



**UNHCR Observations on the proposed amendments to the Danish Aliens legislation,
L 87:**

Lov om ændring af udlændingeloven

(Udskydelse af retten til familiesammenføring for personer med midlertidig beskyttelsesstatus, skærpelse af reglerne om tidsubegrænset opholdstilladelse, skærpelse af reglerne om inddragelse af flygtninges opholdstilladelse m.v.)

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (hereafter “RRNE”) is grateful to the Ministry of Immigration, Integration and Housing for the invitation to submit its observations on Proposal no. L 87 dated 10 December 2015, containing amendments to the Danish *Aliens Act* (hereafter “Proposal”).
2. 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 UNHCR has a direct interest in asylum laws. 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, 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 the 1951 Convention,⁵ as well as by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

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”.

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>.

II. General Observations

4. As one of the first parties to the 1951 Convention, Denmark has a long tradition of providing sanctuary to those in need of international protection. Denmark was also one of the first 15 members of the UNHCR Advisory Committee established in 1951, which was a predecessor to the Executive Committee of the High Commissioner's programme that Denmark currently chairs. Hence, not least given Denmark's role internationally as an active supporter of the development of a strong international protection regime, UNHCR is concerned with the pace and scope of the restrictions the Danish Government is presently introducing in the areas of asylum, integration and family reunification.
5. The proposals presented by the Government are evidently aimed at conveying a message to make it "less attractive" to seek asylum in Denmark, and is a deeply concerning response to humanitarian needs. UNHCR regrets that Denmark is restricting its asylum legislation for the sole purpose of curbing the number of asylum-seekers, instead of focusing on promoting and supporting a fair distribution of asylum-seekers within all EU Member States. In the context of the European refugee situation, UNHCR has repeatedly called on States to demonstrate the principles of international solidarity and responsibility sharing, set out in international instruments relating to refugees, including in paragraph 4 of the Preamble to the 1951 Convention, and in Conclusions on international protection adopted unanimously by UNHCR's Executive Committee⁶. UNHCR has in the same context called for 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
6. The signal Denmark's introduction of restrictions sends to other countries in the world, including the major refugee hosting countries and European countries that need to strengthen their asylum and integration capacity in order to receive higher numbers of refugees, is worrisome and could fuel fear, xenophobia and similar restrictions that would reduce – rather than expand - the asylum space globally and put refugees in need at life-threatening risks. In particular obstacles to family reunification, the proposal to confiscate valuables from asylum-seekers, the introduction of further restrictive criteria for permanent residency, and the reintroduction of integration criteria in Denmark's selection of refugees under its resettlement quota are disconcerting measures. UNHCR therefore appeals to the Government of Denmark to reconsider its intention to further restrict the national asylum space and urges Denmark to instead use its standing as a global advocate for human rights, democracy and solutions to focus on promoting and building a coordinated European response. This needs to be done through the implementation of fully-functional hotspots, an internal relocation scheme and the opening-up of more legal entry channels including expanded resettlement programmes, and through support to European countries in need to further develop the capacity of their asylum and integration systems. This would, in UNHCR's view, be a more effective, positive, and humanitarian way of reaching a sustainable solution to the unequal distribution of refugees in Europe, than by introducing restrictions that challenge the international protection regime that Denmark has been a strong supporter of for decades.

⁶ See for example ExCom Conclusion Nos. 52 (on International solidarity and refugee protection), 77 (general conclusion), 85 (conclusion on international protection) and 90 (general conclusion), available at: <http://www.unhcr.org/pages/49e6e6dd6.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>.

III. Specific Observations

a. Postponement of the right to family reunification for persons recognized under Article 7 (3) of the Aliens Act

7. As UNHCR understands the Proposal, the right to family reunification will further be postponed for beneficiaries of temporary subsidiary protection (i.e. individuals recognized as in need of protection under the Danish *Aliens Act*, Article 7 (3), due to a situation of indiscriminate violence in their countries of origin (*vilkårlig voldsudøvelse og overgreb på civile*)).⁸ According to the Proposal, beneficiaries of temporary subsidiary protection would only be able to apply for reunification with their families after the holder of the status has resided in Denmark for three years (i.e. after the initial one year permit, plus two consecutive one-year extensions). Today, family reunification can be initiated after the beneficiary of temporary subsidiary protection has completed the first year of residence. Individuals would still retain the possibility of applying for family reunification before that, if the conditions set out in Article 9 c of the *Aliens Act* are met, that is, if “special circumstances” are at hand, for example, relating to the best interests of the child.
8. In the Explanatory Memorandum to the Proposal, the Government acknowledges that the three-year residence requirement for eligibility for family reunification might not be consistent with Article 8 of the European Convention of Human Rights⁹ (hereafter “ECHR”). However, it further concludes that, as the residence permit of the beneficiary of temporary subsidiary protection residing in Denmark is only valid for one year at a time, his/her links to Denmark will be limited; the Proposal therefore assesses that the proposed measures should be in compliance with the ECHR.
9. UNHCR reiterates the recommendations contained in its “Observations on the proposed amendments to the Danish Aliens Act: Lov om ændring af udlændingeloven (Midlertidig beskyttelsesstatus for visse udlændinge samt afvisning af realitetsbehandling af asylansøgninger, når ansøgeren har opnået beskyttelse i et andet EU-land mv.)”,¹⁰ submitted to the Danish Government in November 2014. In these, UNHCR advised Denmark to refrain from denying beneficiaries of temporary subsidiary protection the right to apply for family reunification during the first year on this status. UNHCR urged Denmark to instead facilitate family reunification for all beneficiaries of international protection in a pro-active manner, including for all children within the meaning of the Convention on the Rights of the Child (hereafter “CRC”)¹¹ and for extended family members of Syrians who have been granted some form of protection, including subsidiary protection.
10. In the aforementioned Observations from November 2014, UNHCR also underlined that it characterizes the flight of civilians from Syria as a **refugee** movement, and notes that

⁸ The provision in Article 7(3) of the Aliens Act was adopted in November 2014, and entered into force in 2015.

⁹ 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, <http://www.refworld.org/docid/3ae6b3b04.html>.

¹⁰ UNHCR Observations on the proposed amendments to the Danish Aliens Act: Lov om ændring af udlændingeloven (Midlertidig beskyttelsesstatus for visse udlændinge samt afvisning af realitetsbehandling af asylansøgninger, når ansøgeren har opnået beskyttelse i et andet EU-land mv.), November 2014, available at: http://www.unhcr-northerneurope.org/fileadmin/user_upload/Documents/PDF/Denmark/UNHCR_comments_on_proposal_to_amend_the_Danish_Aliens_Act_November_2014.pdf.

¹¹ 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>

many States in the EU today, including Denmark, grant Syrian asylum-seekers Convention refugee status rather than subsidiary forms of protection.¹² As the temporary subsidiary protection status was introduced in response to the increase in the number of Syrian asylum-seekers arriving to Denmark, UNHCR continues to emphasize the importance of thoroughly assessing eligibility for Convention refugee status before resorting to the granting of subsidiary or temporary subsidiary protection status, especially when the differences in entitlements are so significant. In regard to persons who have fled Syria, UNHCR moreover recalls that it should be a priority to ensure that Syrians can join family members who are residing in European States, as a legal entry channel. This would also contribute to reducing the number of persons now having no other options for reaching safety but to embark on dangerous boat or risky overland journeys.¹³

11. While the 1951 Convention is silent on the question on family reunification and family unity, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommends that Member States “take the necessary measures for the protection of the refugee's family, especially with a view to (...) [e]nsuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.”¹⁴ Furthermore, family unity is a fundamental and important human right contained in a number of international and regional instruments to which Denmark is a State party. These are the Universal Declaration of Human Rights, (Article 16(3)); the International Covenant on Civil and Political Rights, (Article 17); the International Covenant on Economic, Social and Cultural Rights, (Article 10); the Convention on the Rights of the Child, (Article 16); as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8). Following separation caused by forced displacement such as from persecution and war, family reunification is often the only way to ensure respect for a refugee's right to family unity.¹⁵

Time-limits for family reunification procedures

12. In the EU context, UNHCR welcomed the adoption of more favourable rules for refugees in the Family Reunification Directive,¹⁶ including the possibility for refugees to reunite with their family as soon as they have been granted international protection status.¹⁷ The European Commission similarly “considers that the humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees, and

¹² UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, para. 21, available at: <http://www.refworld.org/docid/544e446d4.html>.

¹³ *Ibid.*, para. 34.

¹⁴ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, <http://www.unhcr.org/refworld/docid/40a8a7394.html>.

¹⁵ UNHCR, *Refugee Family Reunification. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, p. 3, available at: <http://www.refworld.org/docid/4f55e1cf2.html>.

¹⁶ European Union: Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC, available at: <http://www.refworld.org/docid/3f8bb4a10.html>.

¹⁷ UNHCR, *Refugee Family Reunification. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, p. 4, available at: <http://www.refworld.org/docid/4f55e1cf2.html>.

encourages Member States to adopt rules that grant similar rights to refugees and beneficiaries of temporary or subsidiary protection”¹⁸. UNHCR thus welcomes the fact that, despite the exclusion of beneficiaries of subsidiary protection from the scope of the Directive, most EU Member States do not apply time limits for the family reunification of beneficiaries of subsidiary protection. As the humanitarian needs of persons benefiting from subsidiary protection are not different from those of refugees, UNHCR believes there is no reason to distinguish between Convention refugees and beneficiaries of various forms of subsidiary protection in their entitlements to family reunification and the right to family life.

13. In this respect, UNHCR wishes to draw attention to the case law of the European Court of Human Rights (hereafter “ECtHR”). The ECtHR has held that a difference of treatment in “analogous, or relevantly similar, situations”, is discriminatory if it has no objective and reasonable justification, “in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.”¹⁹ The protection conferred by Article 14 of the ECHR (the prohibition of discrimination)²⁰ is not limited to different treatment based on characteristics which are personal in the sense that they are innate or inherent, but also relate to the individual’s immigration status.²¹ The Council of Europe Committee of Ministers have also adopted a Recommendation on family reunion,²² which equally applies to refugees and “other persons in need of international protection”.
14. Furthermore, the Court of Justice of the European Union has held that the duration of residence in the EU Member States is only one of the factors that must be taken into account when considering an application for family reunification, and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors, while having due regard to the best interests of minor children.²³ The ECtHR has concluded that preventing a temporary residence permit holder of five years from family reunification was in breach of Articles 8 and 14 of the ECHR.²⁴

¹⁸ Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, Brussels, 3.4.2014, COM(2014) 210 final, para. 6.2, available at: http://ec.europa.eu/dgs/homeaffairs/e-library/documents/policies/immigration/familyreunification/docs/guidance_for_application_of_directive_on_the_right_to_family_reunification_en.pdf.

¹⁹ *Hode and Abdi v. The United Kingdom*, (Application no. 22341/09), European Court of Human Rights, 6 November 2012, para. 45, available at: <http://www.refworld.org/docid/509b93792.html>.

²⁰ Article 14 states: “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

²¹ *Hode and Abdi v. The United Kingdom*, (Application no. 22341/09), European Court of Human Rights, 6 November 2012, paras. 46–47, available at: <http://www.refworld.org/docid/509b93792.html>.

²² Council of Europe: Committee of Ministers, *Recommendation N° R (99) 23 of the Committee of Ministers to Member States on Family Reunion for Refugees and Other Persons in Need of International Protection*, 15 December 1999, Rec(99)23, available at: <http://www.refworld.org/docid/3ae6b39110.html>.

²³ Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, Brussels, 3.4.2014, COM(2014) 210 final, p. 17.

²⁴ *Hode and Abdi v. The United Kingdom*, (Application no. 22341/09), Council of Europe: European Court of Human Rights, 6 November 2012, available at: <http://www.refworld.org/docid/509b93792.html>.

Child-specific rights in relation to family reunification

15. A child's right to family life is specifically protected under Articles 9, 10 and 16 of the Convention on the Rights of the Child. The Proposal observes that family reunification applications involving a child should be dealt with in a *positive, humane and expeditious* manner, and that the child has the right to maintain a regular and direct contact with both parents, according to Article 10 of the CRC. In the Explanatory Memorandum to the Proposal, the Government, however, concludes that children do not have an unconditional right to family reunification.
16. As highlighted by UNICEF, all judicial and administrative processes concerning children need to be pursued as quickly as possible. Delay and uncertainty can be extremely prejudicial to children's healthy development. From the child's perspective, any period of time is significantly longer in the life of a child than in that of an adult.²⁵ While UNHCR welcomes the fact that family reunification can be granted before three years of residence under certain circumstances, for example where the best interests of the child so requires, UNHCR is concerned that the prolongation of the waiting period for eligibility for family reunification will have a detrimental impact on the well-being and safety of many children.
17. UNHCR further notes that the right to family reunification for children continues to be limited to children under 15 years of age. UNHCR reiterates that children below the age of 18 are by UNHCR and in many other jurisdictions considered part of the nuclear family and eligible for family reunification.²⁶ Dependency may usually be assumed to exist when a person is under the age of 18 years, but continues if the individual (over the age of 18) in question remains within the family unit and retains economic, social and emotional bonds. An age limit of 18 years or the age of majority is also consistent with Article 1 of the Convention on the Rights of the Child. UNHCR's Executive Committee has also called for facilitated entry on the basis of liberal criteria of family members of persons recognized to be in need of international protection.²⁷ UNHCR would therefore, again, like to take this opportunity to express its concern over the current legislation and practice, which denies children above 15 years the right to reunify with parents who have been granted international protection in Denmark.

The importance of family reunification for the integration process

18. The ability to reunify with one's family also facilitates the integration process, which States are requested to facilitate as far as possible, pursuant to Article 34 in the 1951 Convention. Separation of family members during forced displacement and flight can have devastating consequences on peoples' well-being, as well as on their ability to rehabilitate from traumatic experiences of persecution and war and inhibit their ability to learn a new language, search for a job and adapt to their country of asylum.²⁸ The

²⁵ UNICEF, Implementation Handbook for the Convention on the Rights of the Child: Fully Revised Third Edition, September 2007, available at: http://www.unicef.org/publications/index_43110.html. See also, UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, para. 60, available at: <http://www.refworld.org/docid/51a84b5e4.html>.

²⁶ UN High Commissioner for Refugees (UNHCR), *Note on Family Reunification*, 18 July 1983, paras. 5 (b) and (c), available at: <http://www.refworld.org/docid/3bd3f0fa4.html>

²⁷ UNHCR, *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) - 2005, available at: <http://www.refworld.org/docid/4357a91b2.html>.

²⁸ UNHCR, *A New Beginning: Refugee Integration in Sweden - It's about time!*, September 2013, available at: <http://www.refworld.org/docid/5295a60e4.html>.

UNHCR ExCom Conclusion No. 104 on local integration,²⁹ (which Denmark – as a member of the Executive Committee – has participated in drafting) notes the potential role of family members in promoting the smoother and more rapid integration of refugee families given that they can reinforce the social support system of refugees. Research consequently shows that, in most cases, family reunification is the first priority for refugees upon receiving status.³⁰

Summary of UNHCR recommendations in relation to family reunification

UNHCR recommends that the Government of Denmark

- Proactively facilitates, through law, policy and in practice, family reunification for all beneficiaries of international protection, including those covered by the new temporary subsidiary protection status in Article 7.3 of the *Aliens Act*, and all children within the meaning of the Convention on the Rights of the Child, as well as extended family members of Syrians who have been granted some form of protection in Denmark; and therefore
- Withdraws the proposal to further delay the right of beneficiaries of temporary subsidiary protection to seek reunification with their family members, until three years have lapsed on this status;
- Provides beneficiaries of subsidiary protection, including temporary subsidiary protection, access to family reunification under the same favourable rules as those applied to Convention refugees;
- Grants all children below 18 years the right to reunify with, at a minimum, their parents and minor siblings; and
- Implements family reunification mechanisms that are swift and efficient in order to bring families together as early as possible.

b. Restricted conditions for obtaining a permanent residence permit, and proposal to reduce duration of temporary residence permits

Increased eligibility requirements for permanent residence permits

19. According to the Proposal, the eligibility requirements for permanent residency will be further restricted. As UNHCR understands the Proposal, the same requirements will apply to all aliens, including refugees and beneficiaries of other forms of protection. The proposed basic requirements that applicants have to meet are the following:

- 1) **Legal residence:** Six (6) years (instead of the current five (5) years)
- 2) **Criminality:** prison sentence of one (1) year or more precludes the granting of permanent residence altogether (instead of the current 1 year and 6 months prison sentence). Individuals convicted of a less serious crime have to wait for a specified period of time to become eligible to apply after serving

²⁹ UNHCR, *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) - 2005, available at: <http://www.refworld.org/docid/4357a91b2.html>.

³⁰ UNHCR, *A New Beginning: Refugee Integration in Europe, September 2013*, <http://www.refworld.org/docid/522980604.html>.

their sentence. These waiting periods will be prolonged by fifty (50) per cent.

- 3) **Danish skills:** passing of Danish Level 2 test (instead of the current Level 1)
- 4) **Employment:** Full-time employment during two and a half (2.5) out of the last three (3) years at the time of application (instead of the current part or full-time studies or work during three (3) of the past five (5) years). Studies and part-time work will thus no longer count.

20. In addition to the four criteria listed above, an applicant would need to fulfil two out of the four following criteria in order to be eligible for a permanent residence permit:

- i. **Citizenship test / Active citizenship:** Passing a citizenship test or “having been involved in Danish society” during one (1) year in the form of serving on a political board, being a sports team instructor or having “worked for the common good”.
- ii. **Employment/Studies:** Full time employment (studies not valid) during four (4) out of the last four years and 6 months (4.5 years).
- iii. **Gross yearly income:** 275,000 Danish Crowns (approx. 40,000 USD)
- iv. **Danish skills:** Danish Level 3.

21. Aliens having reached retirement age only have to fulfil one of the four additional requirements. Applicants under the age of 18 are also not subjected to the same requirements.

22. The Proposal also foresees the abolition of the waiver in Article 11 (15) of the *Aliens Act*, whereby some of the requirements could be waived if an individual has resided legally in the country for the past 8 consecutive years. As refugees are expected to integrate into Danish society to the same extent as other aliens, waiving requirements simply due to long residence will no longer be possible. To further provide incentives for integration, the Proposal introduces a “fast track” avenue for applicants who meet both the basic four and all the additional four requirements, to be granted permanent residence permits after four years of residence.

23. The timely grant of a secure legal status and residency rights are essential factors in the integration process.³¹ UNHCR has observed that the duration of residence permits has a considerable impact on refugees’ abilities to integrate, and that short-term residence permits can be detrimental to refugees’ security and stability.³² In order to take into account the special position of refugees, UNHCR recommends that permanent residence should be granted, at the latest, after a three year residence period,³³ and that this time-frame should also apply to beneficiaries of subsidiary protection statuses. While acknowledging that Denmark has opted out of the EU *acquis* on asylum, UNHCR wishes to note that it has reiterated this recommendation in commentaries to the EU *acquis*, for example in relation to the three-year residence period established by the EU Qualification Directive.³⁴

³¹ 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>.

³² UNHCR, *Note on the Integration of Refugees in the European Union*, para. 18, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>.

³³ *Ibid.*, para. 20.

³⁴ UNHCR comments on the European Commission’s proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content

24. UNHCR considers that the proposed measures – in particular the increase from five to six years of legal residence to be eligible for permanent residence - will further undermine the ability of beneficiaries of international protection to integrate in Denmark, and thus the Danish Government's expressed aim to improve the integration process. The Proposed measures are moreover contrary to the guidance provided in UNHCR's Executive Committee Conclusion No. 104 on local integration, which affirms "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".³⁵ In UNHCR's view, the combined requirements of years of residency, language skills and employment will be very difficult for many refugees and other beneficiaries of protection to meet. The temporary nature of their legal status and restrictions on the right to bring their family members also risk having a demotivating effect on integration. UNHCR considers that the proposed restrictions on residency rights contemplated by the Danish Government would lead to a "retrogression," rather than a progressive realization of rights.

Shortened duration of temporary residence permits

25. UNHCR also notes with concern that the Government intends to shorten the duration of first time and extended residence permits granted to Convention refugees and beneficiaries of subsidiary and temporary subsidiary protection. These intentions of the Government were included in the 'asylum package' announced on 13 November 2015, and are detailed as follows in the Proposal, which states that these changes will be made in subsidiary legislation:

- **Convention refugee status holders:** The first permit granted will have a duration of two (2) years, with a possibility of an extension for another two (2) years (currently, a Convention refugee is granted a residence permit for five (5) years + five (5) year extension).
- **Subsidiary protection status holders:** The first permit granted will have a duration of one (1) year, with a possible extension for another two (2) years (currently, a Subsidiary Protection beneficiary is granted a residence permit for five (5) years + five (5) year extension).
- **Temporary Subsidiary Protection holders:** The first permit granted will have a duration of one (1) year, with a possibility of an extension for another one (1) year, followed by a possibility of another one (1) year extension. Thereafter, a two (2) year residence permit can be granted. (Currently, a Temporary Subsidiary Protection beneficiary is granted a residence permit for one (1) year, with a possible extension for another two (2) years).

26. UNHCR regrets the intention of the Danish Government to shorten the duration of residence permits granted initially, and/or upon extension to beneficiaries of international protection for the reasons outlined above in paras 23 and 24. In UNHCR's "Observations on the proposed amendments to the Danish Aliens Act: Lov om ændring af udlændingeloven (Midlertidig beskyttelsesstatus for visse udlændinge samt afvisning af realitetsbehandling af asylansøgninger, når ansøgeren har opnået beskyttelse i et andet EU-land mv.)", the Office already expressed concern that the one-year duration of the residence permit granted to beneficiaries of the temporary subsidiary protection status would hamper their possibilities to integrate, including acquiring the language, finding

of the protection granted (COM(2009)551, 21 October 2009), available at: <http://www.unhcr.org/4c5037f99.pdf>.

³⁵ UNHCR, *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) - 2005, para (I), available at: <http://www.refworld.org/docid/4357a91b2.html>.

employment and housing.³⁶ These concerns are even more relevant now, in the context of the envisaged changes to the duration of residence permits.

Summary of UNHCR recommendations in relation to residence permits

UNHCR recommends that the Government of Denmark

- Ensures that refugees and other beneficiaries of international protection receive long-term residence rights at an early stage, either immediately or at the latest following the expiry of the initial permit, as shorter-term residency has been proven to have a negative impact on refugees' sense of belonging and motivation to integrate; and in this regard
- Reconsiders the proposal to extend the time before a beneficiary of international protection can be eligible to apply for a permanent residence permit, as well as the other requirements that need to be fulfilled, in recognition of the fact that a secure legal status facilitates the integration process;
- Reconsiders the proposal to reduce the duration of initial and/or extended residence permits granted to Convention refugees as well as to beneficiaries of the subsidiary and temporary subsidiary protection status, on the basis of UNHCR's advice that frequent periodic reviews of individuals' international protection needs often undermine the individuals' sense of security, and in recognition of the fact that a secure legal status facilitates the integration process. In this regard, UNHCR thus also recommends that the period of validity of residence permits provided to beneficiaries of subsidiary protection and temporary subsidiary protection be the same as that for 1951 Convention refugees.

c. Expanded use of the possibility to cease international protection

27. According to current Danish legislation, Convention Travel Documents ("CTDs") and Aliens passports contain a travel restriction to the country of origin of the refugee or beneficiary of subsidiary protection. The restriction is lifted when the person has resided in Denmark for a period of 10 years or more. The restriction can be temporarily lifted before the 10 year limit upon application and the applicant has to specify the purpose and dates of travel to the Danish authorities. When an individual travels on vacation or for other shorter visits to his/her country of origin, the Danish Immigration Service is obliged to make an assessment whether the individual remains in need of protection following his/her return.

28. In UNHCR's understanding, the Proposal introduces a provision stating that a refugee who has voluntarily traveled to his or her country of origin has, him/herself, created a presumption, that the reasons on the basis of which s/he was granted protection have changed to such an extent, that s/he is no longer in need of international protection. The burden placed on the beneficiary of international protection to prove that s/he is no longer in need of protection is thus increased. Though it is not explicitly stated in the Proposal, that the possibility to cease the protection status applies to Convention refugees as well

³⁶ UNHCR Observations on the proposed amendments to the Danish Aliens Act: Lov om ændring af udlændingeloven (Midlertidig beskyttelsesstatus for visse udlændinge samt afvisning af realitetsbehandling af asylansøgninger, når ansøgeren har opnået beskyttelse i et andet EU-land mv.), November 2014, available at: http://www.unhcr-northerneurope.org/fileadmin/user_upload/Documents/PDF/Denmark/UNHCR_comments_on_proposal_to_amend_the_Danish_Aliens_Act_November_2014.pdf.

as to holders of subsidiary protection and temporary subsidiary protection, UNHCR assumes this is the case as the Proposal refers to § 7 of the *Aliens Act*.

29. 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 (Article 1 C (5) and (6)). The cessation clauses are exhaustively enumerated, that is, no additional grounds would justify a conclusion that international protection is no longer required.³⁷
30. It needs to be underlined 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 in the form of 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.
31. The Proposal does not specify which of the cessation clauses the Government intends to apply to refugees who travel to the country where they fear(ed) persecution or a neighbouring country. With respect to refugees who return to their countries of origin, UNHCR however wishes to draw attention to what the UNHCR Handbook states in reference to Article 1C(4) of the 1951 Convention. The term “voluntary re-establishment” in the country where persecution was feared is to be understood

“as return to the country of nationality or former habitual residence with a view to permanently residing there. A temporary visit by a refugee to his former home country, not with a national passport but, for example, with a travel document issued by his country of residence, does not constitute “re-establishment” and will not involve loss of refugee status under the present clause.”³⁸
32. While the refugee may reasonably be expected to explain his or her conduct, States initiating cessation procedures against recognized Convention refugees bear the burden of proving that the refugee is no longer in need of international protection. The benefit of the doubt must be given to the refugee, which is consistent with the restrictive interpretation appropriate to the application of the cessation clauses. Moreover, the cessation clauses “should not be transformed into a trap for the unwary or a penalty for risky or naive conduct.”³⁹
33. UNHCR’s Executive Committee Conclusion No. 103 on complementary forms of protection,⁴⁰ further recommends that “where it is appropriate to consider the ending of

³⁷ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, 10 February 2003, HCR/GIP/03/03, para. 4, available at: <http://www.refworld.org/docid/3e50de6b4.html>.

³⁸ UN High Commissioner for Refugees (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, para. 134, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

³⁹ Cambridge University Press, *Cessation of Refugee Protection*, June 2003, p. 525, available at: <http://www.refworld.org/docid/470a33bc0.html>.

⁴⁰ UNHCR, *Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection*, 7 October 2005, No. 103 (LVI) - 2005, available at: <http://www.refworld.org/docid/43576e292.html>.

complementary forms of protection, States adopt criteria which are objective and clearly and publicly enunciated; and notes that the doctrine and procedural standards developed in relation to the cessation clauses of Article 1C of the 1951 Convention may offer helpful guidance in this regard". In terms of procedural rights, whether international protection status has ceased should always be determined in a procedure in which the person concerned has an opportunity to bring forward any considerations and reasons to refute the applicability of the cessation clauses. The burden of proof that the criteria of the cessation provisions have been fully met lies with the country of asylum.

34. As it is not clear from the wording of the Proposal which of the cessation clauses in Article 1 C of the 1951 Convention the Danish Government is considering applicable to the situation envisaged, UNHCR would also like to note that the "ceased circumstances" cessation clauses in Article 1 C (5 and 6) are intended for situations where the country of origin has undergone such fundamental and enduring change that protection is considered restored. The burden rests on the country of asylum to demonstrate that there has been a fundamental, stable and durable change in the country of origin and that invocation of Article 1C(5) or (6) is appropriate.⁴¹ These clauses are thus not meant to cover refugees who temporarily return to the country of origin for shorter visits. It should also be noted that Article 1C(5) and (6) have rarely been invoked in individual cases. States have not generally undertaken periodic reviews of individual cases on the basis of fundamental changes in the country of origin. These practices acknowledge that a refugee's sense of stability should be preserved as much as possible. Where these cessation clauses are applied on an individual basis, it should not be done for the purposes of a re-hearing *de novo*.⁴²
35. The Proposal further states that in order to prevent an individual from circumventing the aforementioned travel restrictions in his/her travel document, and travels to the country of origin through a neighbouring country, the Ministry of Immigration, Integration and Housing wishes to make an amendment to the *udlændingebekendtgørelse* (subsidiary legislation to the *Aliens Act*). Nonetheless, UNHCR would like to take this opportunity to note that travel to a country neighbouring the one of origin is often the only way refugees can meet family members who have remained either in the country of origin, or in a neighbouring country. This is particularly relevant when the ability to reunify with family members is restricted or delayed.

⁴¹ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 10 February 2003, HCR/GIP/03/03, para. 25 (ii), available at: <http://www.refworld.org/docid/3e50de6b4.html>.

⁴² UNHCR, *Note on the Integration of Refugees in the European Union*, para. 18.

Summary of UNHCR recommendations in relation to cessation

UNHCR recommends that the Government of Denmark

- Does not expand the grounds for cessation beyond those enumerated in the 1951 Convention, both in regard to the cessation of Convention refugee status, as well as in relation to cessation of subsidiary protection statuses;
- Does not use cessation as a tool for undertaking frequent reviews of individual cases on the basis of fundamental changes in the country of origin, in recognition of the importance to preserve the refugee's sense of stability as much as possible;
- Retains the burden of proof when assessing possible cessation of international protection;
- Recognizes the importance for refugees to be able to travel to countries neighboring the one of origin in order to meet with family members remaining in these, in particular when possibilities for family reunification are limited and delayed.

d. Introduction of fees for applications for family reunification and permanent residence permits

36. The Proposal recommends the introduction of fees for applications for family reunification and possible appeal of rejections of applications (a measure previously introduced in 2010 and abolished in 2012). The Proposal also wishes to introduce fees for re-applying for family reunification. The appeal fees will be reimbursed, should the complainant be at least partly successful with his/her claim. Applications for extensions and permanent residence permits initially based on a family reunification procedure, would also be subjected to fees. UNHCR notes however that the Proposal indicates that refugees would generally be exempted from fees for family reunification, but finds it unclear whether this would be the general rule or an exception/possibility, and whether it would apply not only to Convention refugees, but also to beneficiaries of subsidiary and temporary subsidiary protection. UNHCR thus takes this opportunity to express its views on the imposition of fees for applications for family reunification by beneficiaries of international protection.

37. UNHCR is of the view that States should consider reducing or waiving administrative and visa fees for beneficiaries of international protection where such costs may otherwise prevent family reunification. As also underlined by the European Commission, excessive fees can hamper the right to family reunification.⁴³ Beneficiaries of international protection may face particular difficulties in paying these high costs as they may not have had access to the labour market for lengthy periods while waiting for a decision on their status in the asylum procedure and often face difficulties in accessing the mainstream banking systems and private loan schemes. In addition, their family members may themselves be refugees with restrictions on their rights to work. Hence, UNHCR is concerned that high family reunification costs may put beneficiaries of international protection in a

⁴³ Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC), COM(2011) 735 final, para. 5.3, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0735>.

precarious, exploitative situation, and in worst case scenarios, lead families to choose which family member to reunite first, leaving other family members behind until they can gather sufficient resources. Fees may thus significantly delay or prevent family reunification altogether. UNHCR thus recommends that States reduce or waive administrative costs, and make available financial assistance schemes, such as interest free loans, for beneficiaries of international protection to cover the costs of family reunification.⁴⁴

38. The Proposal also introduces fees for applications for permanent residence permits for beneficiaries of international protection. Should a beneficiary of international protection apply for a permanent residence permit without paying the fee, the application will automatically be processed as an application for an extension to the temporary permit. The Proposal argues that at the stage of applying for a permanent residence permit, a beneficiary of international protection should be integrated into Danish society to the extent that paying for the application is reasonable.⁴⁵ As a mitigating measure however, the Proposal suggests that if the outstanding amount for an application is 200 DKK (approx. 30 USD) or less, the application for a permanent residence permit should not be automatically rejected.
39. The Proposal also retains the wording of the *Aliens Act* Article 9 h, stating that if the introduction of fees is contrary to Denmark's international obligations in a particular case, fees will not be charged. The Proposal notes that introducing fees for applying for permanent residence permits is not contrary to the Refugee Convention, in that Article 7 of the 1951 Convention only awards refugees the same treatment as other aliens.
40. UNHCR advises against the introduction of fees in the context of applications for permanent residence permits, as it runs contrary to the recommendation in Article 34 of the 1951 Convention, which calls on States to facilitate the integration of refugees. Article 34 refers specifically to the reduction of fees for naturalization, to which an analogy can be made, as a secure legal status and residence permit supports refugees' ability to integrate as fully participating members of society.

Summary of UNHCR recommendations in relation to fees for applications for family reunification and permanent residence

UNHCR recommends that the Government of Denmark

- Refrains from introducing fees in the context of applications for family reunification, both with regards to refugees and beneficiaries of subsidiary and temporary subsidiary protection; and
- Refrains from introducing fees in the context of applications for permanent residence permits.

⁴⁴ *Ibid.*

⁴⁵ According to the Proposal, fees introduced for beneficiaries of international protection would be 7000 DKK (approx. 1000 USD) for an application for family reunification and 3700 DKK (approx. 545 USD) for applications for permanent residence permits. The fees for possible appeal of such decisions are not conclusively set.

e. Seizure of assets of asylum-seekers

41. According to current Article 40 (9) of the Danish *Aliens Act*, documents and other items may be seized from an asylum-seeker, if it serves the interest of verifying the person's identity or possible connection to other countries. According to the Proposal, the Police will be able to search the clothing and luggage of asylum-seekers and seize any valuables from the asylum-seekers in order to use these assets towards paying for their subsistence.
42. As UNHCR understands, in accordance with Danish Procedural Law, seizure of valuables has to be supported by a court decision within 24 hours, unless the individual consents to the measures. The Proposal finds that in practice, as the seizure would need to be immediate in order to have any practical effect, the Police would present the case to the court whenever the asylum-seeker does not consent to the seizure of their valuables.
43. According to current Article 42a, the Danish Immigration Service can decide that an asylum-seeker will not be granted subsistence allowances or State-financed accommodation if s/he is in possession of adequate funds him/herself. According to Article 40 (4) of the same Act, an alien is to inform the Danish Immigration Service truthfully whether s/he is in the possession of such funds. The Proposal concludes that the measures currently at the government's disposal have rarely been efficient, as it remains difficult for the authorities to verify the extent of the assets a particular asylum-seeker is in possession of.
44. The introduction of these new search and seizure powers are, in essence, conveying to asylum-seekers that the Danish Immigration Service does not believe that they have been truthful about their ability to adequately support themselves. It is an affront to their dignity and an arbitrary interference with their right to privacy. Denmark is a signatory to several international instruments that protect the right to dignity and privacy; namely, the Universal Declaration of Human Rights, (Preamble, 'inherent dignity'; and Article 1, 'born equal in dignity and rights'; Article 12 'privacy, honour and reputation');⁴⁶ the International Covenant on Civil and Political Rights, (Preamble, Article 17);⁴⁷ the International Covenant on Economic, Social and Cultural Rights, (Preamble);⁴⁸ as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms, (Article 8, 'respect for private life')⁴⁹.
45. Further, according to current legislation, if found to be in possession of adequate assets, asylum-seekers may only be obliged to pay for their families' subsistence during three months in total.⁵⁰ The Proposal wishes to extend this period so that the asylum-seeker

⁴⁶ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <http://www.refworld.org/docid/3ae6b3712c.html>.

⁴⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aa0.html>.

⁴⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <http://www.refworld.org/docid/3ae6b36c0.html>.

⁴⁹ 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, <http://www.refworld.org/docid/3ae6b3b04.html>.

⁵⁰ The time-limit is based on a notion from the preparatory works of the Aliens Law, when a procedure taking longer than three months was perceived as a failure by the authorities and that the applicant should therefore not bear the burden of additional costs.

can be obliged to pay for his/her subsistence until the end of the calendar month of his/her placement into a municipality or until his/her removal from Denmark.

The Right to Property

46. With respect to the right to property, the Charter of Fundamental Rights of the European Union (hereafter “the Charter”) sets out in Article 17(1) that “Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest”.⁵¹
47. According to the Explanations to the Charter,⁵² the provisions in Article 17 are based on Article 1 of the Protocol to the ECHR. Article 1 of Protocol No. 1⁵³ protects individuals or legal persons from arbitrary interference by the State with their possessions, however, the State has the right to control the use of property, or even deprive an individual or legal person of property belonging to them, under the conditions set out in the Article. Although Article 1 of Protocol No. 1 contains no explicit reference to a right to compensation for a taking of property or other interference, it is in practice implicitly required.⁵⁴
48. The European Court of Human Rights has defined Article 1 of the Protocol to encompass three rules. The rules were first put forward in the *Sporrong and Lönnroth v. Sweden* case, where the Court held that:

The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph.⁵⁵

⁵¹ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, <http://www.refworld.org/docid/3ae6b3b70.html>. The right to property is also enshrined in the Danish Constitution, (Section 73(1)) which states that the right to property is “inviolable”, and thus, these proposals may be unconstitutional.

⁵² European Union, *Explanations relating to the Charter of Fundamental Rights*, 2007/C 303/02, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:en:PDF>.

⁵³ “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

⁵⁴ See *Holy Monasteries (The) v. Greece*, European Court of Human Rights, 9 December 1994, Series A no. 301-A.

⁵⁵ *Sporrong and Lönnroth v. Sweden*, Application no. 7151/75; 7152/75) 23 September, 1982, para. 61, available at: http://portal.uclm.es/descargas/idp_docs/jurisprudencia/sporrong%20-%20proteccion%20de%20la%20propiedad.%20titularidad%20y%20alcance.%20privacion%20legal%20de%20la%20propiedad.%20in.pdf.

The three rules have since been repeated in many subsequent judgements.⁵⁶

49. Consequently, a lawful deprivation of an individual's property may be justified only if it pursues a legitimate aim in the general interest, and the individual is justly compensated for the taking of property.⁵⁷ While the State has a margin of appreciation to consider if a deprivation of an individual's property may be justified in the domestic context, the measure must be proportional to the general interest. Should the measure pose "an individual and excessive burden" on the property owner, the measure is not justified.
50. In the present Proposal, the Danish Government is proposing that the Government may confiscate valuables which asylum-seekers may carry at the time of arrival in Denmark, in order to compensate the Government for costs of reception of the asylum-seekers. In view of Article 1 of Protocol 1 to the ECHR and Article 17 of the Charter as explained above, UNHCR questions whether the measure of confiscating valuables of individual asylum seekers is in accordance with international and European standards.
51. The ECtHR on numerous occasions has held that that asylum-seekers are "a particularly underprivileged and vulnerable population group in need of special protection" and further that there exists "a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the European Union Reception Directive".⁵⁸ In the view of UNHCR, the measure of confiscating the valuable property of asylum-seekers would place an 'individual and excessive burden' on persons who by definition are vulnerable and entitled to the protection and assistance of the host state.
52. In addition to the legal arguments presented above, UNHCR would like to highlight that any valuables an asylum-seeker may bring with him or her into the country of asylum often represent the only assets he or she managed to save before the flight from persecution or war. Needless to say, a refugee will never be able to carry along his or her entire household, and will often be forced to leave behind both property and other assets when escaping to save his or her life. The precious belongings s/he manages to secure and bring into the country of asylum can constitute a small 'cushion' and 'seed money' which will be helpful when the refugee is about to start a new life in the country of asylum. It is to be noted that a specific provision was included in Article 30 of the 1951 Convention regarding resettled refugees' right to transfer assets to their country of resettlement. Article 30 was intended to ensure that assets that the refugee had acquired

⁵⁶ See further in Council of Europe, *The right to property under the European Convention on Human Rights: A guide to the implementation of the European Convention on Human Rights and its protocols*, June 2007, Human rights handbooks, No. 10, hereafter "Human Rights Handbook no.10", <http://www.refworld.org/docid/49f186632.html>.

⁵⁷ In the Human Rights Handbook No.10, the legitimate aim requirement is explained: "A measure interfering with the peaceful enjoyment of possessions must be necessary in a democratic society directed at achieving a legitimate aim. It must strike a fair balance between the demands of the general interest of the community and the requirements of the individual's fundamental rights. Such a fair balance will not have been struck where the individual property owner is made to bear "an individual and excessive burden". However, the Court leaves the Contracting States certain discretion commonly referred to as "margin of appreciation", considering the State authorities to be better placed to assess the existence of both the need and the necessity of the restriction, given their direct contact with the social process forming their country." See, Human Rights Handbook, No. 10, p. 14.

⁵⁸ See *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, <http://www.refworld.org/docid/4d39bc7f2.html>, para 251, and more recently e.g. in *Tarakhel v. Switzerland*, Application no. 29217/12, Council of Europe: European Court of Human Rights, 4 November 2014, <http://www.refworld.org/docid/5458abfd4.html>, para. 97.

'pre-flight' and/or during the stay in a first country of asylum would be at his or her disposal when starting a new life in the country of resettlement.⁵⁹ This would help ensure that the durable solution would be achieved in a humane way.⁶⁰

Summary of UNHCR recommendations in relation to the seizure of asylum-seekers' assets

UNHCR recommends that the Government of Denmark

- Withdraw the proposed measures to seize valuables of asylum-seekers so as to conform with International and European human rights standards, and the spirit of the 1951 Convention.

f. Re-introduction of the 'integration potential' criteria in resettlement

53. With regard to the proposed measures concerning the selection criteria for quota refugees, UNHCR wishes to refer to its "Observations on the Danish Government's Proposal to revise the criteria for the selection of quota refugees (Forslag til Lov om ændring af udlændingeloven, Ændring af kriterierne for udvælgelse af kvoteflygtninge)" of 11 November 2015,⁶¹ and recall that the selection of quota refugees should be based on the global resettlement criteria and not on a perception of individual refugees' 'integration potential'. At this point in time, when the global resettlement needs are so big compared to the number of places available, it is more important than ever that resettlement can be used as a life-saving tool and not as a migration-measure, for which States are free to establish other schemes.

Summary of UNHCR recommendations in relation to the 'integration potential' criteria in the selection of quota refugees for resettlement

UNHCR recommends that the Government of Denmark

- Refrains from introducing an 'integration potential criteria' in the selection of quota refugees that may undermine the overarching humanitarian purpose of resettlement. If the 'integration potential criterion' cannot be omitted from the law altogether, then UNHCR recommends maintaining the subsidiary criteria as introduced in 2014, as it balances the individual refugee's needs and expectations with the responsibility on receiving communities to support and facilitate the refugee's integration.

UNHCR Regional Representation for Northern Europe
Stockholm, 6 January 2016

⁵⁹ *The 1951 Convention Relating to the Status of Refugees – A Commentary*, edited by Andreas Zimmerman, Oxford University Press, 2011, 1229.

⁶⁰ *Ibid.*

⁶¹ Observations by the UNHCR Regional Representation for Northern Europe on the Danish Government's Proposal to revise the criteria for the selection of quota refugees (Forslag til Lov om ændring af udlændingeloven, Ændring af kriterierne for udvælgelse af kvoteflygtninge), 11 November 2015, available at: http://www.unhcr-northerneurope.org/fileadmin/user_upload/Documents/PDF/Denmark/UNHCR_Observations_on_the_Danish_Government_s_Proposal_to_revise_the_criteria_for_the_selection_of_quota_refugees.pdf.