



**UNHCR Observations on the proposal to amend the Danish Citizenship Act in regard to parents' consent and a child's 'good conduct', when the child derives Danish citizenship from a parent –**

*Lov om ændring af lov om dansk indfødsret (Krav om forældremyndighedsindehavers samtykke og vandel, når børn som bipersoner erhverver dansk indfødsret)*

## **I. Introduction**

1. The UNHCR Regional Representation for Northern Europe (“RRNE”) is grateful to the Ministry of Immigration, Integration and Housing for the invitation to submit its observations on the law proposal *Lov om ændring af lov om dansk indfødsret (Krav om forældremyndighedsindehavers samtykke og vandel, når børn som bipersoner erhverver dansk indfødsret)*, hereafter referred to as “the Proposal”.
2. 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,<sup>1</sup> UNHCR has a direct interest in laws and policies affecting the rights and situation of asylum-seekers and refugees. According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”<sup>2</sup> UNHCR’s supervisory responsibility is reiterated in Article 35 of the 1951 Convention and in Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as the “1951 Convention”).<sup>3</sup> It has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union.<sup>4</sup>
3. UNHCR also has an interest in law and policy proposals affecting the rights and situation of stateless persons, as the agency mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In 1994, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international

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<sup>1</sup> 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> (hereafter “UNHCR Statute”).

<sup>2</sup> *Ibid.*, para. 8(a).

<sup>3</sup> According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

<sup>4</sup> European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

protection of stateless persons.<sup>5</sup> This mandate has continued to evolve as conclusions of the UNHCR Executive Committee<sup>6</sup> have been endorsed by the UN General Assembly. Over time, UNHCR has developed a recognized expertise on statelessness issues.<sup>7</sup>

## II. Scope of the Proposal

4. The Proposal seeks to codify existing practice in two areas relating to a child's ability to derive Danish citizenship from a parent who is acquiring Danish citizenship. Firstly, the Proposal introduces a requirement in the Citizenship Act that a parent who has shared custody of a child consents to the child deriving Danish citizenship through the other parent. Secondly, the Proposal introduces a requirement of 'good conduct' (*vandel*) in the Citizenship Act that a child needs to fulfil in order to obtain Danish citizenship through his or her parent's naturalization.

## III. UNHCR's Observations

5. In regard to the first element of the Proposal, UNHCR welcomes the legal certainty that will be achieved through a codification of existing practice.
6. However, UNHCR notes that the Proposal does not specify under which circumstances, if any, the requirement of consent of both parents can be waived. In particular, UNHCR is concerned that this requirement may lead to situations where a stateless child is prevented from acquiring a nationality or where the naturalization of a stateless child is left pending for an extended or undefined period of time. In this context, UNHCR wishes to draw attention to Article 7 of the Convention of the Rights of the Child ("CRC") that sets out the child's right to a nationality, and to Article 3 of the CRC, requiring that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration. It follows from Articles 3 and 7 of the CRC that a child must not be left stateless for an extended period of time. The obligations imposed on States by the CRC are not only directed to the State of birth of a child, but to all countries with which a child has a relevant link, such as through parentage or residence.<sup>8</sup> These considerations are also important with regard to refugee children whose best interests may be compromised in situations where their naturalization, together with one parent, is prevented or delayed in the absence of consent of the other parent.

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<sup>5</sup> UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, available at: <http://www.refworld.org/docid/3ae68c443f.html>.

<sup>6</sup> UNHCR, *Conclusion on International Protection*, 05 October 2001, No. 90 (LII) - 2001, para. (q), at: <http://www.unhcr.org/refworld/docid/3bd3e3024.html>; *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (y), at: <http://www.unhcr.org/refworld/docid/3f93aede7.html>; *General Conclusion on International Protection*, 08 October 2004, No. 99 (LV) - 2004, para. (aa), at: <http://www.unhcr.org/refworld/docid/41750ef74.html>; *General Conclusion on International Protection*, 07 October 2005, No. 102 (LVI) - 2005, para. (y), at: <http://www.unhcr.org/refworld/docid/43575ce3e.html>; *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 06 October 2006, No. 106 (LVII) - 2006, paras. (f), (h), (i), (j) and (t), at: <http://www.unhcr.org/refworld/docid/453497302.html>.

<sup>7</sup> UNHCR has published a number of Guidelines pursuant to its mandate responsibilities to address statelessness, which are intended to provide interpretive legal guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary. These are *inter alia* accessible through the Statelessness page on UNHCR's Refworld, <http://www.refworld.org/statelessness.html>.

<sup>8</sup> UN High Commissioner for Refugees (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, para. 11, available at: <http://www.refworld.org/docid/50d460c72.html>.

7. UNHCR thus recommends the Government to include a possibility to waive the requirement of joint consent, when the child's acquisition of Danish nationality would be in his or her best interests. This would include situations where the naturalization of a stateless or refugee child would otherwise be prevented or left pending for an extended or undefined period of time.
8. In relation to the second element of the Proposal, UNHCR wishes to recall that Article 32 of the 1954 Convention relating to the Status of Stateless Persons stipulates that "The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and reduce as far as possible the charges and costs of such proceedings", and that Article 34 of the 1951 Convention relating to the Status of Refugees stipulates the same with regard to refugees. UNHCR encourages the Government to ensure that the current Proposal does not run counter to these articles, in particular when interpreted in light of Articles 3 and 7 of the CRC.

**UNHCR Regional Representation for Northern Europe**

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