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RE: UNHCR Observations on the draft law on amendments to the Foreign Nationals Act, No. 80/2016 (temporary protection due to mass exodus, etc.) (*Frumvarp til lagaum breytingu á lögum um útlendinga, nr. 80/2016 (tímabundin vernd vegna fjöldaflotta o.fl.)*) (Parliamentary Document 97 - Issue 97)

To the Members of the Judicial Affairs and Education Committee,

The UNHCR Representation for the Nordic and Baltic Countries appreciates the opportunity to provide its observations on the on amendments to the Foreign Nationals Act, No. 80/2016 (temporary protection due to mass exodus, etc.) (*Frumvarp til lagaum breytingu á lögum um útlendinga, nr. 80/2016 (tímabundin vernd vegna fjöldaflotta o.fl.)*).

UNHCR appreciates the constructive dialogue with Alþingi, and we thank you for your consideration of this important matter. We remain at your disposal for any clarification required.

Yours sincerely,

P.P.

Annika Sandlund
Representative

**UNHCR Observations on the draft law on amendments to the Foreign Nationals Act,
No. 80/2016 (temporary protection due to mass exodus, etc.).**

*Frumvarp til lagaum breytingu á lögum um útlendinga, nr. 80/2016 (tímabundin vernd
vegna fjöldaflóttá o.fl.)*

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries appreciates the opportunity to provide observations on the “Draft law on amendments to the Act on Foreigners, No. 80/2016 (temporary protection due to mass exodus, etc.)” (*Frumvarp til lagaum breytingu á lögum um útlendinga, nr. 80/2016 (tímabundin vernd vegna fjöldaflóttá o.fl.)*) - hereafter the “Proposal”.¹
2. UNHCR has a direct interest in law proposals related to asylum, as the agency entrusted by the United Nations (“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 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 (hereafter collectively referred to as “1951 Convention”) oblige State Parties 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 (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union (“EU”) law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the EU.⁵ The UN General Assembly has also entrusted UNHCR with

¹ The full presentation of the Proposal by the Ministry of the Justice, including explanatory notes and proposed legislative text (in Icelandic): *Frumvarp til lagaum breytingu á lögum um útlendinga, nr. 80/2016 (tímabundin vernd vegna fjöldaflóttá o.fl.)*, 158. löggjafarþing 2026–2027. Þingskjal 97 - 97. mál. Stjórnarfrumvarp, <https://www.althingi.is/altext/158/s/0097.html>.

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

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. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002, <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 <https://www.refworld.org/legal/agreements/unga/1951/39821>. According to Article 35 (1) UNHCR has the “duty of supervising the application of the provisions of the Convention”.

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

a global mandate to provide protection to stateless persons world-wide and for preventing and reducing statelessness.⁶

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 law 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")⁷ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions for forcibly displaced and stateless persons.

II. Scope of the Proposal

4. The collective protection scheme⁸ in Iceland was activated in March 2022 for persons fleeing Ukraine following the full-scale invasion of Ukraine in February 2022.⁹ UNHCR commends Iceland for its steadfast commitment to providing protection and support to persons fleeing the war in Ukraine, and for its efforts in establishing and maintaining the collective protection scheme since March 2022.
5. The Proposal seeks to amend Article 44(3) of the Icelandic Foreign National Act to extend the maximum duration of collective protection from five to six years, thereby enabling Iceland to align with the European Union's extension of temporary protection until 4 March 2028.¹⁰
6. Furthermore, the Proposal seeks to remove the provision which provides for the possibility for beneficiaries of collective protection to transition from temporary residence permits to a residence permit on humanitarian grounds. Until now, such a permit would subsequently serve as the basis for obtaining a permanent residence permit. The Proposal also expressly

⁶ UN General Assembly Resolution A/RES/50/152, 9 February 1996, <https://www.refworld.org/legal/resolution/unga/1996/17284>, reiterated in subsequent resolutions, including A/RES/61/137 of 25 January 2007, <https://www.refworld.org/legal/resolution/unga/2007/41114>, A/RES/62/124 of 24 January 2008 <https://www.refworld.org/en/download/149439>, and A/RES/63/148 of 27 January 2009 <https://www.refworld.org/en/download/149439>.

⁷ 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, <https://www.refworld.org/docid/5cb474b27.html>.

⁸ The scheme is currently called "collective protection" (*sameiginlega vernd*) in the Foreign Nationals Act. This Proposal seeks to rename the protection status from "collective protection" to "temporary protection" (*timabundna vernd*) throughout the Foreign Nationals Act to harmonize the terminology of Icelandic law with the terminology used in Directive 2001/55/EC. However, for the purpose of these observations, reference is made to existing legal terminology.

⁹ Ministry of Justice, The Minister of Justice permits collective protection due to mass exodus, 7 March 2022, <https://www.government.is/diplomatic-missions/embassy-article/2022/03/07/The-Minister-of-Justice-permits-temporary-protection-due-to-mass-flight/>

¹⁰ Proposal p. 2. Council of the European Union, COUNCIL IMPLEMENTING DECISION (EU) 2026/1912 of 30 July 2026 extending the temporary protection introduced by Implementing Decision (EU) 2022/382, ISSN-1977-0677, 30 July 2026, <https://www.refworld.org/legal/resolution/coe/2026/151725>.

provides that a residence permit granted on the basis of collective protection cannot constitute grounds for permanent residence permits. As explained in the Proposal, by eliminating this pathway to humanitarian permit, and consequently access to permanent residence on that basis, the proposed amendments seek to align Iceland's collective protection framework more closely with that of the European Union and other Schengen states.¹¹

7. UNHCR will, in the following observations, focus on issues raised in the Proposal relating to a) access to permanent residency, and b) transitional measures for beneficiaries of collective protection.

III. Observations

A. Access to permanent residency

8. The Proposal introduces restrictions on access to permanent residence for beneficiaries of collective protection, who hold temporary residence permits that may be renewed over a prolong period. Such restrictions would result in differential treatment depending on one's form of international protection under Icelandic law (refugee status, subsidiary protection or collective protection). This raises the question of whether such differential treatment may be objectively and reasonably justified.
9. Under international and European human rights law, States may establish different legal regimes for different categories of residence permits. However, differential treatment between categories of beneficiaries of international protection should pursue a legitimate aim and be based on objective and reasonable grounds.¹² Particular care is warranted where such distinctions affect access to secure legal status, integration and durable solutions. UNHCR notes that the Proposal does not address the rationale for the differential treatment between beneficiaries of different protection statuses, nor does it assess whether restricting access to permanent residence for beneficiaries of collective protection would objectively and reasonably be justified.
10. In this regard, UNHCR wishes to recall that individuals who are granted refugee status, subsidiary protection or collective protection may equally fall within the definition of a refugee under international law. It is well established that a person is a refugee within the meaning of the 1951 Convention as soon as he or she fulfils the legal criteria, irrespective of a formal determination of that status. Recognition of refugee status is declaratory. Beneficiaries of collective protection may accordingly also qualify as refugees under international law.

¹¹ Proposal, p. 3.

¹² Charter of Fundamental Rights of the EU, Art. 21; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"), as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, <https://www.refworld.org/docid/3ae6b3b04.html>, Art. 14.

11. Temporary Protection or Stay Arrangements (“TPSAs”) – such as the Icelandic temporary collective protection regime– are pragmatic tools that complement the international refugee protection framework, particularly in times of large-scale influxes.¹³ However, the use of such tools does not determine or limit the duration of the protection needs that refugees may have. While TPSAs employed as emergency response to large-scale refugee movements may initially provide for a limited set of rights, they should ensure minimum standards of treatment while preserving more favourable rights where applicable.¹⁴ In cases of prolonged stay, or where transition to solutions is delayed, standards of treatment should be gradually improved.¹⁵ For these reasons, UNHCR is concerned that the Proposal may introduce unjustified distinctions in the rights afforded to individuals who have been granted different forms of international protection.
12. UNHCR also wishes to recall that the European Court of Human Rights (“ECtHR”) has found a violation of the non-discrimination guarantee under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) in several cases involving differential treatment based on immigration status. ECtHR jurisprudence shows that differences in treatment between persons who are similarly situated require a legitimate aim and a proportionate relationship between this aim and the means employed to realize it.¹⁶
13. In UNHCR’s view, the practical consequences of the Proposal, namely the differing treatment of beneficiaries of collective protection in relation to eligibility for permanent residence, as compared to other beneficiaries of international protection, do not appear proportionate. UNHCR is concerned that the proposed amendments not only reduce the legal certainty enjoyed by beneficiaries of collective protection thus far, but also risk having a negative impact on their socio-economic inclusion in Iceland. UNHCR recommends that Iceland reconsider the proposed differential treatment in respect of the eligibility for permanent residence permits.

¹³ UNHCR, Guidelines on Temporary Protection or Stay Arrangements, February 2014.

¹⁴ Ibid.

¹⁵ Ibid. See also UNHCR, Updated UNHCR Observations on the Proposal for a Directive of the European Parliament and of the Council Amending Directive 2003/109/EC Establishing a Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection, August 2010, <https://www.refworld.org/legal/intlegcomments/unhcr/2010/en/75419>.

¹⁶ For jurisprudence in Council of Europe: European Court of Human Rights, see for example *Niedzwiecki v. Germany*, 58453/00, 15 February 2006, <https://www.refworld.org/jurisprudence/caselaw/echr/2006/en/119154>; *Okpiz v. Germany*, 59140/00, 25 October 2005, <https://www.refworld.org/jurisprudence/caselaw/echr/2005/en/19454>; *Biao v. Denmark* (Grand Chamber), Application no. 38590/10, 24 May 2016, <https://www.refworld.org/jurisprudence/caselaw/echr/2016/en/114050> and *Hode and Abdi v. The United Kingdom*, (Application no. 22341/09), 6 November 2012, <https://www.refworld.org/jurisprudence/caselaw/echr/2012/en/89212>.

B. Transitional measures for beneficiaries of collective protection

14. While the Proposal does not provide the pathway from collective protection to a residence permit on humanitarian grounds or to permanent residency, it does confirm that beneficiaries of collective protection are able to apply for residence permits on other bases under the Foreign Nationals Act, including employment or personal ties to Iceland.¹⁷ However, the Proposal does not provide for any specific transitional measures or safeguards for individuals currently benefiting from collective protection.
15. While return to Ukraine remains a long-term aspiration for many beneficiaries of collective protection, available evidence suggests that a significant proportion is likely to remain in host countries even after collective/temporary protection arrangements come to an end.¹⁸ In this regard, UNHCR has emphasized that planning for legal stay and inclusion during displacement should be viewed as a necessary complement to return planning, helping to ensure that refugees remain protected and supported to achieve self-reliance while retaining the possibility of voluntary, safe and sustainable return when conditions permit.
16. In UNHCR's view, transition from collective protection to an alternative legal status and other solutions requires a predictable and well-managed strategy.¹⁹ UNHCR's analysis indicates that the eventual phase-out of temporary/collective protection will affect a large and diverse population.²⁰ Hence, even if collective protection is extended until March 2028, its eventual termination without adequate bridging arrangements, grace periods or accessible alternative legal statuses could leave a significant number of beneficiaries in legal uncertainty without a viable route to regular stay, creating risks of potential onward movement, disrupted access to rights and undue pressure on national asylum systems.²¹ Given the scale of displacement and continued uncertainty regarding the situation in

¹⁷ Proposal, p. 3.

¹⁸ UNHCR's scenario analysis projects that a substantial proportion of refugees from Ukraine are likely to remain in host countries beyond the end of temporary protection arrangements. Even under a "fragile peace with concessions" scenario, approximately 2.4 million refugees are projected to remain in the EU and Moldova by the end of 2029, representing 56% of the total population. The report further notes that many refugees have established social and economic ties in host countries during their displacement. UNHCR, *Transitioning From Temporary Protection: Projected Stay, Legal Pathways, and Policy Options for Refugees from Ukraine*, UN High Commissioner for Refugees (UNHCR), May 2026, <https://www.refworld.org/reference/repcomp/unhcr/2026/151443>, pp. 5-6.

¹⁹ UN High Commissioner for Refugees (UNHCR), *UNHCR Recommendations on the continued use of Temporary Protection arrangements and Guiding Principles for Transition in relation to the Ukraine Refugee Situation*, May 2025, <https://www.refworld.org/policy/countryspos/unhcr/2025/150064>.

²⁰ UNHCR report notes that the eventual transition from temporary protection will concern a population with varying levels of socio-economic inclusion, protection needs, geographical origin and prospects for return, including both economically active households and persons in vulnerable situations, such as older persons, single caregivers and persons with disabilities. See supra note 18, pp. 5

²¹ Findings indicate that asylum was selected as a prospective legal status by between 9% and 23% of respondents planning a change of status, depending on household characteristics, and by 18% of respondents from frontline oblasts. Given the scale of the population expected to remain in host countries, these findings underline the potential for increased asylum applications and consequent pressure on national asylum systems where alternative transition pathways are not available. *Ibid*, p. 7.

Ukraine, a range of options of accessible legal pathways will be required once collective protection arrangements come to an end.

17. Against this background, UNHCR recommends that Iceland accelerate the development of accessible pathways to longer-term legal stay for beneficiaries of collective protection, including through residence arrangements that are responsive to their specific circumstances and protection needs. UNHCR further advises that the administrative procedures associated with such permits be adapted to the specific circumstances of beneficiaries of collective protection, including through simplified evidentiary and eligibility requirements where appropriate. Certain requirements, such as valid travel documents²², language proficiency exams, administrative fees or other conditions may otherwise present practical barriers to access residence option. In addition, options with lighter associated administrative procedures may help ease pressure on national capacities.
18. Furthermore, particular attention should be given to ensuring that vulnerable groups, including older persons and persons with serious medical conditions or disabilities, who may be unable to meet employment- or income-related criteria for alternative forms of residence, are adequately considered and are not left behind in these efforts. All transition pathways must retain robust protection safeguards and ensure continued access to core rights, including employment, housing, healthcare and other key social protection benefits. Restricting access to these rights may increase vulnerability, contribute to premature returns and place additional pressure on national asylum systems.²³
19. Regardless of the transitional measures adopted, a number of asylum applications are likely to be received as individuals retain the right to claim asylum under international and regional law. UNHCR therefore recommends that Iceland continue to invest in preparedness measures to make sure that the asylum system is equipped to receive and process potential additional applications for international protection, including through adequate staffing, appropriate procedures and timely information provision. UNHCR further recommends that Iceland consider simplified or accelerated procedures for manifestly well-founded claims, alongside sufficient resourcing to avoid backlogs and safeguard procedural quality.

IV. Concluding remarks

20. Based on the above observations, UNHCR invites Iceland to consider the following amendments to the Proposal and in particular, to:

²² Requirement to have valid travel documents to access certain alternative forms of legal status in host states is a particularly complex issue for some individuals originating from the temporarily occupied territories. See, for instance, UNHCR, Displacement Patterns, Protection Risks and Needs of Refugees from Ukraine – Regional Protection Analysis #3 (November 2023), <https://data.unhcr.org/en/documents/details/104828>.

²³ See supra note 18, p. 9.

- a. To reconsider the proposed differential treatment between refugees, beneficiaries of subsidiary protection and beneficiaries of collective protection, in respect of the eligibility for permanent residence permits, taking into account the prolonged nature of displacement and the importance of facilitating access to secure legal stay.
 - b. To develop accessible pathways to longer-term residency options for beneficiaries of collective protection, including for individuals with specific vulnerabilities who may face difficulties in meeting the requirements of existing residence categories.
 - c. To engage in preparedness and capacity-building activities to ensure that the national asylum system remains equipped to effectively process any asylum applications for international protection which may be submitted by beneficiaries of collective protection.
21. UNHCR welcomes the continued dialogue and cooperation with Icelandic authorities and Alþingi on asylum and international protection matters and remains available to discuss these recommendations further and provide technical support, as appropriate, in relation to collective protection, longer-term legal stay and international protection procedures.

UNHCR Representation for Nordic and Baltic Countries
October 2026