

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review:

2nd Cycle, 24th Session

DENMARK

I. BACKGROUND INFORMATION

Denmark is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter collectively referred to as the *1951 Convention*). Denmark also ratified the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1956 and acceded to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 1977. While a Member State of the European Union, Denmark has opted out of the EU *acquis* on asylum and is therefore not bound by the legal framework established by the EU in this area.

In 2014, 14,815 asylum applications were lodged in Denmark, including by Syrians (7,185), Eritreans (2,293), Somalis (688) and stateless persons (1,265). By comparison, the total number of asylum applications lodged in 2013 was 7,755. An increase in asylum applications made by unaccompanied and separated children (UASC), primarily from Syria, Eritrea and Afghanistan, was also noted in 2014, with 838 applications from UASC in 2014 compared to 354 in 2013. As of the end of 2014, an estimated 4,725 stateless persons were residing in Denmark.

Denmark has a well-established asylum system in place and enacted its first *Aliens Act* in 1983. The competent authorities for asylum decision-making are the Danish Immigration Services (at first instance) and the Refugee Appeals Board (at second instance). Decisions from the Refugee Appeals Board are final and cannot be appealed to the court.¹ The police are the responsible authority for fingerprinting and EURODAC registration.

Domestic legal provisions regulating the right to asylum are primarily contained in the *Aliens Act*.² The amendments to the *Aliens Act* introduced since 2002 include restrictions concerning

¹ *Danish Aliens Act* §56:8.

² *Denmark: Aliens Act of 2003* [Denmark], 24 July 2003, available at: <http://www.refworld.org/docid/3ae6b5634.html>. The latest amendments (in Danish) are available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=164258>.

the right to family reunification and the right to permanent residency and have several times lowered the threshold for expulsion of foreigners.

The main legal instrument concerning the acquisition and loss of Danish nationality is the *2005 Nationality Act*.³ Naturalization of stateless persons in Denmark is based on the conditions stipulated in a *Circular Letter on Naturalization* (hereafter the *Naturalization Circular*).⁴ Applicants for naturalization who fulfil the conditions will be listed in a *Naturalization Bill* to be adopted by the Danish Parliament. The Ministry of Justice administers the applications for citizenship and submits the bill to the Parliament.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR welcomes the many positive initiatives by the Danish Government aimed at strengthening refugees' abilities to successfully integrate into Danish society, including the proposal in March 2015 to amend a number of laws relating to the integration of refugees.

UNHCR also welcomes the Government's reintroduction of the full amount of the old age pension for refugees who have not resided in Denmark for 40 years. UNHCR also acknowledges the abolishment in 2012 of the "starting allowance benefit" (*starthjælp*), which prevented persons who had not resided lawfully in Denmark for at least seven out of the preceding eight years from accessing the full amount of social cash benefits. UNHCR further wishes to acknowledge the abolishment in 2012 of the point system that had been introduced in 2010 and had instituted several onerous requirements for obtaining a permanent resident permit.⁵

Furthermore, UNHCR would like to highlight the high standards of Danish reception centers, including the reception centers for unaccompanied children seeking asylum in Denmark, as well as the efforts to establish new centers throughout the country to accommodate the increased number of asylum-seekers arriving in 2014.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Conditions for obtaining a permanent residence permit

Individuals granted refugee status and subsidiary protection status are initially issued a temporary residence permit, which is renewable and valid for a period of one to two years. Refugees and other foreigners are only able to obtain permanent resident status after they have resided in the country for a minimum of five years. The short duration of the residency permits during the initial five-year period may have a negative impact on a person's sense of

³ *Consolidated Act on Danish Nationality, Consolidation Act No. 422 of 7 June 2004*, available at:

http://www.nyidanmark.dk/NR/rdonlyres/52136BD4-FA62-4818-AABB-5709AABAC6A6/0/consolidation_act_no_422_7_june_2004.pdf.

⁴ In 2012-13, *Circular Letter no 61 of 22 September 2008*, available at:

http://www.nyidanmark.dk/NR/rdonlyres/2DA2D909-D91F-4E36-92E7-32C8F8DED7FD/0/cirk_nr_61eng_2_naturalisation.pdf. As of 15 June 2013, the *Circular letter of 2008* is

replaced by *Circular letter no 9253 of 6 June 2013*, available at:
<https://www.retsinformation.dk/Forms/R0710.aspx?id=152087>.

⁵ The point system required that the refugee obtain 100 points accrued through demonstrating e.g. no financial support received from the Government within the previous three years, no debt to the Government, two and a half years employment within the last three years and passing a Danish language test (*dansk prøve 2*).

belonging and motivation to integrate. While the five-year period is an improvement from the earlier seven-year period of legal residence required for foreigners, refugees continue to experience barriers to obtaining permanent residence as a number of additional requirements must be met concerning employment, self-reliance and language skills. While the *Aliens Act* allows for the possibility of an exemption from these requirements, these exemptions only apply if the refugee has resided in the country for at least eight years and if he/she has demonstrated a general willingness to integrate into Danish society.

To be eligible for naturalization, refugees and stateless persons must have resided in Denmark for a total of eight years and, at the time of application, possess a permanent residence permit. Other foreigners are required to have resided in Denmark for nine years.

Amendments to the *Aliens Act* passed by the Parliament in February 2015 introduced a “temporary subsidiary protection status” for persons originating from countries undergoing conflict and other situations of violence, as set out in Article 7.3 of the *Act*. Beneficiaries of the new status will initially receive a one year residence permit, which may be extended for two years if it has been assessed that the general conditions in the country of origin continue to be of such a character that there is a continued need for international protection. Beneficiaries of the subsidiary status will not be allowed to initiate family reunification proceedings during the first year (see Issue 2 for further information).

Of particular concern is the potential application of the new temporary subsidiary protection status to Syrian asylum-seekers, in accordance with the explanatory memorandum to the amendments, which makes specific references to the situation in Syria, and with the current practice of granting Syrian asylum-seekers either *1951 Convention* status or subsidiary protection under Article 7.2. The explanatory memorandum to the amendments provides that the international protection needs of individuals covered by Article 7.3 are generally more temporary, as their protection needs are based on a situation that is subject to change. In this regard, UNHCR would like to underline that there is currently no political solution in sight to the crisis in Syria and that the conflict entered its fifth year in March 2015. As international efforts to find a political solution to the Syria situation have so far not been successful, the conflict continues to cause further civilian casualties, displacement and destruction of the country’s infrastructure.⁶ In recognition of the flight of civilians from Syria as a refugee movement, EU Member States have in 2014 increasingly been granting refugee protection to asylum-seekers from Syria, in contrast to 2013 when States predominantly granted subsidiary protection to Syrians.⁷ UNHCR has previously stated that there is no reason to expect the protection needs of subsidiary protection beneficiaries to be of shorter duration than protection needs under the *1951 Convention*.⁸

Although Denmark has opted out of the EU *acquis* on asylum, it may be worth noting that UNHCR has in various commentaries to the EU *acquis*, recommended that permanent residence permits be granted to refugees, at the latest by the end of the three-year residence

⁶ UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, para. 2, available at: <http://www.refworld.org/docid/544e446d4.html>.

⁷ *Ibid.*, para. 26.

⁸ UNHCR, *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009)*, 29 July 2010, para. 8, available at: <http://www.refworld.org/docid/4c503db52.html>.

period established by the EU *Qualification Directive*.⁹ UNHCR emphasizes that the three-year deadline should also apply to persons granted subsidiary protection.¹⁰

UNHCR's Executive Committee in its *2005 Conclusion on Local Integration* called upon States to support refugees' ability to integrate "through the timely grant of a secure legal status and residency rights, and/or to facilitate naturalization."¹¹ During the 1st cycle UPR, Denmark received a recommendation from the United States to "Review the requirements for migrants and asylum-seekers to obtain permanent residence and citizenship..."¹² However, this recommendation did not enjoy the support of Denmark.

Recommendation:

UNHCR recommends that the Government of Denmark:

- Ensure that refugees and other beneficiaries of international protection receive long-term residence rights at an early stage, either immediately or at the latest following the expiry of the initial permit, as shorter-term residency has been proven to have a negative impact on refugees' sense of belonging and motivation to integrate.

Issue 2: Family reunification

During the 1st cycle UPR, Denmark received recommendations regarding family reunification from Greece,¹³ Sweden¹⁴ and Ecuador.¹⁵ Furthermore, the Committee on the

⁹ European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L 337/9-337/26; 20.12.2011, 2011/95/EU, recital 13, available at: <http://www.refworld.org/docid/4f197df02.html>.

¹⁰ "Note on the Integration of Refugees in the European Union", UNHCR, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>, p. 6.

¹¹ UNHCR, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975-2009 (Conclusion No. 1-109), available at: <http://www.refworld.org/docid/4b28bf1f2.html>, No. 104 (LVI) – Conclusion on Local Integration (2005) para. (j).

¹² See para. 106.123 (recommendation by the United States), Report of the Working Group of the Universal Periodic Review: Denmark, A/HRC/18/4, 11 July 2011, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/145/41/PDF/G1114541.pdf?OpenElement>.

¹³ "106.116. Allow for family reunification for children in as many cases as possible and ensure that Danish jurisprudence on family reunification is in accordance with its human rights obligations (Greece)," Report of the Working Group of the Universal Periodic Review: Denmark, A/HRC/18/4, 11 July 2011, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/145/41/PDF/G1114541.pdf?OpenElement>. This recommendation was accepted by Denmark, with the following comment: "Family reunification with children is granted upon application if the conditions stipulated in the Danish Aliens Act have been met – residence permits are therefore granted in as many cases as possible according to the Danish Aliens Act. It is Danish Governments opinion that the rules in the Danish Aliens Act are in accordance with Denmark's international obligations." Addendum: Report of the Working Group on the Universal Periodic Review – Denmark, A/HRC/18/4/Add.1, 13 September 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/DKSession11.aspx>.

¹⁴ "106.129. Implement the recommendations of the Committee on the Elimination of Racial Discrimination with regard to the conditions for family reunification of spouses (Sweden)," Report of the Working Group of the Universal Periodic Review: Denmark, A/HRC/18/4, 11 July 2011, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/145/41/PDF/G1114541.pdf?OpenElement>. This recommendation was not accepted by Denmark. Addendum: Report of the Working Group on the Universal Periodic Review – Denmark, A/HRC/18/4/Add.1, 13 September 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/DKSession11.aspx>.

¹⁵ "106.130. Implement the legal provisions and, where necessary, adopt legal reforms to guarantee family reunification of foreigners who have settled in Denmark, particularly family members of refugees, in accordance

Elimination of Racial Discrimination has recently noted its concern regarding Denmark's "strict and restrictive conditions regarding family reunification."¹⁶ With reference to recent developments relating to the issue of family reunification, UNHCR notes the following:

The amendments to the *Aliens Act* in February 2015 further restrict access to family reunification for persons granted temporary subsidiary protection status under Article 7.3. They will not be entitled to family reunification of their spouse, partner or minor child below 15 years, unless an extension of the temporary subsidiary protection status is granted. The explanatory memorandum to the law states that an exemption will be made if required by Denmark's international obligations, for example, families where the spouse or a child suffers from severe illness. However, the memorandum does not address the situation of unaccompanied or separated children granted temporary protection who would like to reunite with their family.

UNHCR has stressed the important role that family plays in the specific situation of refugees. Family reunification is a fundamental aspect of bringing normality back to the lives of persons who have fled persecution or serious harm and have lost family during forced displacement and flight. UNHCR's Executive Committee has called for facilitated entry on the basis of liberal criteria of family members of persons recognized to be in need of international protection. The Executive Committee has noted in particular the potential role of family members in promoting the smoother and more rapid integration of refugee families given that they can reinforce the social support system of refugees.¹⁷ UNHCR has welcomed the flexible approach in some States to provide family reunification to all beneficiaries of international protection, including beneficiaries of subsidiary protection, under the same conditions.¹⁸

Specifically in regard to persons who have fled Syria, UNHCR has emphasized that it should be a priority to ensure that Syrians can join family members who are residing in European States. The experience of Syrian refugees has shown that this support can be critical for their rehabilitation, integration and well-being. UNHCR is therefore urging States to simplify and expedite the family reunification process and to explore other avenues, such as humanitarian admission, to ensure that families are not torn apart or separated for a long period of time.¹⁹

with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the 1954 Convention Relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Ecuador);" Report of the Working Group of the Universal Periodic Review: Denmark, A/HRC/18/4, 11 July 2011, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/145/41/PDF/G1114541.pdf?OpenElement>. This recommendation was not accepted by Denmark, with the following comment: "Denmark finds that the current rules in the Danish Aliens Act are in full accordance with Denmark's international obligations..." Addendum: Report of the Working Group on the Universal Periodic Review – Denmark, A/HRC/18/4/Add.1, 13 September 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/DKSession11.aspx>.

¹⁶ Para. 11, Concluding Observations, Committee on the Elimination of Racial Discrimination, 87th session, CERD/C/DNK/CO/20-21, 15 May 2015, available at:

http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/DNK/INT_CERD_CO_CERD_COC_DNK_20484_E.pdf.

¹⁷ UNHCR, Conclusion on Local Integration, 7 October 2005, No. 104 (LVI) - 2005, available at: <http://www.refworld.org/docid/4357a91b2.html>.

¹⁸ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, 8 October 2008, COM(2008)610 final, p. 4-5, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0610:FIN:EN:PDF>.

¹⁹ UNHCR, *Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity*, 11 July 2014, pp. 27-28, available at: <http://www.refworld.org/docid/53b69f574.html>. See also UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, para. 34, available at: <http://www.refworld.org/docid/544e446d4.html>.

Moreover, a timely and pro-active approach to reunification could prevent family members from embarking on risky boat or overland journeys with the goal of joining their family members who have found protection in Europe.

Currently, children above 15 years of age are not entitled to family reunification with parents who have been granted international protection in Denmark. This age limit applies to family reunification in general and not only to individuals granted subsidiary protection status. UNHCR advocates for a flexible definition of the family members considered eligible for family reunification. Children below the age of 18 are by UNHCR and many jurisdictions considered as part of the nuclear family and eligible for family reunification. An age limit of 18 years or the age of majority is also consistent with Article 1 of the *1989 Convention on the Rights of the Child* (the *CRC*).

UNHCR also promotes family reunification in other situations where the family member is socially, economically or emotionally dependent, including unmarried children, regardless of age, who were living with their parents in the country of origin. Dependency may usually be assumed to exist when a person is under the age of 18 years, but continues if the individual (over the age of 18) in question remains within the family unit and retains economic, social and emotional bonds. Dependency should be recognized if a person has a disability and is incapable of self-support, either permanently or for a period expected to be of long duration. Other members of the household may also be dependents, such as grandparents, single/lone brothers, sisters, aunts, uncles, cousins, nieces, nephews and grandchildren; as well as individuals who are not biologically related but are cared for within the family unit.²⁰

Recommendations:

UNHCR recommends that the Government of Denmark:

- Ensure family reunification for all beneficiaries of international protection, including those covered by the new temporary subsidiary protection status under Article 7.3 of the *Aliens Act*, by allowing them to reunite with their family;
- Increase the age limit for children to be entitled to family reunification from 15 to 18 years, in line with Article 1 of the *Convention on the Rights of the Child*; and
- Apply flexible and humane criteria for family reunification and allow other dependents beyond the nuclear family to reunite with their family members.

Issue 3: Prevention of statelessness - avoidance of statelessness at birth

All data indicates that statelessness occurs in Denmark chiefly in the context of migration and asylum. In identifying and registering statelessness, the major issue emerges from discrepancies in registering practices between different Government institutions. Concerning the determination of statelessness and the rights attached to the status, Danish legislation contains very few provisions on statelessness, which is why the legal status of stateless persons depends largely on their residence status.

The renewed attention to statelessness in Denmark has however led to a number of positive changes to the situation of stateless persons since 2011. These improvements include a statelessness determination procedure, automatic acquisition of nationality by children born

²⁰ UNHCR, *Resettlement Handbook*, 2011, July 2011, p. 272 and p.273, available at: <http://www.refworld.org/docid/4ecb973c2.html>. See also: UNHCR, *Note on Family Reunification*, 18 July 1983, para. 5(b) and (c), available at: <http://www.refworld.org/docid/3bd3f0fa4.html>.

to a Danish parent, and a right to nationality by declaration for immigrant descendants born in Denmark before they turn 19.

Stateless children born in Denmark are entitled to Danish nationality through naturalization without meeting the usual requirements for naturalization. This process was introduced through Section 17 of the *Naturalization Circular* in 1992, in order to comply with the obligation of States under Article 7 of the *CRC* to ensure that children enjoy their right to acquire a nationality.

To be eligible for naturalization, the child must be registered in the Central Office of Civil Registration as a Danish resident, that is, lawfully resident. The requirement of lawful residence for a child born stateless in the country to acquire a nationality is in line with the conditions allowed under Article 6(2)(b) of the *1997 European Convention on Nationality*.²¹ However, this requirement is not in line with the conditions allowed under Article 1(2)(b) of the *1961 Convention on the Reduction of Statelessness*,²² which provides that a Contracting State may make the grant of its nationality conditional upon the person concerned being habitually resident in the territory. According to UNHCR's *Guidelines on Statelessness No. 4*, the term "habitual residence" is found in a number of international instruments²³ and is to be understood as stable, factual residence.²⁴ It does not imply a legal or formal residence requirement. The *1961 Convention* does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon lawful residence.²⁵ For States, such as Denmark, bound by both the *1997 European Convention on Nationality* and the *1961 Convention*, the Convention affording the strongest protection must prevail. Thus, a requirement of lawful residence is not a permissible condition.

Furthermore, a child must not be left stateless for an extended period of time. Rather, a child must acquire a nationality at birth or as soon as possible after birth.²⁶ Article 1 of the *1961 Convention* provides Contracting States with two alternative options for granting nationality to children who would otherwise be stateless who are born on their territory. States can either provide for automatic acquisition of nationality upon birth pursuant to Article 1(1)(a), or for

²¹ Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, available at: <http://www.refworld.org/docid/3ae6b36618.html>.

²² UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.refworld.org/docid/3ae6b39620.html>.

²³ For example, the term is also used in the treaties prepared by The Hague Conferences on Private International Law, the drafters of which have sought to harmonize its usage. The term is found also in Article 1A(2) of the 1951 Convention relating to the Status of Refugees and according to the Travaux Préparatoires of that treaty it refers to "the country in which [the stateless applicant] has resided and where he had suffered or fears he would suffer persecution if he returned". UN Ad Hoc Committee on Refugees and Stateless Persons, Report of the Ad Hoc Committee on Statelessness and Related Persons (Lake Success, New York, 16 January to 16 February 1950), 17 February 1950, E/1618; E/AC.35/5, p. 39, available at:

<http://www.unhcr.org/refworld/docid/40aa15374.html>. Please see also UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, paragraph 103. Please see also Article 1 of the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession and the Explanatory Report on that Convention, and Resolution (72)1 of the Council of Europe.

²⁴ This also applies for the term "habitual residence" in Article 1(5) and Article 4(2) of the 1961 Convention.

²⁵ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>, para. 11.

²⁶ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>, para. 41.

acquisition of nationality upon application pursuant to Article 1(1)(b). UNHCR would like to note that the goal of reducing statelessness could be promoted by providing for automatic acquisition of nationality by children born in the territory who would otherwise be stateless, at least for those whose parents are permanent residents, as per UNHCR's *Guidelines on Statelessness No 4*.²⁷

Recommendations:

UNHCR recommends that the Government of Denmark:

- Incorporate the right to acquire Danish nationality by children born in the country who are otherwise stateless into the *Nationality Act* (rather than limiting this provision to the *Naturalization Circular*);
- Establish “habitual residence,” rather than lawful residence, as the requirement for qualifying for acquisition of nationality for stateless persons;
- Adopt a more inclusive approach to the implementation of relevant provisions of the *Convention on the Rights of the Child* and to Article 1 of the *1961 Convention on the Reduction of Statelessness*, in order to allow children who are born stateless in Denmark to acquire Danish nationality at birth automatically, *ex lege*, at least in the case of children who are born to parents who are permanent residents; and
- Harmonize data collection between institutions dealing with stateless persons and undertake further research to provide an accurate picture of the stateless population in Denmark.

Issue 4: Pledges made at the 2011 Ministerial Intergovernmental Event on Refugees and Stateless Persons

UNHCR recalls the positive pledges made at the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011.²⁸ Denmark maintains one reservation to the *1951 Convention* pertaining to Article 17, paragraph 1, that is, “to accord to refugees lawfully staying in Denmark the most favourable treatment accorded to nationals of a foreign country as regards the right to engage in wage-earning employment shall not be construed to mean that refugees shall be entitled to the privileges which in this respect are accorded to nationals of Finland, Iceland, Norway and Sweden,”²⁹ and has pledged to conduct a review of the necessity to maintain this reservation.

Denmark *inter alia* also pledged to further the discussions within the EU on how to ensure effective solidarity with persons in need of international protection; to further the negotiations on the developments of the Common European Asylum System based on high protection standards, combined with fair and effective procedures as a priority; and to promote the issue of resettlement within the EU cooperation.

Recommendation:

UNHCR recommends that the Government of Denmark:

²⁷ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>, paras. 32–33.

²⁸ UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, available at: <http://www.refworld.org/docid/50aca6112.html>.

²⁹ UNHCR, Reservations and Declarations to the 1951 Convention relating to the Status of Refugees, available at: <http://www.unhcr.org/3d9abe177.html>.

- Provide an update on the pledges made at the Ministerial Intergovernmental Event on Refugees and Stateless Persons in 2011.

Human Rights Liaison Unit
Division of International Protection
UNHCR
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**Excerpts of Recommendations from the 1st cycle Universal Periodic Review and
Concluding Observations from UN Treaty Bodies**

- Universal Periodic Review:

DENMARK

We would like to bring your attention to the following excerpts from the 1st cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to Denmark.

I. Universal Periodic Review

Below is a list of recommendations of relevance to UNHCR made to Denmark during the 1st cycle of the Universal Periodic Review. Denmark's views and responses to recommendations are elaborated upon (and sometimes amended) in the Addendum. Information contained in the Addendum,³⁰ which is of relevance to UNHCR, can be found here in italics.

Report of the Working Group on the Universal Periodic Review, Eighteenth Session (11 July 2011) A/HRC/18/4

106.1. Extend the applicability of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to Greenland and to the Faroe Islands (Hungary);

106.1. Accepted³¹

106.24. Greenland and Faroe Islands to ratify the following international instruments: Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and ensure their application (Ecuador);

106.24. Accepted³²

106.61. Fully respect the human rights of foreigners, regardless of their migratory status (Ecuador);

106.61. Accepted³³

³⁰ Addendum, Eighteenth Session (13 September 2011) A/HRC/18/4/Add.1.

³¹ *The Kingdom of Denmark is currently examining to what extent legislative amendments for Greenland and the Faroe Islands would be necessary to meet the obligations under the Optional Protocols and expects this study to be completed in the course of 2011.*

³² *Reference is made to the answer to recommendation no. 106.1.*

³³ *The recommendation is accepted as Denmark finds that the current rules in the Danish Aliens Act are in full accordance with Denmark's international obligations.*

106.65. Remove the obstacles preventing victims of discrimination from effective access to justice, adopt appropriate measures to facilitate reporting on this crime by national, ethnic and religious minorities (Mexico);

106.65. Accepted³⁴

106.83. Continue its efforts to combat domestic violence, especially against vulnerable groups such as women and children (Republic of Korea);

106.83. Accepted³⁵

106.84. Provide foreign married women who are victims of domestic violence with legal safeguards and administrative guidelines for their protection, giving particular consideration to residence permits (Honduras);

106.84. Accepted³⁶

106.87. Strengthen the capacities for identifying victims of trafficking (Austria);

106.87. Accepted

106.88. Strengthen the identification of human trafficking victims (Slovakia);

106.88. Accepted

106.89. Ensure that victims of human trafficking are not detained but instead granted proper protection, as well as expand the reflection period while making it entirely unconditional (Slovakia);

106.89. Not accepted³⁷

³⁴ Reference is made to the answer to recommendation no. 106.54.

³⁵ Reference is made to the answer to recommendation no. 106.45.

³⁶ It is directly stipulated in the Danish Aliens Act, cf. section 19 (8) of the Danish Aliens Act, that if a residence permit has been granted on the basis of marriage or marital cohabitation, and this basis is no longer present, the authorities must pay special regard to whether the marriage or co-habitation has ended as a consequence of the foreigner concerned having been exposed to outrages, abuse or ill-treatment, etc., by the spouse.

The Danish immigration authorities will decide whether revocation or refusal must be assumed to be particularly burdensome owing to the foreigner's personal circumstances. This decision is made on the basis of a specific, individual assessment of the circumstances in each case. Thus Danish legislation ensures clear legal guarantees and administrative guidelines for the protection of immigrants who are victims of domestic violence with regard to their residence permits. Furthermore, all victims of domestic violence have access to support, legal aid and shelters.

³⁷ The reflection period is only relevant for trafficked foreigners, who have to leave Denmark because they (if they have applied for a residence permit) do not fulfill the conditions in the Danish Aliens Act. Furthermore, the different offers of special aid and assistance to trafficked foreigners in the Aliens Act are unconditional of a trafficked foreigner's willingness to participate in criminal investigations or proceedings. The foreigner's "cooperation in planning the prepared return" does not mean cooperation with the police regarding criminal investigations, but that the foreigner accepts the offered aid and assistance and signs necessary applications for travel documents etc. and if possible provides the authorities with information needed in order to establish necessary contacts in the country of origin.

106.90. Take necessary measures to combat child prostitution and ensure that those children have access to adequate services for their recovery and social reintegration (Indonesia);

106.90. Accepted

106.91. Prevent commercial sexual exploitation of children and ensure additional protective measures for all victims of trafficking (Azerbaijan);

106.91. Accepted

106.92. Take more effective measures to prevent sexual exploitation of children, including through criminalizing the production and distribution of pornographic or erotic images including children, and prosecute Danish citizens who abused children abroad (Malaysia);

106.92. Accepted³⁸

106.93. Adopt all necessary measures to combat the phenomenon of child sex tourism, including by consistently prosecuting offenders on their return for the crimes committed abroad (Greece);

106.93. Accepted³⁹

106.95. Develop a more systematic approach to cooperation between governmental bodies and civil society to combat child trafficking (Australia);

106.95. Accepted

106.111. Give equal recognition to the right of undocumented children to education (Honduras);

106.111. Accepted

106.114. Remedy the difficulties in terms of access to health care for asylum-seekers created by the fact that they do not have the social security number required for identification and support (France);

106.114. Not accepted⁴⁰

³⁸ *The distribution and production of child pornography is already criminalized, and the Criminal Code also provides for the prosecution of Danish citizens or other persons living in Denmark who sexually abuse children abroad.*

³⁹ *Reference is made to the answer to recommendation no. 106.92.*

⁴⁰ *Denmark cannot accept the recommendation, as it is based on a factual misunderstanding. The Danish Immigration Service already provides for the healthcare treatment of asylum seekers – including rejected asylum seekers. Asylum seekers under the age of 18 are entitled to the same healthcare as children who are residents of Denmark. In the case of adult asylum seekers, the Immigration Service covers the expenses for healthcare provided that the treatment is necessary, urgent and alleviating/soothing. In addition, all persons – including asylum seekers and illegal immigrants – staying in Denmark are entitled to free emergency hospital treatment, for example in cases of an accident, sudden illness and birth or worsening of chronic illnesses, etc. under the same conditions as persons residing in this country.*

106.115. Oversee the citizenship policy regarding the granting of citizenship to stateless persons in order to ensure that it corresponds with the Convention on the Reduction of Statelessness (Finland);

*106.115. Accepted*⁴¹

106.116. Allow for family reunification for children in as many cases as possible and ensure that Danish jurisprudence on family reunification is in accordance with its human rights obligations (Greece);

*106.116. Accepted*⁴²

106.117. Review its practice of returning aliens to regions where they may encounter real risks of persecution or serious harm, particularly in Iraq (Switzerland);

*106.117. Not accepted*⁴³

106.118. Strictly observe the principle of non-refoulement and not resort to diplomatic assurances to circumvent it (Switzerland);

*106.118. Accepted*⁴⁴

106.119. Revise the proposed amendments to the Danish Aliens Act with respect to unaccompanied children seeking asylum and ensure that the necessary protection and assistance is provided to them (Poland);

*106.119. Denmark **does not accept** the first part of the recommendation (regarding the amendments to the Danish Aliens Act).*

*Denmark **accepts** the second part of the recommendation (to ensure necessary protection and assistance for unaccompanied minors).⁴⁵*

⁴¹ *The citizenship policy corresponds with the Convention on the Reduction of Statelessness. Moreover, a number of initiatives have been initiated to ensure future compliance with the Convention.*

⁴² *Family reunification with children is granted upon application if the conditions stipulated in the Danish Aliens Act have been met – residence permits are therefore granted in as many cases as possible according to the Danish Aliens Act. It is Danish Governments opinion that the rules in the Danish Aliens Act are in accordance with Denmark’s international obligations.*

⁴³ *Denmark cannot accept the recommendation, as it is based on a factual misunderstanding.*

According to section 7 of the Danish Aliens Act a residence permit will be issued – upon application – to a foreigner if the foreigner falls within the provisions of the Convention relating to the Status of Refugees or if the foreigner risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin. Decisions are made after a concrete and individual assessment of the information in the applicant’s case in conjunction with background information on the conditions in the applicant’s country of origin.

Reference is also made to the answer to recommendation no. 106.118.

⁴⁴ *Pursuant to section 31 in the Danish Aliens Act a foreigner may not be returned to a country where he/she will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the foreigner will not be protected against being sent on to such country. The safeguard against refoulement is absolute.*

⁴⁵ *Denmark regards unaccompanied minors as vulnerable, and the Danish Aliens Act therefore contains special rules regarding these foreigners.*

106.120. Ensure that any decision obliging a foreigner to leave the country is in accordance with international standards and under no circumstances should a person needing international protection be expelled, in accordance with the Convention Relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, to all of which Denmark is a party (Mexico);

106.120. Accepted⁴⁶

106.121. Take the necessary legal or administrative measures to ensure that migratory status does not depend on conjugal relations in cases in which gender violence is reported (Mexico);

106.121. Not accepted⁴⁷

106.122. Give due consideration to the cultural and religious sensitivities of newly arrived foreigners and migrants when designing social integration policies and programmes (Pakistan);

106.122. Accepted

106.123. Review the requirements for migrants and asylum-seekers to obtain permanent residence and citizenship and consider removing retroactive elements of these requirements (United States of America);

106.123. Not accepted

106.124. Strengthen its protection of trafficking victims, specifically by offering longer-term alternatives that would allow them to stay in the country on a work or residency permit, rather than solely offering repatriation or asylum (United States of America);

106.124. Not accepted⁴⁸

106.125. Further streamline the Aliens Act to ensure that acts which may lead to expulsion are in line with international refugee and human rights law (Netherlands);

106.125. Not accepted⁴⁹

⁴⁶Prior to the return of a foreigner who has been expelled after he/she was granted a residence permit as a refugee the Danish authorities decides whether the foreigner can be returned.

Reference is made to the answer to recommendation no. 106.118.

If the foreigner cannot be returned, the authorities must also decide whether the foreigner should be granted asylum again – or stay in Denmark without a residence permit (exceptional leave to remain).

⁴⁷Reference is made to the answer to recommendation no. 106.84.

⁴⁸Denmark cannot accept the recommendation if this implies the introduction of a special residence permit for trafficked foreigners.

According to the Danish Aliens Act, a residence permit cannot be granted only for the reason that a foreigner has been exposed to trafficking. This applies to both adults and minors.

However, a trafficked foreigner, who risks persecution in his/her home country, can be granted asylum. In each individual case the asylum authorities make an assessment of whether the foreigner is in a concrete and individual risk of persecution or need of protection. If significant humanitarian considerations warrant it, for example serious illness, residence permit can be granted on humanitarian grounds. Residence permit can also be granted if exceptional reasons make it appropriate.

⁴⁹It is the Danish Government's opinion that the current rules in the Danish Aliens Act are in accordance with

106.126. Strengthen safeguards against potential refoulement of persons in need of international protection, including by closely monitoring the situation in the countries of origin of the asylum-seekers (Republic of Korea);

*106.126. Not accepted*⁵⁰

106.127. Take further concrete steps to ensure the rights of all its citizens in relation to the 24-year rule (United Kingdom);

*106.127. Not accepted*⁵¹

106.128. Ensure that non-Danish residents can also fully enjoy their basic human rights, paying special attention to access to justice (Brazil);

*106.128. Accepted*⁵²

106.129. Implement the recommendations of the Committee on the Elimination of Racial Discrimination with regard to the conditions for family reunification of spouses (Sweden);

*106.129. Not accepted*⁵³

106.130. Implement the legal provisions and, where necessary, adopt legal reforms to guarantee family reunification of foreigners who have settled in Denmark, particularly family members of refugees, in accordance with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the 1954 Convention Relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Ecuador);

*106.130. Not accepted*⁵⁴

106.131. Ensure that detention of refugees, migrants and asylum-seekers is applied only as a last resort (Slovakia).

106.131. Accepted

Denmark's international obligations.

⁵⁰*The rules stipulated in the Danish Aliens Act offer sufficient protection in accordance with Denmark's international obligations.*

⁵¹*Denmark does not accept the recommendation according to which further steps must be taken.*

Reference is made to the answer to recommendation no. 106.103.

⁵²*It is the opinion of Denmark that non-Danish residents already fully enjoy their basic human rights, including access to justice.*

⁵³*Reference is made to the answer to recommendation no. 106.103.*

⁵⁴*Denmark finds that the current rules in the Danish Aliens Act are in full accordance with Denmark's international obligations.*

Reference is made to the answer to recommendation no. 106.103.

II. Treaty Bodies

Committee on the Elimination of Racial Discrimination

Concluding Observations, Eighty-Seventh Session (15 May 2015), [CERD/C/DNK/CO/20-21](#)
[Advance unedited version]

Family Reunification

11. The Committee is concerned by the State party's strict and restrictive conditions regarding family reunification despite its repeated recommendations. It notes with concern that the State party amended in February 2015 the Aliens Act limiting the right of asylum seekers granted temporary subsidiary protection to family reunification with their spouse, partner or minor child less than 15 years old, unless an extension of the temporary protection status with a one year residence permit has been granted. The Committee remains concerned about these amendments despite the declaration by the State party that exceptions are still possible (arts. 2 and 5).

The Committee recommends that the State party ensure family reunification of the beneficiaries of international protection, by revising the newly introduced provision in the Aliens Act that denies family reunification to beneficiaries of temporary subsidiary protection and their family members during the first year, and by ensuring family reunification for all children under 18 in light of its General Recommendation no. 30 (2005) on discrimination against non-citizens.

Refugees

12. The Committee is concerned about changes in the Aliens Act in 2012 placing additional restrictions on obtaining an indefinite residence permit, pursuant to which the required period of residency was increased from 4 to 5 years, while additional restrictive requirements dealing with employment, self-reliance and language skills continue to apply. Exemptions from these additional requirements are available only if the applicant has resided in Denmark for 8 years. The Committee is concerned that this lengthy period is not conducive to the integration of refugees. The Committee is further concerned that the new temporary subsidiary protection status provides for only a one-year residence permit which can be renewed for two years. This short period has a negative impact on a person's sense of belonging and motivation to integrate (arts. 2 and 5).

Bearing in mind its General Recommendation no. 30 (2005) on discrimination against non-citizens:

(a) The Committee recommends that the State party amend the Aliens Act to ensure that refugees and other beneficiaries of international protection and their families receive long-term residence rights at an early stage, either immediately or at the latest following the expiry of the initial permit.

(b) The Committee requests that the State party provide it with information on the situation of non-citizens who have lost their residence permit in Denmark but are - despite their willingness to cooperate with the Danish authorities - unable to return to their home country.

Education

14. The Committee is concerned by reports that children in asylum centres experience discrimination in their access to education. They reportedly do not have the right to attend the Danish government schools (Folkeskolen) which prevents them from accessing quality

education. The Committee is further concerned by reports that Roma children also experience discrimination in education. Moreover, while noting the experimental programme designed to examine the positive effects of different teaching modules in the mother tongue of minority students, the Committee is however concerned about the high dropout rate of children of foreign origin, in particular non-EU nationals (art. 5).

The Committee recommends that the State party guarantee to asylum seeking children equal opportunities to access quality education as well as to address discrimination against Roma children in the field of education. The Committee further recommends that the State party continue with its experimental programme on access to mother tongue education for children belonging to minority groups, including vocational training, as well as ensure supplies of school textbooks in minority languages.

Committee on the Elimination of All Forms of Discrimination against Women
Concluding Observations, Sixtieth Session (11 March 2015) [CEDAW/C/DNK/CO/8](#)

Nationality

25. The Committee notes the State party's policy of generally ensuring gender equality in the transmission of nationality, but remains concerned that the existing law on citizenship continues to have an adverse impact on stateless women and girls, given that it does not grant automatic citizenship to children born in the State party's territory to stateless parents.

26. The Committee encourages the State party to ensure that its national citizenship legislation complies fully with the 1961 Convention on the Reduction of Statelessness, in particular by providing for the automatic granting of nationality to all children born in Denmark who would otherwise be stateless. In doing so, the State party should ensure that its procedures for addressing statelessness are timely and gender sensitive, in accordance with the Committee's general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

Family reunification

43. The Committee notes that the State party has recently evaluated its policy, adopted as a measure to combat forced marriage, that, for the purpose of family reunification, migrant spouses must generally be at least 24 years of age. The Committee also notes the State party's assertion, made during the dialogue, that the requirement is de jure gender neutral. The Committee remains concerned, however, that the requirement may nonetheless, de facto, unduly restrict women's right to family life in the State party.

44. The Committee recommends that the State party establish monitoring and follow-up procedures for evaluating whether the minimum age requirement for family reunification of migrant spouses may result in de facto gender discrimination. It also urges the State party to continue to explore alternatives to the minimum age requirement as a means of combating forced marriage.

Committee on Economic, Social and Cultural Rights

Concluding Observations, Fiftieth Session (6 June 2013) [E/C.12/DNK/CO/5](#)

18. The Committee notes with concern that quota refugees, migrants reunified with their family, and undocumented migrants continue to encounter difficulties in gaining access to health care facilities, goods and services (art. 12).

The Committee recommends that the State party take steps to ensure that all persons belonging to disadvantaged and marginalized groups and individuals, in particular quota refugees, migrants reunified with their family, and undocumented migrants and members of their families, have access to basic health care. The Committee recommends that these steps include guaranteeing health examinations to such persons upon their arrival in the State party, and offering of vaccinations to their children. It also recommends that the State party take steps to raise awareness among disadvantaged and marginalized groups and individuals of the health-care system and ensure that all have access to related information in languages other than Danish.

19. The Committee is concerned about the disadvantaged position of children of immigrants and Roma in public schools, linked to socio-economic factors, compared to ethnic Danish pupils. It is furthermore concerned that asylum-seeking children are not promptly integrated into mainstream public schools (arts. 13 and 14).

The Committee recommends that the State party prioritize the implementation of the framework for language development and the reduction of the impact of socio-economic backgrounds of pupils on their academic performance. The Committee furthermore recommends that the State party take steps to ensure that asylum-seeking children are promptly integrated into mainstream public schools, and are not first educated in separate schools.