



UNHCR

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

**UNHCR Observations on the proposed amendments to the
Norwegian Immigration Act to allow for detention of asylum-seekers in the 48-
hours accelerated procedure:**

*Høyringsnotat om ny heimel for pågriping og fengsling i samband med 48-
timarproseduren for openbert grunnlause asylsøknader*

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (RRNE) is grateful to the Ministry of Justice of the Kingdom of Norway for the invitation to submit its observations on the proposal, dated 3 July 2015, to amend the Norwegian Immigration Act,¹ in order to allow for the detention of asylum-seekers channeled in the 48-hours accelerated procedure (reference 15/4903 - SBO) (hereafter the “Proposal”).
2. UNHCR has a direct interest in law proposals in the field of asylum, 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.² Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,³ whereas the 1951 Convention relating to the Status of Refugees⁴ and its 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Convention”) oblige States to

¹ *Lov 15. mai 2008 nr. 35 om utlendingers adgang til riket og deres opphold her* (utlendingsloven), unofficial translation available at: <https://www.regjeringen.no/en/dokumenter/immigration-act/id585772/5772/>.

² UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), (hereafter “UNHCR Statute”), available at: <http://www.refworld.org/docid/3ae6b3628.html>.

³ *Ibid.*, para 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. The UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, see UNHCR, *UNHCR’s supervisory responsibility*, October 2002, ISSN 1020-7473, available at: <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

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).

3. UNHCR's supervisory responsibility is exercised in part by the issuance of 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 ("UNHCR Handbook") and subsequent Guidelines on International Protection.⁵ Of particular relevance to the Proposal are the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (hereafter "UNHCR Detention Guidelines").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. The UNHCR Detention Guidelines reflect the current state of international law relating to the detention of asylum-seekers as reflected, for example, in the 1951 Convention, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "ECHR"),⁷ and the International Covenant on Civil and Political Rights (hereafter "ICCPR").⁸
5. Although Norway is not part of the Common European Asylum System (CEAS), UNHCR advises Norway to align its legislation with that of the EU to ensure a consistent approach to asylum procedures across the Schengen Area. Reference is therefore made to relevant EU asylum *acquis* in these observations.⁹

⁵ 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/IP/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

⁶ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, (hereafter "UNHCR, Detention Guidelines"), available at: <http://www.refworld.org/docid/503489533b8.html>. The Guidelines are intended to guide Governments in their elaboration and implementation of asylum and migration policies which involve an element of detention; as well as decision-makers, including judges, in making assessments about the necessity of detention in individual cases.

⁷ 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"), available at: <http://www.refworld.org/docid/3ae6b3b04.html>.

⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, (hereafter "ICCPR"), available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

⁹ See, European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, (hereafter "Recast RCD"), available at: <http://www.refworld.org/docid/51d29db54.html>; European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, (hereafter "Recast

II. General Observations

6. According to the Explanatory Memorandum (hereafter “Memorandum”),¹⁰ the purpose of the Proposal is to ensure efficient processing and swift return of asylum applicants in the 48-hours accelerated procedures, as well as to prevent crime.¹¹
7. UNHCR acknowledges the multitude of contemporary challenges to national asylum systems caused by irregular migration and the need for States to uphold the integrity of the asylum system, *inter alia*, by ensuring that claims, which are clearly abusive or manifestly unfounded can be processed in accelerated procedures.¹² UNHCR supports States’ implementation of effective return policies for people who are found not to be in need of international protection. Individuals found not to have a valid protection claim and who cannot benefit from alternative legal means to regularize their stay should be assisted to return quickly to their home countries, in full respect of their human rights. Detention in connection with accelerated procedures may under certain conditions be for a legitimate purpose. However, because of the hardship that it entails for the individual concerned, it is subject to safeguards in international human rights law (see further below at paragraphs 13–22).
8. The other stated purposes of the Proposal, that is, crime prevention and administrative expediency, are in UNHCR’s view not legitimate purposes for detention and are inconsistent with Norway’s international obligations under international refugee and human rights law.¹³ Preventing asylum-seekers from committing crimes should be considered part of the criminal justice system and should not be regulated through immigration law. The UN Human Rights

APD”), available at: <http://www.refworld.org/docid/51d29b224.html>; 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 “Dublin III Regulation”), available at:

<http://www.refworld.org/docid/51d298f04.html>.

¹⁰ *Høyringsnotat om ny heimel for pågriping og fengsling i samband med 48-timersprosedyren for openbart grunnlause asylsøknader*, 3 July 2015, (hereafter “Explanatory Memorandum”, available at: <https://www.regjeringen.no/contentassets/8bc1a8ee6eaa4e3b8d39621fa5643892/hoyringsnotat-om-fengsling-i-48-timersaker.pdf>).

¹¹ Memorandum, pp. 2, 14. See also, p. 11: “Ein slik heimel vil styrke utlendingskontrollen og effektivisere arbeidet med sakshandsaming og eventuell snarleg retur[...] [V]ilkåra i forslaget er enklare å praktisera”.

¹² UNHCR, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>; UNHCR, *UNHCR public statement in relation to Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration pending before the Court of Justice of the European Union*, 21 May 2010, available at: <http://www.refworld.org/docid/4bf67fa12.html>, para. 5.

¹³ See, e.g. ICCPR, Article 9, which prohibits arbitrary arrest or detention and applies to all cases of deprivation of liberty, including in the context of immigration control.

Committee has noted in its General Comment No. 35, that administrative detention “presents severe risks of arbitrary deprivation of liberty. Such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available.”¹⁴ As affirmed by the case law of the Committee, detention must not simply be lawful, but must also not have been imposed on grounds of administrative expediency.¹⁵

III. Specific observations

Accelerated procedures and the application of the concept of safe country of origin

9. It is UNHCR’s understanding that the Norwegian accelerated procedures are used to process applications made by applicants from specific countries, which are considered safe and that therefore there is a presumption that the application is manifestly unfounded.¹⁶ UNHCR notes that procedures for the determination of refugee status and subsidiary protection status may only include special procedural devices for dealing in an expeditious manner with applications, which are obviously without foundation as not to merit a full examination at every level of the procedure. UNHCR wishes to remind of the importance of ensuring that procedural safeguards are in place, including to ensure an appropriate examination of the merits of the claim to determine that the applicant does not qualify for international protection.¹⁷
10. UNHCR further notes that an asylum claim lodged by an applicant from a country designated as a safe country of origin may be channeled into accelerated procedures.¹⁸ UNHCR does not object to the designation of countries as safe countries of origin *per se*, provided that the decision has been preceded by a thorough assessment of the situation of that country. The presumption that a country of origin is safe must be rebuttable both in law and practice. There must also be a mechanism in place to quickly remove the designation of a country as safe, if the country would cease to meet the criteria for a safe country of origin.

¹⁴ UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, available at:

<http://www.refworld.org/docid/553e0f984.html>, (hereafter “General Comment no. 35”), para. 15.

¹⁵ See, *van Alphen v. the Netherlands (Communication No. 305/1988)*, CCPR/C/39/D/305/1988, UN Human Rights Committee (HRC), 23 July 1990, available at:

<http://www.refworld.org/docid/525414304.html>.

¹⁶ Currently, the list consists of 50 countries. The list may be revised by the Norwegian Directorate of Immigration (UDI), see Memorandum, p. 5 and UDI circular *RS 2011-030*, para. 4, available at:

<https://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2011-030/>.

¹⁷ UNHCR, *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*, January 2012, at: <http://www.refworld.org/docid/4f3281762.html> pp. 26–27.

¹⁸ Recast APD, Article 31(8)(b).

11. In UNHCR's understanding, the concept of safe country of origin may serve as a case management tool, for instance, to assign applications to fast track procedures, but there should be no negative impact on the procedural safeguards. The concept should be applied on a case-by-case basis, taking into account the specific circumstances of a given country and only if the applicant is a national of that country (or, in case of stateless persons, was habitually resident in that country). UNHCR welcomes the Proposal in that it provides for applications to be taken out of the accelerated procedure if there is reason to believe that the claim should not be in the procedure because it is not manifestly unfounded.¹⁹

Detention of asylum-seekers in connection with accelerated procedures

12. In UNHCR's understanding, the proposed amendment to the Norwegian Immigration Act § 106(1) entails that the nationality of the applicant will justify the inclusion of an asylum-seeker in the accelerated procedure. Being in the accelerated procedure in turn constitutes the legal basis for the detention of the asylum-seeker. As UNHCR understands the Proposal, it will thus in effect allow for the detention of asylum-seekers of certain nationalities.²⁰ UNHCR further understands that children and parents of children below 18 years of age who have applied for protection, will not be covered by the proposed amendment, and cannot be detained under the proposed new provision.
13. As a starting point with regard to the detention of asylum-seekers, UNHCR would like to reiterate that seeking asylum is a right and not an unlawful act.²¹ Article 31 of the 1951 Convention provides that asylum-seekers shall not be penalized for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence. It further provides that restrictions on movement shall not be applied to such refugees (or asylum-seekers) other than those which are necessary and such restrictions shall only be applied until their status is regularised or they gain admission into another country.²² Article 31(2) authorizes necessary restrictions on movement for the purposes of investigation of identity, the circumstances of arrival, basic elements of the claim and security concerns.²³

¹⁹ Memorandum, p. 4; UDI, *Circular RS 2011-030*, para. 7.

²⁰ UNHCR, Detention Guidelines para. 43.

²¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>, Article 14; 1951 Convention, Article 31. See also, UNHCR, Detention Guidelines, paras. 1 and 11.

²² UNHCR, Detention Guidelines, para. 13. See also, Gregor Noll, in Andreas Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford University Press, 2011, pp. 1266–1273.

²³ UNHCR, *UNHCR intervention before the European Court of Human Rights in the case of Saadi v. United Kingdom*, 30 March 2007, Application No. 13229/03, available at: <http://www.refworld.org/docid/47c520722.html>, para. 26.

14. The fundamental rights to liberty and security of person and freedom of movement are expressed in all the major international and regional human rights instruments. As affirmed by the UN Human Rights Committee, these rights apply in principle to everyone lawfully in the territory of a State party, including asylum-seekers.²⁴ The combined rights to seek asylum, the non-penalization for irregular entry or stay and the rights to liberty and security of person and freedom of movement, mean that the detention of asylum-seekers should normally be avoided and be a measure of last resort.²⁵
15. As provided for by international law, detention can only be applied where it pursues a legitimate purpose and has been determined to be both necessary and proportionate in each case. As seeking asylum is not an unlawful act, any restrictions on liberty imposed on persons exercising this right need to be provided for in law, carefully circumscribed and subject to prompt review.²⁶ In the context of the detention of asylum-seekers, there are three purposes for which detention may be necessary in an individual case, and which are generally in line with international law, namely public order, public health or national security.²⁷ Without such a purpose, detention will be considered arbitrary, even if entry was illegal.²⁸ The detention of an asylum-seeker on the sole ground of his or her nationality would be discriminatory and inconsistent with Article 3 of the 1951 Convention and international human rights law.²⁹
16. In this respect, UNHCR notes that the Proposal foresees detention in connection with accelerated procedures for applicants from countries considered as safe countries of origin. UNHCR observes that detention of applicants to prevent absconding and in connection with accelerated procedures for manifestly unfounded claims falls under the category of public order and may be legitimate, however, such detention must be regulated by law and, as required by proportionality considerations, must weigh the various interests at play.³⁰ Moreover, those subjected to such detention are entitled to the protections set out

²⁴ See, UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: <http://www.refworld.org/docid/45139c394.html>, para. 4. The fundamental rights to liberty and security of person and freedom of movement are expressed in all the major international and regional human rights instruments, and apply in principle to all human beings, regardless of their immigration, refugee, asylum-seeker or other status, see UNHCR, *Detention Guidelines*, para. 12.

²⁵ UNHCR, *Detention Guidelines*, para. 14.

²⁶ *Ibid.*, para. 2.

²⁷ *Ibid.*, para. 21.

²⁸ *Ibid.*, para. 21.

²⁹ *Ibid.*, para. 43 and fn. 71.

³⁰ UNHCR, *Detention Guidelines*, para. 23. See also, UNHCR, *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)*, April 2015, (hereafter "UNHCR, Annotated Comments to the Recast RCD"), available at: <http://www.refworld.org/docid/5541d4f24.html>, pp. 15–22.

in the UNHCR Detention Guidelines. UNHCR welcomes that asylum-seeking children and their parents will not be detained according to the Proposal.³¹

17. UNHCR notes that according to the Memorandum, the general necessity and proportionality requirement in the Norwegian Immigration Act § 99 shall be applied in all cases where detention as part of the accelerated procedures is being considered. In particular, UNHCR welcomes the assurance that the Immigration Act § 99, which stipulates the necessity and proportionality requirements, shall be applied in all cases in the accelerated procedures being considered for detention.³²
18. In UNHCR's view, a decision to detain an asylum-seeker should be based on a detailed and individualized assessment of the necessity to detain in line with a legitimate purpose.³³ To guard against arbitrariness, any detention needs to be necessary in the individual case, reasonable in all the circumstances and proportionate to a legitimate purpose.³⁴ State authorities must not take any action exceeding that which is strictly necessary to achieve the pursued purpose in the individual case.
19. Importantly, the UNHCR Detention Guidelines do not consider a provision allowing for systematic detention to facilitate an accelerated asylum procedure as being in compliance with international law or the Guidelines. The Guidelines *inter alia* note that "Mandatory or automatic detention is arbitrary as it is not based on an examination of the necessity of the detention in the individual case".³⁵
20. The necessity and proportionality tests further require an assessment of whether there were less restrictive or coercive measures (that is, alternatives to detention) that could have been applied (see further below at paragraphs 26–28).³⁶ UNHCR observes that it is not clear in the Proposal how the necessity test will be applied in practice and notes in this respect that other provisions in the Immigration Act require a necessity and proportionality assessment in all cases.³⁷
21. The current Immigration Act § 106 sets out a number of grounds for detention.³⁸ The Memorandum states explicitly that in many cases these alternative grounds

³¹ See, further UNHCR, Detention Guidelines, paras. 51–57.

³² Memorandum, p. 11.

³³ *Ibid.*, paras. 19, 21. See also Recast RCD, Article 8(2).

³⁴ UNHCR, Detention Guidelines, paras. 18, 34.

³⁵ *Ibid.*, para. 20.

³⁶ *Ibid.*, para. 34.

³⁷ Immigration Act, paras. 99 (1) and 106 (2).

³⁸ The grounds are: when (a) an applicant is not cooperating on clarifying his or her identity, (b) there are specific grounds for suspecting that the foreign national has given a false identity, (c) there are specific grounds for suspecting that the foreign national will evade the implementation of a return decision, (d) the foreign national fails to comply with the statutory alternatives to detention (ATD), (e) an administrative decision regarding expulsion on account of being sentenced to a penalty has been made and the decision is final, (e) the foreign national does not do what is necessary to fulfill his or her

will be applicable to persons in an accelerated procedure and are thus covered by the proposed § 106(1)(g). In UNHCR's view, the existing legal grounds for detention would be sufficient to cover the detention of asylum-seekers in the accelerated procedure for whom this measure has been determined.³⁹

22. Finally, the proposed amendment allows for detention up to 72 hours before judicial review is required. UNHCR recommends that judicial review takes place in the first instance within 24–48 hours of the initial decision to hold the asylum-seeker.⁴⁰

UNHCR Recommendations:

- UNHCR recommends that where detention is used in connection with accelerated procedures for clearly abusive or manifestly unfounded cases or in order to prevent absconding, appropriate safeguards are put in place to ensure that detention is used as a last resort and that the principles of necessity and proportionality are applied in each individual case;
- UNHCR cautions against the use of detention as a general rule in cases channelled in the accelerated procedures. Detention must not be used as an automatic rule for all applicants coming from countries considered as a safe country of origin or third country.

Rejection of the asylum application in the accelerated asylum procedure as an element in the assessment of the risk of absconding

23. Applicants whose asylum applications have been rejected in the accelerated procedures are subject to deportation according to Norwegian law. According to the Proposal, a new element, “having an application for asylum rejected in the accelerated procedure”, will be added to the list of factors relevant to the assessment of risk of absconding in the Immigration Act § 106(a)(1)(k). The stated objective of this provision is to make it easier for the police to get court acceptance for prolonged detention after the proposed initial 72 hours period.⁴¹
24. While statistics may show that persons who have had their application for asylum rejected in the accelerated procedure are more likely to abscond,⁴² and that this could therefore be an element in the assessment of the risk of absconding,

obligation to procure a valid travel document, (f) the foreign national is in transit in a Norwegian airport, with a view to removal.

³⁹ Recast RCD, Article 8; UNHCR, Annotated Comments to the Recast RCD, pp. 15–16.

⁴⁰ UNHCR, Detention Guidelines, para. 47 (iii). See also, Recast RCD, Article 9.1.

⁴¹ Memorandum, p. 13: “Denne endringa vil gjere det enklare å få avgjerd frå retten om fengsling også etter utløpet av 72-timarfristen i forslaget til endring i utlendingslova § 106”.

⁴² Memorandum, p. 5.

UNHCR wishes to emphasize that such a risk does not necessarily exist in every individual case. For example, a manifestly unfounded application may be the result of insufficient knowledge of refugee law on the part of the applicant and, without additional information, give little indication of his or her intention to abscond. UNHCR is therefore concerned that introducing this element explicitly in the law may create a presumption that all applicants who have had their claim rejected are at risk of absconding. Also in case of prolongation, the necessity and proportionality tests must be applied in each individual case.

UNHCR Recommendations:

- UNHCR cautions against the explicit stipulation of having an application for asylum rejected in the accelerated procedure among the elements to be given weight when assessing the risk of absconding, as it might lead to a rather automatic prolongation of the detention, without a thorough evaluation of the necessity and proportionality in each case.

The use of alternatives to detention in the 48-hours accelerated asylum procedure

25. As UNHCR understands, the Proposal introduces a specific legal basis for the use of alternatives to detention (ATD) for asylum-seekers who are in the 48-hours accelerated procedure.⁴³ Under the Immigration Act § 105, the ATDs permitted in Norway include reporting conditions and directed residence (an obligation to stay in a specific place). Similar to the comment made above in paragraph 15, the use of ATDs on the sole ground of the asylum-seeker's nationality would be discriminatory and inconsistent with Article 3 of the 1951 Convention and international human rights law.⁴⁴ Furthermore, ATDs should not be used as alternative forms of detention; nor should alternatives to detention become alternatives to release.⁴⁵
26. UNHCR welcomes the provision of ATDs in the legislation as the consideration of ATDs ensures that the detention of an asylum-seeker is a measure of last, rather than first resort. In UNHCR's view, it must be shown that in light of the asylum-seeker's particular circumstances, there were not less invasive or coercive means of achieving the same ends.⁴⁶

⁴³ UNHCR, Detention Guidelines, para. 8. "Alternatives to detention" is not a legal term, however, is used in the UNCHR Detention Guidelines as short-hand to refer to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement.

⁴⁴ *Ibid.*, para. 43 and fn. 71.

⁴⁵ *Ibid.*, para. 38.

⁴⁶ *Ibid.*, para. 35.

27. The Memorandum explains that the Immigration Act § 99 applies, and that ATDs must be necessary and proportionate.⁴⁷ UNHCR welcomes that any restrictions to an asylum-seeker's freedom of movement in the form of ATDs must be necessary and proportionate, and would like to reiterate that an assessment of the availability, effectiveness and appropriateness of the ATD should be made in each individual case.⁴⁸
28. It needs to be noted, however, that ATDs that restrict the liberty of asylum-seekers may impact on their human rights. They are thus subject to human rights standards, including periodic review in individual cases by an independent body. Individuals subject to ATDs need to have timely access to effective complaints mechanisms as well as remedies, as applicable.

UNHCR Recommendations:

- UNHCR recommends that the consideration of alternatives to detention should be part of an overall assessment of the necessity, reasonableness and proportionality of detention;
- UNHCR recommends that appropriate safeguards are put in place to ensure that the assessment of the availability, effectiveness and appropriateness of alternatives to detention is made in each individual case.

Simplified asylum procedure for persons in the 48-hours accelerated asylum procedure

29. The Memorandum notes that in the event the new legal basis is enacted, the interview in cases falling within its scope, will be conducted by the National Police Immigration Unit (hereafter "PU"), and not by the Directorate of Immigration (hereafter "UDI"), in the form of an "expanded registration", which will form the basis for the assessment of the application for asylum.
30. In regard to the responsibility for interviewing applicants for international protection at the admissibility stage and in accelerated procedures, as well as for taking decisions on the granting or refusal of admissibility or international protection, UNHCR is of the strong view that all these tasks should be performed by a single central authority, in line with the guidance in UNHCR's Executive Committee Conclusion No. 8 (XXXVIII) of 1977.⁴⁹

⁴⁷ Memorandum, p. 4.

⁴⁸ UNHCR, Detention Guidelines, para. 35.

⁴⁹ UNHCR, *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, letter e (iii), available at: <http://www.unhcr.org/refworld/docid/3ae68c6e4.html>.

31. Article 14 of the Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status,⁵⁰ sets out the general rule that interviews concerning the substance of an application for international protection shall be conducted by the personnel of the determining authority (in Norway, the UDI), which would encompass interviews conducted within accelerated procedures as these should always assess the substance of an application. In regard to admissibility interviews, however, Article 34(2) of the recast APD contains an exception to the general rule, which allows Member States to provide that the personnel of other authorities than the determining authority, such as the PU, conducts the personal interview on the admissibility of the application for international protection. Nonetheless, Article 34(2) further provides that in such cases, Member States shall ensure that the personnel of those authorities who conduct the interview receive in advance the necessary basic training in particular with respect to international human rights law, the EU asylum *acquis* and interview techniques.
32. UNHCR is further concerned that replacing the asylum interview for persons in the 48-hours accelerated asylum procedure, with an “expanded registration”, increases the potential for erroneous first instance decisions. As noted above, individuals in accelerated procedures should be provided with an opportunity to rebut a presumption that they do not have international protection needs. In UNHCR’s view, a personal interview is crucial as it provides the applicant with an opportunity to explain comprehensively and directly to the authorities the reasons for the application; and it gives the determining authority the opportunity to establish, as far as possible, all the relevant facts and to assess the credibility of the oral evidence. As such, UNHCR considers that a personal interview should be an essential component of the asylum procedure, including accelerated procedures.
33. If Norway wishes to authorize officials of the PU to conduct the personal interview on the admissibility of the application for international protection – on the basis of which the determining authority shall decide on admissibility – UNHCR encourages Norwegian authorities to ensure that those officials receive in advance the necessary basic training in particular with respect to international human rights law and interview techniques.

⁵⁰ See above fn. 9.

UNHCR Recommendations:

- UNHCR recommends that a single central authority (UDI) be responsible for interviewing asylum-seekers in the 48-hours accelerated asylum procedure, to ensure a high quality status determination procedure.
- UNHCR recommends that a personal interview is conducted for claims channeled in the accelerated procedures in lieu of an expanded registration.

**UNHCR Regional Representation for Northern Europe
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