

Comments by the United Nations High Commissioner for Refugees (UNHCR) on the draft Law ‘Municipal Task Asylum Reception Facilities’ (‘wet gemeentelijke taak asielopvangvoorzieningen’)

I. Introduction

1. UNHCR welcomes the introduction of the draft Law ‘Municipal task asylum reception facilities’ (hereafter referred to as ‘the Draft Law’) and appreciates the opportunity to present its comments on the Draft Law.
2. UNHCR offers these observations in its capacity as the Agency entrusted by the United Nations General Assembly with the responsibility of providing international protection to refugees and other persons within its mandate and of assisting governments in seeking permanent solutions to the problems of refugees.¹ Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,² whereas the 1951 Convention relating to the Status of Refugees (hereafter referred to as “the 1951 Convention”)³ and its 1967 Protocol relating to the Status of Refugees (“the 1967 Protocol”)⁴ oblige States 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 and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union.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

¹ 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>.

² *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 UNHCR’s supervisory function to one or other specific international refugee conventions. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002, available at: <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

³ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html> <https://www.refworld.org/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”.

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

⁵ European Union, Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L. 326/47-326/390; 26.10.2012, available at: <http://www.refworld.org/docid/52303e8d4.html>.

instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection (“UNHCR Handbook”)⁶. UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

4. In the section below, UNHCR offers its comments on the Draft Law and its Explanatory Memorandum and would greatly appreciate the opportunity to continue this dialogue with the Government of the Netherlands, along with other relevant stakeholders, on this important legislation with the aim to establish a sustainable, predictable, and humane reception system.

II. General Observations

5. UNHCR acknowledges the recent significant reception capacity challenges that the Government of the Netherlands is facing in terms of accommodating refugees and asylum seekers and hopes that the Draft Law would contribute to addressing some of these challenges. UNHCR considers that the Draft Law which aims to introduce the distribution of asylum-seekers more equally across municipalities, will lead to a more flexible, sustainable and predictable reception system, leading to small scale and adequate reception facilities. UNHCR considers that small-scale reception facilities that are more embedded in the communities could lead to enhanced participation and inclusion of refugees and asylum-seekers in Dutch society as outlined in UNHCR/VWN’s position paper: *“Naar een duurzame en menswaardige asielopvang: contouren opvang nieuwe stijlopvang nieuwe stijl”*⁷, jointly drafted with the Dutch Council for Refugees (*Vluchtelingenwerk Nederland*).⁸ The possibility to live in a safe environment and to interact with community, is essential to the integration process of asylum-seekers and refugees. It enables them to use their resilience, determination, and resourcefulness to contribute to their local communities and economies. Direct and sustained engagement between asylum-seekers and refugees, and their host communities is essential. It builds familiarity and empathy and creates opportunities for social cohesion. It also contributes to a sense of mutual responsibility to one another and to the society as a whole.⁹

⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4, available at: <https://www.refworld.org/docid/5cb474b27.html>

⁷ <https://www.unhcr.org/nl/wp-content/uploads/sites/93/2022/10/Asielopvang-nieuwe-stijl-position-paper-VluchtelingenWerk-en-UNHCR-juli-2022.pdf>.

⁸ The position paper was shared with the Ministry of Justice and Security, COA and United Municipalities Association on 21 July 2022

⁹ *UNHCR Comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)* – COM (2016) 465, August 2017, available at: <https://www.refworld.org/docid/59a6d6094.html>, and Executive Committee of the High Commissioner’s Programme, *Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) - 2002*, 8 October 2002, No. 93 (LIII), available at: <https://www.refworld.org/docid/3dafdd344.html> and *Global*

III. Specific Observations:

6. UNHCR notes with concern that of the current reception capacity, only 15,000 reception places¹⁰ are considered as sustainable.¹¹ This number is far below the yearly average of over 36,000 new arrivals over the past 8 years (excluding 2020, when arrivals were considerably lower due to COVID-19 mitigating measures)¹² and the average occupancy rate of around 30,000 reception places, as identified by the Central Agency for Reception of Asylum Seekers (COA). UNHCR notes that Article 2 of the Draft Law allows the relevant Minister to announce every two years the required reception places for the following two years. This could lead to a scaling down of reception capacity in times of lower arrivals, which may lead to similar extensive shortages in the reception system, as seen in the recent year and the subsequent inadequacy of reception conditions which these shortages have led to. Therefore, UNHCR recommends that the current discussion and proposal for the determination of the reception capacity, should reflect a more longer-term vision by ensuring a minimum reception capacity of 30,000 sustainable reception places, guaranteeing predictability of the reception system.¹³ Experience has shown that quickly scaling up reception capacity is difficult, costly, causes dissension in host communities and often results in inadequate reception conditions. Maintaining a minimum capacity will ensure that when needed, the reception system is able to respond immediately in a flexible and adequate manner in case of an increase in new arrivals. As explained in the Explanatory Memorandum accompanying the Draft Law, in times of lower arrivals of new asylum-seekers, this capacity would not remain unused, as it could be used to accommodate other groups in need of temporary accommodation, such as migrant workers or (international) students.

7. UNHCR welcomes the expansion of the definition of reception facility ('*opvangvoorziening*'), as laid down in article 1 of the Draft Law and article 1 of the Law Central Agency for Reception of Asylum-Seekers ('*Wet COA*'), to enable municipalities to manage reception facilities for refugees and asylum-seekers, rather than these facilities being solely run by a central government authority. UNHCR has observed, including through monitoring visits, that reception of refugees and asylum-seekers can be adequately provided by other organizations too, including municipalities.¹⁴

Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems, 4 September 2001, EC/GC/01/17, available at: <https://www.refworld.org/docid/3bfa81864.html>

¹⁰ Explanatory Memorandum to the draft law Municipal Task Asylum Reception Facilities, p. 4.

¹¹ It remains however unclear, how the Government of the Netherlands defines a 'sustainable reception place', and UNHCR considers that besides the long-term character, it also includes the quality of a sustainable reception place which also complies with international and EU standards and that it is not solely based on the duration of the availability of the reception facility.

¹² Number of asylum seekers in the Netherlands: 2015: 58.880; 2016: 31.642; 2017: 31.327; 2018: 30.380; 2019: 29.435; 2020: 19.132; 2021: 36.620; Until October 2022: 39.311. Data source CBS and IND.

¹³ This minimum reception capacity corresponds to the average occupancy rate as identified by COA: https://coa.h5mag.com/iedereen_telt_mee_2021/cijfers_07559.

¹⁴ <https://www.unhcr.org/nl/2022/10/opvangcrisis-opvang-nieuwe-stijl-asielzoekers/>.

8. UNHCR welcomes that article 3 of the Draft Law, as well the Explanatory Memorandum, provides that a certain number of reception places be assigned to accommodate refugees and asylum-seekers with specific needs. However, UNHCR notes the absence of important categories of persons with specific needs in the Explanatory Memorandum which only mentions unaccompanied children as an example of a group with specific needs for whom separate and specialized reception facilities would need to be provided. UNHCR would like to recommend that the scope of special reception and adaptive accommodation facilities is extended to cover other non-exhaustive categories of applicants with specific needs in line with the EU legislation and UNHCR's past recommendations.¹⁵ Such categories of applicants with specific needs include persons living with disabilities, persons with medical needs including applicants who are mentally challenged, LGBTIQ+ persons, victims of human trafficking, survivors of torture, gender-based violence, and older persons amongst others. These specific groups may also face mobility issues and require accessible and acceptable accommodation facilities. Additionally, it is essential that reception facilities adhere to gender and age-sensitive standards to protect asylum seekers from (further) harm, which may include the capacity to create additional gender-aligned and/or child friendly accommodation options to meet the identified needs of persons with diverse genders, sexual identity and orientations, and survivors of gender-based violence.

9. UNHCR notes that in the Explanatory Memorandum the Government recommends to provinces and municipalities to strive to provide sustainable reception places. UNHCR recommends that this language be altered to identify durable reception facilities to be made available under this law to be the norm, rather than a good intention. Ensuring adequate reception conditions cannot be derogated from, even in times of pressure on reception systems as *inter alia* outlined in case law of the CJEU (*Saciri and others v. Belgium*).¹⁶ UNHCR is concerned about inadequate conditions observed in most emergency reception facilities, as well as the frequent transfers of asylum-seekers between (crisis) emergency facilities. Mental health issues are compounded in inadequate reception facilities and the uncertainty and lack of stability that frequent transfers inherently bring, may aggravate the issues further. This is particularly serious for the development and well-being of children, while it also impacts integration and inclusion. The reception of asylum-seekers and refugees under the new plan, should be arranged in an adequate and sustainable manner, with sufficient access

¹⁵ UNHCR Comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) – COM (2016) 465, August 2017, available at: <https://www.refworld.org/docid/59a6d6094.html>; UNHCR, *Response to Vulnerability in Asylum – Project Report*, December 2013, available at: <http://www.refworld.org/docid/56c444004.html>; and UNHCR Annotated Comments to 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), available at: <http://www.refworld.org/docid/5541d4f24.html>

¹⁶ In *Saciri v. Belgium* the Court ruled that the saturation of the reception network would not be a justification for any derogation from meeting an adequate standard of living as set forth in the Reception Conditions Directive. The principle of an adequate standard of living principle thus is the norm. Member States will therefore need to guarantee these in all circumstances, and they are understood to be higher than covering basic needs. CJEU, C-79/13 *Saciri and others*, lodged on 17 February 2013 <http://curia.europa.eu/juris/document/document.jsf?text=&docid=148395&pageIndex=0&doclang=en&mode=lst&dir=&cc=first&part=1&cid=161686>

to rights, basic needs, and services such as education, medical care, and psychosocial support, and must always comply with international and EU (European Union) standards.¹⁷

10. UNHCR is concerned that the reception capacity for refugees from Ukraine who fall under the Temporary Protection Directive (TPD) are not included under the Draft Law. Reception of refugees who fall under the TPD should comply with the same applicable international and EU standards. Additionally, the system the Draft Law proposes, with a designated task to municipalities to provide reception facilities for asylum seekers and refugees, is similar to what is currently in place for the reception of refugees from Ukraine. UNHCR encourages the Government of the Netherlands to include provision of the reception capacity needed for refugees from Ukraine under the municipal task as defined in the Draft Law.

UNHCR recommends that:

- The Government of the Netherlands ensures establishment of a minimum capacity of 30,000 reception places to guarantee a predictable and sustainable reception system.
- The Decree distributing the needed reception capacity over municipalities include that a certain number of reception places will be adapted accommodation accessible and functional for asylum-seekers and refugees with specific needs, such as children, women at risk, persons living with disabilities, persons with medical needs including applicants who are mentally challenged, LGBTIQ+ persons, victims of human trafficking, persons exposed to traumatic events (survivors of torture, victims of gender-based violence, etc.) and older persons amongst others.
- Sustainable and predictable reception facilities should become the norm rather than a good intention. The Netherlands needs to move away from (crisis) emergency reception facilities, which in most cases can only provide inadequate reception conditions. The reception of asylum-seekers and refugees should comply with relevant international and EU legislation.
- The Government of the Netherlands to include the provision of the needed reception capacity for refugees from Ukraine in the municipal task to ensure one reception system for all asylum seekers and refugees in the Netherlands.

¹⁷ See also UNHCR Comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) – COM (2016) 465, August 2017, available at <https://www.refworld.org/docid/59a6d6094.html>