Submission by the United Nations High Commissioner for Refugees

for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review:

DENMARK

I. Background information and Current Conditions

Denmark is a State party to the *1951 Convention and the 1967 Protocol relating to the Status of Refugees*. Denmark has also ratified the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. In the context of the EU harmonisation, Denmark has opted out of the EU *acquis* on asylum and is therefore not bound by the legal framework established by the EU in this area.

Denmark has a well established asylum system in place. Domestic legal provisions are primarily contained in the Aliens Act. The number of asylum-seekers arriving in Denmark has plunged from 12.512 in 2001 to 2.226 in 2007 and has remained low compared to most Western European countries. From 2008 to 2009, however, a 60 % increase in the number of asylum-seekers was registered.

Since 2002, Denmark has frequently introduced legislative changes to the Aliens Act. Most of these changes introduced restrictive measures. With regard to family reunification, the Aliens Act has become one of the most restrictive in Europe. In addition, the criteria for the expulsion of aliens have been amended several times.

II. Achievements and Good Practices

UNHCR would like to highlight the high standards of the Danish reception centers for unaccompanied children seeking asylum in Denmark.

III. Challenges and Constraints

Issue 1: Conditions for an indefinite residence permit and naturalization

On 25 May 2010, the Parliament passed legislative changes to the Danish Aliens Act, which includes the abolition of the earlier seven years period for obtaining an indefinite residence permit. This has instead been replaced by a point system containing a number of criteria[1] set out in § 11 of the Alien Act. While the newly introduced point system might be an advantage for persons with a strong academic background, who may be capable of obtaining the required points already after four years of legal residence, it will be difficult, if not impossible, for many refugees, especially those with specific protection needs, to obtain the required 100 points. Exemption from these requirements can only be obtained based on the *Convention on the Rights of Persons with Disabilities* (CRPD) or with reference to Denmark's international obligations in general, as no other exceptions are foreseen based on personal circumstances or specific vulnerabilities, which do not meet the specific standards of the CRPD. As refugees move for non-economic reasons and have often experienced severe losses and trauma, they may require special assistance and be unable to embrace fully the challenges and opportunities in the asylum country, which is the underlying expectation of the new points-based system.

A permanent residence permit is furthermore a precondition for obtaining naturalization. However, naturalization should be available within a reasonable timeframe, as set out in Article 34 of the 1951 Convention relating to the Status of Refugees (the 1951 Convention), keeping in mind that the timely grant of secure legal status and residency rights are essential factors in the integration process. The inability to obtain the required points and long-term residence will have a negative impact on refugees' possibilities to obtain citizenship. UNHCR is concerned with the above mentioned amendment, as many protection beneficiaries will not be able to find a durable solution other than naturalization and may, despite reasonable efforts, not be able to meet the integration targets set out in the new § 11,3.

Recommendation: UNHCR recommends that the newly introduced point system for obtaining permanent residence permit as set out in § 11,3 of the Aliens Act exempts beneficiaries of international protection, who, due to age, trauma or other vulnerabilities, cannot be expected to meet the integration targets, but who, as beneficiaries of international protection, nevertheless are entitled to a secure status and a durable solution.

Issue 2: Family Reunification

The amendments of May 2010 also include a more stringent requirement for family reunification, especially as regards the self-support requirement. Referring to its obligations

[1] For more information on the new requirements for permanent residence permit, see the website of the Danish Ministry for Refugee, Immigration and Integration Affairs (in English): http://www.nyidanmark.dk/en-us/coming_to_dk/permanent-residence-permit/permanent-residence-permit.htm

under international law, Denmark allows for exemptions, so that refugees should in principle not be affected by these new regulations.[2]

UNHCR shared its comments on the right of the family to live as a family unit, which is protected by a variety of internationally recognized rights under both international and European human rights law, such as Article 10(1) of the Convention on the Rights of the Child and the Final Act of the Conference of Plenipotentiaries, that adopted the 1951 Convention relating to the Status of Refugees, formally recognizing the principle of family unity in the refugee context.

Recommendation: Amend the Danish Aliens Act to ensure that the right to family life, marriage and choice of spouse is guaranteed to every person without discrimination based on national or ethnic origin. This includes ensuring that the right to family reunification does not only apply to children below the age of fifteen, but also to children between 15 and 18 years of age, as the current limitation leads to a situation where persons belonging to ethnic or national minority groups are discriminated in the enjoyment of their right to family life.

Issue 3: Expulsion of Aliens

The amendments of May 2010 also provided for wider possibilities of expulsion of aliens in case of violations of the Criminal Law, based on which unconditional imprisonment can lead to expulsion, in cases of *"social fraud", or "if crimes have been committed in a situation of severe disturbances of public order."*

Whereas Denmark affirmed that it would respect its international obligations in the implementation of the new provisions, UNHCR is concerned that in safeguards against *refoulement* for persons in need of international protection will be reduced.[3]

In principle, every state has the right to expel non-nationals from its territory in accordance with the State's obligations under international law, in particular human rights law. With

[2] "In accordance with Denmark's international obligations to protect the right to family life, exemptions from the following requirements can be granted to certain groups of applicants:
- the 24-year requirement
- the attachment requirement
- the housing requirement
- the collateral requirement
- the requirement that your spouse/partner not have received certain types of public assistance within the past three years
Exemptions can be granted, if your spouse/partner in Denmark holds a residence permit on the grounds of asylum or Protected Status and still risks persecution in his/her country of origin."

[3] C.f UNHCR ExCom Conclusion 1977, No. 7 (XXVIII) - 1977, available at: http://www.unhcr.org/ refworld/ docid/3ae68c4437.html [accessed 16 April 2010] Advisory Opinion from the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Scope of the National Security Exception Under Article 33(2) of the 1951 Convention Relating to the Status of Refugees, 6 January 2006, "The Scope and Content of the Principle of *Non-Refoulement*: Opinion", Sir Elihu Lauterpacht and Daniel Bethlehem, 20 June 2001, in "*Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*", edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, Cambridge (2003).

regard to refugees lawfully on the territory, expulsion to a third country is limited under Article 32 and Article 33(2) of the 1951 Convention. Article 32 enumerates the permissible grounds for expulsion as "national security" and "public order". These grounds would not permit expulsion or return (*refoulement*) to the country of origin, or to a third country where the refugee's life or liberty would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Since a refugee, unlike an ordinary alien, does not have a country to which to return, his expulsion may have particularly serious consequences, which would justify a restrictive interpretation of this provision. In addition, the *travaux préparatoires* for Articles 32 and 33(2) emphasize that these provisions should be interpreted in a restrictive manner.

In UNHCR's understanding, the gravity of the crimes should be analyzed in light of international standards, not simply by its categorization in the host State. In either case, these should be treated as exceptions and the principle of proportionality should be applied. This would require that there be a rational connection between the removal of the refugee and the elimination of the danger; the removal must be the last possible resort to eliminate the danger; and the danger to the country of refuge must outweigh the risk to the refugee upon expulsion.

Expulsion measures against a refugee should only be taken in very exceptional cases and after due consideration of all the circumstances, including the possibility for the refugee to be admitted to a third country other than his or her country of origin. Against this background, UNHCR believes that the amendments relating to expulsion of refugees go beyond what is permitted by Article 32 of the 1951 Convention.

In UNHCR's view, the amendments to the Aliens Act are also problematic, insofar as the expulsion of a refugee entails that s(he) loses his/her refugee status. The cessation of refugee status is exhaustively regulated by Article 1C of the 1951 Convention. This provision does not allow for cessation of refugee status on the ground that a refugee has committed common crimes such as those, which according to the amended Danish legislation can lead to expulsion. Revocation, or withdrawal, of refugee status may be foreseen for refugees who engage in conduct coming within the scope of Article 1F(a) or 1F(c), provided that all the criteria for the application of either of these articles is met. While asylum could be withdrawn in cases where Articles 32 and 33(2) are applicable, the termination of refugee status would be at variance with the 1951 Convention unless, as noted above, the criteria of Articles 1C, 1F(a) and 1F(c) are met.

Recommendation: Ensure that acts, which may lead to expulsion, are in line with international refugee and human rights law, in order to avoid disproportionate measures being imposed on persons in need of international protection.

Issue 4: Unaccompanied and separated children

Currently, amendments to the Aliens Act restricting the granting of residence permits for unaccompanied and separated children are under consideration by Parliament. One of these amendments suggests that the temporary residence permit for unaccompanied minors and

separated children, which is granted for an initial period of two years for children who are not mature enough to undergo the asylum procedure, or for children who are not in need of international protection, but would be put in a state of emergency upon return, residence permits on the grounds will be temporary and will be withdrawn when the child turns eighteen years, unless exceptional conditions apply (residence since early childhood, strong ties in Denmark and poor ties to the country of origin, well integrated or severely traumatized or retarded).

UNHCR is concerned about the further tightening of the Aliens Act for a vulnerable group of minors, who are not found to be sufficiently mature to have their protection needs assessed, upon arrival to the country. The limitation of the residence permit up to the age of 18 is likely to impact negatively on the development and well-being of the child, as it may create fear and anxiety. Allowing the child to temporarily settle in a country, learn the language, attend school and then oblige it to return years later to the country of origin, may have a negative and disruptive effect on the child This group of minors would be put in a less favourable situation than those who are found to be mature enough to undergo asylum procedures upon arrival, as they will be in a waiting period, which could take up to several years, and the uncertainty could thereby hamper their local integration prospects as well as personal development.

UNHCR acknowledges that return to a reception and care centre may be a solution for some children without protection needs, but only when appropriate safeguards are in place.[4] In line with the Convention on the Rights of the Child and with other good practice documents[5] the use of residential care should be limited to cases where it is appropriate, necessary and constructive for the individual child concerned and in his/her best interests to return to such an institution.

According to Article 3(1) of the *UN Convention on the Rights of the Child,* the best interests of the child shall be a primary consideration." In line with CRC General Comment no. 6, a best interest determination must be carried out prior to any decision, fundamentally affecting the unaccompanied or separated child's life. Even when the asylum claim of a child has been rejected, the best interest of the child should be carefully assessed in view of possible return to the country of origin, as the best interest determination may reveal a need

[4] See UN High Commissioner for Refugees, Special measures applying to the return of unaccompanied and separated children to Afghanistan, August 2010, available at: http://www.unhcr.org/refworld/docid/4c91dbb22.html

[5] General Comment # 6, UN General Assembly, *Guidelines for the Alternative Care of Children: resolution / adopted by the General Assembly (hereinafter UN guidelines on Alternative Care for Children)*, 24 February 2010, A/RES/64/142, available at: http://www.unhcr.org/refworld/docid/4c3acd162.html, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, (hereinafter; Inter-Agency Guiding Principles) January 2004, available at: http://www.unhcr.org/refworld/docid/4113abc14.html, UN High Commissioner for Refugees, *Best Interests Determination Children - Protection and Care Information Sheet*, June 2008, available at: http://www.unhcr.org/refworld/docid/49103ece2.html, Separated Children in Europe Programme, *SCEP Statement of Good Practice*, March 2010, Fourth edition, March 2010, available at: http://www.unhcr.org/refworld/docid/415450694.html.

to provide the child with a residence permit on other grounds.[6] A best interest determination assessment should include an assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.

The EU's *Council conclusions on unaccompanied minors* (2010) also emphasizes "the importance of finding durable solutions based on an individual assessment of the best interest of the child consisting of return and reintegration in the country of origin or return, granting of international protection status or granting other status according to national law of the member States."

Recommendations:

- Revise the proposed amendments to the Danish Aliens' Act with respect to unaccompanied children seeking asylum, in particular, in order to introduce a best interest determination process for the assessment of humanitarian needs, as well as, durable solutions.

- UNHCR recommends that the current provision of the Aliens' Act concerning residence permit for unaccompanied and separated children is retained and that the requirements in the Danish Aliens' Act for humanitarian status is limited and/or applied in a less restrictive manner to ensure a legal status and a durable solution for children suffering from trauma and diagnosed with psychological or psychiatric problems, who are nonetheless found not to be in need of international protection.

- When considering return to institutionalized care, UNHCR recommends a number of safeguards be applied that recognizes the additional protection and assistance needs of children. The assessment should take into consideration the child's immediate safety and well-being, as well as, his/her longer-term care and development, and should be based on the child's personal and developmental characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history and any special needs.

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[6] UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, paras. 84-88, available at: http://www.unhcr.org/refworld/docid/42dd174b4.html
Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, Fourth edition, March 2010, available at: http://www.unhcr.org/refworld/docid/415450694.html p. 40-43.
Inter-Agency, Inter-Agency Guiding Principles on Unaccompanied and Separated Children, January 2004, available at: http://www.unhcr.org/refworld/docid/4113abc14.html. p. 60-62