



UNHCR Observations on the proposed amendments to the Danish Social Security legislation:

Lov om ændring af lov om aktiv socialpolitik, lov om en aktiv beskæftigelsesindsats, integrationsloven og forskellige andre love (L2) (Indførelse af en integrationsydelse, ændring af reglerne om ret til uddannelses- og kontanthjælp m.v.)

and

Lov om ændring af lov om social pension (Harmonisering af regler om opgørelse af bopælstid for folkepension, sagsnr. 2015-3055)

and

Lov om ændring af lov om børnetilskud og forskudsvis udbetaling af børnebidrag og lov om en børne- og ungeydelse (Genindførelse af optjeningsprincippet for ret til børnetilskud og børne- og ungeydelse for flygtninge m.v.)

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (hereafter "RRNE") is grateful to the Ministry of Immigration, Integration and Housing, the Ministry of Employment and the Ministry of Taxation of the Kingdom of Denmark for the invitation to submit its observations on the proposal to amend social security legislation dated 3 July 2015.
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.¹ 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[.]".² 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").³ It has also been reflected in European Union law,

¹ 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> ("UNHCR Statute").

² *Ibid.*, para. 8(a).

³ According to Article 35 (1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of the 1951 Convention".

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 (hereafter "TFEU").⁴

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, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection.⁵ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

II. General Observations

4. UNHCR remains grateful for the generous financial contribution provided by the Government of Denmark to the Syria regional response and Denmark's reception of refugees through the national asylum system and the resettlement quota. These concrete ways in which Denmark has exercised international solidarity and responsibility-sharing in relation to displacement situations are extremely important, in that they directly help save lives and, at the same time, constitute signals of political support and solidarity.
5. In this context and at a point in time when the need for international solidarity is greater than ever, UNHCR regrets that the Government of Denmark is proposing to introduce changes to a number of laws aimed at restricting the social security benefits of refugees. The number of persons forcibly displaced worldwide is at its highest since World War II, and 86 per cent of the world's refugees are living in non-industrialised countries. Over the past year, UNHCR has, on numerous occasions, called on States to demonstrate the principles of international solidarity and responsibility sharing, set out in the preamble to the 1951 Convention and in several Executive Committee ("ExCom") Conclusions,⁶ including the creation of legal alternatives to dangerous irregular movements, such as resettlement, facilitated access to family reunion options and other forms of legal admission to Europe.⁷ The United Nations High Commissioner for Refugees also personally addressed the Danish Ministry of Justice in June 2015 to underline the need for international solidarity.

⁴ 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>.

⁵ 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>.

⁶ UNHCR, *Thematic Compilation of Executive Committee Conclusions*, June 2014, Seventh edition, available at: <http://www.refworld.org/docid/5538cfa34.html>.

⁷ See e.g., UNHCR, *Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity*, 11 July 2014, p. 12, available at: <http://www.refworld.org/docid/53b69f574.html> and UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, paras. 33–36, available at: <http://www.refworld.org/docid/544e446d4.html>.

6. In UNHCR's view, the proposed legislative amendments will not only negatively impact upon refugees' ability to find a durable solution in Denmark and start the process of rehabilitation from the traumas of conflict and persecution, but they will also send a negative signal to other European countries, whom UNHCR also calls upon to preserve asylum space. UNHCR therefore appeals to the Government of Denmark to reconsider its intention to restrict the national asylum space and to instead lead by example in upholding the European Union founding principles of human rights, democratic values and international solidarity.

III. The proposals and Denmark's international obligations

7. Denmark is bound by its obligations as a State party to the 1951 Convention and other relevant international instruments for the protection of refugees. UNHCR wishes to recall that the Vienna Convention on the Law of Treaties⁸ offers guidance concerning the interpretation of international treaties. Articles 26 and 31 explicitly state that the obligations of a convention must be performed by the parties "in good faith" and "in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". UNHCR therefore finds it regrettable that the explicit intention of the law proposals is to make it less attractive to seek asylum in Denmark and that the Government of Denmark aims to reduce its responsibilities for the protection of refugees. UNHCR further regrets that the proposals only to a limited extent assess whether they are consistent with Denmark's human rights and refugee law obligations.
8. The proposed amendments intend to make core social security entitlements relating to unemployment, child benefits and pensions conditional on residency requirements. This will, in practice, mean that beneficiaries of international protection (hereafter referred to as "refugees"⁹) will be placed in a situation whereby their monthly subsistence allowances during their first years in Denmark will be substantially lowered compared to the current social security benefits. In UNHCR's view, the law proposals will negatively impact upon refugee integration in Denmark and risk further marginalizing refugees in Danish society (see further below). As noted by Eide:

"Asylum-seekers, refugees and displaced persons do not have the same opportunities as others to achieve an adequate standard of living on the basis of their own efforts. They therefore require, to a larger extent than the ordinary public, direct provisions, until conditions are established in which they can obtain their own entitlements."¹⁰

⁸ United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.refworld.org/docid/3ae6b3a10.html>.

⁹ The law proposals cover 1951 Convention refugees and beneficiaries of subsidiary protection, including resettled refugees.

¹⁰ A. Eide, *The Right to an Adequate Standard of Living Including the Right to Food* in *Economic, Social and Cultural Rights: A Textbook*, pp. 133–148, quoted in E. Lester, 'Article 24', in A. Zimmerman (ed.), *Commentary of the 1951 Convention relating to the Status of Refugees*, Oxford University Press, 2011, p. 1049, at 19.

9. In this regard, UNHCR would like to refer to the concept of "progressive realization" of social and economic rights,¹¹ which is a key aspect of the obligations of States according to international human rights treaties. At the core of this concept is the obligation to take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of States' available resources. The UN Committee on Economic, Social and Cultural Rights has noted in its General Comment on the Right to Social Security that:

"If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party."¹²

10. The UNHCR ExCom, of which Denmark is a member, has also referred to the progressive realization of rights and affirmed "*the particular importance of the legal dimension of integration, which entails the host State granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalizing*" [emphasis added].¹³ In UNHCR's view, the current proposals will facilitate a "retrogression" rather than a progressive realization of rights, as they intend to lower the standards of the current entitlements for refugees.
11. Relevant provisions in the 1951 Convention concerning social security for refugees are found in Article 23 (Public Relief) and Article 24 (Labour Legislation and Social Security). The interpretation and application of these complementary provisions must be consistent with the protective and rights-based object and purpose of the 1951 Convention. Article 23 provides that "The Contracting States shall accord to refugees lawfully staying in their territory the **same treatment** with respect to public relief and assistance as is accorded to their nationals" [emphasis added]. The Drafting Committee of the 1951 Convention noted in the *Travaux préparatoires* specifically with regard to this provision, that "refugees should not be required to meet any conditions of local residence or affiliation which may be required of

¹¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>, Article 2.1.

¹² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19, available at: <http://www.refworld.org/docid/47b17b5b39c.html>, para. 42. See also, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.html>, which notes that "the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources." para. 9.

¹³ UNHCR, *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) - 2005, available at: <http://www.refworld.org/docid/4357a91b2.html>.

nationals".¹⁴ Both provisions use the language "shall accord", which denotes an obligation that is mandatory in nature, rather than discretionary or recommendatory.¹⁵

12. Article 24(1)(b)(i) of the 1951 Convention provides that refugees lawfully staying in the territory of a State party shall be accorded the same treatment as is accorded to nationals with regard to social security, including unemployment, old age and family responsibilities.¹⁶ This right may be limited in situations where part of the social benefit would ordinarily be paid by another country, for example, where the entitlement has been accrued in the country of origin or another third country; however, access to such benefits from the country of origin or a third country needs to be a reality, and not merely theoretical. It is more likely the case that refugees will not be in a position to make contact with their own countries in order to access such benefits and nor can they be required to do so given their particular circumstances as refugees (Article 6).¹⁷
13. Article 24(1)(b)(ii) further provides that special arrangements may be prescribed for benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfill the contribution conditions prescribed for the award of a normal benefit. While this provision allows for very limited exceptions to the general rule that refugees shall enjoy the same treatment as nationals with respect to social security, "it does not absolve States of the responsibility of ensuring that special arrangements are made to cover those refugees whose situation cannot be adequately covered by the usual arrangements that are in place for nationals generally"¹⁸ and that those arrangements are in line with international human rights law (see further below). Refugees may under Article 24 receive less than a national in very specific circumstances and properly justified, however, this provision does not mean that States can deny pension and other social security benefits to refugees altogether (see on adequacy of entitlements, paragraph 17 below).¹⁹ Safeguards against creating an underclass of elderly or other refugees would need to be taken.

¹⁴ UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*, 1990, available at: <http://www.refworld.org/docid/53e1dd114.html>. The drafters of the 1951 Convention intended for Article 23 to fill gaps where social security provisions may be inadequate and for Articles 20, 23 and 24 combined, to form a comprehensive framework for welfare assistance for many refugees.

¹⁵ *Supra*, E. Lester, Article 23, *Commentary of the 1951 Convention relating to the Status of Refugees*, p. 1050, at 26.

¹⁶ See the UNHCR comments in relation to a previous, similar proposal, *UNHCR's Observations on the proposed amendments to the Danish law on social pension*, December 2010.

¹⁷ Article 6 of the 1951 Convention provides that "For the purposes of this Convention, the term 'in the same circumstances' implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling."

¹⁸ *Supra*, E. Lester, Article 24, *Commentary of the 1951 Convention relating to the Status of Refugees*, p. 1073, at 44.

¹⁹ Grahl Madsen, *Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)*, October 1997, available at: <http://www.unhcr.org/refworld/docid/4785ee9d2.html>, Article 24, para. 8.

14. Obligations under the 1951 Convention thus require the granting of pension and/or social security benefits in cases where refugees may not have had the opportunity to contribute to the relevant benefit schemes, *inter alia*, due to their short period of residence in the country of asylum or, for example, because of disability or age. This takes into consideration that, in many instances, refugees will be in an unfair and disadvantaged situation, as they generally cannot claim the pension and/or social security benefits towards which they contributed in their country of origin.²⁰ As an exception to the general rule that refugees shall be accorded the same treatment as nationals in relation to social security (Article 24), the exceptions are to be applied only with proper justification, must not amount to discrimination in purpose or effect (Article 3 and below paragraphs 15–17) and cannot be applied as a penalty (Article 31(1)).
15. A similar right to that of Article 24(1) is set out in Article 9 of the International Covenant on Economic, Social and Cultural Rights (hereafter "ICESCR"),²¹ which recognizes "the right of everyone to social security, including social insurance". The rights of refugees to social security benefits are also enshrined in Articles 10, 11 and 12 of the ICESCR.
16. The principle of non-discrimination is enshrined in all major human rights treaties, including the ICESCR, and prohibits discrimination in the enjoyment of Convention rights, including on the basis of national and social origin. The Committee on Economic, Social and Cultural Rights has in its General Comment on the Right to Social Security stated that:

"The Covenant ... [p]rohibits any discrimination, whether in law or in fact, **whether direct or indirect**,²² on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security."²³ [emphasis added]

With regard to refugees and other vulnerable groups, the Committee has specifically stated that:

²⁰ *Supra*, UNHCR's Observations on the proposed amendments to the Danish law on social pension, December 2010.

²¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, available at: <http://www.refworld.org/docid/3ae6b36c0.html>, p. 3.

²² Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates. See UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: <http://www.refworld.org/docid/4a60961f2.html>, para. 10 (b).

²³ *Supra*, General Comment No. 19: The right to social security (Art. 9 of the Covenant), para. 29.

"Refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards."²⁴

17. In respect of the adequacy of benefits, the Committee on Economic, Social and Cultural Rights has noted that:

"Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided."²⁵

18. At the regional level, while acknowledging that Denmark has opted out of the EU Asylum Acquis, it should be noted the European Union Qualification Directive²⁶ provides in Article 29 that refugees have the right to "the necessary social assistance as provided to nationals". In addition, Article 16 of the European Social Charter (ESC) outlines that States undertake to promote the economic and social protection of family life by such means as social and family benefits, amongst other appropriate means, while Article 23 refers to States having agreed to design measures to enable the elderly to lead a decent life.²⁷ The rights enumerated in the ESC extend to refugees, as does the European Convention on Social Security.²⁸

19. The principle of non-discrimination has also been affirmed and elaborated in regional jurisprudence. For instance, in a judgment from the European Court of Human Rights, *Thlimmenos v. Greece*, the Grand Chamber underlined that "the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention [the European Convention on Human Rights] is also violated when states without an objective and reasonable justification fail to treat differently

²⁴ *Ibid.*, para. 38.

²⁵ *Ibid.*, para. 22.

²⁶ 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, available at: <http://www.refworld.org/docid/4f197df02.html>.

²⁷ Council of Europe, *European Social Charter (Revised)*, 3 May 1996, ETS 163, available at: <http://www.unhcr.org/refworld/docid/3ae6b3678.html>.

²⁸ Appendix, 2; Council of Europe, *European Convention on Social Security*, 14 December 1972, ETS 78, available at: <http://www.unhcr.org/refworld/docid/3ae6b367c.html>, Art. 4.1.

persons whose situations are significantly different.²⁹ In all cases, refugees must be allowed to enjoy a dignified stay (Article 3, ECHR).³⁰

IV. Specific observations

Unemployment benefits: Introduction of an integration allowance (integrationsydelse) and a language supplement (dansktillæg)

20. According to current legislation in Denmark, refugees are afforded unemployment benefits at the same level as citizens, including access to cash and education support (*kontant- or uddannelseshjælp*). As per the proposed amendments, the unemployment benefits will be subject to a residency requirement. Unemployed refugees will thereby need to prove that they have legally resided in Denmark during seven of the last eight years in order to qualify for the benefits. According to the proposal, the time spent in Denmark as asylum-seekers will not count towards the residency requirement.
21. Newly arrived refugees will evidently not fulfill the residency requirement. For these individuals, the law proposal instead introduces an integration allowance (*integrationsydelse*). The entitlements accorded under this allowance are substantially lower than their equivalents under *kontant- or uddannelseshjælp*. The monthly integration allowance also cannot be increased through taking part in work-related activities. Refugees most affected by the changes will thus have their monthly entitlements significantly reduced.
22. UNHCR would like to recall that refugees arriving in Denmark have frequently been forced to abruptly leave their home countries, and have often had their possessions destroyed or taken away. Upon arrival in Denmark, they will thus have to start rebuilding their lives, often without any financial means and lacking local networks and knowledge. While formally the integration allowance is also intended for Danish citizens who have lived abroad outside the European Union, in reality it will primarily affect refugees and others with a foreign background. UNHCR is thus concerned that the proposed residency requirement to be eligible for the *kontant- or uddannelseshjælp* and instead introducing a significantly lower *integrationsydelse* for refugees who are not able to find employment during the first seven years will have a discriminatory effect and that the impact of the proposal will be detrimental for refugees. As noted above, conditions which refugees are incapable of fulfilling and which are discriminatory in their impact would be inconsistent with the 1951 Convention (Article 6) and international human rights law.
23. UNHCR further notes that the proposal contains the possibility of an addition to the monthly integration allowance in the form of a supplementary language benefit (*dansktillæg*). The proposed language allowance is intended as an "incentive for

²⁹ *Thlimmenos c. Grèce*, Application no. 34369/97, Council of Europe: European Court of Human Rights, 6 April 2000, available at: <http://www.unhcr.org/refworld/docid/4a3a3af70.html>, para. 44.

³⁰ See also, *Secretary of State for the Home Department v. Wayoka Limbuela, Binyam Tefera Tesema and Yusif Adam*, [2004] EWCA Civ 540, United Kingdom: Court of Appeal (England and Wales), 21 May 2004, available at: <http://www.refworld.org/docid/42494f5b4.html>.

integration" and, in order to qualify, the individual has to pass a level two Danish language test. Exemptions apply to individuals who are able to invoke medical reasons (long-term illness) for not passing the test. These individuals may be entitled to the allowance if they can prove that they have made reasonable efforts to pass the test, or if they can prove that it is impossible to do so due to medical reasons. UNHCR would like to emphasize that there may be vulnerable refugees who, despite a genuine willingness to learn Danish, may simply not be able to reach the required level, and especially not within a short period of time. UNHCR is therefore of the view that if the Government of Denmark chooses to introduce a supplementary language allowance, it should be the willingness to learn that is awarded, and not the skills level attained.

Child benefits: Introduction of residency requirements (optjeningsprincippet) regarding refugee child benefits

24. The current child benefits legislation in Denmark stipulates a two-year residency requirement (within the last ten years) in order to be entitled to full child benefits, however, refugees are exempted from this requirement. The Government proposes to revoke this exemption and apply the residency requirement also to the children of recognized refugees. By virtue of their recent arrival in Denmark, refugee children will not be able to comply with the two-year residency requirement, and this would thus not be in line with Article 6 of the 1951 Convention. Many refugee children would thus, during the first two years, receive only part of the benefits to which Danish children are entitled.
25. Placing restrictions on the rights of refugees, in particular in respect of refugee families with children, can often have a negative impact on their ability and opportunities to integrate into their new society, with its attendant consequences for social harmony and long-term stability for host and refugee communities. Research conducted in the context of the provision of *starthjælp* (a similar measure to *integrationsydelse*, introduced by a previous Government, however, abolished in 2012), showed that families with children receiving the lower entitlements were forced to cut down on items promoting integration, such as literature, communication tools, media, sports, outdoor activities, bicycles and public transport.³¹
26. The Convention on the Rights of the Child ("CRC")³² applies to all children without distinction (Article 2). The UN Committee on the Convention on the Rights of the Child has clarified that the principle of non-discrimination "prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on

³¹ Rockwool Fondens Forskningsenhed, Arbejdsrapport 25; Starthjælpens betydning for flygtninges levevilkår og beskæftigelse, available at: <http://www.rockwoolfonden.dk/files/RFF-site/Publikations%20upload/Arbejdsrapporter/Arbejdsrapport%2025%20-Starthj%C3%A6lpens%20betydning%20for%20flygtninges%20levevilk%C3%A5r%20og%20besk%C3%A6ftigelse.pdf>.

³² 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>.

the basis of different protection needs such as those deriving from age and/or gender."³³

27. The principle of the best interests of the child is enshrined in Article 3 of the CRC and also relevant in this context. The principle provides that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."
28. Further, the CRC specifically notes that States parties shall take appropriate measures to protect and assist refugee children so they may enjoy the applicable rights set out in the CRC and other instruments that Denmark is a party to (Article 22). The Committee on the Convention of the Rights of the Child has explicitly noted in respect of integration of separated or unaccompanied children that they "should have the same access to rights (including to education, training, employment and health care) as enjoyed by national children. In ensuring that these rights are fully enjoyed by the unaccompanied or separated child, the host country may need to pay special attention to the extra measures required to address the child's vulnerable status, including, for example, through extra language training."³⁴ UNHCR considers that refugee children in families should also have the same access to these rights.
29. Article 26 of the CRC further recognizes the right of every child to benefit from social security, including social assistance. State parties should also ensure (to the extent possible) the child's survival and development, and provides for the right of the child to an adequate standard of living, including the mental, spiritual, moral and social aspects of his or her development. While, according to Article 27 of the CRC, parents have the primary responsibility for the child's development, State parties are to take appropriate measures to assist parents in this task and in case of need, are required to provide material assistance, especially with respect to such basic needs as housing, food and clothing.
30. As any action involving children, including refugee children, should be taken in line with the principle of the best interests of the child (Article 3, CRC), UNHCR is deeply concerned that under the proposed amendments, refugee children during the first two crucial years in Denmark will receive a reduced child allowance and that this may have serious consequences for the care of refugee children and does not acknowledge their special position as refugees (Article 6) and as children (Article 22, CRC). UNHCR is further concerned that the amendments, if adopted, will lead to a differential treatment of refugee children compared to other children in Danish society and that this would be inconsistent with Denmark's commitments according to international refugee and human rights law.

³³ UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>, para. 18.

³⁴ *Supra*, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, para. 90.

Pension benefits: Introduction of residency requirements (optjeningsprincippet) regarding refugee pension benefits

31. The current legislation regulating old-age pension ensures that refugees have the same old-age pension as Danish nationals by including the period of residence in their country of origin in the calculation for the entitlement to the pension.³⁵ According to the proposed amendments, the period of residence in the country of origin shall no longer be taken into account when calculating refugees' entitlements to an old-age pension.
32. Similar to immigrants and nationals who have lived abroad, refugees must, in accordance with the proposal, reside in Denmark for 40 years after the age of 15 in order to obtain the full old-age pension. Many refugees are thus not likely to meet the requirement for full pension. Older refugees will also have constraints in securing other forms of pension. For instance, the minimum requirement of three-years-residence may exclude some refugees from so-called "fraction pension".
33. While the proposed amendments would bring the calculation of old-age pension for refugees in line with the rules for calculation of old-age pension for Danish citizens and immigrants who have lived abroad, they do not take into consideration the specific circumstances of refugees. Refugees who may have worked and would be entitled to pensions in their home countries will generally not be able to access such pensions after they have fled. UNHCR regrets that this part of the proposal is framed as a "harmonization" of the legislation as the preconditions for meeting the residency requirements are fundamentally different for refugees.
34. Furthermore, the proposed amendments do not take into consideration that some refugees may be stateless and therefore, as a matter of law, would be unable to secure the benefits accorded to nationals of his or her country of former habitual residence. Not having access to the full old-age pension and other benefits in Denmark will leave them in a very vulnerable situation with little means to integrate.
35. As noted above, Article 9 of the ICESCR applies to *all* older persons, including refugees, and requires State parties to pay special attention to this group, including ensuring that they enjoy equal treatment in access to non-contributory pension schemes. It prohibits any discrimination in the law, whether direct or indirect, on the basis of a person's national or social origin, and which has the effect of impairing the right to social security, including old-age pension.
36. The UN Committee on Economic, Social and Cultural Rights has in its General Comment No. 19 on the Right to Social Security specified that:

"States Parties should, within the limits of available resources, provide non-contributory old-age benefits, social services and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not

³⁵ *Supra*, UNHCR's Observations on the proposed amendments to the Danish law on social pension.

otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance, and have no other source of income."³⁶

V. CONCLUSION

37. To conclude, UNHCR considers that the proposed amendments fall short of the requirements of the 1951 Convention as they do not sufficiently take into account the specific situation of refugees and because they lead to the unequal treatment and enjoyment of the right to social security. The combined object and purpose of Articles 23 and 24 of the 1951 Convention, as well as relevant human rights obligations, establish a minimum standard of treatment with regard to social security, below which there would be concerns that inhuman or degrading treatment could arise. The general principle that refugees shall enjoy social security rights on par with nationals should be upheld and reinforced.

38. In line with international obligations, UNHCR recommends to remove the residency requirements from all social benefits for recognized refugees. Retaining the current provisions of the relevant laws regulating unemployment, child care and pension benefits of refugees, in order for refugees to receive the same benefits as the general national population, would support this general position and acknowledge the special position of refugees vis-à-vis other non-nationals.

UNHCR Regional Representation for Northern Europe

Stockholm, August 2015

³⁶ *Supra*, General Comment No. 19: The right to social security (Art. 9 of the Covenant), para. 15.