UNHCR Note
On the 2nd Revision of the Draft Proposed Amendments to the Law on Asylum of the Republic of Slovenia

General

In accordance with its mandate responsibilities contained in Article 35 of the 1951 Convention Relating to the Status of Refugees (1951 Convention), Article II of its 1967 Protocol and Article 8 of the United Nations High Commissioner for Refugees (UNHCR) Statute, the Office) is pleased to share with the Government of the Republic of Slovenia (Government of Slovenia) this Note which contains our position, and further comments and suggestions, on the second revision of the draft proposed amendments to the Law on Asylum.

This Note follows our preliminary comments which were sent to the Government on 10 October 2005, the technical discussions held on them in Ljubljana on 20 October, and our subsequent letter communicated on 26 October 2005, under cover of which we submitted text proposals. As a result of this constructive exchange of ideas, UNHCR welcomes and appreciates the fact that a number of significant revisions have been made to the initial draft proposed amendments to the law on asylum in a manner that takes into account the situation of refugees and other persons in need of international protection with regard to the objective of establishing a fair and efficient asylum system in Slovenia, within a common European asylum system.

However, UNHCR, confident that continued substantive discussions will contribute to the enactment of amendments to the Law on Asylum that are based on the full and inclusive application of the 1951 Convention relating to the Status of Refugees (1951 Convention), and the establishment of asylum procedures based on the principle of *non-refoulement,* wishes, hereunder, to reiterate its concerns with several of the provisions in the draft proposed amendments. We would like to request, in the spirit of co-operation and mutual understanding that these concerns will once again be seriously taken into consideration by the Government of Slovenia.

UNHCR's concerns with the proposed draft amendments can broadly be grouped into two clusters; those which relate to procedural safeguards and those which address the socio-economic impact of the proposed new restrictions on asylum seekers and refugees. It must be underlined that UNHCR does not oppose the introduction of notions such as an internal protection alternative, safe country of origin or procedures that provide a specific and clear role for the Police, provided procedural safeguards are available that will ensure protection is given to persons in need of international protection. Accordingly, comments on Articles 1, 2, 16, 26, 29, 35, 37, 38, 40a and 41 are focused on the legal process, procedural safeguards and due process guarantees that would ensure that the asylum system in Slovenia provides for effective and fair decision making, done promptly and with enforceable results and effective remedies. Comments on Articles 15a, 40, 42, 43, 45, 46, 46a, 46b, 47 and 59 are related to the full implementation of the social and economic rights that ensure the material protection of asylum seekers, refugees and other persons of concern. The remaining comments are of a general nature commensurate with our constructive dialogue.

Finally, UNHCR has also noted that the current proposed amendments to the Law on Asylum do not fully transpose the EU Reception and Qualification Directives, a non-exhaustive list of these still be transposed Articles is included at the end of our comments. We trust these Articles will be transposed in accordance with the relevant deadlines and that UNHCR's Comments on them will be taken into account.

Ad Amendment to Article 1
(Right to Asylum)

UNHCR previously expressed its concern with the introduction of the term "international protection" replacing the term "asylum". It was also concerned with the Government of Slovenia's proposal to delete Article 1 (3) and Chapter VI of the current law and replace it with the content of Article 15 of the European Union (EU) Qualification Directive[1] which in the view of the Office may not offer a sufficient legal basis to provide protection to all refugees under UNHCR's mandate. . Therefore, UNHCR very much welcomes the retention of the title "Right to Asylum" and would like to recommend a more precise elaboration of its content to better reflect that asylum is being granted to those recognised to be in need of refugee protection or subsidiary protection. This approach should be carefully reflected in the contents of paragraphs one, two and three of the current draft proposal. In addition to this, clarification is needed that the decision, as to qualification for either status, is being made by the same adjudicator in a single procedure, with subsidiary protection status being considered only after a determination is made with regard to the non-fulfilment of the refugee definition under the 1951 Convention. In this regard, UNHCR recommends that a fourth paragraph be introduced that would explicitly, by law, institutionalise this approach as follows:

4. All applications for international protection will be considered in a single procedure by the same authority, first by an assessment on the basis of the refugee definition contained in Article 1 of the 1951 Geneva Convention, and only if its criteria are not fulfilled, will the need for subsidiary protection be examined.

Article 2
(Definitions)

UNHCR welcomes the proposed formulation "serious harm includes" as it takes into account the fact that the grounds for subsidiary protection will continue to evolve in line with national and international jurisprudence and practice. However, we are concerned with Article 2 (1) c) which mirrors Article 15 (c) of the EU Qualification Directive. As outlined in UNHCR's Commentary on this Directive the notion of an "individual" threat should not lead to an additional threshold and higher burden of proof for victims of indiscriminate threats resulting from generalised violence or events seriously disturbing public order, as such situations are characterised precisely by the indiscriminate and unpredictable nature of the actions against individuals in the affected area. UNHCR is also concerned that protection will only be available to persons who are fleeing indiscriminate actions occurring in a situation of international

[1] European Union Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted.

or internal armed conflict. Generalised violence or events seriously disturbing public order can pose a serious threat to life, physical integrity or fundamental freedoms even if it does not yet meet the necessary threshold required to qualify as an international or internal armed conflict. In some cases, either situation may be the subject of dispute. Therefore, UNHCR's position is that the law should also protect persons fleeing serious and indiscriminate threats resulting from generalised violence or events seriously disturbing public order in circumstances that do not amount to an international or internal armed conflict. To adequately cover all protection needs arising in such situations we suggest the following:

C) serious and indiscriminate threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order.

UNHCR welcomes that the Government of Slovenia has introduced some safeguards for the application of the concept of internal protection. However, these need to be refined to eliminate ambiguity and reduce the possible attendant scope of error for the adjudicator. This may require, in addition to the definition, the introduction of a separate and new Article on this notion. The following formulation is proposed:

Article *xx*
Internal Protection

1) ***The assessment of an internal protection alternative shall only be made during the consideration of the refugee claim on its merits and the following factors shall be taken into account by the adjudicator:***

a) the relevance of considering an internal protection or relocation alternative in the individual factual circumstances of the case, in particular (i) whether the proposed area of relocation is practically, safely, and legally accessible to the asylum-seeker, (ii) whether the agent of persecution is the State, in which case relocation is generally not applicable, (iii) whether the agent of persecution is a non-State actor and, if so, whether the State is able and willing to provide protection, and (iv) whether the asylum-seeker would be exposed to a risk of being persecuted or to other serious harm if relocated.

b) the reasonableness of considering an internal protection or relocation alternative in the individual factual circumstances of the case, in particular whether such relocation is durable in character, provides effective protection, the possibility to lead a relatively normal life and does not present an undue hardship on the applicant;

2) An assessment of an internal protection alternative will not be applied in circumstances in which recourse for protection can only be made to non-state actors, including international organisations or where the persecutory treatment

emanates from state authorities or where the state is unable or unwilling to provide effective protection.

Introduction of the Concept of Safe Country of Origin

The introduction of the concept of safe country of origin was not part of the first set of proposed amendments. UNHCR does not oppose the notion of "safe country of origin" provided it is used as a procedural tool in carefully circumscribed situations during the course of examining a case fully and individually on its merits. Each applicant should be given an effective opportunity to rebut the presumption of safety in the country of origin, in his or her individual circumstances. In addition, he or she should be given access to an effective remedy against the rejection of the asylum claim in the form of an independent review with due regard to the principle of *non-refoulment*.

In the context of the harmonisation of the asylum systems of EU Member States and the set objective to create a common European asylum system, the creation of national lists of safe countries of origin could impede harmonisation in this area. UNHCR therefore recommends the elaboration of a common EU list of safe countries of origin. However, should the government wish to proceed and introduce this concept, then UNHCR would recommend that it also provide adequate procedural guarantees as outlined above and appropriate mechanisms for a regular review of such lists. Any designation of such countries should be flexible enough to take account of changes, both gradual and sudden, in a given country.

Further, it is not necessary to include the provision contained in draft paragraph three, that the safe country of origin should respect the principle of *non-refoulement* in accordance with the 1951 Geneva Convention, as the principle is not applicable in circumstances in which an individual returns to his/her place of origin. Therefore, UNHCR proposes the following text:

1. a safe country of origin will only be considered as such for a particular applicant for asylum, after an individual examination of its application, provided the applicant will not be subjected to persecution or serious harm and only in circumstances in which:

a) The particular applicant for asylum has the nationality of that country; or is a stateless person and was formally habitually resident in that country;

b) The particular applicant has not, during the course of the individual examination, provided plausible grounds for rebutting the presumption that the country concerned is safe;

c) The country concerned has adopted and implements laws that effectively protect and enforce international human rights standards, in particular the international Covenant on Civil and Political Rights and the Convention Against Torture and, where relevant, the European Convention on Human Rights and Fundamental Freedoms; in a system that provides effective legal remedies against violations of these rights and freedoms.

2. It is the duty of the competent refugee authority to establish whether the country concerned qualifies to be considered as a safe country of origin for that particular applicant for asylum;

3. Vulnerable applicants, particularly children, are exempted from the operations of this provision;

4. An appeal can be made against the decision of the competent refugee authority under this provision. The appeal shall, pending its outcome, suspend the execution of the decision;

5. The national list establishing safe countries of origin shall be reviewed regularly, in any event the review will be made, at least, once every six months.

Introduction of New Article 15 a.
(Vulnerable Groups)

This is another newly introduced draft amendment to the previous draft, UNHCR's position is that assistance to persons falling under this law with special needs and vulnerabilities must be provided for solely on the basis of those needs and the specific legal status of the individual should not be used as a qualification criteria. Accordingly, UNHCR recommends that the proposed provisions should be revised as follows:

1) Specific care and attention shall be provided to persons, falling under this law, with special needs and vulnerabilities, especially children, separated children, unaccompanied children, disabled persons, the elderly, pregnant women, single parents with children, and persons who have survived rape, torture or other forms of psychological, physical or sexual violence;

2) Special needs and vulnerability, in accordance with this law, shall be established on the basis of an individual needs assessment of the situation of the asylum seeker, refugee or person having subsidiary protection status;

3) The accommodation of vulnerable asylum seekers, refugees or persons having subsidiary protection status shall take into consideration their specific situation and appropriate attention and care arrangements will be made, especially with regard to material conditions of reception, medical and psychological counselling and care.

Ad Amendment to Article 16
(Refugee Advisors)

UNHCR welcomes that the revised draft takes into account its concerns with regard to an adequate training for refugee advisors. The Office continues, however, to have concerns with regard to the Minister of Interior being the appointing authority of refugee advisors. . The Minister of Interior is an interested party in any asylum proceedings, and, as such, it is our view that it is more appropriate to retain the

current system under which the appointing authority for refugee advisors is the Minister of Justice.

UNHCR is also concerned that free support and legal assistance will be restricted to the appeal instances (Administrative Court and the Supreme Court). It is UNHCR's position that legal assistance, at the first instance, is an essential procedural safeguard guarantee which improves the fairness, efficiency and quality of first instance decision making and thereby reduces the likelihood of appeals and the attendant costs on account of the adjudicator erring on fact or law. The objective of having fair and efficient asylum procedures will be greatly undermined if free legal assistance and support are not provided at the first instance. UNHCR, therefore, recommends the retention of the current system in which free legal assistance is available at all levels of the asylum procedure.

It is also important to note that the proposed amendments do not explicitly enable the provision of counselling support to asylum seekers by other relevant actors. During our previous discussion the government specifically stated that its intention in this regard was to usher in a system in which more actors, apart from lawyers, would be allowed by law to support asylum seekers during the course of the first instance procedure. The current draft formulation appears not to fully capture this intention. In line with the aforementioned comments, UNHCR recommends the following revision to Article 16 (1):

1) ***The Minister of Justice appoints Refugee Advisors for the provision of counselling and legal assistance to asylum seekers in the asylum procedure. . The appointment procedure shall be governed by the provisions of the Act on General Administrative Procedures.***

Furthermore, UNHCR recommends the replacement of "Minister of Interior", with "Minister of Justice", throughout the Article. We also propose the deletion of the last condition "is trustworthy for performing duties of refugee advisor". If the intent is to address the ethical behaviour of the individual lawyer, it is best, in our opinion, for the Minister to leave this issue to the body responsible for the ethical conduct of practicing legal professionals**.**

Article 26
(Treatment of Foreigner that Expresses Intent to Apply for Asylum)

UNHCR regrets to inform the Government of Slovenia that the retention of Article 26 in the second draft proposed amendments to the Law on Asylum is a matter of very serious concern to us. The article introduces a pre-procedure with a preliminary examination of the asylum claim by the policing authority. The concept of a "foreigner who intends to seek asylum" places asylum seekers outside the regular asylum procedure to be "treated", in a manner as yet undefined, by the Police. It is UNHCR's view that this measure will impede the access of certain asylum seekers to the regular asylum procedure, and, as such, may result in the violation of the principle of *non-refoulement* (Article 33 of the 1951 Convention).

According to this article, the police authority would be given competence, as the case may be, merely on account of the asylum seeker's manner of entry into Slovenia, the point in time when the claim is submitted (explained as illegal entry or illegal residence in the Republic of Slovenia in the draft). With regard to asylum seekers who illegally enter or stay in Slovenia or who apply for asylum in the transit zone at the airport or aboard a ship, the Police will decide as to whether an application is consistent with Article 1 of the Law on Asylum. It seems, thus, that the police have been given competence to make a decision on the merits of the asylum claim of persons who enter or reside in Slovenia illegally. UNHCR is of the opinion that the decision on the asylum application needs to be taken by the competent authorities and in the procedure with the necessary safeguards to minimise the risk of wrong decisions which violate the principle of *non-refoulement*.

Furthermore, the failure to give statements on demand, or other non-fulfilment of formal administrative obligations, in particular, leaving the premises of the reception centre (asylum home) may result in the referral of the case to the Police for examination of the claim under the Aliens Law.

The fact that an applicant does not comply with formal requirements and/or even intentionally does not present his claim earlier can be due to a number of reasonable factors such as trauma suffered, language difficulties, age, gender, cultural sensitivities, lack of confidence, and the fear of authorities due to past persecutory treatment. In fact, violation of formal requirements does not necessarily mean that the intention to apply for asylum is *mala-fide* or that the person lacks protection reasons so that a treatment by the policing authority is warranted. On the contrary, they may indicate that the individual concerned has special protection needs that have to be taken into account by the authorities.

To underline the point, non-co-operation with the authorities might indicate the need for special treatment as the person may be a survivor of physical or psychological violence. Absconding from the reception centres or any designated place of residence might be for justifiable reasons which may be indicative of problems in reception conditions, effective protection or other relevant personal reasons.

Unjustified failure to co-operate may be taken into account as an element when assessing the credibility of the asylum claim. However, these issues can not be addressed by way of summary assessment by a policing authority, but are issues that must be carefully considered by the competent refugee authority which has sufficient training and required capacity to deal fairly and efficiently with asylum applications.

Subjecting persons who seek asylum at the transit zone of the airport, port or harbour to preliminary examination by the policing authority is, in fact, treating asylum seekers who present their claims at these locations to a standard of treatment that is different from those who submit their claims elsewhere, for example, at the Reception Centre. Such differentiation in treatment is discriminatory since no valid reasons justify the processing of cases submitted at one location under a procedure providing less procedural guarantees than cases submitted at another location.

In practice, Article 26 may lead to a situation in which many asylum seekers may not only rely on illegal means to enter the territory, but also evade detection by the

authorities, transit the country and submit their claims elsewhere in Europe, for fear of being subjected to a preliminary examination by the policing authority, which could result in summary rejection and *refoulement* as the nature of the proposed treatment is left unspecified in the law. This, in turn, could create an environment in which asylum seekers may be compelled to use the services of smugglers to transit through the country undetected in order to seek asylum in countries where they believe their claims will be dealt with in a fair and efficient manner. Thus, adversely impacting on the objective of creating a Common European Asylum System.

In conclusion, the provisions contained in draft Article 26 would render access to the asylum procedures difficult or near impossible, which would be incompatible with the purpose and object of the 1951 Convention. Therefore, it is UNHCR's position that Article 26 should clearly limit the role of the policing authority in the asylum procedure. In its current format, the language and scope of the proposed article provides wide powers to the policing authority which would encroach on the role of the competent refugee authority. In order to avoid *refoulement,* UNHCR recommends that the role of the policing authority be restricted to the duties as outlined below.

The role of the policing authority will be:

- ***a) To ascertain the identity and register asylum seekers;***
- ***b) To conduct the preliminary recording of the relevant facts, including as concerns their illegal entry or illegal presence;***
- **c)** ***To forward the record and refer the applicant to the competent authority responsible for refugee status determination.***

Ad Amendment to Article 27
(Limitation of Movement)

UNHCR welcomes the fact that in the revised draft all the three grounds for detention or deprivation of liberty/freedom of movement proposed earlier have been rescinded.

Ad Amendment to Article 29
(Hearing of an Asylum Applicant)

The recording of information in the form prescribed by Article 63 (b) can not be considered to be a "fair and full hearing". Information that would satisfy the requirements of Article 63 (b) of the current asylum law is not always sufficient or appropriate to justify the use of an accelerated summary procedure in the absence of due process procedural safeguards. These safeguards would include a full review of the claim at the first instance by a competent authority and providing the applicant with the opportunity for a personal rebuttal interview. Information given in terms of Article 63 (b) is usually not sufficiently complete for the reviewer to make a fair decision without applying the aforementioned due process procedural safeguards. In any event, accelerated procedures that truncate due process are not suitable for first instance decisions as a fair examination of the case would not have been carried out.

Perceived abuse of the asylum procedure, especially by asylum seekers who leave Slovenia to seek protection elsewhere should be addressed by other means. Asylum seekers leaving the country may have valid reasons why they feel compelled to leave.[2] Some of these reasons have been acknowledged as valid by the international community as outlined in EXCOM Conclusion 58. The consequences for onwards movement by asylum seekers, in particular without knowing the reasons behind the move, should not result in nullifying the right to seek asylum by taking a decision which declares the application manifestly unfounded. This, in the context in which Dublin II is operational, effectively closes the asylum space in the European Union for the affected individuals and potentially exposes them to a series of measures that may amount to *refoulement*. . Therefore, to guard against this UNHCR would like to present the following formulation:

The statement of the asylum seeker under Article 63 (b), obtained during a full and fair hearing by the competent authority, will be considered as a sufficient interview.

Ad Amendment to Article 35
(Rejection of Asylum Applications)

UNHCR has underlined that the introduction of the notion of internal protection alternative should be examined during the regular procedure and not in an accelerated procedure due to its complexity. Accordingly, we propose the following:

Move the draft amendment from paragraph 2 to paragraph 1 i.e. from the "manifestly unfounded" category (accelerated procedures) to the "unfounded" category (regular procedures).

Article 37
(Pre-Procedure for Aliens Arriving from Safe Third Countries)

It is UNHCR's position that international protection is often a matter of life and death for the person concerned and that an appeal against an order allowing the State to remove an applicant from the country should suspend the execution of the order pending the completion of the case, or at the very least provide a possibility to apply for leave to remain in the country pending the outcome of the appeal. To allow removal in these circumstances undermines the very remedy being sought by the appeal. Accordingly, the proposed new changes in the law deny an effective remedy to the appellant as they reduce the right to appeal to a mechanical procedural step which does not in essence protect the rights of the individual. To give meaning to the right to appeal in this instance the individual must be granted the opportunity to

[2] These reasons have included: lack of a fair and effective refugee determination procedure or a prolonged decision making process; asylum seekers and refugees may also face capricious restrictions on enjoyment of their human rights, discrimination, xenophobia, serious economic and social deprivations in their countries of first asylum, including lack of access to adequate food, water and basic public services, health care, education, work, and housing; and asylum seekers and refugees may for purposes of maintaining family or community ties move from countries of first asylum to join family members or members of their own community, with whom they share a cultural, linguistic and historical affinity.

challenge the removal before being removed. Thus, UNHCR would propose the following text:

An asylum applicant has the right to appeal against the inadmissibility of the application within three days at the Administrative Court of the Republic of Slovenia. The Appeal will suspend the execution of the decision pending its final outcome, unless it is established and confirmed by the court, that the appeal is clearly abusive or manifestly unfounded.

Article 38
(Appealing against a decisions of the first instance)

The proposed change is decreasing the appeal deadline from the present 30 days to 3 days. To ensure that adequate legal and procedural safeguards are maintained UNHCR's position is that the affected asylum seekers should be given adequate time in which to lodge an appeal. Therefore, we propose the following:

That the deadline for appeal be not less than 15 days.

Article 40
(Deportation)

UNHCR recommends to provide the rejected asylum seekers with sufficient time in which the rejected asylum seeker can leave the country in an orderly and humane manner. We, therefore, propose that the rejected asylum seekers should be given at least three days in which they can prepare themselves and leave the country.

Article 40 a
(Dublin Procedures)

We are pleased that the Government of Slovenia has addressed our major concerns in this revision. Our understanding of Slovenia's position is that it considers itself responsible for considering the asylum application of all persons returned under the Dublin II Regulation on the merits as required by the Regulation. In this respect, UNHCR recommends an explicit provision in the law that clearly states this obligation as provided by the EU Regulation as follows:

An asylum application in which no decision on merits has been made shall be re-opened upon the asylum seekers return to the Republic of Slovenia under the operations of the Dublin II Regulation.

In the new wording of the draft provision, asylum applicants in the Republic of Slovenia for whom Slovenia is not responsible under the Dublin II Regulation and, as such, are subject to redirection to another country, may appeal against the measure within 3 days, however, this appeal will not have a suspensive effect. Since an asylum seeker may have legitimate reasons for opposing transfer to the designated EU member State, UNHCR proposes to introduce the possibility to ask for leave to

remain. This would provide the appeal authorities with the flexibility to do justice to the individual case.

Article 41
(Lodging a new asylum application)

UNHCR comments on the non-suspensive effect of appeals apply to this article, even when lodging a new asylum claim, unless the new application has been rejected as manifestly unfounded. UNHCR recommends the following proposal:

The Appeal will suspend the execution of the decision pending its final outcome, unless the claim has been rejected as manifestly unfounded. The applicant can apply for leave to remain which will be granted if the authorities have wrongly rejected the case as manifestly unfounded.

Furthermore, rejected appellants should not be automatically detained. In line with human rights standards, especially Article 5 ECHR, the necessity and proportionality of the detention order needs to be examined in each individual case. UNHCR recommends restricting the use of detention accordingly.

Article 42
(Withdrawal of an Asylum Application)

UNHCR has no major concerns with this proposed amendment, though it is our view that involving landlords in the asylum procedure might make them reluctant to lease accommodation to asylum seekers as they will also have to assume these notification obligations.

Article 43
(Rights of Asylum Applicants)

UNHCR has already expressed its concerns with regard to the proposed repeal of the right to financial assistance and a monthly allowance for destitute asylum seekers. These entitlements are now being replaced by the right to work which, however, can only be exercised after an asylum seeker has been in the country for not less than 12 months in the manner governed by the new proposed Article 46.a on the Right to Work. In line with the repeal of Article 43 (3), part-time employment outside the reception centre is proscribed. This, in our view, will lead to increased illegal employment of asylum seekers and their exposure to unscrupulous labour practices, including, in some cases, possible criminal exploitation. UNHCR is also concerned that the cancellation of financial support, in addition to the prohibition to access employment opportunities until the expiration of the twelve month period will render asylum seekers without their own means destitute. This would impede their ability to participate in everyday life outside the reception centre and, as such, have an adverse impact on their right to enjoy an adequate standard of living as contained in Article

11(1) of the International Covenant on Economic, Social and Cultural Rights.[3] Therefore, it is UNHCR's position that the amendment should retain the current scheme of financial assistance and right to access employment opportunities.

Furthermore, UNHCR is concerned with the repeal of free legal assistance at the first instance of the asylum procedure. It is UNHCR's position that the amendment should retain the option of having free legal assistance at the first instance (see comment to Article 16).

Article 45
(Asylum Home and Reception)

UNHCR welcomes the clarity of the revised draft, both in Articles 45 and 45b, which now make it clear that asylum seekers with means can reside in a place of their choice and as such will enjoy freedom of movement and residence in the same manner as any other alien, legally resident, in Slovenia. We also note that the management of reception centres is being deregulated and non-governmental institutions are now permitted to manage them. UNHCR hopes that this deregulation will lead to the continued improvement of reception conditions. Nevertheless, the Government of Slovenia will continue bearing the primary responsibility for reception conditions and standards as also clarified by Article 23 of the EU Reception Directive. Accordingly, we recommend the explicit transposition of Article 23 of the EU Reception Directive and suggest the following:
"The minister shall ensure that appropriate guidance, monitoring and control of the level of reception conditions are established."

New Article 45 .b
(Accommodation outside the Asylum Home)

UNHCR welcomes the various options presented for the accommodation of asylum seekers which take into account their right of freedom of movement.

Article 46
(Medical Care)

While the draft Article reiterates that asylum seekers are entitled to health care, in UNHCR's view further clarification is needed. The international human rights standard contained in Article 12 of the International Covenant of Economic, Social and Cultural Rights recognises the right of everyone to the highest possible attainable standard of physical and mental health, according to Article 2 of the same Convention without discrimination. In its General Comment on Article 12 the Committee on Economic, Social and Cultural Rights stated that "health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in

[3] Article 11 (1) "The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

dignity."[4] The Committee has also underlined the relevance of non-discrimination as essential to the right to health underlining that "health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party."[5] In this respect, the Committee has pronounced that *"by virtue of paragraph 2 of its article 2 and of its article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health."*[6]The Committee has further emphasised that the States' core obligations with regard to the right to health include "(to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups."[7]

It is on the basis of these recommendations that UNHCR maintains that health care in this law should, at least, include the required treatment that is needed by the asylum applicant, including emergency health care, essential treatment of illness, counselling on reproductive health matters and HIV/AIDS, psychological care and counselling. In this respect, Slovenia should also provide necessary medical and other assistance to applicants who have special needs. To this end, the approach contained in Article 15 (Health Care) of the EU Reception Conditions Directive is instructive as it provides health care rights on a needs basis. Accordingly, UNHCR recommends the following formulation which takes into account the spirit and purpose of having adequate reception conditions with regard to health:

1) In accordance with Article 43, asylum applicants will be entitled to receive the required health care which shall include, at least, emergency care, essential treatment of illness, counselling on reproductive health matters and HIV/AIDS, and psychological care and counselling.

2) In accordance with Article 43, asylum applicants who have special needs shall receive health care or other assistance that is commensurate with these needs, particular attention will be paid to survivors of trauma or torture, especially with regard to cases involving traumatised children.

Article 46 a
Right to Work

The Office considers the restrictions on the right to work in the revised draft to be a considerable hardship for asylum seekers. UNHCR is of the view that it is in the

[4] General Comment 14 (2000) The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant) Adopted by the Committee on Economic, Social and Cultural Rights at its 25th meeting (twenty-second session) held on 11 May 2000.
[5] Ibid para. 12 (b).
[6] ibid para. 18 "Article 12 of the Covenant: Special Topics of broad application.- Non-discrimination and equal treatment"
[7] ibid para. 43.

interest of Slovenia and to the benefit of asylum seekers that they be granted access to the labour market, especially when the length of the asylum procedure exceeds a period of six months. UNHCR's Executive Committee, in its Conclusion No. 93, has recognised that reception arrangements can be mutually beneficial where they are premised on the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with the requisite opportunities to do so. Furthermore, legal access to the labour market removes incentives for informal non-legal employment. In addition, the prospects for the successful integration of refugees are considerably diminished if they can not participate in basic employment activities from the start.

The right to work, access to employment opportunities, enhances human value, meets social and economic need, and is a means for self-reliance and promotes human dignity. Access to employment opportunities, is also closely linked with the "right to a standard of living adequate for the health and well-being of himself and his family" contained in Article 25 (1) of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. Accordingly, asylum seekers should not face severe formal restrictions to enter the job market during the consideration of their claims. This effectively puts them in a position whereby the only way to earn money to meet their basic needs would be to access opportunities for informal employment with all its potential for problems with regard to abuse or exploitation. Therefore, UNHCR would propose that Slovenia provides the right to work for asylum seekers who have been in the procedure for more than six months, and even sooner if practically possible.

Article 46 b.
(Help with Maintenance Chores in the Asylum Home)

UNHCR welcomes the provision to allow asylum seekers to work within the confines of the reception centre provided that the level of remuneration is commensurate with the work that the individual performs and does not infringe the human rights and dignity of the concerned individual.

Ad Amendment to Article 47
(Rights of Refugees)

The new draft proposes to limit the right of refugees to accommodation in the housing facility for a period of one year or financial support for private accommodation for a period up to three years. UNHCR is concerned that a general application of this provision may result in hardship situations, especially for refugees with special needs, including families with children, the elderly and disabled. Furthermore, the amendment is contrary to recommendations made by human rights monitoring bodies.

Article 21 of the 1951 Convention obliges States to "accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances." This obligation has also been incorporated in the EU Qualification Directive in Article 31 which minimally, calls on Member States to "ensure that beneficiaries of refugee or subsidiary protection status have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories."

The right to adequate housing also finds explicit recognition within an array of international and regional instruments, including the Universal Declaration of Human Rights Article 25 (1), the International Covenant on Economic, Social and Cultural Rights (Article 11), the Convention on the Elimination of All Forms of Racial Discrimination Article 5 (e) (iii), the Convention on the Rights of the Child (Article 27), the Convention on the Elimination of All Forms of Discrimination against Women (Article 14 (2), ; the European Social Charter (Article 16).

The UN Committee on Economic, Social and Cultural rights in its General Comment 4 has said that the right to housing denotes the right to live somewhere in security, peace and dignity. It also states that the "human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.[8]" The Committee of Independent Experts, the body responsible for monitoring the European Social Charter, has on a number of occasions questioned policies that distinguish between citizens and aliens residing in the country legally.

The Committee with regard to the nature of State parties' obligations under Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights has stated:

"The principle obligation of result reflected in article 2 (1) is to take steps 'with a view to achieving progressively the full realisation of the rights recognised' in the Covenant… It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."[9]

It would seem that having previously accorded the right to housing in the current law, in terms of Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, the government may be precluded from withdrawing this right without infringing its Article 11 obligation under the Covenant if it is determined that it was not "fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."[10]

Therefore, UNHCR would recommend that the Government of Slovenia grant refugees and beneficiaries of subsidiary protection public housing on the same terms as citizens. As a minimum, refugees with special needs and vulnerabilities should be exempted from the time limitations of housing assistance introduced by the amendments.

Article 59
(Refugee Passport)

[8] UN Committee on Economic, Social and Cultural Rights: General Comment No. 4.
[9] General Comment No. 3 (1990): The Nature of States Parties' Obligations (Article 2 (1) of the Covenant, Adopted by the Committee on Economic, Social and Cultural Rights at its 48th meeting (fifth session) held on 11 December 1990. para 9.
[10] Ibid General Comment No. 3 (1990). Paragraph.

UNHCR has previously expressed its concerns with regard to the shortened length of validity of the travel document. The proposed validity period of one year could bring refugees into difficulties, especially with regard to meeting visa requirements. We encourage the Government of Slovenia to solve the technical problems which seem to be behind this amendment so that refugees will, at least, receive travel documents valid for a period of two years in line with the general practice of State parties.

Additional Suggestions for Amendments based on the EU Asylum Directives

UNHCR would like to take this opportunity to recommend to Government of Slovenia the transposition of a number of provisions contained in the following EU Directives:.

EU Reception Directive
Article 5 (provision of information to asylum Seekers); Article 6 (provision of documentation to Asylum Seekers); Article 10 (schooling and education of minors); Article 12 (access to vocational training); Article 13 (general rules on material reception conditions and health care); Article 18 (minors, thus incorporating the principle of the best interests of the child); Article 19 (treatment of unaccompanied minors); Article 20 (victims of torture and violence) and; Article 21 (appeals to ensure effective remedies with regard to reception conditions)

EU Qualification Directive
Article 26 (access to employment for recognised refugees and persons granted subsidiary protection); Article 27 (access to education for refugees and persons granted subsidiary protection status); Article 28 (1) (access to social welfare); Article 29 (1) and (3): (Access to Health Care); Article 30 (treatment of unaccompanied minors); Article 33 (integration facilities, which should also include beneficiaries of subsidiary protection); Article 34 (Repatriation) and; Article 36 (Staff).

UNHCR Regional Representation for
Hungary, Poland, Slovenia and the Slovak Republic
12 December 2005