UNHCR's comments on the Draft Bill on amending the Aliens Act, the Marriage Act and other Acts (Ref: 2001/7310-81)

1. General comments

At the outset UNHCR wishes to underline that Denmark, as the first country to sign the 1951 UN Refugee Convention, has traditionally been one of Europe's strongest supporters of refugees. UNHCR appreciates the challenges that Denmark faces, with significant numbers of asylum seekers and the related expense of ensuring that their needs are met and their applications for asylum are dealt with fairly. The Office welcomes the stated commitment of the Government of Denmark in the context of this Draft Bill, to adhere rigorously and fully to its various Convention obligations. The support UNHCR has enjoyed by Denmark and the partnership over the past 50 years are exemplary. UNHCR hopes to continue to look to Denmark as a country that leads by example, particularly within the context of the EU harmonisation process. With the assumption of the EU Presidency later this year, Denmark will play an important role in negotiations on various EU Draft Directives on asylum. UNHCR is active in the EU harmonisation process and our Office works very closely with the rotating Presidency. UNHCR looks forward to close collaboration with the upcoming Danish Presidency later this year.

By way of a further initial observation, the *Draft Bill on amending the Aliens Act, the Marriage Act and other Acts*, which we understand was formulated in close reference to the policy document 'A New Policy for Foreigners', gives rise to an overall concern for the Office. Our overall concern stems from the aspects of the proposal, which together cast refugees and immigrants in a negative light. UNHCR has already expressed its preoccupation about the tone of the asylum debate in Denmark, including during the High Commissioner's visit to Denmark on 11 January 2002. In UNHCR's view, it is important to ensure that Government policy proposals concerning asylum-seekers and refugees avoid feeding into prejudices and generalisations about immigrants. UNHCR is working with a number of Government and non-Governmental actors to counter an unfair and negative portrayal of foreigners in the media and other fora. The Office sees this as a necessary public information and education activity, in addition to the imperative to counter rising incidents of xenophobia, intolerance and race-related crime against asylum-seekers and refugees.

UNHCR has greatly benefited from the opportunity to meet with Danish Government officials to discuss the Policy Paper and Draft Bill on 24 January and 28 February respectively, and we have equally benefited from the fact that the Government has made available English translations of the key aspects of the 147 page Bill and commentary. Concerning the Draft Bill and commentary, and with reference to the helpful clarifications which were provided by Government officials on various aspects of the proposal, UNHCR remains concerned that specific aspects of the Bill and commentary appear inconsistent with international refugee and human rights law.

Pursuant to its statutory responsibilities and Article 35 of the 1951 Convention, UNHCR's comments are put forward in a constructive spirit, in the hope that they will assist the authorities in reconsidering aspects of the law proposal. The below comments follow the presentation of issues as formulated in the English translation of the law text which was shared with UNHCR.

2. Section 2.1 of the Draft Bill: "Abolishment of the *de facto* refugee concept"

UNHCR has been advised that the abolition of the *de facto* refugee concept should not be understood as meaning that complementary forms of protection will be abolished. UNHCR has been further advised that the Draft Bill intends to extend protection to all persons for whom Denmark has an international obligation to do so. The Bill thereby incorporates a modification to ensure that persons protected under provisions of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocol No. 6, as well as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) will be specifically provided for in the *Aliens Act*. The commentary to the Draft Bill, and explanations provided to the Office, indicate that the Government considers it necessary to amend the *Act* to spell out these human rights protections and their origins in order to be more precise about those for whom Denmark has assumed Convention based international legal responsibilities. Presently the *Act* does not identify the specific legal grounds on which so-called 'protection status' can be granted under Danish law. UNHCR was also told that persons recognised under this proposed category of 'protection status' would be granted rights akin to those of Convention refugees in Denmark, with the exception of Convention travel documents, which would only be available to Convention refugees.

2.1 Reference to 'temporary protection'

UNHCR understands the priority objective of ensuring that Denmark's international legal obligations are clearly reflected in domestic law. UNHCR would however recommend that the Danish Government consider incorporating in legislative form, the provision of temporary protection to persons who fulfil the requirements as set forth in the EU Directive on Temporary Protection (Council Directive 2001/55/EC of 20 July 2001). As was specifically noted in UNHCR's preliminary comments on the new policy for foreigners of 30 January 2002, the possibility of granting temporary residence permits to groups other than those specified in § 9 e (1) and (2) of the *Aliens Act* (i.e. persons from the Former Yugoslavia and Kosovo) should be provided for.

During the meeting with the Danish Permanent Representative to the UN at Geneva and other Government officials on 28 February , UNHCR was advised that the Government was in the process of consultations with the EU Commission with a view to "opting into" the Temporary Protection (TP) Directive. UNHCR welcomes the intention of Denmark of implementing the TP Directive. In light of the overall importance of ensuring that a TP regime is put in place, and in consideration of the scope of reform which is proposed by the law proposal, UNHCR would welcome if the Government reflected the introduction of a TP provision in the Draft Bill and commentary.

2.2 The refugee definition and complementary forms of protection

Under § 7(2) of the Draft Bill concerning complementary forms of protection, the law proposal exclusively refers to death sentence, or torture or expulsion to inhuman or degrading treatment or punishment as reasons for the granting of complementary protection. The proposal, as currently formulated, therefore falls short of protection for other categories of persons of UNHCR's concern because they are in need of international protection.

UNHCR's paper to the Standing Committee of the Executive Committee on 'Complementary Forms of Protection' of 9 June 2001 (EC/50/SC/CRP.18) specifically identifies so-called complementary forms of protection to "cover persons outside their countries who are in need of international protection because of a serious threat to life, liberty or security of the person in the country of origin, as a result of armed conflict or serious public disorder; for example, persons fleeing the indiscriminate effects of violence and the accompanying disorder in a conflict situation, with no specific element of persecution …." (para. 10). From UNHCR's perspective, the term "refugee" applies both to persons coming within the scope of the 1951

Convention and 1967 Protocol, and to people fleeing the indiscriminate effects of armed conflict or generalised violence, albeit with no specific element of persecution. The UN General Assembly and UNHCR's Executive Committee have for many years called upon UNHCR to provide protection and assistance to such persons coming within this "broader" refugee definition. The Danish law proposal in describing the scope of § 7(2) is devoid of any reference to this category of persons in need of international protection.

In UNHCR's view, a more acceptable formulation of the provision in § 7(2) could read as follows:

> "Denmark shall grant subsidiary protection status to an applicant for international protection who is outside his or her country of origin, and cannot return there for reasons outside of the scope of the definition of Convention refugee under Section 7 (1) and owing to:
> a) the risk of death penalty or being subjected to torture or inhuman or degrading treatment or punishment; or
> b) indiscriminate threats to life, physical integrity or liberty resulting from generalised violence or events seriously disturbing public order;
> with no element of persecution or link to a specific Convention ground."

UNHCR recommends that the Bill be amended accordingly.

UNHCR understands that the comments to the Bill are meant to provide authoritative guidance to the Danish decision-making authorities. In this regard, UNHCR has noted that the comments make reference to specific categories of persons who would be affected by the law proposal. There are two categories of persons referred to in the comments which raise particular concerns to our Office and in regard to which UNHCR would suggest clarifications in the commentary:

- One is the reference to draft evaders and deserters who, in UNHCR's view, fall under the 1951 Convention refugee definition under a number of circumstances. For example, draft evaders and deserters facing disproportionate punishment, or whose actions are based on conscientious objection or who do not wish to participate in an internationally condemned conflict belong to categories of persons who may be recognized as Convention refugees.

- A second category identified in the comments are persons who have faced serious, previous persecution such as "torture or other outrages, such as rape". In this context, UNHCR wishes to recall that it is internationally recognized that there may be compelling reasons arising out of previous persecution for which refugees, when a risk of persecution ceases to exist, can refuse to avail themselves of the protection of their country of origin. It is for this reason that Article 1C(5) of the 1951 Convention provides for an exemption to cessation of refugee status. We would like to stress that the act of rape, in particular, is recognised as an international crime and it is not understandable why victims of such crime would be specifically excluded from international protection and the scope of Section 7 (2) of the *Aliens Act*.

As concerns how politically and practically Denmark would consider victims of such violence to being removed from Denmark, UNHCR has been informed that § 9 b of the Draft Bill, which permits the grant of residence permits to persons who, in cases not falling within § 7(1) or (2), are "in such a position that essential considerations of a humanitarian nature conclusively make it appropriate to grant the application", may be applicable. As categories of persons who may be granted this 'humanitarian status', UNHCR has been advised that certain groups of persons from areas experiencing civil unrest would fall under Section 9 b *Aliens Act* and would thereby be permitted to remain in Denmark on humanitarian grounds, such as Afghans and Somalis not qualifying for refugee or protection status. While this

provides some reassurance, UNHCR prefers that international protection needs, rather than humanitarian compassion, be set out as the basis for granting such persons permission to stay.

UNHCR has noted the repeated assertion in the comments to the Bill that the Danish Government does not feel obliged to afford international protection in cases where there is no specific treaty obligation. In UNHCR's view, a state's legal obligations under international treaties must be seen in the proper context, as the praxis and interpretation of international treaties, which include international refugee and human rights instruments, go beyond the categories of victims of persecution or human rights violations noted in the Draft Bill. Furthermore, such treaty obligations are subject to a continuing evolution in state practice and jurisprudence, which the law proposal and commentary fail to reflect.

3. Section 2.2 of the Draft Bill: "Tightening of the first country of asylum rule"

On the issue of the 'first country of asylum' rule, UNHCR has taken note of § 7(3) of the Draft Bill which *inter alia* provides that an alien may be refused a residence permit under § 7(1) and (2) if he or she "has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed to be able to obtain protection". UNHCR has been advised that this provision means that the foreigner should have close ties with the other country, which normally means the person has formerly resided there. The basic criteria noted on pages 17-18 of the translated commentary include the asylum seeker's ability to enter and take up lawful residence; and his/her personal integrity and safety being protected in that country, including against *refoulement*. UNHCR has been further advised that the actual 'tightening' of this rule, as noted in the heading under this section of the commentary, would be that the 'personal balancing' test would be abolished. This test means that the authorities would weigh the applicant's ties to Denmark in comparison with his or her ties in the third country. In future only the ties with a third country would be assessed.

UNHCR wishes to note that its Executive Committee Conclusion No. 58 (1989), focuses on the need for "effective protection" if an asylum seeker is being returned to a country of first asylum. UNHCR is concerned that the formulation of § 7(3) is vague, in so far as it does not refer to the actual possibility for the refugee to re-avail him or herself of the previously enjoyed protection in another country. A question on this aspect of the Draft Bill therefore is whether it would be applied to applicants who are not readmitted, and can for other reasons not return to other countries of asylum, and if so, what would their status in Denmark be?

Finally, the reference to Palestinians from Lebanon in the commentary to the Draft Bill raises the question as to why this particular group of refugees is singled out, and whether the Danish authorities are of the view that indeed Lebanon does offer protection to all Palestinian refugees who have chosen, or are obliged, to leave that country.

4. Section 2.3 of the Draft Bill: "Abolishment of the possibility of applying for asylum from Danish missions abroad"

Notwithstanding UNHCR's earlier recommendation, as noted in UNHCR's preliminary comments of 30 January, that the practice of asylum seekers with ties to Denmark being able to apply for asylum at diplomatic missions abroad should continue, the Draft Bill proposes that this practice (previously § 7(4) Aliens Act) be abolished. UNHCR has been advised that the principal reason for the abolition of this procedure is to save money, as the expense of processing these applications at diplomatic missions abroad is too burdensome In UNHCR's view, the abolition of this practice would be regrettable, as it would foreclose the possibility of persons with protection needs and links to Denmark to seek protection in Denmark through a more direct application process. UNHCR has promoted this unique aspect of the Danish system with other countries as a 'best practice'. It is furthermore the Office's view that such

a practice may actually help reduce the number of asylum seekers and refugees who have close ties to Denmark, from choosing to 'move irregularly' to enter the country. UNHCR reiterates its recommendation that the Draft Bill be amended so as to permit the continuation of this overseas asylum application process.

5. Section 2.4 of the Draft Bill: "Refusal of entry to asylum seekers and return to safe third countries"

§ 48a of the Draft Bill *inter alia* provides that: "Return … may only be effected to a country which has acceded to and in fact honors the 1951 Convention, and which provides access to an adequate asylum procedure. Return … may not be effected to a country where the alien will be at risk of the death penalty or of being subject to torture or inhuman or degrading treatment or punishment, or where there is no protection against return to such country."

UNHCR notes and welcomes the inclusion of additional criteria in the provision on "safe third countries". It is UNHCR's view that, apart from the Dublin Convention procedure and any appropriate successor instrument, returning an asylum seeker to another country based on the 'safe third country' concept must be accompanied by a case-by-case determination, within a fair procedure, that the individual asylum seeker will:

- Be re-admitted to that country;
- Enjoy there effective protection against *refoulement*;
- Have the possibility to seek and enjoy asylum in that country; and
- Be treated in accordance with accepted human rights standards.

UNHCR's formulation of the necessary criteria, as noted above, for such returns differs from that in the commentary to the Draft Bill. UNHCR recommends that the Danish law proposal reflect all of these criteria so as to avoid ambiguity, or the possibility of an overly broad application of discretionary authority. The specific phrase to 'be treated in accordance with accepted human rights standards', is particularly important in the context of avoiding asylum seekers being returned to countries where they may be subject to mandatory and/or long-term detention. UNHCR further recommends that the phrase "fair and efficient" procedures as opposed to the formulation in the translation of "adequate", be used in the Draft Bill. While the criteria in § 48a are generally acceptable along with the above qualification, in UNHCR's view there should additionally be an appeal possibility with suspensive effect in all cases being considered for third country returns.

In discussions on this aspect of the Draft Bill with Government officials, UNHCR was advised that, as outlined in the commentary, UNHCR would be consulted on which 'third countries' may be come into consideration in applying this provision. While UNHCR welcomes the envisaged consultations, it wishes to note that the organization will not be in a position to pronounce itself in general terms on the safety of a third country as this has to be assessed on a case-by-case basis. Moreover, it is not clear to UNHCR whether, in practice, there is a consultation procedure with a third country prior to a transfer of an asylum seeker, so as to obtain the explicit consent of readmission to the third country, as well as admission to an asylum procedure for the individual concerned.

6. Section 3 of the Draft Bill: "Tightened conditions for the issue of permanent residence permits"

Under this sub-heading of the commentary to the Draft Bill, the Government has proposed a significant change in the number of years, from 3 to 7, of residence required for a refugee to be granted a 'permanent residence' permit. In this connection UNHCR was advised that the counting of the 7-year period would only begin when an individual was granted status in Denmark, for example refugee or humanitarian status, and would not include time spent in the procedure.

While this aspect of the proposal is clearly a policy choice, it is at odds with the practice of a number of EU States which either choose to grant permanent residence status immediately after a refugee is recognised as such, or do so after a lesser number of years of residency, normally 5 years or less. The EU proposals on this issue are moving towards adopting a 5-year timeline that counts the time spent in the asylum procedure. Furthermore, in the refugee context the declarative nature of recognition of refugee status should be considered in order not to prejudice an applicant for time spent in the procedure. The draft EU Directive on Long-Term Residents also includes important exemptions as regards qualifying conditions for refugees, including economic means tests and insurance coverage.

In UNHCR's experience, it is important to grant appropriate legal status to refugees in as short a time as possible, in order to facilitate their social acceptance and integration prospects. UNHCR is concerned about the signal this provision sends to the immigrant community in particular, and how it may actually work against the Government's desire to promote integration of foreigners and refugees if they have to wait so long in order to be considered 'permanent residents' and are faced with the insecurity of a possible revocation (see below) of their temporary residence permits during this period.

UNHCR recommends that the waiting period to be granted permanent residence status as presently formulated in the Draft Bill be amended in line with the above comments. In the case of persons who have been recognized as being in need of international protection, no longer than 5 years, which would include the amount time spent in the asylum procedure, should, in our view, be required in order to gain permanent residence status.

7. Section 4 of the Draft Bill: "Enhanced access to revocation of residence permits"

As concerns the criteria for revocation of non-permanent residence permits (which covers cessation of refugee status) contained in § 19 *Aliens Act*, UNHCR was advised that there will always be a balancing of criteria, and in the comments to the Bill it is noted that any revocation decision would be taken as a separate assessment by the Danish Immigration Service and the Refugee Board. In the refugee context, the commentary refers to Article 1(C)(5) of the 1951 Refugee Convention as well as paragraph 139 (exemption to cessation) of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. UNHCR is of the opinion that in cases of very serious past persecution, even if there is no prospect of future persecution, the refugee should be granted continued protection in Denmark. UNHCR has been further informed that Article 1(C) criteria would only apply to persons granted Convention refugee status, and for those individuals granted 'other protection status' such status would not be revoked where a person risks torture, human rights violations or if it would be particularly burdensome to the person. The doctrine of "acquired rights" may also come into play for refugees who have been in Denmark over a period of years.

This aspect of the law text in the Draft Bill does not refer to the entirety of the cessation criteria in the 1951 Refugee Convention. So as to avoid any ambiguity under this important aspect of international refugee law, the full provisions of Article 1(C) of the 1951 Convention should be reflected in the text of the Draft Bill. UNHCR further recommends that the commentary to the Draft Bill reflect the fact that in cases where Denmark is deciding on the application of the cessation clauses, UNHCR may be consulted in evaluating the impact of changes in the country of origin or in advising on the implications of cessation of refugee status in relation to large groups of refugees on Danish territory. Such an involvement of UNHCR would be in line with the Office's supervisory role under its Statute in conjunction with Article 35 of the 1951 Refugee Convention and would be consistent with the views of the Executive Committee as noted in its Conclusion No. 69 (1992).

8. Section 5.1 of the Draft Bill: "Composition of the Refugee Board"

A further amendment in the Draft Bill of § 53 (2) *Aliens Act* is to change the composition of the Refugee Board so as to remove representation of the Danish Refugee Council (DRC) and the Ministry of Foreign Affairs. UNHCR is concerned about the motivation for removing the DRC from the Refugee Board. The Office has been advised that the DRC's presence over the last several years has never been problematic, and indeed the DRC brings much experience and expertise to the deliberations of the Board. UNHCR has also been informed by Government officials that the Refugee Board almost always takes unanimous decisions, which is indicative of a well-functioning decision-making body. It is UNHCR's view, that the representation of civil society in, and the cumulative experience the DRC brings to the Danish asylum procedure in its various aspects, is worth preserving. The role of the DRC has been promoted by UNHCR as a model of 'best practice' for other countries. In this context the Conclusions on Supervisory Responsibility coming out of the Expert Consultation within the UNHCR Global Consultations on International Protection have noted the importance "to ensure that non-governmental organizations have a proper role in the process of supervision" of the implementation of the 1951 Refugee Convention.

UNHCR reiterates its plea to maintain the DRC on the Refugee Board, as well as in other aspects of the Danish asylum procedure.

9. Section 5.3 and 5.4 of the Draft Bill: "Processing of cases under the manifestly unfounded procedure"

This aspect of the Draft Bill provides that the manifestly unfounded procedure is to be applied in more cases (§ 53b *Aliens Act*). The proposal further notes that in potentially a large number of cases the chairperson of the Refugee Board could alone decide on such cases. The proposal also recommends the abolition of the so-called 'one night rule' to allow for processing of claims in one day, and would permit the use of manifestly unfounded procedures in cases which concern credibility ("unreliability") issues.

As concerns the notion of manifestly unfounded claims, UNHCR's Executive Committee in its Conclusion No. 30 (1983) defines such claims as either (i) clearly abusive or fraudulent, or (ii), not related to the criteria for refugee status. UNHCR would not agree to the scope of manifestly unfounded claims going beyond these two categories. Those asylum claims that require complex assessments, such as the application of the so-called internal flight alternative, or that involve difficult issues of credibility, cannot be handled in an accelerated procedure. Similarly an asylum-seeker's lack of documentation, or use of forged documentation cannot, in itself alone, render his or her refugee claim manifestly unfounded.

The proposal further suggests that an "expedited manifestly-unfounded procedure" be undertaken in only one day. UNHCR questions whether this is logistically possible, and whether sufficient safeguards can be put in place to ensure a fair determination procedure. Given the current formulation of the respective provision of the Draft Bill (§ 53 b (2) *Aliens Act*) UNHCR is also concerned that use of the 'less than one night' procedure, as presently formulated in the commentary, may become the normal practice and not, as UNHCR was advised, the exception. Furthermore, to allow the Chairperson of the Refugee Board to deal with manifestly unfounded cases on his or her own may overburden the Chairperson and delay decision-making. These various procedural changes – as such minor on their own – may, in their entirety, have the effect of reducing the quality of the manifestly unfounded procedure, which could lead to erroneous decisions.

10. Section 5.5 of the Draft Law: "Immediate departure upon final refusal of asylum"

The Draft Bill provides that asylum seekers whose applications are rejected are to leave the country immediately and not, as is the practice today, within 15 days. UNHCR feels that this

aspect of the proposal should be modified to allow rejected asylum seekers a reasonable time to exhaust appeal possibilities. As concerns exhaustion of appeal procedures, UNHCR was advised that the responsible authorities would wait for a decision on a humanitarian application, for example, before executing a removal order. UNHCR was also advised that rejected asylum seekers would be expected to apply for humanitarian status on the same day as they received the rejection decision, and if they did so afterwards then special consideration would have to be given as to whether the applicant could remain in Denmark pending the outcome of the application. Our Office was further informed that rejected asylum seekers in this position would be provided guidance and legal advice on these matters, and applicants before the Refugee Board would be provided with a lawyer.

Given the importance of these procedural safeguards, which UNHCR commends, it is recommended that they be specifically spelled-out in either the law text and/or the commentary to the Bill.

11. Section 7: "The Family Reunification Field"

This aspect of the proposal entails the abolition of the statutory rights to reunification with members of the core family (spouses, children and parents above the age of 60). UNHCR has however welcomed the advice it received that recognized refugees who are married when they come to Denmark, will not be required to meet the financial and other requirements in order to be granted family reunification. UNHCR was also advised that the rules would be more stringent in cases where refugees got married after arriving in Denmark.

The Draft Bill suggests that refugees who have been granted asylum in Denmark based on family ties, and who later marry someone from a third country may, depending on the closeness or otherwise of their ties with Denmark, be asked to join the spouse in his or her country of residence. In UNHCR's view, it should be an important consideration that recognized refugees are at quite a disadvantage as regards joining a spouse in a third country due to their status as refugees, which carries with it difficulties in moving from the country of refuge. Depending on the spouse's country of origin, the refugee may be unable to relocate there for security reasons linked to refugee status. Recognized refugees, just as persons enjoying other forms of international protection, may fail the test of *returnability* enunciated by the European Court of Human Rights in a number of decisions concerning Article 8 of the European Convention on Human Rights (ECHR).

It is also important to bear in mind that the UNHCR Executive Committee has repeatedly recognized the importance of the principle of family unity and has called upon states "to implement *measures to facilitate family reunification of refugees on their territory*, especially through the consideration of all related requests in a positive and humanitarian spirit …." (Executive Committee Conclusion No. 85 (1998), at Para. (w). The UN Human Rights Committee has further recognized that the "the right to found a family implies, in principle, the possibility to procreate and live together". The Human Rights Committee has underscored that the possibility to live together implies the adoption of appropriate measures "both at the internal level and as the case may be, in cooperation with other states, to ensure the unity and reunification of families, *particularly when their members are separated for political, economic or similar reasons*" (General Comment 19 of the Human Rights Committee on 'Protection of the family, the right to marriage and equality of spouses' (Article 23), 1990, at Para. 5).

Given the particular vulnerability which characterizes the situation of many refugees, and considering the fact that recognized refugees have already had their lives disrupted by being forced to leave their country of origin, it is UNHCR's view that particular consideration should be given to allowing refugees residing in Denmark to be joined by their family and spouses in Denmark. In brief, UNHCR recommends that there should be a specific exemption for Convention refugees as concerns constraints on family reunification, whether such

reunification is based on a pre-existing marriage or a marriage which is entered into after asylum has been granted.

A related concern of the Office is that both Convention refugees, as well as those granted subsidiary protection under § 7(2), may have to wait more than three years in order to have their family reunification applications processed, as the new rules would not permit an applicant receiving any public benefits to be joined by a spouse. As the Danish integration programme is three years in length, this could result in refugees and other protected persons waiting at least three years before they can *apply* to be joined by family members. In the case of persons granted humanitarian status under § 9 b *Aliens Act*, under the terms of the Draft Bill they would have to wait "at least 7 years" in order to obtain permanent residence status, hence before being able to benefit from family reunification.

UNHCR has been advised that, for example, in the case of a person granted humanitarian status, family reunification may be granted under § 9 c *Aliens Act* if a denial would be contrary to Article 8 of the ECHR (9c *Aliens Act* provides *inter alia* that "a residence permit may be issued to an alien if exceptional reasons make it appropriate"). Nevertheless, the scope of the provision in practice, in addition to the very long waiting period, is of general concern to our Office. Furthermore, the jurisprudence concerning Article 8 of the ECHR and the grant of family reunification generally addresses situations whereby one spouse is subject to an expulsion or removal order based on criminality or other grounds. This case law is distinguishable to the situation of refugees and other protected persons, and it is therefore difficult to see how the current jurisprudence under Article 8 of the ECHR could be used directly to interpret the grant of family reunification to the benefit of refugees and other protected persons.

A related issue in the Draft Bill, is the rule that would only permit reunification of spouses who are at least 24 years of age. The proposal suggests restricting the ability of asylum seekers to enter into marriage under the terms of the Danish *Marriage Act*. The commentary to the Bill appears to make little distinction between what UNHCR agrees is the unacceptable practice of 'forced marriage', and 'arranged marriage' which is common in many cultures. In UNHCR's view it is incorrect to compare the two. Furthermore, it is difficult to assess how merely raising the age for legal marriage in Denmark would have the desired effect of limiting the incidents of forced marriage. Public education on the issue of forced marriage may be an effective approach.

A related consideration is whether it would be desirable from a policy perspective to restrict the ability of asylum seekers and refugees to marry in Denmark. In UNHCR's view, this aspect of the proposal may be inconsistent with a proper interpretation of Articles 8, 12 and 14 of the ECHR, and Articles 23 and 26 of the International Covenant on Civil and Political Rights.

12. Social benefits

The Draft Bill suggests that in order for individuals to obtain full social welfare benefits they must have resided in Denmark for at least seven out of the preceding eight years. This proposal applies to both "foreigners" and Danish citizens. A somewhat related proposal, linked to the introduction of the Danish *Integration Act*, was discussed with the Danish Government in 1998. UNHCR provided extensive comments on the 1998 proposal. The present proposal is different, however, in that it endeavors to bring in some parity of treatment as between refugees and Danish citizens.

During UNHCR's meetings with Danish Government officials on 24 January and 28 February, questions were raised about aspects of the policy proposal in the context of Articles 23 and 24 of the 1951 Refugee Convention. Moreover, the question was put as to whether it was equitable to compare a returning Dane to a refugee for the purposes of

assessing the need for social welfare benefits. With regard to international refugee law, Article 23 of the 1951 Refugee Convention promotes the equal treatment of refugees with nationals, but as such, i.e. not with selected sub-categories of nationals. There is no reference in the Article to nationals "in the same circumstances", as otherwise appears in some articles of the Convention. In any case, clearly a refugee who does not have the same background in and knowledge of the society, the same social and family ties, a comparable grasp of the language, or an economic base on par with a returning Danish citizen, could not be said to be in a comparable position.

UNHCR would hope that proper consideration be given to the special situation of refugees, who do not choose to flee their countries of origin. Refugees lack the networks that can compensate for lost assistance of the sort Danish nationals normally can rely on. Furthermore, it is at the early stages of their arrival and integration, often from situations of deprivation and trauma, that refugees need maximum support. At another level, UNHCR would be concerned should such a reduction somehow send out a negative message about the contribution being made by refugees to Danish society by implying, wrongly in UNHCR's view, that it cannot offset any welfare burden they may constitute.

UNHCR therefore questions the rationale, and the legality, of this provision of the Draft Bill.

13. Concluding Remark

UNHCR would be pleased to provide any clarifications on aspects of the above comments, or on any other related matter the Government or Parliament may wish to raise. UNHCR appreciates this opportunity to provide its views on this important law proposal, and it looks forward to a continuing dialogue with Denmark.

UNHCR Geneva
18 March 2002