

**Observations by the United Nations High Commissioner for Refugees Regional  
Representation for Northern Europe on the draft law proposal  
“Clearer authority for the Police when implementing decisions concerning expulsion”  
(*Tydligare befogenheter för polisen när beslut om avvísning eller utvisning verkställs*)**

## I. INTRODUCTION

1. The United Nations High Commissioner for Refugees (hereafter “UNHCR”) Regional Representation for Northern Europe is pleased to present its observations to the draft law proposal “Clearer authority for the Police when implementing decisions concerning expulsion” (*Tydligare befogenheter för polisen när beslut om avvísning eller utvisning verkställs*), (hereafter “the Proposal”).
2. As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees,<sup>1</sup> UNHCR has a direct interest in law and policy proposals in the field of asylum. According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”.<sup>2</sup> UNHCR’s supervisory responsibility is reiterated in Article 35 of the 1951 Convention<sup>3</sup> and in Article II of the 1967 Protocol relating to the Status of Refugees<sup>4</sup> (hereafter collectively referred to as the “1951 Convention”).<sup>5</sup> It has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (hereafter “TFEU”).<sup>6</sup>
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereafter “UNHCR Handbook”) and subsequent Guidelines on International Protection.<sup>7</sup> 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.
4. The following comments are based on international refugee protection standards set out in the 1951 Convention, on Conclusions on International Protection of the UNHCR Executive Committee (hereafter “ExCom”), on UNHCR guidelines, as well as applicable international human rights and EU law. While neither UNHCR ExCom Conclusions nor UNHCR guidelines are binding on States, they contribute to the formulation of *opinio juris* by setting out standards of treatment and approaches to interpretation which illustrate States’ sense of legal obligation towards asylum-seekers and refugees.<sup>8</sup> As a member of the UNHCR

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<sup>1</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html> (hereafter “UNHCR Statute

<sup>2</sup> *Ibid.*, para. 8(a).

<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>.

<sup>4</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html>.

<sup>5</sup> According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

<sup>6</sup> European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

<sup>7</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

<sup>8</sup> Goodwin Gill/McAdam, *The Refugee in International Law*, Oxford University Press, 2007, p. 217.

ExCom since its inception in 1958, Sweden has contributed extensively to the development of the Conclusions on International Protection, adopted unanimously by the ExCom.

5. UNHCR understands that the personal scope of the Proposal is to encompass any alien who is to be removed from Sweden, including rejected asylum-seekers as well as asylum-seekers who are to be transferred to another country under the Dublin Regulation of the European Union.<sup>9</sup> Persons who after due considerations of the merits of their claims are found not to be in need of international protection,<sup>10</sup> generally fall outside of UNHCR's mandate.<sup>11</sup> UNHCR considers that providing effective and efficient outcomes, including return, for persons who are found not to be in need of international protection, those who do not qualify for a residence permit on other grounds, and absent compelling humanitarian or statelessness-related considerations, is essential to maintain a credible asylum system.<sup>12</sup> The return of persons not in need of international protection is increasingly seen as an integral part of the asylum and migration policies of states,<sup>13</sup> although UNHCR considers that the sustainability of return is best guaranteed if persons who do not qualify for international protection or a residence permit on other grounds in the host country, return home voluntarily. Assisted voluntary return must therefore be considered as the preferred option. At all times, the return of persons found not to be in need of international protection must be carried out in a humane manner, and with full respect for their human rights and dignity, without resort to excessive force and, in the case of children, taking due account of their best interests.<sup>14</sup>
6. In view of the above, UNHCR is pleased to present the below observations to the Proposal, with a view to support the Government of Sweden in its endeavours to maintain a humane, credible and efficient asylum system.

## II. THE PROPOSAL

7. The Proposal suggests that the Police and the Security Police, (hereafter collectively referred to as "the Police") may take custody of an alien, including families with children and unaccompanied or separated children, for 24 hours if necessary to implement the removal, and for another 24 hours if there are particular reasons. Once an alien has been

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<sup>9</sup> 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, (hereafter the "Dublin Regulation"), available at: <http://www.refworld.org/docid/51d298f04.html>

<sup>10</sup> UNHCR defines a person found not to be in need of international protection in this context as a person who has sought international protection, and who, after due consideration of his/her asylum claim in a fair procedure, has been determined not to be in need of protection as a refugee, beneficiary of subsidiary protection, or as a person entitled to protection in accordance with other international obligations or national law.

<sup>11</sup> With the exception of stateless persons, who still can fall within the mandate. Persons who are to be removed following admissibility procedures normally fall within UNHCR's mandate. For further information about the mandate of UNHCR, see UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, available at: <http://www.refworld.org/docid/5268c9474.html>.

<sup>12</sup> See e.g. UNHCR, *Conclusion on the return of persons found not to be in need of international protection No. 96 (LIV) - 2003, 10 October 2003, No. 96 (LIV) – 2003*, available, together with other ExCom Conclusions on the return of persons found not to be in need of international protection, at: <http://www.refworld.org/docid/4f9d415d2.html>. See also UNHCR, *The 10-Point Plan in Action, 2016 Update, Chapter 9: Return Arrangements for Non-Refugees and Alternative Migration Options*, December 2016, available at: <http://www.refworld.org/docid/584185c14.html>.

<sup>13</sup> UNHCR, *Protection Policy Paper: The return of persons found not to be in need of international protection to their countries of origin: UNHCR's role*, November 2010, page 2, available at: <http://www.refworld.org/docid/4cea23c62.html>.

<sup>14</sup> UNHCR, *The 10-Point Plan in Action, 2016 Update, Chapter 9: Return Arrangements for Non-Refugees and Alternative Migration Options*, December 2016, page 230, available at: <http://www.refworld.org/docid/584185c14.html>.

taken into custody, the Police will have the right to use coercive measures to carry out the removal. The Proposal underlines that the taking into custody is not the same as detention, and that if detention is required, a separate decision should be adopted. However, the Proposal does not exhaustively list the situations when the Police may take an alien into custody, nor does it specify the coercive measures that may be used. Instead, the Proposal refers to the right of the Police to use force, expressed in Police Act,<sup>15</sup> specifically Section 10, paragraph 1, point 2, which justifies the use of force if other measures are insufficient, and if the persons who is to be deprived of his or her liberty tries to escape or otherwise resists the deprivation of liberty. The Proposal also refers to the general norms of self-defence expressed in the Criminal Law Act.<sup>16</sup> Reference is further made to the general principle of the proportionality of the use of force expressed in Section 8 of the Police Act. According to the Proposal, the Police may also carry out body searches and enter premises based on a search warrant to search for an alien who is to be removed, the authority for which also follows from the Police Act. The Proposal suggests that decision to take an alien into custody by the Police shall not be open to appeal.

8. The Proposal also provides for a right for the Police to detain children against whom the Police has adopted a removal decision. The Proposal however emphasize that children shall be placed in detention only in exceptional circumstances, and that the best interests of the child shall be considered particularly.

### III. OBSERVATIONS

9. UNHCR acknowledges that coercive measures may be required in certain instances and under certain conditions to ensure the efficient removal of aliens from the territory. Coercive removals may be fraught with difficulty and render the individual concerned extremely vulnerable and at increased risk of abuse. UNHCR thus welcomes a stricter regulation of these situations and the reference to the principle of proportionality in the Proposal. As will be explained below, UNHCR recommends that the Proposal define the coercive measures with greater specificity, incorporate relevant safeguards in line with international and EU law standards and to ensure that any removal by force is carried out in a humane manner with due respect for the dignity and physical integrity of the individual concerned.

#### **Right to liberty and security of person, and freedom of movement**

10. UNHCR notes that the Proposal does not expand on how the proposed restrictions of the liberty or freedom of movement of persons would comply with international and EU law and standards. The right to liberty and security of person and the right to freedom of movement are fundamental human rights that are reflected in all major international and regional human rights instruments.<sup>17</sup> States have a right to restrict these fundamental rights,

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<sup>15</sup> Polislag (1984:387), available at: [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/polislag-1984387\\_sfs-1984-387](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/polislag-1984387_sfs-1984-387).

<sup>16</sup> Brottsbalk (1962:700) available at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700\\_sfs-1962-700](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700).

<sup>17</sup> The following instruments may be of particular interest in the Swedish context: UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Articles 3 and 9, available at: <http://www.refworld.org/docid/3ae6b3712c.html>, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, (hereafter "ICCPR") Articles 9 and 12, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>, Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, (hereafter "ECHR"), Article 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>, Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those*

provided said restrictions are authorized by law, proportional, justified in the individual case and are used as a means of last resort.<sup>18</sup> Measures that fall short of detention proper, or are alternative forms of detention, must be “governed by laws and regulations in order to avoid the arbitrary imposition of restrictions on liberty or freedom of movement.”<sup>19</sup>

11. For a restriction of these fundamental rights to be lawful, it must conform with the principle of legal certainty.<sup>20</sup> The UNHCR Detention Guidelines provide that “[t]his requires *inter alia*, that the law and its legal consequences be foreseeable and predictable.”<sup>21</sup> Further, measures restricting the liberty or freedom of movement of an individual needs to be explicitly defined in national legislation in order to meet the requirements of legal certainty,<sup>22</sup> which is also emphasised in Article 52(1) of the EU Charter of Fundamental Rights.<sup>23</sup> The principle of legal certainty, as a corollary to the rule of law, has also been recognised as a general principle by the EU, including that laws must be certain, and its implications foreseeable.<sup>24</sup>
12. The restriction of the right to liberty and security of person and the right to freedom of movement in the asylum and migration context can take various forms and span across “a spectrum of deprivation of liberty”.<sup>25</sup> At the extreme end of the spectrum is detention, which UNHCR defines as “deprivation of liberty or confinement in a closed place which [a person] is not permitted to leave at will”.<sup>26</sup> However, other measures short of detention, which impose a lesser restriction of the liberty and freedom of movement of persons, should also entail guarantees against arbitrariness and are subject to international and EU law and standards.<sup>27</sup> Alternatives to detention, for example, involve some form of restriction of liberty or freedom of movement, and therefore are subject to legal safeguards. As explained in the UNHCR Detention Guidelines, the distinction between detention and lesser restrictions on movement to be one of “degree or intensity and not one of nature or substance”.<sup>28</sup>

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already included in the Convention and in the First Protocol thereto, 16 September 1963, ETS 46, available at: <http://www.refworld.org/docid/3ae6b3780.html>.

- 18 For further elaboration, see Chapter B.3, UNHCR, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, April 2011, PPLA/2011/01.Rev.1, (hereafter “Back to Basics”), available at: <http://www.refworld.org/docid/4dc935fd2.html>.
- 19 UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, (hereafter “UNHCR Detention Guidelines”), page 22, available at: <http://www.refworld.org/docid/503489533b8.html>.
- 20 UNHCR Detention Guidelines, page 14.
- 21 *Ibid*, see also endnote no. 31 of the UNHCR Detention Guidelines, referring to the case law of the European Court of Human Rights: *Bozano v. France*, (1986), ECtHR, App. No. 9990/82, para. 54, available at: <http://www.unhcr.org/refworld/docid/4029fa4f4.html>; *H.L. v. United Kingdom*, (2004), ECtHR, App. No. 45508/99, para. 114, available at: <http://www.unhcr.org/refworld/docid/502d48822.html>. See, also, *Dougoz v. Greece*, (2001), ECtHR, App. No. 40907/98, para 55: the law must be “sufficiently accessible and precise, in order to avoid all risk of arbitrariness”, available at: <http://www.unhcr.org/refworld/docid/3deb8d884.html>.
- 22 *Ibid*. In end note no. 33 of the UNHCR Detention Guidelines, it is explained that this is the recommendation of the UN Working Group on Arbitrary Detention (WGAD), *Report to the Fifty–sixth session of the Commission on Human Rights*, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5, available at: <http://www.unhcr.org/refworld/pdfid/3b00f25a6.pdf>.
- 23 European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal of the European Communities, 2000 OJ C 364/1, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b70.html>.
- 24 See: European Union, Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs Legal Affairs, *The General Principles of EU Administrative Procedural Law, In-depth Analysis*, page 17, available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL\\_IDA\(2015\)519224\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA(2015)519224_EN.pdf).
- 25 UNHCR Detention Guidelines, page 9.
- 26 *Ibid*.
- 27 See in part. Art. 2. of 4<sup>th</sup> Protocol to the ECHR; see also Back to Basics, page 8, and Chapter B.7.
- 28 UNHCR Detention Guidelines, page 9, where reference is made to the judgement of the European Court of Human Rights in *Guzzardi v. Italy*, (1980), ECtHR, App. No. 7367/76, para. 93, available at: <http://www.unhcr.org/refworld/docid/502d42952.html>.

13. Of particular significance in the Swedish context is the European Convention on Human Rights (hereafter “ECHR”),<sup>29</sup> which Sweden has incorporated as domestic law and is directly applicable in Sweden. There are primarily two provisions in the ECHR which may be of relevance in relation to the measures in the Proposal. Firstly, its Article 5, which guarantees the right to liberty and security, is engaged as soon as a person is deprived of his or her liberty. The European Court of Human Rights has in its case law established that a deprivation of liberty is not limited to the confinement of a person in a closed space. Even in situations when force is not actually used, but it is clear that the Police will prevent a person from leaving at their free will, or where the Police will oblige a person to come with the police officer to a certain place, Article 5 is applicable.<sup>30</sup> Secondly, Article 2, paragraph 1 of Protocol No. 4, guarantees those lawfully within the territory of a State the right to freedom of movement. This provision is limited to those lawfully within the territory of a State, and may therefore not apply to persons who after a material assessment of their claim have been found not to be in need of international protection. Nonetheless, issues may arise in relation to other articles of the ECHR, such as Article 8, concerning private life, which is not restricted to those lawfully within a territory.<sup>31</sup>
14. The question to be considered is thus if the proposed right for the Police to take an alien into custody and use coercive measures is to be regarded as a deprivation of liberty, or a restriction of freedom of movement. As the Proposal does not provide a detailed explanation of what is meant by custody, or the coercive measures that may be resorted to, nor under what circumstances the initial custody decision may be extended, it is difficult for UNHCR to assess this question. However, the reference in the Proposal to Section 10 of the Police Act implies that what is proposed is a right for the Police to deprive an alien of his or her liberty, in which case the safeguards, set out in paragraphs 18 – 20 below, should apply.

### Access to legal remedy

15. UNHCR notes that the Proposal suggests granting the Police a wide margin of discretion to decide, without the oversight of an appellate court, when it is legitimate to take an alien into its custody for 24 hours in order to implement a removal order, and when to extend said decision for another 24 hours. UNHCR understands that in effect, the Police would be authorised to use a range of coercive measures, albeit for a limited period of time, without the possibility for the alien to request a review of the legality of the decision of the Police.
16. As noted above, any restriction of liberty or freedom of movement must be lawful and may not be used arbitrarily. The further along the spectrum of deprivation of liberty, that is to say, the stricter the restriction on liberty, the more stringent human rights safeguards must be put in place to guard against executive excess, arbitrariness and unlawful punishment. UNHCR thus considers that individuals who are subject to restrictions of their liberty should have timely access to an effective complaints mechanism by an independent body.<sup>32</sup>
17. The ECHR, under Article 5, guarantees the individual who has been deprived of her or his liberty to bring proceedings challenging the lawfulness of the deprivation of liberty before a

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<sup>29</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>.

<sup>30</sup> Council of Europe, *The right to liberty and security of the person: A guide to the implementation of Article 5 of the European Convention on Human Rights*, December 2004, Human rights handbooks, No. 5, page 17 – 19, available at: <http://www.refworld.org/docid/49f181e12.html>.

<sup>31</sup> See, for example, ECtHR, *A.A. v. the United Kingdom*, No. 8000/08, 20 September 2011, ECtHR, *Amrollahi v. Denmark*, No. 56811/00, 11 July 2002, ECtHR, *Beldjoudi v. France*, No. 12083/86, 26 March 1992; ECtHR, *Boultif v. Switzerland*, No. 54273/00, 2 August 2001; ECtHR, *Udeh v. Switzerland*, No. 12020/09, 16 April 2013.

<sup>32</sup> UNHCR Detention Guidelines, page 22.

court, which must decide speedily. The supervision by the Court must allow for an oral hearing, and the individual deprived of liberty should have access to legal assistance.<sup>33</sup>

### **Treatment of persons whose liberty or freedom of movement is restricted**

18. UNHCR notes that the proposed measures fall within the EU Returns Directive, which regulates that coercive measures to remove an alien may only be used as a last resort.<sup>34</sup> Further, the Returns Directive continues that “such measures shall be proportionate and shall not exceed reasonable force”, and that the measures shall be implemented “in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.”
19. It is also the position of UNHCR that measures undertaken to expedite or implement the return of persons found not to be in need of international protection should be undertaken in a humane manner, with full respect for the human rights and dignity of that person.<sup>35</sup> UNHCR thus recommends that reference is made to the human rights, dignity and physical integrity of the alien in the forthcoming draft law proposal.
20. Respect for the rights and human dignity of returnees during the return process, particularly in the event of forced returns, is essential. UNHCR has in its 10-Point Plan in Action suggested that guidelines and trainings are developed for the Police and other law enforcement officials, in order to “promote a better understanding of applicable legal and policy standards as well as appropriate tools to handle difficult situations in a way that respects the rights and dignity of the returnees”.<sup>36</sup> UNHCR recommends that the Swedish Government take measures to ensure that Police officers and other law enforcement officials have relevant training for working with returnees. UNHCR stands ready to support the Government and the Police in developing appropriate training for those involved in the use of coercive measures, as suggested in the Proposal.

### **Detention of children**

21. The Proposal suggests that the Police be provided the same authority as the SMA to detain children. The Police would thus have the right to detain children against whom the Police has adopted a removal decision. From the Proposal, it is unclear to UNHCR in what situations the Police would adopt removal decisions against children. Regardless, UNHCR emphasizes that in the opinion of UNHCR, children should never be detained for immigration related purposes, irrespective of their legal/migratory status, or that of their parents, and that detention is never in the best interests of a child. UNHCR has recently

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<sup>33</sup> Council of Europe, *The right to liberty and security of the person: A guide to the implementation of Article 5 of the European Convention on Human Rights*, December 2004, Human rights handbooks, No. 5, pages 60 - 65, available at: <http://www.refworld.org/docid/49f181e12.html>, see also *Guzzardi v. Italy*, Application no. 7367/76, Council of Europe: European Court of Human Rights, 6 November 1980, available at: <http://www.refworld.org/cases,ECHR,502d42952.html>. See also European Union: European Agency for Fundamental Rights, *Handbook on European law relating to asylum, borders and immigration*, June 2014, pages 144-146 on the definition of deprivation of liberty and pages 163 – 166 on procedural safeguards that must be in place when restricting the right to liberty, available at: <http://www.refworld.org/docid/53ad3c1a4.html>.

<sup>34</sup> 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*, (hereafter the “Return Directive”), Article 8(4), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>.

<sup>35</sup> *Op. Cit* 12, ExCom Conclusion No. 96.

<sup>36</sup> UNHCR, *The 10-Point Plan in Action, 2016 Update, Chapter 9: Return Arrangements for Non-Refugees and Alternative Migration Options*, December 2016, page 233, available at: <http://www.refworld.org/docid/584185c14.html>.

published a position on the detention of children, to which we refer for further details on our position.<sup>37</sup>

### **Forced return monitoring system**

22. UNHCR notes that while Article 8(6) of the Returns Directive, states that “Member States shall provide for an effective forced-return monitoring system”, Sweden does presently not have such a system in place.<sup>38</sup>
23. The Parliamentary Assembly of the Council of Europe has expressed concern over the manner in which aliens are forcibly removed from Europe and has noted an “urgent need to reinforce the human rights dimension” of the forced return procedures, notably by establishing safeguards for the return procedure, and mechanisms for monitoring forced removal.<sup>39</sup> The Parliamentary Assembly further underlined that “the transit phase is the most critical phase of the removal process. It is often then that the greatest risks of ill-treatment occur due to the use of coercive restraining measures, which have, on occasion, resulted in death.”<sup>40</sup>
24. As the present Proposal is meant to provide for coercive measures to be legitimately undertaken during the transit procedure, UNHCR would urge Sweden to establish an independent monitoring mechanism, which will have the authority to monitor all stages of the forced return, including the coercive measures suggested in the present Proposal.

## **IV. CONCLUDING RECOMMENDATIONS**

25. UNHCR recommends the Government of Sweden to
  - Clearly define in law in what is meant by the term “custody” and the situations in which an individual may be taken into custody, as well as the types of coercive measures that may be used, in order to meet the requirement of legal certainty;
  - Further analyse, and clearly set out whether the proposed right to take an individual into custody and the coercive measures that may be taken fall within Article 5 or Article 2, paragraph 1 of Protocol No. 4 of the ECHR, or Article 6 of the EU Charter of Fundamental Rights;
  - Incorporate in the Proposal the right for individuals who are taken into custody to access to a complaint mechanisms and an effective remedy, ideally a court of law, as well as to legal representation;
  - Insert a provision that all removals must be carried out in a humane manner with due respect for the dignity and physical integrity of the person concerned in line with the EU Return Directive and UNHCRs guidance;

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<sup>37</sup> UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>.

<sup>38</sup> See EU Fundamental Rights Agency background information at: <http://fra.europa.eu/en/theme/asylum-migration-borders/forced-return>.

<sup>39</sup> Council of Europe: Parliamentary Assembly, *Monitoring the return of irregular migrants and failed asylum seekers by land, sea and air*, 7 November 2013, Doc. 13351, paragraph 2, available at: <http://www.refworld.org/docid/52f49c9f4.htm>.

<sup>40</sup> *Ibid*, paragraph 6.

- Withdraw the provision authorizing the detention of children given that children, including children with their parents should never be detained for immigration related purposes as being contrary to their best interests.
- Ensure that police officers and other law enforcement officers who are authorised to use coercive measures when implementing removal orders, have access to appropriate training programmes and regular training;
- Establish an independent forced return monitoring system, which will have the authority to monitor all stages of the forced return.

**UNHCR Regional Representation for Northern Europe**

3 February 2017