

UNHCR Observations on the proposed amendments to the Danish Aliens legislation:

Lov om ændring af udlændingeloven (Ny kvoteordning)

I. INTRODUCTION

1. The UNHCR Regional Representation for Northern Europe (hereafter “RRNE”) is grateful to the Ministry of Immigration and Integration for the invitation to express its views on the law proposal dated May 16 2017, but submitted for comments September 9, 2017 to further amend the Danish Aliens Act (hereafter referred to as the Proposal).¹
2. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to refugee problems, as outlined in Paragraph 1 of UNHCR’s Statute.² In the context of resettlement, it is important to emphasize that UNHCR’s role encompasses direct actions that aim to achieve the goal of seeking solutions for refugees as stated in its Statute. This direct engagement translates into a central role for UNHCR in the resettlement process, which is distinct from yet complementary to UNHCR’s supervisory responsibility. Equally important, owing to its operational and first-hand engagement with refugees, host communities and host countries, UNHCR is uniquely positioned to identify situations where resettlement can be used strategically so that it does not only benefit those who are being resettled but also brings protection dividends to the rest of the refugee community (for example, through improved access to asylum). The strategic use of resettlement coupled with it being one of many protection tools deployed by UNHCR in countries of asylum may, in some cases, mitigate the potential for secondary movements and reduce the influence of trafficking/smuggling networks.
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereafter “UNHCR Handbook”), subsequent Guidelines on International Protection³ and the UNHCR Resettlement Handbook.⁴ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.
4. The following comments are based on international protection standards set out in the 1951 Convention, in international human rights law, on Conclusions on International

¹ English translation (2013 version, thus not including subsequent amendments) available at: https://www.nyidanmark.dk/NR/rdonlyres/2A42ECC8-1CF5-4A8A-89AC-8D3D75EF3E17/0/aliens_consolidation_act_863_250613.pdf (hereafter “Aliens Act”).

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

³ UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

⁴ UN High Commissioner for Refugees (UNHCR), *UNHCR Resettlement Handbook*, 2011, July 2011, available at: <http://www.refworld.org/docid/4ecb973c2.html>.

Protection of the UNHCR Executive Committee (hereafter “ExCom”), and on UNHCR guidelines. While neither UNHCR ExCom Conclusions nor UNHCR guidelines are binding on States, they contribute to the formulation of *opinio juris* by setting out standards of treatment and approaches to interpretation, which illustrate States’ sense of legal obligation towards asylum-seekers and refugees.⁵ As a member of the UNHCR ExCom since its inception in 1951, Denmark has contributed extensively to the development of the Conclusions on International Protection, adopted unanimously by the ExCom.

II. THE PROPOSAL

5. Denmark has been receiving refugees through resettlement since 1979 in collaboration with UNHCR. In this context, cases referred to Denmark have been identified and found in need of resettlement by UNHCR. Until 2015, the size of the yearly programme has been decided by Parliament, and has until 2015 consisted of some 1500 refugees over a three-year period (some 500 individuals per year). Throughout the years, the relevant Ministry has been tasked to decide on the overall details of the quota, following which the Danish Immigration Service (DIS) has organized selection missions once or twice a year, together with the Danish Refugee Council (DRC) to countries of asylum, in order to interview resettlement candidates. Interviews have been carried out in order to ensure that the requirements in Article 8 of the Danish Aliens Act are met in each case.
6. The Proposal notes that Denmark, in the last few years, has seen an important increase in the number of arriving asylum-seekers and in the issuance of residency permits to aliens. This has generated increasing challenges for the Government both in terms of the processing of numerous asylum claims and in terms of the need to subsequently integrate high numbers of recognized refugees and other aliens into Danish society. These high numbers are also given as a justification for ceasing the resettlement of refugees to Denmark for the years 2016 and 2017.
7. The Proposal adds that the Government nevertheless considers that Denmark will accept resettled refugees in the future and thus support global efforts. The Proposal also states that it is in the interest of Denmark to curb human smuggling and reduce spontaneous arrivals of asylum-seekers to Europe. Should this be successful, Denmark will be in a better position to control the arrivals of refugees to Denmark, which in turn could allow Denmark to re-activate its resettlement program.
8. In order to be able to make decisions in a more “flexible” manner on whether to accept quota refugees during one particular year, the Proposal now wishes to give the Minister of Immigration and Integration the power to decide on the number of refugees (including whether to accept any at all) that Denmark is able to resettle each year.⁶ According to the Proposal, the assessment on the number of quota refugees Denmark is capable of receiving on a yearly basis, shall depend on both the social and financial capacity of the country at the time of decision. The assessment, if such capacity is available, will primarily rely on three factors;
 - The number of asylum-seeker arrivals during previous years, although no definition is provided on the meaning of the term “previous years”. Neither are

⁵ Goodwin Gill/McAdam, *The Refugee in International Law*, Oxford University Press, 2007, p. 217.

⁶ Proposed to be done in practice through inserting a concrete reference to the number of quota refugees to be accepted (in addition to only “the overall details”) into Article 8:6 of the Aliens Act.

any figures used to pinpoint what number would be considered too high in the context. The Proposal also notes that it is not possible to predict how many asylum-seekers will arrive in a given year.

- The number of residence permits issued to aliens during previous years, although again no definition is provided as to the scope of the term “previous years”, nor to how many permits would be regarded as exceeding a specific threshold. UNHCR understands that the Proposal does not distinguish between permits granted based on international protection needs⁷ and others, and thus refers to any permits granted to aliens in general.
 - The level of integration among aliens already in Denmark. The Proposal does not distinguish between aliens granted international protection and other aliens. The Proposal refers to the following elements, although not exhaustively, when making the assessment on the level of integration; the number of aliens employed or enrolled as students beyond high school level, the number receiving welfare benefits, the number possessing satisfactory Danish language skills, the number of individuals committing crimes, the number of individuals perceiving themselves as “recognized by Danish society”, the number “actively participating” in society, the number feeling “limited by family traditions and/or social control” and number of “ghetto” housing areas in the country. Again, the Proposal does not provide any guiding figures nor guidance as to how the various elements are to be measured.
9. In addition to the above, the Proposal states that other considerations may also be considered in the capacity assessment, such as the number of rejected asylum-seekers still remaining in the country. The Proposal concludes that there need not necessarily be a positive development regarding all the above mentioned factors when deciding whether to accept quota refugees a given year. The Proposal also abolishes the current practice, whereby unused funds allocated for resettlement would automatically be channeled into the development aid budget.

III. OBSERVATIONS

General observations

10. 2016 marked a ground-breaking year in the world, with UNHCR submissions of refugees for resettlement reaching a 20-year high of more than 162,500, and over 125,800 refugees departing on resettlement to rebuild their lives in safety. In addition, there was a broadening and diversification in the number of resettlement States, with 37 in total engaged in resettlement programming. During the year, established resettlement countries increased their programmes, and new resettlement States, particularly in Europe, implemented activities for the first time.⁸
11. By contrast, the number of people forcibly displaced continues to grow. Throughout 2016, violent conflict and persecution, compounded by rising food insecurity, environmental degradation, poor governance and countless other factors drove more than three million people to leave their countries of origin, joining millions of others already forcibly displaced. Many more people were trapped or uprooted inside their

⁷ Under Article 7 or 8 of the Danish Aliens Act.

⁸ UN High Commissioner for Refugees (UNHCR), *UNHCR Projected Global Resettlement Needs 2018*, June 2017, available at: <http://www.refworld.org/docid/5948ea944.html>

own countries. Political solutions and prospects for peace remained elusive in most situations, and while some did manage to return home or to find other solutions, at the end of 2016, the global number of people of concern to UNHCR stood at 65.6 million.

12. In 2017, the global resettlement landscape has also been characterized by important fluctuations in State quotas, resulting in a net decrease in the number of resettlement places now available. European resettlement has therefore become an increasingly important part of the global resettlement program and will be critical in fulfilling the commitments expressed in the New York Declaration, to provide resettlement places and other legal pathways on a scale that addresses the needs identified by UNHCR.⁹ More than 1,19 million displaced persons remain in need of resettlement, and the present need in 2017 of those already submitted for resettlement amounts to approximately 45,000.
13. It is against this background that UNHCR sincerely regrets the Danish decision to halt both the 2016 and 2017 quotas, as global solidarity is currently needed to a greater extent than in a long time.

Specific observations

The humanitarian nature of resettlement

14. UNHCR wishes to assert that resettlement is first and foremost a humanitarian activity intended to provide international protection and meet the specific needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge. Resettlement is also a tool to provide a durable solution for larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration. It can also be seen as a tangible expression of international solidarity and a responsibility sharing mechanism, helping States to share responsibility for refugee protection, and reduce problems impacting the first country of asylum. It also provides refugees with effective access to international protection in the form of secure legal status and rights with a view to a durable solution.
15. In addition to the needs identified at the individual level, UNHCR uses resettlement as part of a collective international effort to realize solutions and improve the protection environment in first countries of asylum. UNHCR has continuously urged States to follow this approach, which in practice means that an increase in protection based resettlement in turn supports a host country's capacity to continue to ensure international protection for those on its territory. This strategic use of resettlement may, in some cases, mitigate the potential for secondary movements and reduce the influence of trafficking/smuggling networks.¹⁰

⁹ Recently concretely recognized by the EU/EC and European states overall, with a call for "a new resettlement scheme for at least 50,000 refugees" by the European Commission. State of the Union press release available at: http://europa.eu/rapid/press-release_IP-17-3406_en.htm

¹⁰ UN High Commissioner for Refugees (UNHCR), *Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council UNHCR's Observations and Recommendations*, November 2016, page 2, available at: <http://www.refworld.org/docid/5890b1d74.html>.

The New York Declaration

16. The adoption of the New York Declaration for Refugees and Migrants by all 193 UN Member States on 19 September 2016 was a pivotal moment. It reaffirmed the importance of the international protection regime and paved the way for achieving a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees.¹¹
17. As one of the recognized durable solutions for refugees, the importance of resettlement is also duly acknowledged in the New York Declaration, as are complementary pathways of admission. United Nations Member States, including Denmark, expressed their intention "*to expand the number and range of legal pathways available for refugees to be admitted to or resettled in third countries*".¹² They also urged "*States that have not yet established resettlement programmes to consider doing so at the earliest opportunity*" and encouraged States with existing resettlement programmes to consider increasing their size.¹³ There are similar commitments in the CRRF, also supported by Denmark, where United Nations Member States also indicate their "*aim to provide resettlement places and other legal pathways on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met*".¹⁴
18. Against this background, resettlement remains an essential protection tool as well as a clear demonstration of responsibility sharing and global solidarity for refugee protection, which is at the heart of the Comprehensive Refugee Response Framework as agreed to by States in the New York Declaration. UNHCR therefore regrets the recent developments in Denmark, further restricting asylum space in general, which come at a time when the international community is otherwise recognizing the need for more complementary pathways to protection, as a way of preventing deaths along dangerous routes and breaking the monopoly of human smugglers and traffickers.

The financial and social capacity of a resettlement country

19. Resettlement remains a humanitarian activity that is driven by the imperative to provide protection and solutions to refugees. As such, resettlement, by design, is not envisioned to act as a migration management tool.¹⁵ It should therefore also not be made conditional on non-refugee protection related elements such as the ones presented in paragraph 8 above. Here UNHCR wishes to emphasize that although it is becoming increasingly common to see the terms 'refugee' and 'migrant' used interchangeably in media and public discussions, there is a crucial legal difference between the two. Refugees are people outside their country of origin because of feared persecution, conflict, violence, or other circumstances that have seriously disturbed public order, and who, as a result, require 'international protection'. Resettlement

¹¹ UN General Assembly, New York Declaration for Refugees and Migrants : resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html>

¹² *Ibid* para 77.

¹³ *Ibid* para 78.

¹⁴ *Ibid*

¹⁵ UN High Commissioner for Refugees (UNHCR), *Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council UNHCR's Observations and Recommendations*, November 2016, page 1, available at: <http://www.refworld.org/docid/5890b1d74.html>

should therefore at all times be underpinned by protection considerations for the refugees concerned. This should include a focus on vulnerability criteria and the overall protection context in which programmes are implemented with a view to ensuring the best possible protection outcomes.

20. UNHCR has previously submitted comments on the proposal of the Danish Government to introduce “integration potential” as a criteria when considering accepting refugees on resettlement.¹⁶ UNHCR therefore wishes to reiterate its regret that reference is now also made to the “social capacity” of the country, and that integration considerations are proposed to become a key element when considering accepting refugees on resettlement in general. UNHCR has always recommended that resettlement allocations be made primarily on the basis of the identified protection needs of eligible refugees, and that countries refrain from additional country specific criteria not related to the protection situation of the refugees.

Practical considerations

21. UNHCR also regrets, from a practical point of view, that the Proposal wishes to move from the current three year planning cycle to a one-year cycle, where the decision whether to admit a quota would be made mid-year. UNHCR would encourage the Danish government to maintain a multi-year planning approach as it would facilitate the collaboration and help making programmes more predictable and therewith efficient (including for the Danish Government itself).¹⁷

IV. CONCLUDING RECOMMENDATIONS

UNHCR recommends the Government of Denmark to:

- i. In the spirit of the NY Declaration, reactivate its resettlement program, at least at the previous level of 500 refugees per year.
- ii. Refrain from introducing a “capacity assessment” as under paragraph 8 above, and instead recognize resettlement as a humanitarian act not reliant or dependent on non-refugee protection related parameters.
- iii. In situations where the Proposal may lead to a decision not to accept any refugees on resettlement a given year, that this decision is taken through a preceding dialogue with UNHCR.

**UNHCR Regional Representation for Northern Europe
9 October 2017**

¹⁶ The integration potential in this context referred to the specific person considered for resettlement, as outlined in UN High Commissioner for Refugees (UNHCR), UNHCR Observations on the proposed amendments to the Danish Aliens legislation, L 87, 6 January 2016, para. 53, available at: <http://www.refworld.org/docid/5694ed3a4.html>

¹⁷ UN High Commissioner for Refugees (UNHCR), Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council UNHCR's Observations and Recommendations, November 2016, page 4, available at: <http://www.refworld.org/docid/5890b1d74.html>