

UNHCR comments on the proposed amendments to the Danish Aliens Act, *Lov om ændring af udlændingeloven (Betinget udvisning, skærpelse af udvisningsreglerne og reglerne om indrejseforbud m.v.) of 22 December 2005*

In view of the complexity of the proposed legislative amendments and the relatively short deadline for commenting, the following comments, rather than focusing on specific draft provisions, are of a general nature and relate to issues which UNHCR considers particularly relevant to refugees and Denmark's obligations under the 1951 Convention.

In principle, while every state has the right to expel any non-national from its territory such a right is circumscribed by the state's obligations under international law, in particular human rights law. Specific provisions are applicable to non-nationals who are lawfully on the territory. With regard to refugees lawfully on the territory, expulsion to a third country is exhaustively 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. *Refoulement* under the 1951 Convention may only be justified when the stringent conditions of its Article 33(2) are met. The permissible grounds for *refoulement* under Article 33(2) are limited to situations when there are reasonable grounds for regarding a particular refugee as "a danger to the security of the country" of asylum or when he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the host community. If the grounds for expulsion of a refugee foreseen in the proposed Danish Immigration Act do not fall under these terms, they would be contrary to the 1951 Convention.

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. Also the *travaux préparatoires* for both 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 judged against 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.

The comments which follow on Articles 32 and 33(2) do not address the "national security" or "danger to the security of the country" grounds of these two articles, but rather seek to explain the "public order" and "particularly serious crimes" aspects of the provisions.

Article 32

The *public order* exception would permit the expulsion of a refugee who had been convicted of certain serious crimes where such crimes are considered to be violations of public order. Even in cases where criminal offences are repeatedly committed, one of the offences should be particularly grave in order to justify expulsion. A separate finding is required to the effect that the continued presence of the offender is prejudicial to the maintenance of public order. In addition, these convictions are only relevant if they indicate a present threat that the individual will act the same way in the future.

Article 33(2)

Article 33(2) requires a conviction of a “particularly serious crime”, which would include crimes such as murder, rape, arson and armed robbery. Certain other offences could be considered particularly serious if they are accompanied by the use of deadly weapons, involve serious injury to persons, or there is evidence of serious habitual criminal conduct. Factors to be considered include the nature of the act, the actual harm inflicted, the form of procedure used to prosecute the crime, and whether most jurisdictions would consider the act in question as a serious crime. It should thus be considered that only egregious crimes warrant an exception to the *non-refoulement* principle.

Additionally, conviction of a particularly serious crime in and of itself is not sufficient. The person concerned must, in view of this crime, also present a *danger to the community*. As with Article 32, this would require an assessment of the present or future danger posed by the wrong-doer.

Hence, not any offence and not any criminal conviction may justify expulsion under the terms of either Article 32 or 33(2). 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 some of the proposed rules relating to expulsion of refugees go beyond what is permitted by Article 32 of the 1951 Convention.

In UNHCR’s view the Danish legislation is 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 proposed 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.