



UNHCR

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Haut Commissariat des Nations Unies pour les réfugiés

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RE: UNHCR observations on the Law Proposal “*Förlängning av lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige – utkast till lagrådsremiss*”

The UNHCR Regional Representation for Northern Europe (UNHCR) is grateful for the invitation to provide observations on the Law Proposal “*Förlängning av lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige – utkast till lagrådsremiss*” (hereinafter “Proposal”).

As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek permanent solutions to the problems of refugees,¹ UNHCR has a direct interest in law and policy proposals in the field of asylum and refugee integration. UNHCR’s supervisory responsibility is also formally recognized under 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 (TFEU),² as well as in Declaration 17 to the Treaty of Amsterdam, which provides that “*consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy*”. Likewise, secondary EU legislation explicitly refers to UNHCR’s mandated responsibilities.

The Proposal entails a two-year extension of *Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige* (hereinafter the Temporary Law), but with important amendments, notably with regard to access to family reunion for beneficiaries of subsidiary protection.

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> (hereafter “UNHCR Statute”).

² European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 26 October 2012, OJ L 326/47-326/390; 26.10.2012, available at: <http://www.refworld.org/docid/52303e8d4.html>.

When the draft Temporary Law was first circulated for hearing in 2016, UNHCR provided detailed observations³ and recommendations – including refraining from granting different lengths of residence permits depending on status, extending the right to family reunification to encompass a broader range of family members than nuclear family only and not imposing a sufficient resource requirement for family reunification of beneficiaries of international protection. Those remain relevant also with regard to the current Proposal and are therefore enclosed.

With regard to the new Proposal, UNHCR would like to provide the following general and specific set of observations.

UNHCR's General Observations

Sweden has a long tradition of providing sanctuary to persons in need of international protection and is a strong supporter of the international protection regime and the work of UNHCR. UNHCR notes that the aim of the Temporary Law, when introduced in 2016, was to reduce the number of asylum-seekers arriving to Sweden, and, during a limited period of time, align the Swedish legal framework with minimum EU standards. The Government expressed at the time that a decrease in the number of asylum-seekers arriving to Sweden would contribute to a more even and fair distribution of asylum-seekers among the EU Member States.⁴ The Temporary Law introduced a number of restrictions on the rights of aliens to obtain residence permits in Sweden, *inter alia* through providing temporary, rather than permanent, residence permits for persons in need of international protection, restricting the right to family reunification and conditioning permanent residence permits on having acquired self-sufficiency through employment.

UNHCR fully recognizes that Sweden, in a European context, did receive a comparatively large number of asylum-seekers since 2012. In particular, UNHCR acknowledges that the reception of approximately 163,000 asylum applicants in 2015 placed a very significant strain on the asylum and reception system in Sweden, but also wish to acknowledge how well Sweden managed these difficult challenges through the dedicated efforts of the authorities, civil society and private individuals.

The situation in the number of asylum-seekers arriving to European countries has changed significantly over the past three years. For Sweden, the number of applicants has dropped by more than 85 % since the peak in 2015, with the number of applications received in 2018 at 21,502, the lowest number of applicants coming to Sweden since 2005.⁵

In light of the decrease and stabilisation with regard to the number of persons seeking asylum in Sweden, UNHCR would therefore like to recommend to the Government of Sweden to carefully consider whether an extension of the Temporary Law until 2021, even with opening for access to family reunion, is indeed necessary and justified. It would be desirable to already now address some of the other humanitarian consequences of the Temporary Law, which already have been observed and documented⁶.

³ Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden, available at: <https://www.refworld.org/docid/56e27d7e4.html>.

⁴ Swedish Government law proposal, proposition 2015/16:174, *Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*, p. 1. The Government further elaborates on the underlying reasons on p. 21, and pointed out that the Swedish asylum-process needed a breathing space.

⁵ See <https://www.migrationsverket.se/Om-Migrationsverket/Statistik/Asyl.html>.

⁶ See for example, the Swedish Red Cross, *Humanitära konsekvenser av den tillfälliga utlänningslagen* (Humanitarian consequences of the Swedish temporary aliens act), available at: https://www.redcross.se/contentassets/4902f3efe95149158fd3b55310ef2cb8/humanitara_konsekvenser-av-den-tillfalliga-utlanningslagen.pdf, see also the Swedish Refugee Advice Centre, *Migrationsrättens*

UNHCR welcomes that a Parliamentary Committee will be set up with the task of developing proposals for Sweden's future migration policies⁷. UNHCR recommends that this Committee be established as soon as possible with a clear mandate to thoroughly analyse and assess the impacts of the Temporary Law⁸, so that the findings and recommendations of the Committee can provide the Government with evidence based recommendations and findings when deciding on measures to further strengthen the Swedish protection and integration system. UNHCR stands ready to contribute actively to the deliberations of this Committee.

UNHCR's Specific Observations

Family reunification

UNHCR warmly welcomes that the Proposal will re-introduce the right to family reunification for beneficiaries of subsidiary protection and commends the Government of Sweden for taking this step. UNHCR strongly believes that access to family reunion will support successful integration and also serve as an important legal pathway, thus help avoiding family members – especially women and children – risking their lives and exposure to serious harm and risks by embarking on dangerous irregular travel routes.⁹

With regard to the requirement introduced with the 2016 Temporary law to assess that the person granted refugee status has reasonable prospects of being granted a permanent residence permit in order for him/her to benefit from the right to family reunification, UNHCR wishes to recall that refugee status should, in principle, not be subject to frequent reviews as these may undermine a refugee's sense of security, which international protection is intended to provide.¹⁰ And, as described further below regarding the different lengths of permits depending on protection status, there is no reason to expect the protection needs of subsidiary protection beneficiaries to be of shorter duration than those of refugees.¹¹

With regards to the Temporary law limiting the right to reunification to the nuclear family and the application of the sufficient resource requirement to refugees and beneficiaries of subsidiary protection, UNHCR wishes to refer to the observations submitted on the draft law proposal on the Temporary law¹². Those included recommendations that the

framtid – en redogörelse för de juridiska riskerna med att förlänga lagen (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållsstillstånd i Sverige (The Future of Swedish Migration Law - an account of the legal risks involved in extending the Act (2016:752) on temporary restrictions to the right to obtain a residence permit in Sweden), available at: <https://sweref.org/wp-content/uploads/2018/10/Migrationsrattens-framtid-en-redogorelse.pdf>.

⁷ The Proposal, p. 26.

⁸ This would also entail an analysis and assessment of the consequences of having suspended the national protection category "persons otherwise in need of protection" (övriga skyddsbehövande).

⁹ See for example UNHCR, *Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden*, paras. 66–69, available at: <https://www.refworld.org/docid/56e27d7e4.html>.

¹⁰ 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. 135, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

¹¹ UNHCR, *UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466*, February 2018, available at: <https://www.refworld.org/docid/5a7835f24.html>, p. 33. See also: UNHCR, *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 of the protection granted (COM(2009)551, 21 October 2009)*, 29 July 2010, p. 9, available at: <http://www.refworld.org/docid/4c503db52.html>.

¹² See UNHCR, *Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden*, paras. 46–58, available at: <https://www.refworld.org/docid/56e27d7e4.html>.

Government should extend the right to family reunification to encompass a broader range of family members who are dependent on each other, including elderly parents and unmarried adult children. In this context it should also be noted the impact the limitations in the Temporary law has for LGBTI persons since it is often impossible for members of this group to legalise their relationship already in the country of origin.

Length of residence permits

According to the 2016 Temporary law, Convention refugees and “persons in need of alternative protection”¹³ are granted temporary residence permits in Sweden. Refugees are granted three year permits as a general rule, and “persons in need of alternative protection” are granted a 13-month temporary residence permit, which can be renewed for an additional period of two years. Persons in need of international protection who are resettled to Sweden are still being granted permanent residence permits, which UNHCR finds positive. The length of these temporary residence permits remains unchanged in the Proposal.¹⁴

Regarding the use of temporary residence permits, UNHCR recalls that “the ultimate goal of international protection is to achieve durable solutions for refugees”, as formulated in ExCom Conclusion No. 104 on local integration.¹⁵ In this respect, the 1951 Convention foresees a gradual attainment of rights,¹⁶ with the end of the continuum being naturalization in the country of asylum, or the cessation of the refugee’s protection needs and voluntary return, for example, as a result of fundamental and durable changes in the country of origin.

Regarding the differentiation between refugees and persons in need of alternative protection, UNHCR notes that the Temporary Law seeks to align the Swedish legislation with the standard of the recast EU Qualification Directive.¹⁷ While UNHCR acknowledges that the recast EU Qualification Directive does not oblige EU Member States to grant beneficiaries of subsidiary protection residence permits of the same duration as refugees, UNHCR has repeatedly urged States to grant – to the extent possible – Convention refugees and beneficiaries of subsidiary/complementary protection the same rights, based on a recognition that they have the same protection needs.

UNHCR maintains that distinctions between beneficiaries of international protection are often neither necessary nor objectively justified in terms of flight experience and

¹³ The Swedish Aliens Act, Chapter 4, Section 2 corresponds to the Qualification Directive. Through the transposition of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast

Qualification Directive) Chapter 4, Section 2 of the Alien’s Act now mirrors Art. 15 a-c. of the recast Qualification Directive, available at: <http://www.refworld.org/pdfid/4f197df02.pdf> Alternative protection is also referred to as a form of subsidiary protection.

¹⁴ With the exception of the proposed new Section 18 a, concerning the possibility of granting permanent residence permits under certain conditions to persons born stateless in Sweden, which will be further commented on below.

¹⁵ UNHCR, *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) - 2005, available at: <http://www.refworld.org/docid/4357a91b2.html> (hereafter “ExCom Conclusion on local integration No. 104”).

¹⁶ See e.g. the 1951 Convention, Article 34, and ExCom Conclusion on local integration No. 104. See also doctrine on “levels of attachment” e.g. in Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press, 2005, pp. 160-192.

¹⁷ European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: <http://www.refworld.org/docid/4f197df02.html>

protection needs. This is evidenced by practice, as the application of the protection statuses across the EU varies widely. Some Member States regularly grant refugee status to people from a particular country of origin, while other Member States grant subsidiary protection status to people with similar profiles from the same country of origin. It is thus not clear which objective criteria may justify a different duration of status.

UNHCR considers that there is no reason to expect the protection needs of subsidiary protection beneficiaries to be of a different nature or shorter duration than the need for protection as refugees.¹⁸ In practice, beneficiaries of subsidiary protection are generally not able to return home earlier than refugees. Further, their integration prospects would benefit from the certainty provided by a status of longer duration.

UNHCR therefore recommends that all beneficiaries of international protection shall receive a residence permit for a period of five years and renewable thereafter for periods of five years.¹⁹

UNHCR recommends therefore that the Government discontinue the use of providing different length of residence permits to different categories of persons in need of international protections and therefore aligns the length of permits for refugees and beneficiaries of subsidiary protection.

Children

Regarding the specific observations regarding children, UNHCR wishes to refer to the observations and recommendations submitted in 2016 on the draft Temporary Law. Those included providing children, be they unaccompanied or separated or in families, a secure residence status that supports their attainment of a durable solution which is long-term and sustainable and ensures that the child is able to develop into adulthood, consistent with the child's needs and rights according to the CRC, and more specifically the principle of the best interests of the child. Additionally, UNHCR recommended the Government to allow children, including unaccompanied children, to reunite with their family members, regardless whether the child is the sponsor, or is seeking reunification with a family member in Sweden, pursuant to the CRC,

In this context, UNHCR also wishes to draw attention to the fact that Articles 1–42 of the Convention on the Rights of the Child (hereinafter "CRC") will apply as Swedish law as of 1 January 2020.²⁰ UNHCR recommends the Government to take this into consideration and to pronounce itself clearly on the Temporary Law's compliance with the CRC.

¹⁸ UNHCR, *UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466*, February 2018, available at: <https://www.refworld.org/docid/5a7835f24.html>, p. 33. See also: UNHCR, *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 of the protection granted (COM(2009)551, 21 October 2009)*, 29 July 2010, p. 9, available at: <http://www.refworld.org/docid/4c503db52.html>.

¹⁹ UNHCR, *UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466*, February 2018, available at: <https://www.refworld.org/docid/5a7835f24.html>, p. 33. See also: UNHCR, *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 of the protection granted (COM(2009)551, 21 October 2009)*, 29 July 2010, p. 9, available at: <http://www.refworld.org/docid/4c503db52.html>

²⁰ Lag (2018:1197) om Förenta nationernas konvention om barnets rättigheter, which enters into force on 1 January 2020.

Otherwise stateless children born in Sweden

UNHCR has a specific and global mandate to prevent and reduce statelessness and to protect non-refugee stateless persons. UNHCR's role in the field of statelessness dates back to 1974 when the United Nations General Assembly entrusted UNHCR with a provisional mandate under article 11 of the 1961 Convention on the Reduction of Statelessness (hereinafter 1961 Convention) and has been expanded since.²¹

The Proposal introduces the possibility of granting a permanent residence permit to a person who has been granted a temporary residence permit as a consequence of the Temporary law, if the grounds for the residence permit are still met and the person: has been born in Sweden, is stateless since birth, has resided in Sweden since 4 years and 6 months or for a total period of 9 years and 6 months, and has not turned 21 years old.²²

Regarding the introduction of this section, the Government refers in the Proposal to the European Convention on Nationality and the 1961 Convention, both of which Sweden has acceded.²³

While UNHCR welcomes the Government of Sweden acknowledgment of its obligations under the 1961 Convention, which complements the 1954 Convention relating to the Status of Stateless Persons (hereinafter the 1954 Convention), UNHCR has the following concerns about the how these are obligations are interpreted and addressed in the Proposal.

States, including Sweden, are responsible for conferring nationality and guaranteeing the right to a nationality. Obligations to prevent and reduce statelessness among children are found in Article 24 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR") and Article 7 of the CRC, both of which recognize the right of every child "to acquire a nationality." The 1961 Convention places a particular obligation on the State where the child is born otherwise stateless. Article 1 requires that "[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless."²⁴ UNHCR observes that in determining the scope of the 1961 Convention obligations to prevent statelessness among children the CRC is of paramount importance. Since all the States parties to the 1961 Convention are also party to the CRC, Articles 1-4 of the 1961 Convention must be interpreted in light of the provisions of the CRC.²⁵

Moreover, Article 7 of the CRC specifies that States must implement the right to acquire a nationality in conformity with their obligations under the relevant international

²¹ UNHCR's advisory responsibility is further set out by the Executive Committee that governs the work of UNHCR. In "Conclusion on the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons" issued in 2006 the Executive Committee requires the agency to work with governments, other UN agencies, and civil society to address the issue of statelessness. The conclusion also requested UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons and calls on States Parties to the 1954 Convention relating to the status of stateless persons to fully implement the provisions of the Convention. See: UNHCR, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII)* - 2006, 6 October 2006, available at: <http://www.refworld.org/docid/453497302.html>, which was endorsed by the General Assembly Resolution 61/137 of 2006.

²² Section 18 a of the Proposal.

²³ Proposal, p. 40.

²⁴ UN High Commissioner for Refugees (UNHCR), *Good Practices Paper – Action 2: Ensuring that no child is born stateless*, 20 March 2017, available at: <http://www.refworld.org/docid/58cfab014.html>

²⁵ UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>

instruments in this field, in particular where the child would otherwise be stateless. The 1961 Convention is therefore of central importance to the full enjoyment of every child's right to acquire a nationality under the CRC.²⁶ In addition, it follows from both Article 7 and Article 3 of the CRC, which describes the principle of the best interest of the child, that a child may not be left stateless for an extended period of time.²⁷

The CRC addresses statelessness through its provisions on non-discrimination (Article 2), best interest of the child (Article 3), the right of every child to acquire a nationality and to be registered at birth (Article 7), and the right of every child to preserve his or her identity (Article 8). A number of General Comments (GC) of the Committee on the Rights of the Child (Committee) help to inform the meaning of these provisions when applying them to address statelessness. In addition, the Committee has consistently recommended in its Concluding Observations that States parties review their legislation to ensure that nationality is granted to all children who are stateless or at risk of being stateless.²⁸

In UNHCR's view, stateless children born in Sweden, following a child-sensitive application of the 1961 Convention, should be granted nationality either automatically or as early as possible. UNHCR submits that children are entitled to a stable and secure legal status, including nationality, which should not be subject to any delays. Reference is made to relevant rights enshrined in the CRC, which recognize children's right to development to special protection and assistance.²⁹ Article 20 of the CRC specifically provides that "when considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing". In this regard, as stated above, UNHCR underlines that a child must not be left stateless for an extended period of time in accordance with Article 3 and 7 of the CRC.

As UNHCR has pointed out previously in its report *Mapping Statelessness in Sweden*, the Act on Swedish Citizenship³⁰ meet most of the requirements of Article 1(2) of the 1961 Convention. However, the requirement pertaining to a permanent residence permit is not in conformity with the 1961 Convention and the CRC as this excludes children born stateless in Sweden from acquiring Swedish citizenship at birth or soon after birth.³¹

UNHCR acknowledges, as expressed by the Government³², that a change of the Act on Swedish Citizenship is not within the framework of the current law proposal. However, in order to ensure that children born on the territory of Sweden, who would otherwise be stateless, are not excluded from acquiring Swedish citizenship at birth or soon after birth, UNHCR recommends the Government to ensure that such children are granted permanent residence permits at birth or as soon as possible. In this context, and with regards to the relevance of the CRC in this aspect as stated above, the fact

²⁶ UN High Commissioner for Refugees (UNHCR), Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness, 23 August 2013, available at:

<http://www.refworld.org/docid/52206aa54.html>

²⁷ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, paragraph 11, available at:

<http://www.refworld.org/docid/50d460c72.html>

²⁸ UN High Commissioner for Refugees (UNHCR), UN High Commissioner for Refugees (UNHCR) and UNICEF, CRC Convention on the Rights of the Child: Quick Reference Guide - Statelessness and Human Rights Treaties, January 2017, available at: <http://www.refworld.org/docid/58c25eb14.html>

²⁹ CRC Article 6, 20 22, and 27.

³⁰ Lag (2001:82) om svenskt medborgarskap.

³¹ UNHCR, *Mapping Statelessness in Sweden*, December 2016, p. 62, available at:

<https://www.refworld.org/docid/58526c577.html>.

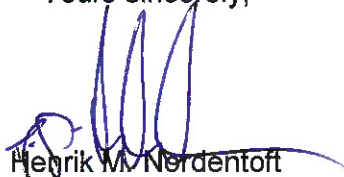
³² The Proposal, p. 40.

that Articles 1–42 of the CRC will be incorporated in Swedish law as of 1 January 2020 should also be taken into account.³³

UNHCR appreciates the constructive dialogue with the Swedish Government, and we thank you for your considerations of this important matter.

We remain at your disposal for any clarification required.

Yours sincerely,



Henrik M. Nerdentoft

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³³ Lag (2018:1197) om Förenta nationernas konvention om barnets rättigheter, which enters into force on 1 January 2020. See also: Government of Sweden, Convention on the Rights of the Child will become Swedish law, <https://www.government.se/articles/2018/03/new-legislative-proposal-on-the-convention-on-the-rights-of-the-child/>.