UNICEF and UNHCR Observations on the proposed amendments to the Norwegian Nationality Act and Nationality Regulations

Forslag til endringer i statsborgerloven og statsborgerforskriften

I. INTRODUCTION

1. The UNHCR Regional Representation for Northern Europe (hereafter "RRNE") and UNICEF are grateful to the Ministry of Justice and Public Security for the invitation to express our views on the law proposal dated 14 July 2017 to amend the Norwegian Nationality Act[1] and Regulations[2] (hereafter referred to as the Proposal).[3] UNHCR and UNICEF, as agencies entrusted by the United Nations General Assembly with a mandate to prevent and reduce statelessness around the world and advocate for the protection of children's rights, respectively, have a direct interest in proposals in the field of nationality law and policy. The joint observations presented below were drafted through a collaborative comment and review process by UNHCR and UNICEF.

2. UNHCR has a specific and global mandate to prevent and reduce statelessness and to protect stateless persons. UNHCR's role in the field of statelessness dates back to 1974 when the United Nations General Assembly entrusted UNHCR with a specific role under the 1954 Convention relating to the Status of Stateless Persons ("1954 Convention") and the 1961 Convention on the Reduction of Statelessness (hereafter 1961 Convention)[4]. UNHCR underlines in this respect that the 1961 Convention establishes an international framework to ensure the right of every person to a nationality by setting out key safeguards to prevent statelessness at birth and later in life.

3. UNHCR's mandate on statelessness gradually expanded during the past decades to include an increasing array of responsibilities in respect of statelessness. UNHCR has been requested to take active steps to ensure that statelessness is avoided as spelled out in a series of General Assembly resolutions.[5] For instance, in 1995, UNHCR was

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1 The Act on Norwegian Nationality (Lov om statsborgerskap (statsborgerloven)), available at: http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20050610-051-eng.pdf

2 The Norwegian Nationality regulations (Forskrift om erverv og tap av norsk statsborgerskap (statsborgerforskriften)), available at: https://lovdata.no/dokument/SF/forskrift/2006-06-30-756?q=statsborgerforskriften

3 Legislative Proposal available at: https://www.regjeringen.no/contentassets/714427bcfeaf4dd0abcb291a46ba5438/horingsnotat-forslag-til-endringer-i-statsrborgerskapslov-og-forskrift.pdf

4 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

5 The UN General Assembly resolutions 3274 (XXIV) and 31/36 designate 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. This mandate has continued to evolve as conclusions of UNHCR's Executive Committee have been endorsed by the UN General Assembly, see in this regard UNGA resolutions A/RES49/169 of 23 December 1994 and

asked to promote accession to and implementation of the 1954 and 1961 statelessness conventions, in particular through the provision of *technical and advisory services* pertaining to the preparation and implementation of nationality legislation to concerned States.[6]

4. The content of UNHCR's advisory responsibility is further set out by the Executive Committee that governs the work of UNHCR. In *"Conclusion on the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons"* issued in 2006 the Executive Committee requires the agency to work with governments, other UN agencies, such as UNICEF, and civil society to address the issue of statelessness. The conclusion also urges States, among other, to work with UNHCR and to consider examining their nationality laws with a view to adopting and implementing legislation to prevent statelessness and to actively disseminate information regarding access to citizenship, including naturalization procedures.[7]

5. In a similar vein, UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the Convention on the Rights of the Child (hereafter CRC)[8] and its endeavor to establish children's rights as legal obligations and ensure ethical principles and international standards of behavior towards all children. As a key component of its mandate, UNICEF is committed to ensuring special protection for the most disadvantaged children including those who are stateless, victims of war, disasters and all forms of violence and exploitation.[9]

6. The following joint comments are thus based on international standards set out inter alia in the 1954 and 1961 Conventions, Conclusions on International Protection of the UNHCR Executive Committee (hereafter "ExCom") and UNHCR guidelines. Given the fact that statelessness conventions are complementary to standards contained in other human rights treaties that address the right to a nationality, the observations will also draw upon relevant international and regional human rights law standards designed to prevent and reduce statelessness, *inter alia* the CRC, the

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A/RES/50/152 of 21 December 1995. The latter endorses Executive Committee Conclusion No. 78 (XLVI) – 1995. Additionally, the General Assembly has endorsed the conclusions of the Executive Committee, notably Executive Committee Conclusion No. 106 of 2006 on "Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons", see in this regard UNGA resolution A/RES/61/137 of 19 December 2006, see also UNHCR strategy note from 2010: http://www.refworld.org/docid/4b9e0c3d2.html

6 UN High Commissioner for Refugees (UNHCR), Self-Study Module on Statelessness, 1 October 2012, available at: http://www.refworld.org/docid/50b899602.html

7 UNHCR), Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) - 2006, 6 October 2006, available at: http://www.refworld.org/docid/453497302.html

8 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

9 Protecting Children of Concern through a Systems Approach, Guidance for Field Offices, available at: https://www.unicef.org/protection/UNHCR_Protecting_Children_of_Concern_through_a_Systems_Approach_Dec_1.pdf

European Convention on Human Rights [10] and the European Convention on Nationality of 1997 (hereafter ECN) which Norway is bound by.[11]

II. THE PROPOSAL

7. The proposal seeks to introduce several changes to the Norwegian Nationality Act and Regulations. The purpose of the legislative proposal is defined with reference to the Government's white paper *From reception centre to the labour market – an effective integration policy (*Meld. St. 30 (2015–2016) which underlines that Norwegian citizenship should not be easily obtained while stressing the need for stricter conditions for citizenship to ensure that new Norwegian citizens are active participants in Norwegian society.[12]

8. The proposal aims *inter alia* to amend Section 16 of the Nationality Act. Currently, Section 16 of the Nationality Act governs naturalization of stateless persons requiring that stateless applicants must have resided in Norway for the last three years with work or residence permits of at least one-year validity/duration or a right of residence under the Citizenship Directive 2004/38/EC and the EEA Agreement.[13] The proposed amendment seeks to increase the residence requirement for acquiring Norwegian citizenship from three to five years of legal residence for such stateless persons, including children.

9. Secondly, the Government proposes to introduce two distinctive provisions which are to be applied to two categories of stateless persons born in Norway i.e. one rule (new Section 16 lit. a) which will govern the granting of nationality to stateless children who are legally residing in Norway's territory and are born stateless in Norway and a second rule (new Section 16 lit. b) which will govern the granting of citizenship to stateless persons born in Norway who are between the ages of eighteen and twenty-one years, but who lack a residence permit. The Government points out in its proposal that the former provision is specifically tailored to reflect Norway's obligations under the ECN of 1997, while the latter is tailored to mirror Norway's obligations under the 1961 Convention. The Government considers that the proposed provisions are in line with Norway's obligations under the above-mentioned conventions.

10. For the purpose of the present joint observations, UNHCR and UNICEF will exclusively concentrate on the proposed rules which will affect access to citizenship by stateless persons, including children born in Norway.

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[10] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: http://www.refworld.org/docid/3ae6b3b04.html

[11] Council of Europe, European Convention on Nationality, 6 November 1997, ETS 166, available at: http://www.refworld.org/docid/3ae6b36618.html

[12] From reception centre to labour market-an effective integration policy, available at: https://www.regjeringen.no/en/dokumenter/meld.-st.-30-20152016/id2499847/sec1

[13] See sections 112-116 of the Norwegian Immigration Act, available at: https://www.udiregelverk.no/no/rettskilder/sentrale/utlendingsloven-engelsk/

III. OBSERVATIONS

Outset

11. In accordance with its mandate and work on statelessness in the Northern Europe region, UNHCR conducted a study *Mapping Statelessness in Norway* (hereafter "the Study") which was launched in October 2015. The Study provides an in-depth analysis on administrational practices, statistics and data gathering, and legislation on protection of stateless persons, prevention and reduction of statelessness in Norway.[14] The Study analyzes, *inter alia,* the safeguards against statelessness in the Norwegian Nationality Act in relation to the 1961 Convention and relevant international standards, such as the CRC and ICCPR. The Study concludes that the Norwegian Nationality Act lacks the minimum safeguards in regard to the grant of nationality to children born in Norway who would otherwise be stateless. Consequently, the Study presented a set of comprehensive recommendations, *inter alia*, calling on Norway to amend the Nationality Act to provide Norwegian nationality to children born in Norway -who would otherwise be stateless- automatically by operation of law.

12. The Norwegian Nationality Act is not in line with the international standards set forth by Article 1 of the 1961 Convention as it does not contain specifc provisions under which persons born in Norway who would otherwise be stateless can obtain Norwegian nationality.[15] The 1961 Convention allows a State party to provide for the grant of its nationality to a stateless person born in the territory of that State either a) at birth, by operation of law or b) by way of an application procedure. Article 1(2) sets an exhaustive list of four enumerated conditions that can be permissibly imposed on a person who falls under Article 1(1). Importantly, this list is exhaustive. The four conditions a state may permissibly impose on someone who was born stateless in Norway, who seeks to acquire nationality through the application procedure, are a fixed period for application within certain rules set forth by Article 1(2)(a); a requirement of habitual residence within the rules set forth by Article 1(2)(b); not having been convicted of certain criminal offenses, as described by Article 1(2)(c); and that the person concerned has always been stateless, as provided by Article 1(2)(d).

13. Under the current Nationality Act, any stateless person, including children born in the country, applying for Norwegian nationality must do so on a ground independent of his or her statelessness and birth in Norway. Section 16 of the Nationality Act exempts stateless persons from some of the criteria for naturalization found in Section 7. According to the Nationality Act Section 16, the requirements for stateless persons to naturalize are to; a) have established their identity, c) be present in Norway and have the intention to remain resident in Norway, d) meet the conditions for a permanent residence permit, as found in the Immigration Act § 62, f) satisfy the requirement regarding Norwegian language and civics training (this only applies to persons over 18 years of age, see Section 8 of the Nationality Act), and g) not have been sentenced to a penalty or special criminal sanction (if so, they must have observed the waiting period). A stateless applicant who has reached the age of 18 must have resided in

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[14] UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Norway*, October 2015, available at: http://www.refworld.org/docid/5653140d4.html

[15] *Ibid*, page 51

the realm for the last three years with work or residence permits of at least one year's duration.

14. The requirements to obtain Norwegian nationality for stateless persons, children in particular, stipulated in Section 7 (a, c, d, f and g) and 16 of the Nationality Act, are beyond those permissible in Article 1(2) of the 1961 Convention. Moreover, the requirements of the Nationality Act do not reflect Article 1 of the 1961 Convention, which obliges State parties to establish safeguards against statelessness at birth. Rather, they reflect Article 32 of the 1954 Convention requiring states to provide facilitated naturalization for stateless persons in general.

15. In 2016, the Ministry of Justice and Public Security issued Instruction *G-08/2016* which instructed the immigration authorities to interpret the Nationality Act in line with Article 1 of the 1961 Convention, namely by lifting the requirement of lawful residence for those stateless children who were born in Norway. UNHCR and UNICEF jointly note with regret that the proposal at hand appears to reintroduce the requirement of lawful residence in the *Nationality Act* and *Regulations* and impose further requirements on stateless children born in Norway that are not in line with Norway's obligations under the 1961 Convention, the CRC, ICCPR and ECHR.

General observations

16. States, including Norway, are responsible for conferring nationality and guaranteeing the right to a nationality. Obligations to prevent and reduce statelessness among children are found in the ICCPR and the CRC, both of which recognize the right of every child "to acquire a nationality." The 1961 Convention places a particular obligation on the State where the child is born stateless. Article 1 requires that "[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless."[16] UNHCR and UNICEF observe that in determining the scope of the 1961 Convention obligations to prevent statelessness among children the CRC is of paramount importance. Since all the Contracting States to the 1961 Convention are also party to the CRC, Articles 1-4 of the 1961 Convention must be interpreted in light of the provisions of the CRC.[17]

17. Moreover, Article 7 of the CRC specifies that States must implement the right to acquire a nationality in conformity with their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless. The 1961 Convention is therefore of central importance to the full enjoyment of every child's right to acquire a nationality under the CRC.[18] In addition, it follows from both Article 7 and Article 3 of the CRC, which describes the principle of the best

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[16] UN High Commissioner for Regugees(UNHCR), *Good Practices Paper – Action 2: Ensuring that no child is born stateless, 20 March 2017,* available at: http://www.refworld.org/docid/58cfab014.html

[17] 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, available at: http://www.refworld.org/docid/50d460c72.html

[18] UN High Commissioner for Refugees (UNHCR), Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness, 23 August 2013, available at: http://www.refworld.org/docid/52206aa54.html

interest of the child, that a child may not be left stateless for an extended period of time.[19]

18. As stated above, the CRC has the most States parties of any human rights treaty and has achieved near universal ratification. It addresses statelessness through its provisions on non-discrimination (Article 2), best interest of the child (Article 3), the right of every child to acquire a nationality and to be registered at birth (Article 7), and the right of every child to preserve his or her identity (Article 8). A number of General Comments (GC) of the Committee on the Rights of the Child (Committee) help to inform the meaning of these provisions when applying them to address statelessness. In addition, the Committee has consistently recommended in its Concluding Observations that States parties review their legislation to ensure that nationality is granted to all children who are stateless or at risk of being stateless.[20]

19. Based on the principle that nobody should be left stateless[21], the "right to a nationality" is also codified in several international legal instruments, such as Article 15 of the Universal Declaration of Human Rights (hereafter UDHR)[22] and Article 24 of the International Covenant on Civil and Political Rights (hereafter ICCPR).[23] The ECHR, which Norway is a contracting party to, does not contain a right to nationality per se. However, the European Court of Human Rights (hereafter ECtHR) has clarified in its jurisprudence, inter alia, *Genovese v. Malta,* that the impact the lack of access to nationality has on a person's social identity was such as to bring it within the general scope and ambit of Article 8 ECHR (the right to respect for private and family life).[24] The same principle was reiterated by the ECtHR in *Ramadan v. Malta* where the Court established that although "[...] the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual".[25] Moreover, one should also note that under the Inter-American human rights regime, the right to

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[19] 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, paragraph 11, available at: http://www.refworld.org/docid/50d460c72.html

[20] UN High Commissioner for Refugees (UNHCR), UN High Commissioner for Refugees (UNHCR) and UNICEF, CRC Convention on the Rights of the Child: Quick Reference Guide - Statelessness and Human Rights Treaties, January 2017, available at: http://www.refworld.org/docid/58c25eb14.html

[21] Council of Europe: Parliamentary Assembly, A*ccess to nationality and the effective implementation of the European Convention on Nationality*, 23 January 2014, Doc. 13392, available at: http://www.refworld.org/docid/52f49bcb4.html

[22] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: http://www.refworld.org/docid/3ae6b3712c.html

[23] 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

[24] *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: http://www.refworld.org/cases,ECHR,509ea0852.html

[25] *Ramadan v. Malta*, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016, available at: http://www.refworld.org/cases,ECHR,57ff5080ae3.html

nationality is considered a non-derogable right which has acquired *jus cogens* status.[26]

The 1969 Vienna Convention on the Law of Treaties

20. Prior to assessing the compatibility of the Proposal with Norway's international and regional obligations, in particular the 1954 and 1961 Conventions, the ECN of 1997 and the CRC, we would like to underline that the above-mentioned instruments must be interpreted in light of the 1969 Vienna Convention on the Law of Treaties ("Vienna Convention"). While noting that the Vienna Convention does not apply retroactively and is not binding on Norway, UNHCR and UNICEF jointly stress that several of the Vienna Convention's provisions codify customary international law thus providing useful guidance with regard to the interpretation of the treaties mentioned above. UNHCR and UNICEF note in this regard that international law is a well-designed legal system consisting of different norms whose hierarchical level may differ, but who nevertheless interact with each other in meaningful ways.[27] As international law is not a random collection of norms, when applying the law, it is mandatory to determine the precise relationship between two or more rules and principles that are both valid and applicable in respect of a situation.[28] This means that when seeking to determine the relationship of two or more norms to each other, the norms should be interpreted in light of articles 31-33 of the Vienna Convention.[29]

21. In addition, the principle of harmonization is also of crucial relevance since it clarifies that norms which bear on the same issue should be interpreted so as to give rise to a single set of compatible obligations.[30] The importance of the harmonization principle has been reiterated by the ECtHR in its established jurisprudence. To illustrate, in *Al-Adsani v. the United Kingdom*, the ECtHR stressed that "the ECHR has to be interpreted in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969, and that Article 31 § 3 (c) of that treaty indicates that account is to be taken of "any relevant rules of international law applicable in the relations between the parties".[31] The Court also stressed that the provisions of the ECHR "cannot be interpreted in a vacuum" as the Court "must be mindful of the Convention's special character as a human rights treaty, and it must also take the relevant rules of international law into account". Moreover, the ECtHR also stressed the importance of

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[26] Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at: http://www.refworld.org/docid/3ae6b36510.html

[27] See International Law Commission, Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, available at: http://legal.un.org/ilc/guide/1_9.shtml, and International Law Commission, Report of the International Law Commission, 57th session (2 May-3 June and 11 July-5 August 2005), 2005, A/60/10, available at: http://www.refworld.org/docid/4a716bdf2.html

[28] *Ibid.*

[29] *Ibid*. Article 31 of the VCLT codifies the general on the interpretation of treaties, Article 32 of the VCLT deals with the use of supplementary means in the process of treaty interpretation and with the relationship of that use to the general rule of interpretation laid down in Article 31 while Article 33 of the VCLT deals with the interpretation of treaties authenticated in two or more languages

[30] *Ibid.*

[31] Article 31 § (3) (c) of the VCLT codifies the so-called principle of systemic integration

interpreting the ECHR in "harmony with other rules of international law of which it forms part [...]."[32]

Specific observations

22. The Government considers that the proposal to increase the residence requirement for acquiring Norwegian citizenship from three to five years of legal residence for stateless persons, including children, is in line with Norway's international obligations, in particular the ECN and its Explanatory report. UNHCR and UNICEF jointly note in this regard that the proposal concerning the introduction of a new Section 16 lit. a) and Section 16 lit. b) neither discusses Norway's obligations under the CRC and the 1954 Convention nor the interplay and relationship between the norms incorporated in the 1961 Convention and the ECN in light of relevant rules on treaty interpretation flowing from customary law and articles 31-33 of the Vienna Convention, in particular. UNHCR and UNICEF would like to note that the proposal is not assessed in light of Norway's obligations under the ICCPR, in particular Article 24 (3) of the Convention, and article 8 of the ECHR. Although the Government does assess the proposal in light of Norway's obligations under the 1961 Convention and the ECN of 1997, this assessment is done in a manner which does not pay regard to customary international law establishing as mandatory the obligation to determine the precise relationship between two or more rules and principles that are both valid and applicable in respect of a situation.

23. Moreover, UNCHR and UNICEF would like to note that Article 3 of the CRC on the best interest of the child is a right, a principle and as a rule of procedure according to General Comment Nr. 14 (2013) by the Committee on the Right as the Child. As a rule of procedure, the Committee has stated that whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact of the decision on the child or children in general. The State Parties shall explain how the best interest assessment has been conducted and taken into consideration in the decision, that is what has been considered to be in the child`s best interest; what criteria has it been based on; and how the child`s interest have been weighed against other considerations. In the Government's proposal this evaluation of the possible impact that the proposed provision will have on children seems to be missing.

24. The proposal fails to address that the Committee on the Rights of the Child has authoritatively interpreted Article 7 of the CRC since 1990 as requiring State Parties to grant nationality to all stateless children born on the territory who would otherwise be stateless. There are at least 27 recommendations made by the Committee on the Rights of the Child to various State Parties underlying this obligation. This obligation was also reiterated by the Parliamentary Assembly of the Council of Europe in its report "*The need to eradicate statelessness of children"* (2015) where it acknowledges

[32] Al-Adsani v. The United Kingdom, 35763/97, Council of Europe: European Court of Human Rights, 21 November 2001, available at: http://www.refworld.org/cases,ECHR,3fe6c7b54.html

that the most extensive protection against childhood statelessness is to be found in the CRC and concludes that nationality should be granted to all children born on the territory of the State who would otherwise be stateless.[33]

Proposed Section 16 lit. a) – children born stateless in Norway with lawful residence

25. Children born stateless in Norway will according to the proposed Section 16 lit. a) be required to have resided in the territory for the past five years with residency permits of a minimum of one year. In UNHCR and UNICEF's understanding the proposed amendment will, as a general rule, require a five-year lawful residence for children born stateless in Norway to be eligible to acquire nationality. In this respect, UNHCR and UNICEF jointly reiterate that the proposal at hand appears to reintroduce the requirement of lawful residence in the *Nationality Act* and *Regulations*, requirement which was eliminated with the entry into force of *Instruction G-08/2016.*[34] The consistency of such measures with Article 7 of CRC on the child's right to acquire a nationality, and Article 24 (3) of ICCPR, which sets out the right of every child to acquire a nationality, would need to be considered.

26. The current legislation and the proposed insertion of Section 16 lit. a) base the residence requirement for the acquisition nationality on "lawful" residence. The proposal refers in this regard to the Explanatory memorandum and the 1997 European Convention on Nationality, in particular 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. UNHCR and UNICEF, however, note 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. States bound by both Conventions shall in accordance with the rules set out in the Vienna Convention on the Law of Treaties implement them with the view of mutual accommodation and in accordance with the principle of harmonization.[35] Moreover, the Convention affording the strongest protection must prevail, thus a requirement of lawful residence is not a permissible condition. This interpretation finds clear support in Article 26 (1) of the 1997 ECN which spells out that the provisions of ECN "shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals in the field of nationality".

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[33] Council of Europe: Parliamentary Assembly, The need to eradicate statelessness of children, 16 February 2016, Doc. 13985, available at: http://www.refworld.org/docid/5836e60f4.html

[34] Instruks om tolkning av statsborgerloven - gjeldende rett for statsløse søkere som er født i Norge, available at: https://www.udiregelverk.no/no/rettskilder/departementets-rundskriv-og-instrukser/g-082016/

[35] International Law Commission, Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, available at: http://legal.un.org/ilc/guide/1_9.shtml, and International Law Commission, Report of the International Law Commission, 57th session (2 May-3 June and 11 July-5 August 2005), 2005, A/60/10, available at: http://www.refworld.org/docid/4a716bdf2.html

27. In light of the foregoing, the Government's proposal to introduce a new Section 16 lit. a) relying exclusively on the ECN of 1997 could not be said to be in line with the 1961 Convention and the Recommendation CM/Rec(2009)13 of the Council of Europe (CoE).[36] This finding is fully supported by the Parliamentary Assembly of the Council of Europe which recently reiterated that the "ECN is not perfect" since it does not provide for the acquisition of nationality at birth ex lege which the Parliamentary Assembly considers as the only effective tool to prevent statelessness.[37] UNHCR and UNICEF note that recommendations, guidelines and other materials issued by UN bodies and the CoE - although non-binding, should be afforded great weight. The ECtHR's interpretation of Article 31 § 3 (c)[38] of the Vienna Convention clearly supports such an approach. For illustration purposes, in *Saadi v. United Kingdom*[39], on the basis of article 31(3) (c) of the Vienna Convention, the ECtHR relied on non-binding materials such as UNHCR guidelines, Council of Europe recommendations and a recommendation of the UN Working Group on Arbitrary Detention.

28. Moreover, the ECtHR underlined in its recent decision in *Mennesson v France*[40], a case concerning childhood statelessness in the context of surrogacy, that the primacy of the principle of the best interests of the child must be afforded decisive weight under the right to respect for private life under Article 8 of the ECHR, even when balanced against matters of national law and policy. Having in mind that statelessness is never in the child's best interest, the principle established by the ECtHR in the *Mennesson*-ruling could apply to cases concerning stateless children born on the territories of the Contracting Parties, thus requiring them to grant nationality to such children, regardless of their lawful stay.

Proposed Section 16 lit b) – children born stateless in Norway without lawful residence

29. In UNHCR and UNICEF's understanding, the proposed Section 16 lit. b) is designed to govern the granting of citizenship to stateless persons born in Norway who are between the ages of eighteen and twenty-one, but who lack a residence permit. According to the proposal, stateless persons born in Norway would have to establish that they have always been stateless and have resided[41] in Norway for the past five years prior to lodging an application for Norwegian nationality.

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36 Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children, 9 May 2009, CM/Rec(2009)13, available at: http://www.refworld.org/docid/4dc7bf1c2.html

37 Council of Europe: Parliamentary Assembly, Access to nationality and the effective implementation of the European Convention on Nationality, 23 January 2014, Doc. 13392, available at: http://www.refworld.org/docid/52f49bcb4.html

38 Article 31 § (3) (c) of the VCLT codifies the so-called principle of systemic integration

39 Saadi v. United Kingdom, 13229/03, Council of Europe: European Court of Human Rights, 29 January 2008, available at: http://www.refworld.org/cases,ECHR,47a074302.html

40 *Mennesson c. France*, Requête no 65192/11, Council of Europe: European Court of Human Rights, 26 June 2014, available at: http://www.refworld.org/cases,ECHR,53b678474.html

41 UNHCR understands that the wording "resided" [fast bosatt] in the Proposal is to be understood as habitual residency.

30. UNHCR and UNICEF jointly underline that the provision, if adopted, would severely restrict or delay the acquisition of a nationality for children born stateless in Norway. The exhaustive list of conditions that can be imposed in order to grant citizenship to children who would otherwise be stateless are incorporated in Article 1(2)(a) of the 1961 Convention. They allow states to restrict the period of application for citizenship to persons who are between 18 and 21. However, UNHCR and UNICEF reiterate in this regard that the principles embodied in the 1961 Convention represent standards which may not be interpreted in isolation. Such an interpretation would also be contrary to established principles by the International Court of Justice[42] (hereafter "ICJ") which in one of its landmark cases stated the following: "[U]nder the general rules of treaty interpretation, as reflected in the 1969 Vienna Convention on the Law of Treaties, interpretation must take into account "any relevant rules of international law applicable in the relations between the parties" (Art. 31, para. 3(c))."[43]

31. As stated above, according to general rules on treaty interpretation, the 1961 Convention cannot be interpreted in a vacuum, but must be interpreted in light of other relevant treaties such as the CRC, ICCPR and the ECHR. Moreover, 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".

32. In UNHCR and UNICEF's view, stateless children born in Norway, following a child-sensitive application of the 1961 Convention, should be granted nationality as early as possible.[44] UNHCR and UNICEF submit jointly that children are entitled to a stable and secure legal status, including nationality, which should not be subject to any delays. Reference is made to relevant rights enshrined in the CRC, which recognize children´s right to development and special protection and assistance.[45] Article 20 of the CRC specifically provides that "when considering solutions, due regard shall be paid to the desirability of continuity in a child´s upbringing". In this regard, a reference should be made to the paragraph 17 of UNHCR and UNICEF observations underlining that a child must not be left stateless for an extended period of time in accordance with Article 3 and 7 of the CRC.[46]

33. The entitlement to a stable and secure legal status as early as possible is further supported by Article 8 of the ECHR and the jurisprudence of the ECtHR. To illustrate, in *Ariztimuno Mendizabal v. France*[47], the ECtHR examines the effects of the

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[42] Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America, International Court of Justice (ICJ), 6 November 2003, available at: http://www.refworld.org/cases,ICJ,414b00604.html

[43] Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America, International Court of Justice (ICJ), 6 November 2003, available at: http://www.refworld.org/cases,ICJ,414b00604.html

[44] 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, available at: http://www.refworld.org/docid/50d460c72.html

[45] CRC Article 6, 20 22, and 27.

[46] 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, available at: http://www.refworld.org/docid/50d460c72.html

[47] Aristimuno Mendizabal c. France, 51431/99, Council of Europe: European Court of Human Rights, 17 January 2006, available at: http://www.refworld.org/cases,ECHR,45cc8aff2.html

"precarious and uncertain situation the applicant sustained for a long period", which had "important consequences for her in material and psychological terms". The uncertainty and precariousness of the applicant's situation had a serious impact on her private life and constituted an infringement of Article 8 ECHR. This judgment clearly illustrates ECtHR's acknowledgment that precariousness in and of itself seriously undermines Article 8 of the ECHR.[48] Although the ECtHR's judgment in *Ariztimuno Mendizabal v. France* concerns excessive delays in the granting of a residence permit to an immigrant (whether regularly or irregularly residing in the State's territory), the analysis of the Court could extend to the conditions for the grant of nationality to stateless children. Thus, a correct interpretation of the 1961 Convention, in harmony with the ECHR and the primacy of the principle of the best interests of the child would require Contracting Parties to these instruments to grant nationality to stateless children born in the country as early as possible.

34. Lastly, UNHCR and UNICEF note that the proposed section 16 lit. b) is not assessed in light of Norway's obligations under the non-discrimination customary clause which is enshrined inter alia in Article 2 of the ICCPR, Article 2 of the CRC and Article 14 of the ECHR. In this regard, we limit ourselves to stress that the proposed differentiation/distinction between the categories of stateless persons born in Norway falling within the scope of Section 16 lit. a) and the category of stateless persons covered by Section 16 lit. b) may amount to a difference in treatment of persons in analogous, or relevantly similar, situations. UNHCR and UNICEF note that such a difference of treatment is discriminatory unless it can be shown by the Government that the difference in treatment is reasonably and objectively justified.[49]

Section 16 – prolonged residence requirement for naturalization

35. With regard to the proposed amendment of Section 16 prolonging the residence period for naturalization of stateless persons from three to five years, as State party to the 1954 Convention, Norway is 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.[50] The object and purpose of Article 32; 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 aimed at making the path to nationality more protracted for stateless persons would be inconsistent with the 1954 Convention.[51]

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[48] The Human Rights of Migrants in European Law, Cathryn Costello, Oxford Press, 2015

[49] See for example Marckx v. Belgium, Application no. 6833/74, Council of Europe: European Court of Human Rights, 13 June 1979, available at: http://www.refworld.org/cases,ECHR,3ae6b7014.html, see also Case "Relating to Certain Aspects of the Laws on the Use of language in Belgium" v Belgium, (Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64), available at: http://hudoc.echr.coe.int/eng?i=001-57524

[50] UNHCR Observations, available at: https://www.regjeringen.no/contentassets/a7935befc95d40c88e5d25e98db5f967/unhcr.pdf

[51] *Ibid*

IV. CONCLUDING RECOMMENDATIONS

36. In light of international standards on the right of every child to acquire a nationality, without discrimination, the acquisition of Norwegian nationality by stateless children born in the territory of Norway should not be contingent on the nationality, legal status or duration of residence status of the child and/or his/her parents. UNHCR and UNICEF recommend the Government of Norway refrains from introducing measures which exclude stateless children from the acquisition of Norwegian nationality in flagrant breach of the CRC and the 1961 Convention.

UNHCR and UNICEF recommend Norway:

i. Refrains from adopting the proposed retrogressive measures.
ii. Amend the Nationality Act to include safeguards against statelessness by providing for the automatic grant of Norwegian nationality at birth to persons born in the territory who would otherwise be stateless, in accordance with Article 1(1)(a) of the 1961 Convention and Articles 7 and 3 of the CRC. If Norway chooses to grant its nationality by application to these persons, it must be done in line with the enumerated permissible conditions set out in Article 1(2) of the 1961 Convention and interpreted in conjunction with the aforementioned Articles of the CRC.

UNICEF
UNHCR Regional Representation for Northern Europe

18 October 2017