

# Joint Submission to the Human Rights Council at the 38<sup>th</sup> Session of the Universal Periodic Review.

## DENMARK

### Introduction

1. The European Network on Statelessness and the Institute on Statelessness and Inclusion make this joint submission to the Universal Periodic Review (**UPR**), on the right of every child to acquire a nationality and human rights challenges pertaining to childhood statelessness in Denmark.
2. The European Network on Statelessness (**ENS**)<sup>1</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 150 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission draws on information and analysis provided by ENS’s members in Denmark.
3. The Institute on Statelessness and Inclusion (**ISI**) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. The Institute has made over 70 country specific UPR submissions on the human rights of stateless persons, of which over 20 have been submitted in collaboration with the European Network on Statelessness. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 36th UPR Sessions.<sup>2</sup>
4. Despite a positive ratification record of relevant international treaties and some existing safeguards in domestic legislation, Danish law and practice fail to adequately respect, protect, and fulfil every child’s right to acquire a nationality. In light of Denmark’s international obligations, recommendations issued to Denmark during previous Universal Periodic Reviews, the importance of the eradication of statelessness as expressed by the UN High Commissioner for Refugees #IBelong campaign<sup>3</sup> and the pledge made by Denmark at the High-Level Segment on

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<sup>1</sup> For more information see: [www.statelessness.eu](http://www.statelessness.eu).

<sup>2</sup> For more information see: [www.institutesi.org](http://www.institutesi.org)

<sup>3</sup> The UNHCR #IBelong campaign aims to eradicate statelessness by the year 2024, see further: <http://www.unhcr.org/ibelong>.

Statelessness,<sup>4</sup> the submitting organisations urge reviewing States to raise the issue of realising the right of every child to acquire a nationality and address recommendations to Denmark to further prevent and reduce childhood statelessness in the country.

5. This submission therefore focuses on:

- Previous commitments by Denmark to address (childhood) statelessness;
- Prevention and reduction of childhood statelessness under international, regional and national law;
- Risks of statelessness for children born in conflict zones;
- Inaccurate registration of children born in Denmark and identification of statelessness.

## Previous UPR of Denmark and recommendations received

6. Denmark was previously reviewed during the first and second cycles of the UPR (11<sup>th</sup> and 24<sup>th</sup> sessions), in 2011 and 2016 respectively.
7. In the first cycle, during the 11<sup>th</sup> session, Denmark received (i) a recommendation from Finland to take measures to ensure its national legislation complies with the 1961 Convention on the Reduction of Statelessness,<sup>5</sup> and (ii) a recommendation to accede to the Statelessness Conventions from Ecuador.<sup>6</sup> Denmark accepted both of these recommendations.
8. In the second cycle, during the 24<sup>th</sup> session, Denmark received (i) a recommendation from Colombia to continue to implement the measures necessary to find solutions for stateless persons,<sup>7</sup> (ii) a recommendation from Finland to take further measures to ensure that its national legislation complies fully with the 1961 Convention on the Reduction of Statelessness,<sup>8</sup> (iii) a recommendation from South Africa to strengthen measures to promote citizenship,<sup>9</sup> and (iv) a recommendation from Mexico to adopt a legal framework to grant nationality to all children born in Denmark who would otherwise be stateless.<sup>10</sup> Denmark accepted three recommendations, but did not accept the recommendation from South Africa.
9. In the second cycle, the UN High Commissioner for Refugees (UNHCR) submitted that the requirement that a child must be lawfully resident in Denmark in order to be eligible to acquire Danish nationality was incompatible with the 1961 Convention and recommended that Denmark incorporate the right to acquire Danish nationality by children born on the territory who were otherwise stateless into the Nationality Act.<sup>11</sup>

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<sup>4</sup> UNHCR, Results of the High-Level Segment on Statelessness, list of pledges available at:

<https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>. See also UNHCR (2020), *High-Level Segment on Statelessness: Results and Highlights*, p. 58, available at: <https://www.refworld.org/docid/5ec3e91b4.html>

<sup>5</sup> A/HRC/18/4/Add.1, Human Rights Council, Addendum to the Report of the Working Group on the Universal Periodic Review on Denmark, 1<sup>st</sup> cycle, 13 September 2011, Recommendation 106.130.

<sup>6</sup> *Ibid.*, Recommendation 106.22.

<sup>7</sup> A/HRC/32/10/Add.1, Human Rights Council, Addendum to the Report of the Working Group on the Universal Periodic Review on Denmark, 2<sup>nd</sup> cycle, 21 June 2016, Recommendation 120.193.

<sup>8</sup> *Ibid.*, Recommendation 120.195.

<sup>9</sup> *Ibid.*, Recommendation 120.194.

<sup>10</sup> *Ibid.*, Recommendation 120.196.

<sup>11</sup> Submission on Denmark by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: 2<sup>nd</sup> Cycle, 24<sup>th</sup> Session.

Furthermore, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that the law on nationality in Denmark continued to have an adverse impact on stateless women and girls, and encouraged Denmark to provide for the automatic granting of nationality to all children born in Denmark who would otherwise be stateless.<sup>12</sup>

10. In 2017, the Committee on the Rights of the Child urged Denmark “to provide for the automatic granting of nationality to all children born in Denmark who would otherwise be stateless”.<sup>13</sup>
11. At the High-Level Segment on Statelessness in October 2019, Denmark recognised the overall importance of the statelessness conventions and pledged to continue its efforts for the general avoidance of statelessness and to improve cooperation between relevant authorities regarding the identification of stateless persons.<sup>14</sup>
12. The submitting organisations do not consider that these recommendations have been fully implemented and Denmark’s legal framework for the prevention and reduction of childhood statelessness is not yet fully aligned with international law.

## Denmark’s International Obligations

13. Denmark has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of UN and regional treaties to which it is a party. It has acceded to the Convention on the Status of Stateless Persons (1954 Convention) and to the Convention on the Reduction of Statelessness (1961 Convention). Denmark’s international obligations on the protection of stateless persons also derive from the International Covenant on Civil and Political Rights (ICCPR) (see Article 24.3), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see Articles 2.2 and 3), the Convention of the Rights of the Child (CRC) (see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (see Article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (see Article 5(d)(iii)), and the Convention on the Rights of Persons with Disabilities (CRPD) (see Article 18). The country has also signed the International Convention for the Protection of All persons from Enforced Disappearance (see Article 25).
14. Denmark is also party to the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the European Convention on Nationality (ECN). However, it retains the reservation that Article 12 of the ECN shall not be binding on Denmark, a provision that ensures the right to a review of decisions relating to the acquisition, retention, loss, recovery, or certification of nationality. Referring to Article 29(2) of the Convention, Denmark noted that naturalisation is granted by law and the Danish Parliament is not bound by the general rules of administrative law, which implies that there is no right to an administrative review.

<sup>12</sup> CEDAW/C/DNK/CO/8, Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of Denmark, 11 March 2015, paras. 25-26.

<sup>13</sup> CRC/C/DNK/CO/5, Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Denmark, 26 October 2017, para. 15.

<sup>14</sup> UNHCR (2020), *High-Level Segment on Statelessness: Results and Highlights*, p. 58, available at: <https://www.refworld.org/docid/5ec3e91b4.html>

## Overview of childhood statelessness in Denmark

15. According to Statistics Denmark, there are currently 8,451 stateless persons in Denmark, of which 2,407 are children aged between 0-19 years.<sup>15</sup> UNHCR reported similar figures, estimating that there were 8,672 stateless persons in Denmark in 2019.<sup>16</sup>
16. All data indicates that statelessness occurs in Denmark predominantly in a migratory context.<sup>17</sup> Most children in migration will automatically acquire a nationality from one or both of their parents by descent (*jus sanguinis*). However, some children may not be able to inherit their parents' nationality for different reasons and find themselves in a country where nationality is not acquired through the place of birth (*jus soli*), leaving them stateless or at risk of statelessness. Children particularly affected by risk of statelessness include:
- children born *en route* to Europe and undocumented children
  - children from countries with large stateless populations (such as Syria,<sup>18</sup> Iraq,<sup>19</sup> Iran,<sup>20</sup> Myanmar<sup>21</sup> and Kuwait<sup>22</sup>)
  - children who cannot inherit a nationality from their parents
  - children from families with complex histories of displacement
  - unaccompanied or separated children outside their country of origin, and
  - other children in migration, such as children of same-sex couples, children born as a result of surrogacy arrangements and abandoned children (foundlings).

## Denmark's International Obligations

17. Considering Denmark is a state party to the international and regional instruments set out in Paras. 13-14, it has the following obligations with regard to protecting every child's right to acquire a nationality and the prevention of childhood statelessness:
- The right of every child to acquire a nationality, with particular attention to those children who would otherwise be stateless;<sup>23</sup>
  - The automatic acquisition of nationality by foundlings found on its territory who would otherwise be stateless;<sup>24</sup>

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<sup>15</sup> Statistics Denmark: [www.statistikbanken.dk/FOLK1B](http://www.statistikbanken.dk/FOLK1B).

<sup>16</sup> UNHCR (2020), Global Trends: Forced Displacement in 2019, <https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>.

<sup>17</sup> Submission on Denmark by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: 2<sup>nd</sup> Cycle, 24<sup>th</sup> Session, available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2428&file=EnglishTranslation>.

<sup>18</sup> For more information on populations affected by statelessness in Syria, see ENS & ISI (2019), Statelessness in Syria Country Position Paper: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Syria-August-2019.pdf>

<sup>19</sup> For more information on populations affected by statelessness in Iraq, see ENS & ISI (2019), Statelessness in Iraq Country Position Paper: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf>

<sup>20</sup> For more information on populations affected by statelessness in Iran, see ENS & ISI (2019), Statelessness in Iran Country Position Paper: <https://statelessjourneys.org/resources/statelessness-in-iran/>

<sup>21</sup> For more information on populations affected by statelessness in Myanmar, see ENS & ISI (2019), Statelessness in Myanmar Country Position Paper: <https://statelessjourneys.org/resources/statelessness-in-myanmar/>

<sup>22</sup> For more information on populations affected by statelessness in Kuwait, see ENS & ISI (2019), Statelessness in Kuwait Country Position Paper: <https://statelessjourneys.org/resources/statelessness-in-kuwait/>

<sup>23</sup> 1989 Convention on the Rights of the Child, Article 7.

<sup>24</sup> 1997 European Convention on Nationality, Article 6 (1)(b); 1961 Convention on the Reduction of Statelessness, Article 2.

- The acquisition of nationality by children born on its territory who do not acquire another nationality, either at birth or subsequently if they remain stateless, enabling children who remain stateless to acquire nationality upon application (with the possibility to require maximum five years of habitual residence before submitting the application, no other conditions);<sup>25</sup>
  - Respecting the guiding principles of the CRC, including the prohibition of discrimination, and ensuring that the best interests of the child are a primary consideration for authorities in dealing with all the matters above.<sup>26</sup>
18. Under Article 1 of the 1961 Convention, Contracting States have two alternative options for granting nationality to children born on their territory who would otherwise be stateless, either through automatic acquisition at birth (Article 1(1)(a)) or acquisition of nationality upon application (Article 1(1)(b)). The State may impose certain conditions on the granting of nationality by application, which are exhaustively listed in Article 1(2).
19. According to the 1961 Convention, a Contracting State may make the grant of its nationality conditional upon the person being *habitually* resident in the territory, which is understood as stable, factual residence and does not imply a legal or formal residence requirement.<sup>27</sup> The 1961 Convention does not allow for the acquisition of nationality to be conditional upon *lawful* residence. Although the ECN allows for “lawful and habitual residence” to be imposed as a condition for the acquisition of nationality,<sup>28</sup> for States such as Denmark that have acceded to both treaties, the 1961 Convention should prevail as it provides the strongest protection (further details below).

## Issue 1: Acquisition of nationality for stateless children born in Denmark

20. Otherwise stateless children born in Denmark do not automatically acquire nationality. Section 44(1) of the Danish Constitution states that ‘foreigners’ can only acquire Danish nationality by an Act of Parliament, thus acquisition of Danish nationality is an exclusive prerogative of the legislature. Acquisition of nationality by stateless persons is based on the conditions stipulated in the Nationality Act Section 6(1) on naturalisation of foreigners<sup>29</sup> and the Circular Letter on Naturalisation, Section 17 and 26 on naturalisation of stateless children and stateless persons aged 18–21 years.<sup>30</sup> The Ministry of Immigration and Integration administers applications for nationality and drafts ‘Naturalisation Bills’, listing the persons who are eligible to acquire Danish nationality, which are then submitted to and adopted by the Danish Parliament.

<sup>25</sup> 1997 European Convention on Nationality, Article 6(2); 1961 Convention on the Reduction of Statelessness, Article 1(2)(b).

<sup>26</sup> 1989 Convention on the Rights of the Child, Articles 2 and 3.

<sup>27</sup> UNHCR (2012), Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>

<sup>28</sup> Article 6.2 of the European Convention on Nationality states that “Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted: (a) at birth *ex lege*; or (b) subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.”

<sup>29</sup> cf. consolidation act no. 1029 of 10 July 2018 with later amendments.

<sup>30</sup> cf. circular no 9779 of 14 September 2018 with later amendments.

21. The application for acquisition of nationality by stateless persons born in Denmark is subject to conditions. Stateless persons (born in Denmark) aged between 18 and 21 years are entitled to Danish nationality if they have “habitual residence” in Denmark (in line with the 1961 Convention), but stateless children born on the territory aged between 0 to 17 years must have “lawful and habitual residence” in Denmark in order to acquire nationality (as allowed by the ECN) and are in practice required to present a formal, valid residence permit.<sup>31</sup>
22. Children under 18 years of age must therefore demonstrate lawful residence in order to be included in the ‘Naturalisation Bills’ and acquire Danish nationality. Children born stateless in Denmark who do not currently hold a valid residence permit have thus been excluded from the ‘Naturalisation Bills’ and denied the right to acquire Danish nationality, consequently remaining stateless. They will remain stateless for an indefinite period, and at least until they successfully submit a new application for nationality and a new ‘Naturalisation Bill’ is adopted in parliament.<sup>32</sup> The requirement to be lawfully residing in Denmark has been applied by the Danish Government on the basis of Article 6.2 of the ECN, which allows for “lawful and habitual residence” to be imposed as a condition for the acquisition of nationality.<sup>33</sup> The Danish Minister for Immigration and Integration has stated that the right to acquire Danish nationality may be subject to the requirement of “lawful and habitual residence” for persons under the age of 18 because the Convention on the Rights of the Child indirectly refers to the European Convention on Nationality.<sup>34</sup> This argument disregards the wider application of the CRC, principles of treaty interpretation,<sup>35</sup> and the fact that the CRC predates the ECN, therefore it could not contain any implicit reference to the ECN.
23. Imposing a requirement to have “lawful and habitual residence” on children born in Denmark who would otherwise be stateless is in breach of Denmark’s international obligations. The legal framework applicable to stateless children must rely on a joint interpretation of Denmark’s international obligations under the CRC, the 1961 Convention and the ECN. As Denmark is bound both by the 1961 Convention and the ECN, the provisions affording the strongest protection must prevail. This interpretation finds clear support in Article 26(1) of the ECN, which states that the provisions of the ECN “shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals in the field of nationality”. The 1961 Convention does not allow states to make an application for the acquisition of nationality of otherwise stateless individuals conditional on lawful residence, thus

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<sup>31</sup> Minister of Immigration and Integration, response to the written question asked by the Naturalisation Committee of the Danish Parliament no. 8 to L 41, 11 December 2019; and Minister of Immigration and Integration, responses to the written question asked by the Naturalisation Committee of the Danish Parliament nos. 100-103, 12 May 2020.

<sup>32</sup> It has been reported that some children born in Denmark who would otherwise be stateless have been excluded from the naturalisation bills, including children of stateless Palestinian refugees from Syria. The Danish Government argues that these children are not entitled to Danish nationality as long as they do not possess a residence permit (they were in a situation where their parents had failed to renew their residence permits).

<sup>33</sup> Article 6.2 of the European Convention on Nationality states that “Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted: (a) at birth *ex lege*; or (b) subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.”

<sup>34</sup> Minister of Immigration and Integration, response to the written question asked by the Naturalisation Committee of the Danish Parliament no. 8 to L 41, 11 December 2019; and Minister of Immigration and Integration, responses to the written question asked by the Naturalisation Committee of the Danish Parliament nos. 100-103, 12 May 2020.

<sup>35</sup> 1969 Vienna Convention on the Law of Treaties, Articles 30-33.

this should be the prevailing provision and applied to all children born in Denmark.

24. UNHCR has stated that the requirement that a child must be lawfully resident in Denmark in order to be eligible to acquire nationality is incompatible with Article 1(2)(b) of the 1961 Convention.<sup>36</sup>
25. Article 7(1) CRC enshrines the right of every child to acquire a nationality, a right that is 'essential for the protection of every child'.<sup>37</sup> Obligations deriving from the 1961 Convention on the Reduction of Statelessness require States to grant nationality to children who would otherwise be stateless and must be interpreted in light of the CRC.<sup>38</sup> This includes the underlying principles of (i) non-discrimination (Article 2 CRC) and (ii) that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration (Article 3 CRC).
26. The CRC applies to all persons below the age of 18. Insofar as the requirement of lawful residence effectively imposes on stateless children a need to wait until they are 18 years old to acquire a nationality, such requirement will constitute a breach of the child's right to a nationality as protected by Article 7 of the CRC. Moreover, it follows from Articles 3 and 7 of the CRC that the child's statelessness should be determined and resolved immediately after birth or as soon as possible thereafter.<sup>39</sup> According to the 1961 Convention, this period is not to exceed five years immediately preceding an application nor ten years in all. However, UNHCR has noted that these periods are lengthy in light of the standards established under the CRC, therefore the period required for a child to be habitually resident in a country in order to apply for nationality should be as short as possible.<sup>40</sup>
27. It should also be noted that Danish law and practice prohibits children who would otherwise be stateless from acquiring a nationality because their parents failed to renew their children's resident permits. This discrimination is prohibited under Article 2 CRC, which requires State Parties to respect and ensure the rights set forth in the Convention irrespective of the child's or their parent's status. It also fails to uphold the best interests of the child as a primary consideration (Article 3), the child's right to acquire a nationality (Article 7), and the right to preserve his or her identity, including nationality (Article 8).
28. The Committee on the Rights of the Child has made several recommendations for State parties to ensure that all stateless children born on their territory have access to nationality without any conditions and irrespective of their residence status,<sup>41</sup> and recalled that the outcome of an application for nationality, legal residence or similar status by the parents of a child born on the territory should not prejudice the right of

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<sup>36</sup> Submission on Denmark by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: 2<sup>nd</sup> Cycle, 24<sup>th</sup> Session.

<sup>37</sup> UNHCR (2018), Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness, available at <https://www.refworld.org/docid/52206aa54.html>

<sup>38</sup> UNHCR (2012), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, available at: <https://www.refworld.org/docid/50d460c72.html>

<sup>39</sup> *ibid*, para. 11.

<sup>40</sup> *ibid*, para. 11, 36, 40-43.

<sup>41</sup> CRC/C/NLD/CO/4, Committee on the Rights of the Child, Concluding observations on the fourth periodic report of the Netherlands, 16 July 2015, paras. 32-33.

the child to acquire the nationality of the State party where the child would otherwise be stateless.<sup>42</sup>

## Issue 2: Risks of statelessness for children born in conflict zones

29. An amendment to the Danish Citizenship Act was introduced as of 1 February 2020, stating that a child born to a Danish parent who has unlawfully entered or stays in a 'conflict zone' will not acquire Danish nationality by birth. In an explanatory note to the bill, the Danish government states that:

*'These children are born to parents who have turned their back to Denmark and Danish values, and they cannot be expected to grow up under circumstances that will provide for their attachment to Denmark and Danish values'.*

Therefore children born in conflict zones should not acquire Danish nationality automatically at birth.<sup>43</sup> The provision disregards international human rights law and principles of nationality law, including the principle of non-discrimination and that the best interests of the child should be a primary consideration.

30. According to the Danish Government the provision does not apply if the child would otherwise be stateless, however it is unclear whether statelessness will be prevented in practice. The risk of statelessness depends on the circumstances in which the child is born and may increase due to the difficulty in obtaining documentation, accessing administrative procedures and ensuring birth registration particularly when the child is born in a conflict zone and the child's parent is affiliated with a terrorist organisation.<sup>44</sup>
31. The United Nations Office of Counter-Terrorism has stressed the importance of protecting the right to a nationality and preventing statelessness of children affected by the 'foreign fighter' phenomenon, as well as integrating a child rights based-approach in solutions.<sup>45</sup> As noted in a report to the Parliamentary Assembly of the Council of Europe, "these children are neither responsible for the actions of their parents nor do they bear responsibility for the circumstances in which they find themselves".<sup>46</sup>

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<sup>42</sup> CRC/C/CZE/CO/3-4, Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic report on Czech Republic, 4 August 2011, paras 37-38.

<sup>43</sup> See Eva Ersbøll, "Birthright citizenship and children born in a conflict zone", 5 February 2020, available at <https://www.statelessness.eu/blog/birthright-citizenship-and-children-born-conflict-zone>

<sup>44</sup> See also Eva Ersbøll, "Birthright citizenship and children born in a conflict zone", 5 February 2020, available at <https://www.statelessness.eu/blog/birthright-citizenship-and-children-born-conflict-zone>

<sup>45</sup> See also United Nations Office of Counter-Terrorism (2019), *Handbook Children affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach*, available at: <https://www.un.org/counterterrorism/handbook-children-affected-foreign-fighter-phenomenon-ensuring-child-rights-based-approach>

<sup>46</sup> Report of the Committee on Social Affairs, Health and Sustainable Development, Doc. 1505529, *International obligations concerning the repatriation of children from war and conflict zones*, January 2020, available at: <https://pace.coe.int/pdf/37de3fb546582f7f2c8df1eb1a17bda517f98833326667a8259ffe25682ae848428feba12/doc.%2015055.pdf>. See also Parliamentary Assembly Resolution 2321 (2020), on international obligations concerning the repatriation of children from war and conflict zones; and Parliamentary Assembly Recommendation 2169 (2020), on international obligations concerning the repatriation of children from war and conflict zones.

### Issue 3: Inaccurate registration of children born in Denmark and identification of statelessness

32. Gender discrimination in nationality laws is one of the primary causes of childhood statelessness. Nationality laws in 25 countries worldwide contain gender-discriminatory clauses that prevent women from passing their nationality to their children on an equal basis with men. There are also countries that discriminate against men in their ability to pass their nationality to their children born out of wedlock.<sup>47</sup> Discriminatory nationality laws can render children stateless when the law prevents children from acquiring the nationality of one parent, and children are unable to acquire the nationality of the other parent for a variety of reasons (e.g. because the parent is stateless, unknown or unwilling to cooperate).
33. The risk of children being born stateless due to gender discriminatory laws increases in a migratory context, when children are born outside of their parent's country of origin or when the father has been separated from the family or is unknown, unless adequate safeguards are in place to prevent childhood statelessness. International norms for the prevention of statelessness establish that children who would otherwise be stateless shall acquire the nationality of the State where they were born. However, to establish if a child would 'otherwise be stateless' and meet their obligations under the CRC and the 1961 Convention, States must be able to determine whether the child has acquired the nationality of another State. When registering a child's birth, authorities often presume that the child has the same nationality as their parents. However, some children may be unable to acquire their parents' nationality and their statelessness is overlooked by civil registration and competent authorities for citizenship matters.
34. Between 1 January 2015 and 20 May 2020, 117 children were born in Denmark to mothers who are nationals of one of the 25 countries that do not allow women to pass on their nationality to their children on an equal basis with men (including Iraq,<sup>48</sup> Iran,<sup>49</sup> Somalia and Syria<sup>50</sup>), and whose fathers are unknown. Although nationality laws of these countries do not allow women to confer their nationality to their children, these children were registered as having the same nationality as their mothers by the Danish authorities.<sup>51</sup> As these children are not entitled to their mothers' nationality, the Danish authorities may have failed to conduct an adequate determination of the child's nationality in each case and identify their statelessness. In this regard, it is noted that the Ministry of Immigration and Integration has asked the Immigration Service to follow up and secure the correct registration of these children's nationality

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<sup>47</sup> UNHCR, UNICEF & Global Campaign for Equal Nationality Rights (2019), *Gender Discrimination and Childhood Statelessness*, available at: <https://www.unhcr.org/ibelong/wp-content/uploads/Gender-discrimination-childhood-statelessness-web.pdf>; UNHCR (2020), *Background Note on Gender Equality, Nationality Laws and Statelessness 2020*, available at: <https://www.refworld.org/docid/5f0d7b934.html>. Countries that discriminate against mothers in their ability to confer nationality on their children include The Bahamas, Bahrain, Barbados, Brunei, Burundi, Eswatini, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Togo, United Arab Emirates. For further information see also the Global Campaign for Equal Nationality Rights: <https://equalnationalityrights.org/the-issue/the-problem>.

<sup>48</sup> ENS & ISI (2019), *Statelessness in Iraq Country Position Paper*: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf>

<sup>49</sup> ENS & ISI (2019), *Statelessness in Iran Country Position Paper*: <https://statelessjourneys.org/resources/statelessness-in-iran/>

<sup>50</sup> ENS & ISI (2019), *Statelessness in Syria Country Position Paper*: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Syria-August-2019.pdf>

<sup>51</sup> Minister of Immigration and Integration, responses to the written question asked by the Naturalisation Committee of the Danish Parliament no. 106, 8 June 2020, <https://www.ft.dk/samling/20191/almdel/ifu/spm/106/svar/1668277/2205144.pdf>.

or statelessness.<sup>52</sup> However, it is important that this is done in a timely and effective manner, and moreover that robust processes and safeguards are put in place to avoid incorrect attribution of nationality being imputed to stateless children in the future.

35. The examination of whether the child would otherwise be stateless should be carried out by a competent authority with the necessary expertise, through an established procedure for determining the child's nationality or whether they would otherwise be stateless, and resolved immediately after birth registration or as soon as possible.<sup>53</sup> The nationality of the child should be considered 'unknown', 'undetermined' or 'under investigation' for as short a period as possible and never longer than five years. All actions involved in determining whether a child would otherwise be stateless must be undertaken with the best interests of the child as a primary consideration, and the authority responsible for such a procedure should ensure that its decision-making staff are trained on nationality and statelessness law and have the legal and language knowledge necessary to conduct the assessment of foreign nationality laws.<sup>54</sup>
36. The Minister of Immigration and Integration has committed to contacting the Immigration Service with a view to securing the correct registration of this group of children's nationality or statelessness and, in October 2019, Denmark also committed to strengthen cooperation between relevant authorities regarding the identification of stateless persons.<sup>55</sup> In order to honour these commitments, Denmark must improve the procedures to determine the child's nationality and identify where they would otherwise be stateless, including by:
- Ensuring full legal safeguards are in place so that any child born on the territory who would otherwise be stateless can acquire a nationality;
  - Building the capacity of civil registry officials through training and guidance to identify (the risk of) statelessness during birth registration;
  - Ensuring mechanisms are in place for civil registry officials to refer identified cases for nationality determination to a clear procedure under a designated competent authority with the necessary expertise and safeguards;
  - Ensuring that children are treated as nationals for the purposes of accessing their fundamental rights while their nationality is determined as soon as possible and in line with their best interests;
  - Improve research, standards, guidance, and information about law and policy frameworks for the determination of the child's nationality.

## Recommendations

37. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Denmark:

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<sup>52</sup> Minister of Immigration and Integration, responses to the written question asked by the Naturalisation Committee of the Danish Parliament no. 106, 8 June 2020, <https://www.ft.dk/samling/20191/almindel/ifu/spm/106/svar/1668277/2205144.pdf>.

<sup>53</sup> UNHCR (2012), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, available at: <https://www.refworld.org/docid/50d460c72.html>

<sup>54</sup> For further details see European Network on Statelessness (2020), *Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers*, available at:

[www.statelessness.eu/files/attachments/resources/ENS-Birth\\_registrations-StatelessnessINDEX\\_briefing.pdf](http://www.statelessness.eu/files/attachments/resources/ENS-Birth_registrations-StatelessnessINDEX_briefing.pdf).

<sup>55</sup> UNHCR (2020), *High-Level Segment on Statelessness: Results and Highlights*, p. 58, available at: <https://www.refworld.org/docid/5ec3e91b4.html>

- I. Provide for the automatic granting of nationality to all children born in Denmark who would otherwise be stateless or at least, if providing for the acquisition of nationality upon application, to establish that applications made by all stateless persons are conditional upon habitual residence not exceeding five years, rather than lawful residence.
- II. Grant nationality to the 117 children who were born in Denmark in the period between 1 January 2015 and 20 May 2020, to mothers who are nationals of one of the 25 countries that do not allow women to pass on their nationality to their children on an equal basis with men and whose fathers are unknown, if determined that they would otherwise be stateless after an adequate assessment of their nationality status.
- III. Take further measures to ensure that its national legislation complies fully with the 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child;
- IV. Improve cooperation between relevant authorities regarding the identification of stateless persons;
- V. Improve the procedures to determine the child's nationality and identify where they would otherwise be stateless;
- VI. Harmonise data collection between institutions with whom stateless persons are in contact and undertake further research to provide an accurate picture of the stateless population in Denmark, including stateless children and those at risk of statelessness.
- VII. Amend the Danish Citizenship Act to remove any discriminatory clauses, including provisions affecting the right to nationality of children born to parents in conflict zones.