

Observations by the United Nations High Commissioner for Refugees (UNHCR) on the draft law “Implementation law Asylum and Migration Pact 2026”.

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) would like to thank the Government of the Netherlands for the invitation to provide observations on the draft law “Implementation law Asylum and Migration Pact 2026” (*Wijziging van de Vreemdelingenwet 2000 en enkele andere wetten in verband met de uitvoering en implementatie van het EU-Asiel- en migratiepact 2026 (Uitvoerings- en implementatiewet Asiel- en migratiepact 2026)*)¹ – hereafter referred to as the “Draft Law”.
2. UNHCR has a direct interest in law proposals in the field of asylum, as the agency entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.² Paragraph 8(a) 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 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).⁵
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent 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.

¹ As published in the public consultation phase on <https://www.internetconsultatie.nl/asielenmigratiepact/b1>.

² 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>.

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 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.

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> <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”.

⁵ UNHCR’s supervisory responsibility has also been reflected in European Union (“EU”) law, including by way of general reference to the 1951 Convention in Article 78 (1) of the Treaty on the Functioning of the EU.

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>.

4. UNHCR's observations on the Draft Law for the implementation of the EU Pact are structured as follows: Section II sets out a number of general observations relating to the Draft Law. Sections III and following set out observations to clarify UNHCR's positions with respect to selected aspects of the Draft Law, including recommendations to the Dutch Government.

II. General observations

5. UNHCR welcomes the Dutch Government's efforts to prioritize the full implementation of the EU Asylum and Migration Pact (hereafter: "the Pact"). If implemented with sufficient procedural safeguards, the Pact will increase efficiencies in the Dutch asylum system and the management of migration flows while upholding key protection safeguards. Implementing the Pact further presents an opportunity to show solidarity within the EU, to uphold the Netherlands' shared responsibility and to shape a regional system that can respond effectively to existing and new challenges.
6. Implementing the Pact will ensure a more predictable and better managed asylum process in the Netherlands and help determine in a more effective and fairer manner who is granted asylum and thus, the right to stay in the Netherlands. UNHCR encourages the Netherlands to use the implementation of the Pact as an opportunity to strengthen the Dutch asylum system, ensuring its efficiency and sustainability, in offering protection to those forced to flee.
7. In this framework, UNHCR encourages the Netherlands to retain the current procedural safeguards in the Dutch asylum system and in national legislation even when these may go beyond the standards laid out in some of the legal instruments of the Pact. This includes retaining the right to free legal aid and representation for asylum seekers during the entirety of the asylum procedure, continuing to ensure that children are not detained for immigration purposes, retaining a longer validity for residence permits and retaining equal access to family reunification for all refugees in the Netherlands. The Pact in fact offers ample room for retaining safeguards in national legislation above the standards set in EU law.⁷ Moreover, many of the procedural safeguards that the Draft Law intends to remove from national law, have proven to be beneficial to the efficiency of the Dutch asylum system as well as to the protection, participation and inclusion of refugees and their family members in Dutch society. The removal of these national safeguards should be carefully considered against the serious impact that the proposed measures and amendments will have on asylum seekers and refugees.

⁷ See for example consideration 6 of the Asylum Procedures Regulation: "*This harmonisation and convergence of national asylum systems should be achieved without preventing Member States from introducing or retaining more favourable provisions where provided for by this Regulation*".

8. In addition, as explained in the Explanatory Memorandum to the Draft Law, the Dutch government is still exploring and drafting plans relating to various aspects of the implementation of the Pact; including with regard to legal aid and the monitoring mechanisms. UNHCR calls on the Netherlands to consult stakeholders on its plans relating to these key aspects in the Draft Law before finalizing the legislation to implement the Pact, to ensure that legislation and policies drafted benefit the efficiency and operability of the asylum system.
9. As the Draft Law is introduced simultaneously with other legislative amendments, UNHCR calls for a holistic approach that considers the combined impact that these changes may have. Indeed, various parties and agencies involved in the asylum process, including the Immigration and Naturalization Service, the Council of State and the Advisory Council on Migration,⁸ have called on the government to focus on the implementation of the Pact as the sole moment to introduce changes in the Aliens Act and asylum process; noting that many of the same proposed amendments to the Aliens Act and changes in the asylum process are included in multiple legislative proposals.⁹

III. A stable and predictable protection status (Articles 29 and 33-35 of the Draft Law)

10. The Draft Law amends Articles 29 and 33-35 of the Aliens Act, shortening the length of the residence permit granted on protection grounds from five to three years and abolishing the indefinite asylum permit.
11. In the 1951 Refugee Convention, there was no intention that refugees were to be subjected to regular reassessments once their protection needs had been established. From that moment, focus should be on providing refugees with a set of rights and support to restart their lives, enable them to provide for themselves and their families and contribute to the society that hosts them. Short-term residence permits and frequent reviews thereof are counter-productive to integration objectives and to the well-being of refugees.
12. UNHCR's Executive Committee (ExCom), of which the Netherlands is a member, has called on States to support refugees' ability to attain local integration "*through the timely grant of a secure legal status and residency rights, and/or to facilitate naturalization*".¹⁰ The ExCom has thus recognized that short-term residence permits and frequent reviews are counter-productive to integration.

⁸ See Immigration and Naturalization Service (IND), *Letter relating to the Emergency Asylum Measures Act and the Draft Law Introduction Two-Status System*, 29 November 2024; Netherlands Council of State, *Letter relating to the Emergency Asylum Measures Act and the Draft Law Introduction Two-Status System*, 2 December 2024; Advisory Council on Migration, *Advies over tweestatusstelsel en aanscherpingen vereisten bij nareis* and *Advies over Asielnoodmaatregelenwet*, both 13 February 2025.

⁹ Including the legislative proposals '*Wijziging van de Vreemdelingenwet 2000 in verband met de introductie van een tweestatusstelsel en het aanscherpen van de vereisten bij nareis*' and '*Wijziging van de Vreemdelingenwet 2000 en de Algemene wet bestuursrecht in verband met maatregelen om de asielketen te ontlasten en de instroom van asielzoekers te verminderen (Asielnoodmaatregelenwet)*'.

¹⁰ UNHCR, ExCom, *Conclusion on Local Integration No. 104 (LVI) - 2005*, No. 104 (LVI), 7 October 2005, <https://www.refworld.org/policy/exconc/excom/2005/en/114429>, para. (j)

13. The Qualification Regulation (2024/1347) prescribes that a residence permit granted to refugees should be valid for at least three years, and at least one year for those granted subsidiary protection.¹¹ UNHCR notes that this does not preclude the Netherlands to issue residence permits to refugees with a longer validity beyond this minimum.
14. UNHCR calls on the government to refrain from shortening the validity of the temporary asylum residence permits. Refugees and others in need of international protection benefit from a secure status. Reducing the validity of temporary asylum permits from five to three years is detrimental to the security and stability that refugees are in great need of.
15. Many refugee crises are of a protracted nature and tend to result in long-term protection needs for refugees and their families. For many refugees it is essential to be granted with a stable and secure legal status which would allow them to focus on their commitment to participate to their new community and ensure a smoother inclusion in society from early on. This would be in line with the intention of the 1951 Refugee Convention to provide a durable solution to refugees.¹²
16. UNHCR therefore calls on the government not to abolish the indefinite asylum residence permit.¹³ Abolishing the indefinite residence permit would cause more insecurity for refugees on their right to stay in the Netherlands and may become an obstacle to their participation and inclusion process into Dutch society.
17. In addition, regularly reassessing refugees' protection needs requires more time and staff and will therefore result in more pressure on the immigration authorities (IND), as well as increased costs for the State. The indefinite residence permit was introduced in 2001 to increase efficiency by diminishing the IND's workload,¹⁴ and to reduce costs. Similarly, in 2020 the Council of State advised negatively on a draft law proposal to shorten the validity of the asylum residence permit exactly because of the resulting additional costs to the IND, legal aid providers and the Dutch courts.¹⁵

¹¹ EU Qualification Regulation (2024/1347), Article 24.

¹² UNHCR, Executive Committee, *Conclusion No. 29 (XXXIV): General - Adopted by the Executive Committee (1983)*, No. 29 (XXXIV) 1983, 20 October 1983, <https://www.refworld.org/policy/exconc/excom/1983/en/41985>; UNHCR, Executive Committee, *Conclusions No. 50 (XXXIX) (1988) and no. 90 (LII) (2001)*, available at <https://www.refworld.org/policy/polcomp/unhcr/2017/en/120301>.

¹³ UNHCR, *UNHCR's comments to the Coalition Programme of the Dutch Government (2024-2027)*, 31 October 2024, available via <https://www.unhcr.org/nl/wp-content/uploads/sites/93/2024/10/251028-Messaging-Dutch-Government-coalition-agreement-2024-additional-measures-MCO-JN-FV11.pdf>

¹⁴ Netherlands Council of State, *Advies Afdeling Advisering Raad van State en Nader Rapport*, available via https://www.eerstekamer.nl/behandeling/20201222/advies_afdeling_advisering_raad_2/document3/f=/vlezi2g42vzw.pdf

¹⁵ Netherlands Council of State, *Advies Afdeling Advisering Raad van State en Nader Rapport*, available via https://www.eerstekamer.nl/behandeling/20201222/advies_afdeling_advisering_raad_2/document3/f=/vlezi2g42vzw.pdf

Resettled refugees

18. Shortening the duration of the temporary residency permit and abolishing the indefinite residence permit – along with measures announced by the government¹⁶ – risks undermining resettlement to the Netherlands as a durable solution. A secure, long term status is a prerequisite for resettlement.

UNHCR recommends the government of the Netherlands:

- to continue providing a stable, predictable and long-term protection status to all refugees, which will benefit their participation and inclusion in Dutch communities, by upholding the current validity of the temporary residence permit and by maintaining the indefinite asylum residence permit.

IV. Access to naturalization (as a result of Articles 29 and 33-35 of the Draft Law)

19. UNHCR notes that the Draft Law will restrict refugees' access to Dutch nationality by abolishing the indefinite asylum residence permit. The current Dutch naturalization procedure requires refugees applying for citizenship to be in possession of an indefinite residence permit. If the indefinite asylum permit is abolished, refugees will, in order to access naturalization, have to obtain an indefinite residence permit on other grounds (e.g. issued on grounds related to work or family), which impose stricter income and civic integration requirements.
20. UNHCR emphasizes that naturalization is an essential and decisive step in the participation and inclusion of refugees and their children, benefitting both them and their host communities. Naturalization offers the most complete and definitive form of protection for people forced to flee who cannot return to their country of origin. UNHCR therefore encourages States to facilitate and expedite naturalization procedures in line with their obligation under Article 34 of the 1951 Refugee Convention.
21. A similar provision is contained in the European Convention on Nationality ("ECN"), to which the Netherlands is a State Party. According to Article 6(4.g) of the ECN, each State Party "*shall facilitate in its internal law the acquisition of its nationality for [...] stateless persons and recognized refugees lawfully and habitually resident on its territory*".¹⁷
22. In UNHCR's view, abolishing the indefinite residence permit is not in line with Article 34 of the Refugee Convention and Article 6(4.g) of the ECN. UNHCR is concerned that these changes may limit refugees and stateless persons' prospects of full participation and

¹⁶ This includes the intention to abolish the housing task for municipalities, to introduce a ban on the prioritization of refugees for the allocation of social housing, and to introduce multiple measures linked to naturalization.

¹⁷ CETS 166 - European Convention on Nationality, available via <https://rm.coe.int/168007f2c8>

inclusion in society, as these measures impose more stringent income and civic integration requirements to become a Dutch citizen.

23. Lastly, introducing more stringent requirements and lifting exceptions and customization, limits access to Dutch citizenship especially for refugees with specific needs. Without exemptions, the elderly, illiterate people, people with mental and/or physical disabilities, and victims of torture and trauma, may be excluded from naturalization. Studies have shown that war, torture, abuse, and other traumatic events can significantly hinder learning a second (or third, etc.) language, often a requirement to be allowed to apply for naturalization. Flexibility and customization therefore remain essential.

UNHCR recommends the government of the Netherlands:

- to ensure refugees have a fast, fair and effective route to naturalization in line with the intentions of the 1951 Refugee Convention and the European Convention on Naturalization; and
- to retain flexibility in the requirements to be met in the naturalization procedure so to allow *all* refugees effective access to citizenship.

V. Family reunification for beneficiaries of subsidiary protection (Article 29d of the Draft Law)

24. The Draft Law introduces a differentiation in rights between refugees recognized under the 1951 Convention¹⁸ and refugees granted subsidiary protection.¹⁹ Article 29d of the Draft Law introduces housing requirements, income requirements and a statutory waiting period of two years for family reunification for beneficiaries of subsidiary protection. The Draft Law ends the one-status system that the Netherlands introduced in 2001 as a cost-saving measure.

Equal rights for similar protection needs

25. UNHCR applauds the current Dutch system according equal rights to refugees and beneficiaries of international protection, recognizing their similar protection needs. The 1951 Convention obliges State parties to provide protection to all refugees, ensuring the widest possible exercise of their fundamental rights and freedoms without discrimination.
26. UNHCR notes that the Qualification Regulation (2024/1347) explicitly provides member states with the discretion to grant the same rights and benefits to refugees recognized

¹⁸ Persons granted an asylum residence permit under Art. 29(1.a) Aliens Act 2000.

¹⁹ Persons granted an asylum residence permit under Art. 29(1.b) Aliens Act 2000.

under the 1951 Convention and those holding subsidiary protection status.²⁰ The Pact thus allows the Netherlands to continue guaranteeing equal rights to all refugees, as under current Dutch legislation.

27. UNHCR has consistently underlined that distinctions between beneficiaries of international protection are often neither necessary nor objectively justified in terms of flight experience and protection needs. In UNHCR's experience, these two categories of beneficiaries of international protection usually have similar protection needs and face the same integration opportunities and challenges, as well as similar return prospects. In practice, often beneficiaries of subsidiary protection are generally not able to return home earlier than refugees.
28. Like refugees, beneficiaries of subsidiary protection cannot reasonably be expected to return to their country of origin to exercise their right to family life due to risks of serious harm. Refugees and beneficiaries of subsidiary protection should therefore have equal access to family reunification to exercise their fundamental right to family life, irrespective of the type of protection status.

Families belong together

29. The criteria introduced in Article 29d of the Draft Law limiting and delaying family reunification for beneficiaries of subsidiary protection may infringe on the right to family unity as laid down in the International Covenant on Civil and Political Rights (Article 23), the International Convention on the Rights of the Child (Article 10), as well as the European Convention on Human Rights (Article 8), to which the Netherlands is party.
30. Measures to limit family reunification may also violate the Netherlands' obligations under EU law, where the right to family life and the principle of the best interests of the child are enshrined in both primary and secondary law and strongly protected by the Court of Justice of the European Union (CJEU).²¹ As the CJEU has emphasized, the right to family life requires states "to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life".²² The Netherlands is legally bound to put the best interests of the child first and to facilitate the reunification of children with their families as soon as possible. This obligation applies equally to all refugees, regardless of whether they flee war, violence, or individual persecution.

²⁰ Recital 48 of the Qualification Regulation (2024/1347): "While the grounds for protection differ between refugee status and subsidiary protection status, the ongoing need for protection could be similar in duration. The content of the protection offered by refugee status or subsidiary protection status might only differ where explicitly provided for in this Regulation. This Regulation nevertheless allows Member States to grant the same rights and benefits under both statuses."

²¹ "As regards the objective pursued by Directive 2003/86, the Court has repeatedly held that that directive is intended to promote family reunification and to grant protection to third-country nationals, in particular minors. In order to achieve that objective, Article 4(1) of that directive imposes on the Member States precise positive obligations, with corresponding clearly defined individual rights. It thus requires them to authorise the family reunification of certain members of the sponsor's family, without being left a margin of appreciation, provided that the conditions laid down in Chapter IV of that directive are satisfied" (CJEU, Third Chamber, Afrin, C-1/23 PPU, 18 April 2023, <https://curia.europa.eu/juris/documents.jsf?num=C-1/23%20PPU>, para. 42)

²² European Court of Justice, Case C-279/20 (XC), 1 August 2022, available via <https://curia.europa.eu/juris/document/document.jsf?text=&docid=263723&doclang=EN>, par. 42

31. Another important reason to facilitate speedy family reunification is that it not only benefits refugees, but the entire society. In fact, uniting families gives them better integration prospects in their new home, as they can adapt and contribute better to their new communities and become self-reliant quicker. It is also proven that being reunited with family members facilitates the healing process of refugees affected by trauma.

Statutory waiting period

32. Article 29d(1.a) of the Draft Law introduces a statutory two-year waiting period before an application for family reunification can be granted to family members of beneficiaries of subsidiary protection. UNHCR notes that requiring a period of lawful residence in the receiving country, before an application for family reunification can be granted to a beneficiary of subsidiary protection, is discriminatory.²³ It fails to take sufficient account of the often vulnerable situation of departing family members and the risks of harm to which they may be exposed in the country of origin or in another country in which they may be residing.
33. In addition, UNHCR notes with concern that the reunification process, even without a statutory waiting period, is in practice very lengthy due to increasing backlogs in both the asylum and family reunification procedure. These backlogs have resulted in family members having to live apart for very long periods of time, with many families being separated between two to five years. Prolonged separation has invariably profound consequences on individual mental health and wellbeing of refugees, which in turn affect their resilience and capacity for integration. This may be aggravated by adding to the separation by introducing waiting periods.²⁴
34. The European Court on Human Rights addressed the issue of statutory waiting periods for family reunification for beneficiaries of subsidiary protection in July 2021.²⁵ The Court found a violation of the right to family life in Article 8 ECHR as the statutory waiting period in casu failed to allow for an individualized assessment of whether the interest of family unity in the light of applicant's situation warranted a swifter reunification.²⁶ The Court

²³ UNHCR, *UNHCR Guidelines on international legal standards relating to family reunification for refugees and other beneficiaries of international protection*, December 2024, <https://www.refworld.org/policy/legalguidance/unhcr/2024/en/149243>, par. 25; UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of [REDACTED]* (Application no. 6697/18) before the European Court of Human Rights, 21 January 2019, <https://www.refworld.org/jurisprudence/amicus/unhcr/2019/en/121700>, Sections 3.2.5–3.2.6; UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland* (Appl. No. 15500/18) before the European Court of Human Rights, 28 May 2019, <https://www.refworld.org/jurisprudence/amicus/unhcr/2019/en/122449>, Section 3.2.6.

²⁴ See also UNHCR's amicus curiae to the European Court of Human Rights addressing legal and practical obstacles to refugees' rights to family reunification. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdul Habib Dotani v. Greece* (Application No. 31077/23) before the European Court of Human Rights, 23 February 2024, <https://www.refworld.org/jurisprudence/amicus/unhcr/2024/en/147674>.

²⁵ European Court of Human Rights, [REDACTED], (Application no. 6697/18), 9 July 2021, available via <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-211178%22%5D%7D>, paras. 192-195

²⁶ European Court of Human Rights, [REDACTED], (Application no. 6697/18), 9 July 2021, available via <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-211178%22%5D%7D>, paras. 192-195

also highlighted the need to safeguard flexibility, speed and efficiency in the family reunification process.

Income requirement

35. The income requirement introduced in Article 29d(1.b) of the Draft Law is not clearly defined and may in effect render family reunification impossible. Due to their specific situation, refugees and beneficiaries of subsidiary protection often face specific challenges in seeking to meet these requirements and should benefit from a more favourable family reunification regime, including less demanding preconditions and, as relevant, necessary protection safeguards. For example, they may face particular difficulties in accessing employment, due to challenges in obtaining recognition of education qualifications and work experience, limited employability skills, language barriers and trauma. UNHCR maintains that beneficiaries of subsidiary protection should also be exempted from such requirements, equal to refugees under the EU Family Reunification Directive.²⁷

Housing requirement

36. The housing requirement introduced in Article 29d(1.c) of the Draft Law risks creating an additional barrier to family reunification. UNHCR notes that the government has announced its intention to abolish the responsibility of municipalities to support refugees in accessing social housing, and instead plans to set up temporary transit locations ('*doorstroomlocaties*') for refugees granted international protection in the Netherlands.²⁸ It is currently unclear whether such locations would meet the qualification of 'housing' introduced for family reunification of beneficiaries of subsidiary protection. Imposing a housing requirement, in addition to the income requirement, may effectively render family reunification inaccessible for beneficiaries of subsidiary protection and their families. UNHCR emphasizes that refugees often face structural challenges in securing housing, including financial constraints, limited access to the private rental market, and long waiting periods for social housing. Moreover, it remains unclear what standards and safeguards would be in place in the planned transit locations, as well as how long refugees will in practice remain in such locations.

Reunification of children with their families

37. UNHCR emphasizes that the requirements introduced in the Draft Law do not take into consideration the best interests of children; be it unaccompanied or separated children granted subsidiary protection in the Netherlands or children whose parent(s) is (are) granted subsidiary protection in the Netherlands. Limiting family reunification for children based on their or their family member(s)' legal or protection status, including by introducing a waiting period for family reunification for beneficiaries of subsidiary protection, is in breach of the principle of non-discrimination and the best interests of the

²⁷ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

²⁸ The '*gemeentelijke taak huisvesting statushouders*'

child. As a State Party to the Convention on the Rights of the Child (CRC), the Netherlands is obligated to ensure that applications for family reunification submitted by a child or their parents are processed *“in a positive, humane and expeditious manner”*.²⁹

‘One-status’ system more efficient and less costly

38. Lastly, UNHCR notes that the ‘one-status’ system was introduced in 2001 to minimize appeals and reduce the extra staff time and costs involved in appeals and review of subsidiary status. Introducing a differentiation in rights between refugees recognized under the 1951 Refugee Convention and beneficiaries of subsidiary protection is expected to lead to an increase in workload for the IND and an increase in appeals before the courts. Moreover, the EU Asylum Procedure Regulation (2024/1348) requires an effective remedy to be open for persons eligible for subsidiary protection wanting to appeal a decision considering their application unfounded for refugee status.³⁰ Introducing a difference in rights between the protection statuses may result in more such appeals and an increased burden on the courts.

UNHCR recommends:

- to maintain the one-status system and refrain from introducing differentiated rights and treatments for refugees recognized under the 1951 Convention and beneficiaries of subsidiary protection.

VI. The definition of family for refugee family reunification (Article 29c of the Draft Law)

39. Article 29c of the Draft Law explicitly excludes unmarried partners and young adult children from the definition of *family* for the purpose of refugee family reunification (*nareis*). UNHCR notes that refugees and their family members have the right to enjoy family life and a right to family reunification under international and EU law. Excluding certain family members to apply for family reunification, may violate these obligations.
40. In UNHCR’s view, the existence of a family is a question of fact and involves examination of real and close personal ties. What constitutes a family must be determined on a case-by-case basis, requiring an open, flexible approach and broad interpretation, considering biological and personal ties, cultural variations as well as material, health-related, emotional or economic dependency factors.³¹ UNHCR encourages states to apply the family definition liberally, based on broad criteria and factual circumstances, and to give positive consideration to the inclusion of other family members, taking into account the

²⁹ UN Convention on the Rights of the Child, 20 November 1989, Art. 10.

³⁰ EU Asylum Procedures Regulation (2024/1348), Art. 67(2)

³¹ UNHCR, *UNHCR Guidelines on international legal standards relating to family reunification for refugees and other beneficiaries of international protection*, December 2024, available via <https://www.refworld.org/policy/legalguidance/unhcr/2024/en/149243>, par. 11

different concepts of family that may apply in different societies and the impact a person's flight can have on the family and its composition.

41. Both (young) adult children and unmarried partners who have established a stable, long-term partnership have been included in the definition of family members by courts and states alike. UNHCR calls on the government of the Netherlands to continue to retain a definition of family which includes these family members, allowing refugees to reunify with their unmarried partners and young adult children under the more favourable conditions for refugee family reunification (*nareis*).
42. Limiting the possibility for refugees to reunify with their unmarried partner may in practice make it impossible for refugees who were forced to flee their country of origin because of their sexual orientation or gender-identity to reunify with their loved ones. LGBTIQ+ refugees often flee countries where same-sex relations and marriage between same-sex partners are not allowed. Most of them will, by the very nature of their protection needs, not be able to meet the requirement of being legally *married* partners. Excluding the possibility to reunify with their unmarried partner violates their right to family unity.
43. The exclusion of (young) adult children from the more favourable conditions for refugee family reunification overlooks the reality of people in need of international protection and disregards the profound changes to the family structure which may come about as a result of forced displacement. Family separation, in the case of refugees, is not a deliberate choice, but rather the result of forced displacement due to persecution and war. In their case, family reunification is often the only way to ensure respect for the right to family unity.
44. UNHCR further notes that the Qualification Regulation (2024/1347) explicitly includes unmarried partners and adult dependent children in the definition of 'family members' provided in Article 3. Therefore, excluding these family members from family reunification is not a uniform interpretation of EU law.
45. Finally, UNHCR has long held that smooth reunification procedures help establish safe and legal routes for refugees, which can truly save lives by preventing them from resorting to smuggling networks and dangerous journeys to reunite with their loved ones.

Independent residence permit for family members

46. In addition, Article 29c of the Draft Law confirms the current practice whereby family members of recognized refugees are granted a residence permit derived from the sponsor, with their status and the validity of their permit being directly linked to that of the sponsor. UNHCR encourages the Netherlands to issue family members a residence status independent from the sponsor's status. If the family tie is broken after arrival in the

Netherlands, a dependent residence permit may be revoked, which can place family members, in particular spouses, in a position of vulnerability. This risk may discourage individuals from leaving harmful situations, including domestic violence or other forms of abuse. In refugee families, trauma caused by previous persecution, flight situations and insecurity can lead to tensions. Granting family members an independent residence permit enhances their security, reduces vulnerability and dependency, and supports their integration.³²

UNHCR recommends:

- to continue allowing refugees to reunify with their unmarried partners and young adult children under the more favourable conditions for refugee family reunification (*nareis*).
- To grant family members an independent residence permit separate from the sponsor's status, to prevent them from being forced to stay in situations of domestic or family violence.

VII. Identification of vulnerabilities and needs

47. The relevant regulations under the Pact include obligations on Member States to identify and address the needs of vulnerable applicants.³³ While both the Draft Law and the National Implementation Plan make some reference to identifying and addressing vulnerabilities and needs, this does not yet have a central place in the implementation of the Pact in the Netherlands.

48. According to the National Implementation Plan and the Draft Law, various government agencies will be involved in the identification of vulnerabilities and (procedural or reception) needs in various phases of the asylum process. UNHCR welcomes the recurring focus on vulnerability identification and attention for individuals' needs throughout the asylum process, starting from a preliminary vulnerability assessment in the screening upon lodging the asylum application, followed by an assessment for special procedural guarantees and/or reception needs. However, UNHCR warns that the fragmentation of responsibilities between multiple authorities and across procedural stages may lead to vulnerabilities being overlooked, being insufficiently identified at crucial moments or not adequately shared with other partners in the asylum process. This risk should be addressed, particularly when deciding whether an individual's application should be

³² UNHCR, *No family torn apart: Challenges refugees face securing family reunification in the Netherlands and recommendations for improvements*, September 2019, available via https://www.unhcr.org/nl/wp-content/uploads/sites/93/UNHCR-Family_Reunification-screen.pdf, pages 86-87

³³ This includes Article 20 of the Asylum Procedures Regulation (2024/1348), Article 25 of the Reception Conditions Directive (2024/1346) and Article 12 of the Screening Regulation (2024/1356).

processed in the border or expedited procedure, as well as when assigning applicants to a reception facility. UNHCR recommends ensuring that the various authorities involved in the identification of vulnerabilities can systematically exchange data, rely on one another's assessments, and maintain a coordinated approach.

49. This is of particular importance for unaccompanied and separated children ('UASC'), as some of the assessments tasked to agencies may not be well-suited to determine age or minority status due to the scope of the assessment or time-limits involved. UNHCR recalls that any person claiming to be under the age of 18 should be treated as a child and benefit from the rights of a child unless this would be clearly unreasonable. The rationale of this presumption - that inter alia flows from the best interests of the child principle - is the need to ensure the rights guaranteed by the Convention on the Rights of the Child and the 1951 Convention.
50. UNHCR calls on the government to ensure that the Dutch asylum and reception system is equipped to quickly and accurately identify and address the needs of vulnerable individuals. The vulnerability assessment must be in-depth and proactive to also identify the non-visible specific needs, such as mental health and psychosocial support as well as indications and risks of gender-based violence. This requires well-trained staff and adequately resourced, specialized services, tailored reception conditions for individuals with specific needs, as well as streamlined processes for vulnerable individuals, from screening and registration to asylum determination. These measures are foundational for efficient asylum systems, enabling applicants to be channeled into appropriate procedures with the necessary support, improving decision accuracy and fostering better integration outcomes.
51. UNHCR further encourages the government to prioritize the processing of asylum applications made by applicants in vulnerable situations, in line with Article 34(5) of the APR.

UNHCR recommends the government of the Netherlands:

- to ensure that identifying and addressing applicants' vulnerabilities and needs is given a central place in the asylum process.
- to ensure that the various agencies involved in the identification of vulnerabilities and needs can exchange information and build on the various assessments and observations.

VIII. Introduction of ground for detention of children (Article 59b of the Draft Law)

52. Article 59b(5) of the Draft Law introduces a ground to detain children under certain circumstances. While Article 59b(5) emphasizes that detention of children is only allowed when there are no alternatives and when detention is in the best interest of the child, UNHCR remains greatly concerned about the explicit introduction in Dutch law of a ground to detain children for immigration related reasons. UNHCR recalls that Article 13(2) of the Reception Conditions Directive does not oblige the Netherlands to introduce grounds for the detention of children.

53. The detention of children may constitute cruel, inhuman or degrading treatment³⁴ and violate the Convention on the Rights of the Child. UNHCR maintains that children should never be detained for immigration related purposes, not even as a matter of last resort and irrespective of their legal/migratory status or that of their parents. Detention is never in the best interests of the child.³⁵ Instead, appropriate care arrangements and child-sensitive alternatives to detention, including arrangements which may involve non-custodial restrictions on movement in an appropriate child protection setting, must be put in place. UNHCR urges the government to exclude children from the grounds for detention introduced in the Draft Law.

UNHCR recommends the government of the Netherlands:

- to ensure that children are not detained for immigration-related purposes, to delete Article 59b(5) of the Draft Law and to include in the Draft Law an article prohibiting the detention of children for immigration-related purposes.

IX. Border asylum procedure (Articles 3 and 6 of the Draft Law)

54. Articles 3 and 6 of the Draft Law regulate the implementation of Chapter IV of the Asylum Procedures Regulation relating to the border asylum procedure. The Draft Law stipulates that applicants whose asylum application is assessed in the border procedure, will remain in detention for the duration of the asylum procedure with a maximum of 28 days.

55. In UNHCR's view, border procedures must comply with the same due process requirements and safeguards as procedures that apply to applications submitted at other locations.

³⁴ UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 March 2015, A/HRC/28/68, at paragraph 80, available via: <https://www.refworld.org/docid/550824454.html>.

³⁵ UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, at page 2, available via: <https://www.refworld.org/policy/legalguidance/unhcr/2017/en/115250>.

56. UNHCR calls on the Netherlands not to automatically detain individuals denied entry to the Netherlands whose asylum application is processed under the border procedure. UNHCR recalls that asylum-seekers should, in principle, not be detained. Detention is an exceptional and temporary measure, that can only be justified for a legitimate purpose, must be assessed on an individual basis and be subject to regular review.³⁶ The Pact allows discretion to members states but does **not** require the automatic use of detention of individuals whose asylum application is processed under the border asylum procedure.³⁷ Instead, the Pact includes a clear obligation on the Member States to assess the application of less coercive measures and only to resort to detention if such measures cannot be applied effectively; all on the basis of an individual assessment.³⁸ UNHCR therefore urges the government to prioritize alternatives to detention in implementing the mandatory border asylum procedure. Alternatives to detention can ensure that individuals remain in the proximity of the designated location for the border procedure, as required by the APR.
57. UNHCR encourages the Netherlands to continue its standing practice of exempting applicants with specific needs from the border procedure, including survivors of torture and violence, children and their families, and instead transfer them to an open reception facility. This practice aligns with the obligations under Articles 21(2) and 52 of the APR, requiring border procedures to cease if ‘necessary support’ cannot be provided to applicants. In UNHCR’s view, ‘necessary support’ for certain groups with specific protection needs, such as survivors of trauma or trafficking, persons with psychosocial or intellectual disabilities, and unaccompanied and separated children will, in practice, prove impossible to secure within the context of an accelerated or border procedure. In UNHCR’s view, as a matter of principle, such applicants should automatically be exempted from these procedures
58. Given the use of detention, and the character of border procedures that may make the provision of full procedural safeguards practically difficult, border procedures should not be applied to children, including for cases of danger to the national security or public order. Detention, including at borders, is never in the best interests of the child, and should not even be used as a last resort. This concerns both unaccompanied and separated children, as well as children in families.
59. According to article 3(3.c) of the Draft Law, asylum applications of unaccompanied children can be processed under the border procedure if the child poses a threat to

³⁶ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available via <https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776>.

³⁷ Indeed, the Asylum Procedures Regulation specifies that the examination of an application for international protection can be applied without recourse to detention. See Asylum Procedures Regulation (2024/1348), recital 69.

³⁸ See Article 10(2) of the Reception Conditions Directive (2024/1346)

national security. UNHCR urges the government not to implement this facultative clause of the APR³⁹ and hence to remove Article 3(3.c) from the Draft Law.

60. The detention of children may constitute cruel, inhuman or degrading treatment and violate the CRC.⁴⁰ Children, including children in families, should **never** be detained for immigration related purposes, not even as a matter of last resort and irrespective of their legal/migratory status or that of their parents, because detention is never in their best interests.⁴¹

UNHCR recommends the government of the Netherlands:

- not to automatically detain individuals denied entry to the Netherlands whose asylum application is processed under the border procedure, and instead prioritize alternatives to detention in the implementation of the asylum border procedure, as required by Article 10(2) recast RCD.
- to maintain its current practice of exempting applicants with specific needs from the border procedure and instead transferring them to open reception facilities.
- not to apply the border procedure to children and their families.
- not to introduce a ground for detention of children in the border procedure, thus deleting Article 3(3.c) from the Draft Law.

X. Accelerated examination procedures

61. UNHCR notes that the Draft Law and its Explanatory Memorandum do not fully elaborate which applications will be examined under the accelerated examination procedures. Based on the wording of the Explanatory Memorandum, it appears that the government intends to implement the facultative Article 42(3) of the APR, thereby including under certain conditions the applications of unaccompanied or separated children in the accelerated examination procedure.

62. UNHCR maintains that accelerated examination procedures should not be applied to unaccompanied and separated children, nor to vulnerable persons who are in need of specific procedural guarantees and/or reception needs (inter alia, gender, sexual orientation, serious illness, or as a consequence of psychological, physical, sexual or gender-based violence).⁴² Rather, these groups should be referred to specialized procedures which fully take into account their specific needs.

³⁹ EU Asylum Procedures Regulation (2024/1348), Arts. 42(3.b) and 44.

⁴⁰ UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 March 2015, A/HRC/28/68, at paragraph 80, available at: <https://www.refworld.org/docid/550824454.html>.

⁴¹ UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, at page 2, available at: <https://bit.ly/3d3VP2u>.

⁴² This includes the factors outlined in Recital 17 of the Asylum Procedures Regulation and Article 24 of the Reception Conditions Directive

63. Further, UNHCR encourages the Netherlands to carefully consider transferring cases out of the accelerated examination procedure when the issues of fact or law are too complex to be examined under an accelerated procedure, in line with Article 42(2) of the APR. Ensuring that complex cases are assessed under the regular asylum procedure minimizes the risk of incorrect or incomplete decision-making, limits unnecessary appeals before the courts, protects the effectiveness and efficiency of the accelerated examination procedure and, ultimately, safeguards against refoulement.
64. UNHCR therefore recommends the government not to apply accelerated examination procedures to unaccompanied or separated children or to other vulnerable groups, but to rather examine their applications in a prioritized procedure in line with Article 34(5)(b) of the APR.

UNHCR recommends the government of the Netherlands:

- not to apply accelerated examination procedures to unaccompanied or separated children and to other vulnerable groups.
- to apply a low threshold for referring cases out of the accelerated examination procedure when the case is too complex to be examined in an accelerated procedure.

XI. Deletion of intended rejection and administrative appeal in the asylum procedure (Articles 39 and 41 Draft Law)

65. Articles 39 and 41 of the Draft Law propose removing the ‘intended rejection’ (*voornemen*) in the asylum procedure, thereby eliminating applicants’ opportunity to submit written views (*zienswijze*) in response. According to the Explanatory Memorandum, this measure aims to shorten the asylum procedure.
66. UNHCR emphasizes that access to an effective remedy to challenge a decision rejecting an asylum application is a fundamental right under both current legislation and the Pact. The ability to contest an asylum decision through administrative or judicial appeal is a critical safeguard against *refoulement*. Limiting the possibility of administrative appeal (the intended rejection (*voornemen*) and written views (*zienswijze*)) weakens procedural guarantees, increasing the risk of incorrect decisions and potential violations of non-*refoulement* obligations.
67. In addition, while the intended rejection (*voornemen*) and written views (*zienswijze*) take time (two additional days) during the asylum procedure, these procedural steps add to the efficiency of the asylum procedure as a whole. Providing applicants the possibility to challenge the reasoned intended rejection before a definitive decision is taken on their

asylum application, ensures that the final decisions are thoroughly reasoned and of better quality, which reduces the need for judicial appeals and minimizes the amount of decisions challenged before the courts.⁴³ UNHCR therefore recommends not to delete these steps from the asylum procedure.

68. In this context, UNHCR reiterates the importance of providing applicants the opportunity to clarify inconsistencies, provide missing information, or explain statements made during asylum interviews. As a general rule, UNHCR recommends that no negative credibility findings regarding an applicant's statements, whether inconsistencies, lack of detail or lack of plausibility, relating to elements material to the refugee claim should be made without fully explaining the issue to the applicant and having given the applicant the opportunity to provide missing information, and/or to explain or clarify the inconsistency.⁴⁴ This is an essential safeguard in the asylum procedure, which should be upheld even when a recording of the asylum interview is available.

UNHCR recommends:

- to maintain the procedural steps of the intended rejection (*voornemen*) and submission of written views by the applicant (*zienswijze*) in the asylum procedure. These steps add to the quality of decisions and the efficiency of the asylum process and form an important safeguard against *refoulement*.

XII. Legal aid

69. The Explanatory Memorandum to the Draft Law confirms the government's intentions to review the current system of legal aid and to abolish access to legal aid for asylum applicants during the administrative phase of the asylum procedure.⁴⁵ However, the Draft Law does not specify how legal aid will be organized, as these plans to limit legal aid are still under development.

70. UNHCR calls on the Dutch government to continue providing free legal aid and representation to all asylum applicants during all phases of the asylum procedure and appeal. Access to free legal aid has been a key feature of the Dutch asylum procedure for decades. Access to quality legal aid and assistance from the outset of asylum procedures enhances fairness, improves compliance, reduces appeals, and saves time and resources. It can assist in the identification of international protection needs of applicants by helping

⁴³ EU Asylum Procedures Regulation (2024/1348), consideration 16 emphasizes that "it is essential to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making".

⁴⁴ UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 26 August 2020, available via <https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123306>, page 154.

⁴⁵ Explanatory Memorandum, p. 35.

them put forward all the information and documents relevant to their refugee claims, as well as discouraging the submission of false claims by dispelling misguided or exploitative information, and thus contributes to the efficiency and expediency of the asylum process.

71. Providing free legal aid to asylum-seekers not only enhances fairness and efficiency, but also decreases the financial costs for the Government by reducing the burden on decision makers to work out the material elements of an asylum-seeker's claim; by strengthening the quality of decisions, resulting in reduced appeal rates; and by enabling asylum-seekers to understand procedures resulting in appropriate engagement in the process and the ability to meet relevant time limits.
72. As noted by the European Commission in the Explanatory Memorandum to the APR, access to legal aid and representation is "*necessary to enable applicants to fully exercise their rights given the tighter time-limits for the procedure*".⁴⁶ The importance of legal aid is even greater in light of the cumulative impact of the Draft Law's other proposed changes, including the deletion of the procedural steps of the intended rejection (*voornemen*) and submission of written views (*zienswijze*) and the reduction of time limits for appeals.
73. Considering the importance of legal aid and representation, UNHCR encourages the government to continue providing free legal aid to all applicants, irrespective of whether they explicitly requested it or the perceived merits of an applicant's appeal. UNHCR recommends that especially in the case of applicants in need of specific procedural guarantees and unaccompanied children, access to free legal assistance and representation is provided systematically, irrespective of the applicant's request.
74. Further, given the importance of the legal issues often involved in cases of second or higher level appeals, as well as the complexity of such proceedings, UNHCR recommends that access to free legal assistance and representation should be maintained in these cases.

UNHCR recommends the government of the Netherlands:

- to continue providing free legal aid and representation to all asylum applicants in all phases of the asylum procedure and appeal.

⁴⁶ European Commission, Explanatory Memorandum to Asylum Procedures Regulation, p. 14

XIII. Access to reception for all asylum applicants (Article 44a of the Draft Law)

75. Article 44a of the Draft Law stipulates that applicants who are required to be in another EU Member State under the Asylum and Migration Management Regulation, are not entitled to the material reception conditions laid out in Articles 17 to 20 of the Reception Conditions Directive. According to Article 44a, the government “ensures a minimum standard of living of uninterrupted access to housing, food and clothing” to these applicants.
76. UNHCR calls on the government to guarantee that *all* asylum applicants have access to an adequate and dignified standard of living. UNHCR is concerned that ensuring a “minimum standard of living of uninterrupted access to housing, food and clothing” as a minimum threshold may be well below an “adequate” standard of living as required under international human rights law.
77. In addition, UNHCR emphasizes that ensuring applicants have access to an adequate standard of living requires taking into account an individual’s personal circumstances, including any vulnerabilities and specific needs.⁴⁷ Indeed, UNHCR encourages the government not to restrict access to reception conditions for vulnerable persons who are in need of specific procedural guarantees due to factors outlined in Recital 17 APR (inter alia, gender, sexual orientation, serious illness, or as a consequence of psychological, physical, sexual or gender-based violence) and special reception needs as exemplified by Article 24 recast RCD.
78. UNHCR further calls on the government to explicitly exclude children, whether unaccompanied or accompanied by their family members, from the application of Article 44a of the Draft Law. The safeguards for the reception of children laid out in Articles 26 and 27 of the Reception Conditions Directive should be respected at all times. In addition, Article 22 of the 1951 Refugee Convention requires children to be accorded the same treatment as nationals with regard to primary education; irrespective of whether they or their parents are required to be in a different EU Member State.

⁴⁷ As also emphasized in various recitals of the Reception Conditions Directive. Recital 22 states: “All provisions under this Directive relating to [...] withdrawal of rights or benefits should be applied with due regard to the principle of proportionality, ensuring at all times effective access to the applicable reception conditions in accordance with this Directive, in particular with regard to health care, education, family unity and access to the labour market. Particular attention is to be paid to the possible cumulative effect of measures”. And recital 62 adds: “Member States should always ensure a standard of living for all applicants in accordance with Union law, including the Charter, and international obligations, taking into account applicants with special reception needs and the best interests of the child”.

UNHCR recommends the government of the Netherlands:

- to guarantee that *all* asylum applicants have access to an adequate and humane standard of living.
- to explicitly exclude children and vulnerable persons who are in need of specific procedural guarantees from the application of Article 44a of the Draft Law.

XIV. Conclusions and recommendations

79. In conclusion, UNHCR is concerned that various components of the Draft Law, when considered cumulatively, may have a negative effect on asylum-seekers and refugees' well-being, as well as on the fulfillment of their human rights and might increase the risk of refoulement. UNHCR reiterates its call to the government to take the implementation of the Pact as an opportunity to strengthen the Dutch asylum system, building on the current safeguards in the Dutch national asylum procedure that go beyond the minimum standards laid out in the Pact. Especially as these standards, including the right to legal aid, the equality in rights accorded to the two protection statuses and the longer validity of asylum residence permits, have proven over the past decades to be beneficial to the efficiency of the Dutch asylum system and to the protection of refugees and their family members.

80. UNHCR remains available to discuss these recommendations with the Dutch authorities.

UNHCR, February 2025