



**UNHCR**

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

**UNHCR Observations on the proposed amendments to the  
Norwegian Immigration Act, Immigration Regulation and Nationality Act: Hevet  
botid for permanent oppholdstillatelse mv.**

**I. Introduction**

1. The UNHCR Regional Representation for Northern Europe (RRNE) is grateful to the Ministry of Justice of the Kingdom of Norway for the invitation to submit its observations on the proposal dated 27 March 2015 to amend the Norwegian Immigration Act, Immigration Regulation and Nationality Act (reference 14/7056 - GBO).
2. UNHCR has a direct interest in law proposals in the field of asylum as the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek permanent solutions to the problems of refugees.<sup>1</sup> 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 relating to the Status of Refugees (“1951 Convention”), and in Article II of the 1967 Protocol relating to the Status of Refugees.”<sup>3</sup>
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, and in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (“UNHCR Handbook”) and subsequent Guidelines on International Protection.<sup>4</sup> UNHCR also fulfils its supervisory responsibility by

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<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (“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> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

## II. General Observations

4. As a general observation, UNHCR welcomes the Government's view, expressed in the explanatory memorandum (Høringsnotat), that immigration is a source of diversity, new impulses and cultural exchange. However, UNHCR notes with concern the proposed amendments to the Norwegian Immigration Act (lov 15. mai 2008 nr. 35 om utlendingers adgang til riket og deres opphold her (utlendingsloven)), Immigration Regulation (forskrift 15. oktober 2009 nr. 1286 om utlendingers adgang til riket og deres opphold her (utlendingsforskriften)) and Nationality Act (lov 10. juni 2005 nr. 51 (statsborgerloven)) to increase the years of temporary residency required from three to five years before a foreign national, upon application, shall be entitled to permanent residency.
5. As UNHCR understands the law proposal, it will lengthen the path to durable solutions and naturalization for refugees and stateless persons, and may entail a more frequent review of cessation of refugee status. UNHCR will comment on specific issues below.

## III. Specific observations

### *Increased requirements for residency time in Norway before refugees can obtain permanent residency*

6. The Ministry of Justice proposes increased requirements for residency time in Norway before a foreign national, including a refugee, upon application, shall be entitled to permanent residency. According to the current Immigration Act § 62, a foreign national who, for the last three years, has resided in the territory based on a temporary residence permit, shall be entitled to a permanent residence permit provided certain requirements are fulfilled (Immigration Act § 62 (1) a - d). As UNHCR understands the law proposal, five years residency will be required before refugees can be granted permanent residency. UNHCR furthermore notes that a temporary residence permit may not be renewed if the circumstances that formed the basis for the permit have ceased. However, it is not specified whether this would also apply to persons in need of international protection.<sup>5</sup>
7. The timely grant of a secure legal status and residency rights are essential factors in the integration process.<sup>6</sup> UNHCR has observed that the duration of residence permits has a considerable impact on refugees' ability to integrate, and that short-

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<sup>5</sup> Explanatory memorandum (Høringsnotat) p. 6.

<sup>6</sup> UNHCR Executive Committee, *Conclusion No. 104*, para. (j), UNHCR, *Thematic Compilation of Executive Committee Conclusions*, August 2009, 4th edition, available at: <http://www.refworld.org/docid/4a7c4b882.html>.

- term residence permits can be detrimental to refugees' security and stability.<sup>7</sup> In UNHCR's view, in order to take into account the special position of refugees, permanent residence should be granted to them, at the latest, at the end of a three year residence period.<sup>8</sup>
8. In UNHCR's view, refugee status should not, in principle, be subject to frequent review as this would be to the detriment of the security which it is intended to provide.<sup>9</sup> Regular reviews with the objective of ending refugee status can create considerable uncertainty, making it difficult for a refugee to focus on the longer term future, and are thus not conducive to integration.
  9. The 1951 Convention recognizes that refugee status ends under certain clearly defined conditions. This means that once an individual is determined to be a refugee, their status is maintained unless they fall within the terms of one of the cessation clauses contained in Article 1 C of the 1951 Convention, or their status is cancelled or revoked. Refugee status may cease either through the actions of the refugee (Article 1 C (1) to (4)), such as by re-establishment in his or her country of origin, or through fundamental changes in the objective circumstances in the country of origin upon which refugee status was based (Article 1 C (5) and (6)).
  10. It needs to be underlined, however, that the cessation clauses are rarely invoked in recognition of the need to respect a basic degree of stability for refugees and the overarching objective of international protection; namely, to find durable solutions for refugees through integration in the country of asylum, resettlement to a third State, or voluntary repatriation to the country of origin when this is possible in safety and dignity. Where the cessation clauses are applied on an individual basis, it should not be done for the purposes of a re-hearing *de novo*.<sup>10</sup> UNHCR thus urges Norway to administer cessation policies in a limited fashion so as to minimize disruptive effects for refugees.<sup>11</sup>

***Increased requirements for residency time in Norway before stateless persons can acquire Norwegian nationality***

11. The Nationality Act § 16 requires a stateless person to have resided in the country for the past three years, instead of the general requirement for foreigners for seven years residency (Nationality Act § 7(1)(e)) before nationality can be granted. As UNHCR understands the proposed amendment to § 16, it will increase the time stateless persons must be resident in Norway from three to five years before

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<sup>7</sup> UNHCR, *Note on the Integration of Refugees in the European Union*, para. 18, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>.

<sup>8</sup> *Ibid.*, para. 20.

<sup>9</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, para. 135.

<sup>10</sup> UNHCR, *Note on the Integration of Refugees in the European Union*, para. 18.

<sup>11</sup> *Ibid.*, para. 21.

nationality can be granted, and will also apply to stateless children. UNHCR notes with concern that the proposed amendments will lengthen the path to nationality for stateless persons, including stateless children, in Norway.

12. Children born stateless in Norway will according to the proposed § 16 (2) of the Nationality Act be exempted from several of the requirements for acquiring nationality in § 7 (1). In addition to the exceptions applicable to stateless persons in Norway in general (§ 7 (1) (b, e, h)), the proposal exempts children born stateless in Norway from the requirements of permanent residency, good conduct, and the intent to continue residency in Norway (“krav om å forbli bosatt i Norge”). Instead they will be required to have resided in the territory for the past five years with residency permits of a minimum of one year. As an alternative, children born stateless in Norway shall be eligible for Norwegian nationality if their parents are granted permanent residency or nationality. In UNHCR’s understanding the proposed amendment will still, as a general rule, require a five-year lawful residency for children born stateless in Norway to be eligible to acquire nationality. It may result in some children acquiring nationality sooner if their parent is granted permanent residency or nationality before the five years have passed.
  
13. Norway is a State party to the 1954 Convention relating to the Status of Stateless Persons<sup>12</sup> (“1954 Convention”) and the 1961 Convention on the Reduction of Statelessness<sup>13</sup> (“1961 Convention”), and is thus obligated, in good faith, to work towards the identification, prevention and reduction of statelessness and the protection of stateless persons. According to Article 32 of the 1954 Convention, States shall, as far as possible, facilitate the naturalization of stateless persons and “in particular make every effort to expedite naturalization proceedings”. The ordinary meaning of this phrase implies that measures aimed at restricting or prolonging the naturalization processes for stateless persons would be inconsistent with this provision.<sup>14</sup> The object and purpose of Article 32,<sup>15</sup> that is, to provide the possibility of facilitated naturalization; seen in conjunction with the general aims of the two statelessness Conventions, also implies that legislative measures

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<sup>12</sup> UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html>.

<sup>13</sup> 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>.

<sup>14</sup> See general rules of treaty interpretation, United Nations, Vienna Convention on the Law of Treaties article 31, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.refworld.org/docid/3ae6b3a10.html>.

<sup>15</sup> See UNHCR, *Convention relating to the Status of Stateless Persons. Its History and Interpretation*, 1997, available at: <http://www.refworld.org/docid/4785f03d2.html>: Art. 32 consists of two parts: One is a recommendation to or a general moral obligation on the Contracting States to facilitate as far as possible the naturalization and assimilation of the stateless person residing in their countries. The other is a more specific obligation, viz., to expedite proceedings whenever an application for naturalization can be or has been made and to reduce the costs involved.

aimed at making the path to nationality more protracted for stateless persons would be inconsistent with these Conventions.

14. Restricting or delaying the acquisition of a nationality for children born stateless in Norway would also be inconsistent with Article 1 of the 1961 Convention, which imposes obligations on the State to grant nationality to persons born on the State's territory if they would otherwise be stateless. The consistency of such retrogressive measures with Article 7 of the 1989 Convention on the Rights of the Child ("CRC")<sup>16</sup> on the right from birth to acquire a nationality, and Article 24 (3) of the International Covenant on Civil and Political Rights ("ICCPR"),<sup>17</sup> which sets out the right of every child to acquire a nationality, would furthermore need to be considered. Indeed, it follows from Article 3 of the CRC, which sets out the principle of the best interests of the child, and Article 7 of the CRC that a child must not be left stateless for an extended period of time: a child must acquire a nationality at birth or as soon as possible after birth.<sup>18</sup> In addition, the UN Human Rights Committee has clarified with regard to Article 24 of the ICCPR that "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born".<sup>19</sup>
15. Current legislation and the proposed amendments base the residency period required for permanent residency and nationality on "lawful" residence. The Explanatory memorandum refers to the 1997 European Convention on Nationality,<sup>20</sup> Article 6, 2 (b), which allows for the conditions of lawful and habitual residence to be imposed for the acquisition of nationality for children born stateless in the country.<sup>21</sup> UNHCR, however, notes that the requirement of lawful residence is not contained in the 1961 Convention. Under the 1961 Convention, only habitual residence is a permissible condition for the acquisition of nationality by children born stateless in the territory.<sup>22</sup> For States bound by both Conventions, the Convention affording the strongest protection must prevail, thus a requirement of lawful residence is not a permissible condition.

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<sup>16</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>.

<sup>17</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>, see also 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, para. 10, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>.

<sup>18</sup> UNHCR, *Guidelines on Statelessness No. 4*, para. 11

<sup>19</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, para. 8, available at: <http://www.refworld.org/docid/45139b464.html>.

<sup>20</sup> Council of Europe, European Convention on Nationality, 6 November 1997, ETS 166, available at: <http://www.refworld.org/docid/3ae6b36618.html>.

<sup>21</sup> Explanatory memorandum (Høringsnotat) p. 16.

<sup>22</sup> Article 1(2)(b) of the 1961 Convention. See also UNHCR, *Guidelines on Statelessness No. 4*, para. 40-43.

***Increased requirements of residency time in Norway for permanent residency for foreign nationals granted collective protection in a mass flight situation***

16. In the law proposal, the number of years required before permanent residency can be granted to foreign nationals given collective protection in a mass flight situation is to be increased from four to six years. UNHCR wishes to reiterate its comment above that the timely grant of a secure legal status and residency rights are essential factors in the integration process. This also applies to refugees granted protection in a mass flight situation.

***New requirement of completed course on Norwegian society before permanent residency can be granted***

17. The Government proposes to make completion of a course on Norwegian society mandatory for acquiring permanent residency. Currently, only completion of a language course is mandatory to qualify for permanent residency.

18. UNHCR welcomes the introduction of required courses on Norwegian society. However, UNHCR also urges Norway to apply in a flexible manner possible future requirements to make permanent residency and eventual nationality contingent on passing tests on the history and culture of Norway. While not specific to refugees, the introduction of stringent language tests on the history and culture of the host country may penalize certain categories of refugees, in particular older or illiterate persons.<sup>23</sup>

**Recommendations:**

- UNHCR recommends that the number of years of temporary residency required for the granting of permanent residency not be increased;
- UNHCR recommends that the number of years of residence required for stateless persons to be granted nationality not be increased;
- UNHCR recommends that “habitual residence”, not lawful residence, should be the requirement for acquiring nationality for children born stateless in the country.

**UNHCR Regional Representation for Northern Europe**  
*Stockholm, 21 May 2015*

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<sup>23</sup> UNHCR, *Note on the Integration of Refugees in the European Union*, para. 43.