity and a joint and fair EU solution to the situation of refugees arriving to Europe, and commends the Government’s efforts to ensure that the reform of the Common European Asylum System (CEAS) is based on international standards and a more equal distribution of refugees. UNHCR urges Sweden to continue to use its standing as a global advocate for human rights, democracy and solutions to continue focusing on promoting and building a coordinated European response and a unified European asylum and migration policy.

The new legislative cycle at EU level and the envisaged European Commission’s Pact on Migration and Asylum³⁴ provide new opportunities to forge common ground among Member States on evolving issues

³⁴ UNHCR, Recommendations for the European Commission’s Proposed Pact on Migration and Asylum, January 2020, <https://www.refworld.org/docid/5e3171364.html>.

of asylum and migration, in line with the GCR³⁵ and the Global Compact for Migration.³⁶ UNHCR considers that a comprehensive approach to address the internal and external aspects of asylum and migration policies would be the most effective, sustainable and humanitarian way of reaching an agreement among Member States on the reform of the CEAS, including on the issues of solidarity, protection-sensitive entry systems, a strong commitment to resettlement and complementary pathways as well as increased support to countries outside of the EU.³⁷ It is vital that the reform to secure key improvements to the EU asylum rules remains high on the political agenda - notwithstanding the effects of the COVID-19 pandemic. Despite some progress on the reform of the CEAS, a significant breakthrough on EU solidarity is still needed.

The establishment of a predictable intra-EU solidarity mechanism in order to support all EU MS receiving a disproportionate number of asylum claims, as well as fair and effective asylum procedures in EU Member States are necessary, as well as working towards finding a long-term solution for the Mediterranean with predictable disembarkation arrangements into a reality.

UNHCR has repeatedly urged States to address the untenable situation of asylum-seekers on the Greek islands and to accelerate transfers to the mainland. In the same vein, UNHCR welcomes the commitment of the European Commission and that of certain EU Member States to help unaccompanied children and other particularly vulnerable individuals in Greece through relocation and reunion with family members elsewhere in the Europe. European solidarity is urgently needed to address the severe overcrowding and living conditions on the islands and to ensure the safety of the most vulnerable, in particular children. UNHCR would like to encourage Sweden to join these EU efforts and commit to the reception of unaccompanied children and other very vulnerable profiles from Greece, as a concrete and tangible measure of solidarity and responsibility sharing in Europe.

Internal EU solidarity must also be accompanied by continued access for people to the EU's asylum procedures, rather than shifting protection responsibilities and externalizing asylum processing to non-EU countries. UNHCR therefore encourages Sweden to further emphasize effective access to EU territory, fair and effective asylum procedures and to provide swift access to safety for those in need of international protection, including finding a long-term predictable solution for disembarkation arrangements as well as ensuring timely returns for those who are not in need of international protection.

Further, in the spirit of the GCR, UNHCR encourages Sweden to continue to promote EU's external engagement, including in its neighborhood with a view to expanding the protection space globally. UNHCR stands ready to support the development of a fair and efficient asylum system within the EU and the development of responses to tackle forced displacement globally.

³⁵ <https://www.unhcr.org/ph/the-global-compact-on-refugees>.

³⁶ <https://www.iom.int/global-compact-migration>.

³⁷ UNHCR, Recommendations for the Croatian and German Presidencies of the Council of the European Union, 9 January 2020, <https://www.refworld.org/docid/5dee08387.html>.

To contribute to an effective EU protection regime, UNHCR recommends Sweden to:

1. Actively support the development of a Common European Asylum System, based on international protection standards and practices, including access to protection in the EU;
2. Support the establishment of an effective mechanism to facilitate greater intra-EU solidarity and responsibility sharing to support EU MS receiving a disproportionate number of asylum claims;
3. Pending long-term reform of the European asylum rules, participate in the development of a safe and predictable disembarkation mechanism in relation to the Mediterranean Sea and processing of persons rescued at sea, including solidarity measures across the region;
4. Promote EU cooperation with both countries of origin and transit to expand the global protection space for persons in need of international protection.

4. Swedish engagement in strengthening the global commitment for the protection of refugees

In the past decade, global forced displacement has increased in scale and complexity. The forcefully displaced population has increased by over 50 per cent since 2007 – from 42.7 million to 70.8 million in 2018. Contrary to what is often portrayed, the majority of persons forced to flee from their homes stay in their own or flee to the immediate neighboring country, and not to Europe. Developing regions are hosting 95 per cent of displaced persons globally, with the least developed countries providing asylum for one-third of the global total. Only a very small fraction of the displaced population may eventually move to the Organisation for Economic Cooperation and Development countries.

While fewer people are coming to Europe, too many are still tragically losing their life at sea trying to reach safety. Pushbacks and abuses at land borders also continue, meaning many people cannot access Europe to seek protection. Meanwhile, the world's response to large-scale movements remains inadequate and underfunded leaving many refugees with a very uncertain future.

With the world mobilizing to combat the spread of COVID-19, many countries are rightly adopting exceptional measures, limiting air travel and cross-border movements. However, wars and persecution have not stopped and UNHCR is concerned that measures adopted by some countries could block altogether the right to seek asylum. Refugees and the forcibly displaced face double challenges by the COVID-19 pandemic and have particular needs that should be considered as part of emergency preparedness efforts and the overall operational response.

4.1. The Global Compact on Refugees

The focus on strengthened burden and responsibility sharing in the context of forced displacement enshrined in the GCR recognizes that there needs to be more complementarity between the approaches of humanitarian, development and peace-building actors to overcome the challenges of displacement, as well as to address root causes of displacement. The GCR, adopted in December 2018, although not legally binding, guides the international community as a whole in supporting refugees and countries and communities hosting large numbers through the mobilization of political will, a broadening of the base of support, and the activation of arrangements for more equitable and predictable burden- and responsibility-sharing.

Sweden has played a crucial role in its political support and active engagement throughout the whole process of the New York Declaration, the Comprehensive Refugee Response Framework and the GCR. UNHCR appreciates that Sweden has been promoting a rights-based approach, a whole of government response, a positive refugee narrative, addressing root causes, the humanitarian-development nexus, the role of education and private sector in creating self-reliance,

The first Global Refugee Forum, convened in December 2019 to facilitate contributions towards the objectives of the GCR, indicated a strong international commitment to come together to work in the spirit of the UN's 2030 Agenda for Sustainable Development and help refugees and their hosts to live lives in dignity. UNHCR encourages Sweden to continue promoting and supporting the effective implementation of the GCR, including through the pledges made by Sweden and other States.³⁸

4.2. Resettlement and Complementary Pathways

As opportunities for voluntary repatriation and local integration of refugees in the current global landscape are increasingly limited, resettlement becomes an even more important tool for protection and for finding solutions for some of the world's most vulnerable refugees. Intensified international efforts are critical to address the shortage of resettlement opportunities. Sweden, and other States, can demonstrate their commitment to global solidarity and responsibility-sharing with States hosting large numbers of refugees, by expanding resettlement programs and the range of legal pathways for refugees, which will also help to combat the business model of human smuggling and trafficking networks.

As part of the GCR, UNHCR, States and Partners adopted in 2019 a global three-year strategy on Resettlement and Complementary Pathways.³⁹ Sweden has assumed a leading role in resettlement and in galvanizing support for this strategy, which calls for an increase in the number of resettlement places and countries engaged in resettlement, while promoting a whole of society approach, involvement of more actors and capacitate countries, civil society and other actors and build welcoming societies.

Due to COVID-19 related travel restrictions introduced in the early months of 2020, many resettlement departures for refugees have been suspended as a temporary measure to be in place only for as long as it remains essential. As resettlement remains a life-saving tool for many refugees, UNHCR and IOM appeal to States to ensure that movements can continue for the most critical emergency cases wherever possible.

UNHCR has a long-standing partnership with Sweden on resettlement. Thousands of refugees, including many women and children, have been able to find safety and restart their lives through the Swedish resettlement programme. UNHCR therefore looks forward to sustained cooperation with Sweden in working together to find solutions for refugees both in Europe and globally, through resettlement and in seeking other complementary pathways for refugees, including community sponsorships programs.

4.3. Sweden's political and financial support to international refugee situations

UNHCR appreciates Sweden's role in international crisis management, including mediation and peace keeping. UNHCR also wishes to highlight Sweden's steadfast commitment to multilateralism and support for the UN. Sweden's humanitarian policy supports protection of vulnerable groups in displacement, including vulnerable girls and women, survivors of sexual and gender-based violence and persons with disabilities. Sweden provides essential funding and has an important role to play to help displaced persons thrive rather than only survive with its support for the humanitarian – development nexus including exploring opportunities for targeting development programs in large refugee-receiving

³⁸ For further information about the Global Compact on Refugees, including pledges and contributions, see <https://globalcompactrefugees.org/index.php/>.

³⁹ UNHCR, The Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways, June 2019, <https://www.unhcr.org/5d15db254.pdf>.

countries to meet the needs of both host communities and refugees. At the global level, UNHCR looks forward to engaging closely with Sweden on the issue of climate change induced displacement

Sweden is one of UNHCR's most important strategic donors and UNHCR's biggest donor of flexible and unrestricted core funding. UNHCR appreciates Sweden's continued commitment to predictable and increased levels of flexible funding to both humanitarian and development programs benefitting host communities and refugees as well as to finding humanitarian solutions and developing new innovative approaches to end displacement.

To enhance Swedish support to refugee protection around the world, UNHCR recommends Sweden to:

1. Continue to promote the Global Compact on Refugees – ensuring its effective implementation – and sustained engagement in placing protection and solutions of refugee situations at the top of the international political agenda;
2. Continued support for a flexible resettlement quota and introduction of complementary pathways, including community-based sponsorship programs and measures to improve access to efficient family reunification procedures, as a demonstration of global solidarity and responsibility sharing for refugee protection;
3. Continue commitment to increased predictable financial and flexible humanitarian and development funding to support international and local organizations as well as host countries respond to refugee situations around the world.

UNHCR Representation for Northern Europe, May 2020