Response from the Government of Denmark to the concluding observations of the Committee on the Elimination of Racial Discrimination

In its concluding observations of 19 October 2006 (CERD/C/DEN/CO/17) following the submission of the sixteenth and seventeenth periodic reports of Denmark in June 2005 (CERD/C/496/Add.1), the Committee on the Elimination of Racial Discrimination requested the Danish Government to provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 11, 13 and 15 within one year.

The Danish Government is pleased to provide the following information.

Concluding observations, paragraph 11

"11. The Committee, while taking note of the State party's efforts to combat hate crimes, is concerned about the increase in the number of racially motivated offences and in the number of complaints of hate speech. The Committee is also concerned about hate speech by some politicians in Denmark. While taking note of the statistical data provided on complaints and prosecutions launched under section 266 (b) of the Criminal Code, the Committee notes the refusal by the Public Prosecutor to initiate court proceedings in some cases, including the case of the publication of some cartoons associating Islam with terrorism (arts. 4 (a) and 6).

The State party should increase its efforts to prevent racially motivated offences and hate speech, and to ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas, and recommends that the State party take resolute action to counter any tendency to target, stigmatize, stereotype or profile people on the basis of race, colour, descent, and national or ethnic origin, especially by politicians. Bearing in mind its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also requests the State party to remind public prosecutors and members of the prosecution service of the general importance of prosecuting racist acts, including minor offences committed with racist motives, since any racially motivated offence undermines social cohesion and society as a whole."

The Government has taken note of the concerns as well as the recommendation of the Committee regarding racially motivated offences and hate speech. As to the reluctance of the police to bring charges under article 266 b of the Danish Criminal Code the Government would like to draw the attention of the Committee to the fact that section 266 b in the Danish Criminal Code is interpreted in accordance with article 10 in the European Convention on Human Rights and the case-law of the European Court of Human Rights. According to this case law freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for individual self-fulfilment.

The Director of Public Prosecutions is notified of all complaints regarding section 266 b of the Danish Criminal Code, cf. Instruction no. 4/1995. The question of prosecution is furthermore

decided by the Director of Public Prosecution to ensure uniform prosecution in cases regarding section 266 b of the Danish Criminal Code. The Director of Public Prosecution brings charges for violations of section 266 b of the Danish Criminal Code when there is sufficient basis for a charge. According to the principle of objectivity of the Prosecution Service, the prosecutor has to make sure, however, that the person liable to punishment is held responsible, but also that no innocent persons are prosecuted.

As to other racially motivated offences it is considered to be an aggravating circumstance, when a given offence is based on others' ethnic origin, faith, sexual orientation or the like, cf. the Danish Criminal Code section 81 (6).

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.

Concluding observations, paragraph 13

"13. The Committee notes with concern that decisions by the Refugee Board on asylum requests are final and may not be appealed before a court. It is also concerned about information according to which asylum-seekers may live with their children in centres for several years, do not have the right to engage in social, professional, educational and cultural activities outside these centres except to a limited extent, and may be transferred many times from one centre to another, thereby weakening established relationships (art. 5).

The Committee recommends that asylum-seekers be granted the rights to appeal against the Refugee Board's decisions. It also recommends that the State party review its policy in relation to centres for asylum-seekers so as to ensure that their rights under the Convention are fully respected."

<u>The Refugee Board</u>

The Government has taken note of the concerns as well as the recommendation of the Committee. The Government would like to take this opportunity to thoroughly explain the Danish Immigration Authorities' handling of asylum cases in order to show the Committee, that the existing system fully ensures an assessment of the application in conformity with Denmark's international obligations.

Most asylum cases are decided according to the so-called "normal procedure", which means that if the asylum application is rejected, the case is automatically referred to the Refugee Board, which will deliver a final decision in the case.

It is very important to take into account that the Refugee Board is an independent, court-like body consisting of three members. The chairman must be an appointed judge. The other two members are appointed by the council of the Board after a nomination by the Ministry for Refugee, Immigration and Integration Affairs and the Danish Bar and Law Society.

The Government is of the opinion that the right for asylum seekers to have their case examined by the Refugee Board constitutes an effective remedy of the decision taken on their application for asylum and emphasises the court-like nature of the Board.

When the Refugee Board verbally handles a case, the asylum seeker will normally be present for the hearing. An attorney will be appointed to represent the applicant's interests. The Refugee Board will appoint an attorney, though the asylum seeker also has the option to choose his or her own attorney. The Danish state will pay the attorney's fees.

Decisions by the Refugee Board are final, which means that it is not possible to appeal the Board's decisions. This is stated by law and determined by the Supreme Court by a decision of 16 June 1997. The Supreme Court attached importance to the fact that the Refugee Board is an expert board of a court-like character. The Supreme Court has since repeated this in several other judgements. However, the national Danish Courts can still contest procedural matters.

The Government would like to underline that the right for asylum seekers to have their case examined by the Refugee Board provides the asylum seekers with an easy and automatic access to have a negative administrative decision tried before a court-like body.

The Refugee Board guarantees that third country nationals submitting an application for asylum in Denmark receive a thorough and fully adequate examination of their asylum application in terms of due process.

Moreover, the Refugee Board is professional with a high degree of legal expertise, including expertise in the fields of immigration and asylum law.

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.

Accommodation centres for asylum seekers

The Government has taken note of the concerns as well as the recommendation of the Committee in relation to centres for asylum seekers. The Government agrees that asylum seekers shall not remain in the asylum centres for several years. Consequently, the Government has made a serious effort to reduce the time for procedures in asylum cases.

The Government would like to stress that all newly arrived asylum seeking children aged 7-16 years are offered a 6 week welcoming course, which entails a 20 hour program consisting of lessons in Danish, mathematics as well as creative lessons. When the families are moved to accommodation centres the children will be able to continue receiving lessons. From this point on a level, which generally equals the special classes in the Danish public school for bilingual students, who do not know enough Danish to participate in the ordinary education, is provided for.

The Government has in this relation taken note of a study undertaken by the Danish National Institute of Social Research of the conditions in the asylum centres in Denmark ("Living conditions for children with family in the Danish asylum centres" published October 2006). The study confirms that families who have been denied asylum and refuse to depart voluntarily can suffer during a stay of long duration in the centres.

The same study, however, shows that the facilities for education, activation and health treatment are good, that the children are happy about the education and activation activities, and that health treatment is of the same standard as that offered to children outside the asylum centres.

The Government respectfully asks that the Committee note, that the study was conducted during the spring of 2006 and describes the situation before the Government implemented a series of improvements in relation to the conditions in the asylum centres. In May 2006 the Government allocated 37,6 million DKK to the improvement of the conditions in the asylum centres, especially the conditions for families with children. The improvements also concern rejected asylum seekers and the funds will also cover support for returned asylum seekers in their respective countries of origin. In 2007 and 2008 respectively 47,3 and 44,5 million DKK have been allocated to continue the initiatives.

Furthermore, families with children are offered accommodation in 2 rooms as part of the Government's efforts to create the best possible environment for children in asylum centres.

When considering the situation of asylum-seeker's prolonged stay at asylum centres, it is important to recall, that if an asylum seeker is denied asylum it is his or her duty to leave the country. It is crucial for the legitimacy of the asylum system that rejection of an application for asylum actually results in the asylum seeker leaving the country. The Government stands firm on this position as it rests assured that all rejected asylum seekers in Denmark have received a thorough treatment of their cases by the authorities, i.e. the Danish Immigration Service and the Refugee Board, fully respecting Denmark's international obligations.

Therefore the Government has consistently maintained that rejected asylum seekers have an obligation to leave the country for their homeland voluntarily, in cases where the journey home is possible.

It must be recalled that rejected asylum seekers who can leave Denmark voluntarily only reside in this country because they refuse to respect a decision by the Danish authorities which states that their application for asylum has been rejected and imposes an obligation to leave the country.

However, in order to improve the conditions for those rejected asylum seekers, who contribute to their own departure, an amendment to the Aliens Act implemented in 2006, cf. act no. 301 of 19 April 2006 (Bill No. L 94 of 30 November 2005), introduced the possibility of offering courses and activation also for rejected asylum seekers. The Government thereby seeks through education and activation to improve the living conditions at the accommodation centres for those rejected asylum seekers. Furthermore, the education offered is aimed at motivating the rejected asylum seekers to return through the strengthening of personal resources and qualifications in a way that should ease return to their home country. The 2006 amendment contains a more general adjustment of the courses and activities offered to both active and

rejected asylum-seekers as well as to the rejected asylum-seekers who contribute to their own departure and those who do not.

Furthermore, the Danish Parliament on 1 June 2007 passed a bill proposed by the Government which entails that rejected asylum seekers who until now have not assisted with their departure in cases where voluntary but not compulsory departure is possible, can be offered a program - an upgrading scheme – which takes place partially in Denmark and partially in the home country. The upgrading scheme is the result of a contract made between the rejected asylum seeker and the Danish Immigration Service. The contract obliges the Danish Immigration Service to provide the upgrading scheme and the rejected asylum-seeker to contribute to his or her return. The upgrading scheme consists of a clarification of competences and education and activation offers, which among other things contains a trainee period, which respects the individual's prerequisites and is aimed at the rejected asylum seeker obtaining employment in the home country. In addition to the upgrading scheme economic support upon return to the home country as well as help to housing and employment in the home country is offered. As mentioned above the rejected asylum seeker must in return agree to cooperate in connection with the departure and consequently voluntarily depart Denmark.

Specific criteria apply as to which groups of rejected asylum seekers can enter into the contract with the Danish Immigration Service in order to be offered the upgrading scheme. It is thus among other things a condition that bigger supporting projects are planned or initiated as part of the reconstruction efforts in a country after war.

For practical reasons the offer is at first given to rejected Iraqi asylum seekers. The scheme will be evaluated by 1 May 2008. If the scheme fulfils its purpose the Minister of Refugee, Immigration and Integration Affairs can extend the offer to other groups of rejected asylum seekers if the criteria are met. Participation in the scheme is completely voluntary.

In relation to the Committee's concern for the movement of asylum seeker-families the Government can inform the Committee that circumstances in relation to the ordinary procedures result in the movement of asylum seekers. When asylum seekers enter the country and apply for asylum the person concerned will usually be registered at Centre Sandholm. After that the asylum seeker moves to an accommodation centre. When the asylum procedure is finished, an asylum seeker who has received asylum stays at the accommodation centre until the person can be offered housing in the receiving municipality. Asylum seekers who do not receive asylum can stay in the accommodation centre if they agree to voluntary return. Asylum seekers, who do not agree to voluntary return, are moved to a deportation centre.

However, some asylum seekers have moved several times due to the large decline in the number of asylum seekers, which has made it necessary to close some centres.

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.

Concluding observations, paragraph 15

"15. The Committee reiterates its concern regarding the restrictive conditions in Danish legislation regarding family reunification. In particular, the conditions that both spouses must have attained the age of 24 to be eligible for family reunification, and that their aggregate ties with Denmark must be stronger than their ties with any other country unless the spouse living in Denmark has been a Danish national or has been residing in Denmark for more than 28 years, may lead to a situation where persons belonging to ethnic or national minority groups are discriminated against in the enjoyment of their right to family life, marriage and choice of spouse. The Committee also regrets that the right to family reunification is restricted to children below the age of 15 (art. 5 (d) (iv)).

The Committee recommends that the State party review its legislation 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. It also recommends that the right to family reunification be allowed to children below the age of 18. The State party should ensure that the measures it adopts to prevent forced marriages do not impact disproportionately on the rights of persons belonging to ethnic or national minorities. It should also assess the extent to which the condition for spousal reunification that the spouse residing in Denmark must provide a bank guarantee and may not have received any public assistance for sustenance within the last year before the reunification amounts to indirect discrimination against minority groups who tend to suffer from socio-economic marginalization."

The Government has taken note of the concerns as well as the recommendation of the Committee. However, the Danish Government is of the opinion that the Danish rules on family reunification do not amount to unfounded discrimination.

In this regard, the Government would like to stress, that it considers it crucial for Denmark to observe its international obligations, including the UN Convention on the Elimination of all forms of Racial Discrimination, the European Convention on Human Rights and the 1951 UN Convention relating to the Status of Refugees. Therefore the Danish Aliens Act, including its rules on family reunification, has been developed in respect of these obligations.

The Government would like to take this opportunity to explain in further detail how the legislation provides for the careful consideration of international obligations (see further below). In the processing of applications for a residence permit in Denmark the immigration authorities always consider whether, in the specific case, an applicant should be granted a residence permit despite non-fulfilment of one or more of the statutory conditions in the Danish Aliens Act to ensure regard for the observation of the international human rights obligations, including the right to family life.

Furthermore, the Government requests that it should be properly noted that the Danish Government has developed changes in i.e. the rules on family reunification in connection with the development of a strategy to improve the successful integration of immigrants – both newcomers and already settled migrants – into the Danish society.

The Government would like to underline the fact that the changes introduced in the Aliens Act under this Government have not led to a decrease in the number of immigrants coming to Denmark. Rather there has been an increase of immigrants from 2001 to 2006. The majority of migrants coming to Denmark now do so to work or study. The shift is obvious from the statistics, which show that 10,001 permits for work or study purposes and 20,403 permits for asylum or family reunification were issued in 2001. In 2006 28,448 permits for work or study purposes and 5,293 for asylum and family reunification were issued.

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.

The 24 year rule

The Government has taken note of the Committee's concern regarding the requirement that both spouses must have attained the age of 24 to be eligible for family reunification. However, the Government finds that the age limit is in line with ECHR article 8 and would like to add the following:

The Government maintains that the 24 year rule is necessary to prevent young people from being forced to marry or entering into arranged marriages for family reunification purposes. The Government finds the 24 year rule effective, because it protects young people against pressure in connection with the entering into a marriage in the light of the fact that the older a person is, the better s/he can withstand pressure from his/her family or others.

The Government agrees with the Committee that measures adopted in order to prevent forced marriages should not impact disproportionately on the rights of the persons belonging to ethnic or national minorities. The Government would like to stress, that the fulfilment of the age requirement is demanded of both Danish nationals and non-nationals.

Additionally the Government finds that the rule promotes better integration, because it contributes to improved opportunities for young people in relation to education and work.

However, if it is found, that the applicant can not be granted family reunification for spouses because of at least one of the spouses' young age, an assessment will be conducted as part of common practice as to whether there are circumstances which entail that the applicant must be granted a residence permit in order to ensure conformity with international obligations such as ECHR art. 8, and other relevant international obligations.

It should in this regard be noted that the Danish Government has included a reference to the right to family unity of refugees in the relevant provision of the 2005 Aliens Act. The reference hereto underlines the importance of respecting family unity and the obligations to do so set down in international obligations. The reference thereby indicates the reasons, which allow the exemption from conditions for granting a residence permit for the purpose of family reunification.

The Government is aware of the fact that there is no direct statistical evidence of any correlation between the introduction of the age limit and the number of forced marriages. Such statistical evidence is very difficult to produce due to the obvious difficulties in assessing the number of forced marriages.

However, the annual statistical report concerning foreigners *"Tal og fakta – befolkningsstatistik om udlændinge"*, published by the Ministry of Refugee, Immigration and Integration Affairs on 18 June 2007 provides strong indications of the age limit having an effect on marriage patterns among immigrants and descendants from non-western countries.

- The report shows that the general age of marriage among immigrants and descendants from non-western countries has increased noticeably from 2001 to 2006.

- Furthermore, the report shows that the share of marriages with foreign spouses within the group of immigrants and descendants from non-western countries living in Denmark has dropped from 62.7 percent in 2001 to 37.8 percent in 2006.

Forced marriages typically involve relatively young immigrants or descendants from non-western countries and foreign spouses. Thus, the changes in marriage patterns, described in the abovementioned report, may indicate that the number of forced marriages can be expected to decrease as a result of the age limit.

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.

<u>The 28 year rule</u>

The Government has taken note of the Committee's concern regarding the 28 years exception-rule to the condition of ties also known as the attachment requirement. However, the Government finds that the 28 year rule is not in contradiction with the principle of equality.

The 28 year rule represents an objectively based deviation from the condition of ties stipulated by the Aliens Act. In cases where the person who wants to bring his or her spouse to Denmark has held Danish citizenship for 28 years the condition of ties is waived. The 28 year rule is in other words an exception to the condition of ties and reflects a standardised assessment of ties. Therefore, it is necessary to require citizenship of a certain length of time. Thus, a 28-year-old Danish national will normally be found to have such ties with Denmark that it is possible to refrain from making a condition of ties. Hence, there are objective reasons for the differential treatment accorded to citizens depending on the length of their citizenship.

However, in order to ensure equal treatment of Danish nationals and foreign nationals living in Denmark in comparable situations the legislation specifies that an exemption from the condition of ties will generally also apply to persons who have not held Danish nationality for 28 years, but were born and grew up in Denmark, or arrived in Denmark as small children and grew up in Denmark, when they have resided lawfully in Denmark for 28 years.

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.

The age limit of 15 for family reunification with children

The Government has noted the concern and recommendation of the Committee concerning family reunification for children between 15 and 18 years of age.

The Government would like to take this opportunity to stress, that children between 15 and 18 years of age are not barred in general terms from applying for family reunification. The immigration authorities thus examine all applications for family reunification with children. The lowering of the age limit from 18 to 15 years merely means that children between 15 and 18 do not have a statutory right to family reunification. The rule is no expression of a prohibition against residence permits for these children.

The Government believes that the best interests of the child must be the primary consideration in all matters affecting the child. The very reason for reducing the age limit to 15 years was, in fact, consideration of the best interests of the child.

The Government would like to inform the Committee, that with the amendment of the age requirement, the Government wants to encourage parents living in Denmark to apply for family reunification with their children as soon as possible to allow the family a life together. Examples were seen of parents letting their children stay in their country of origin until they were almost 18 years old either with one of the parents or with other family members in order to give the child an upbringing in accordance with the culture of their country of origin. Out of consideration for the child and for purposes of integration a child who is to live the rest of its life in Denmark should spend its childhood in Denmark and not in the parents' country of origin.

The amendment additionally aims at preventing children from being sent on re-education journeys to the parents' countries of origin and thus being separated from their parents living in Denmark.

In connection with the preparation of the relevant amendment of the age limit for family reunification of children the Government carefully assessed the international obligations relevant for this area. The Government concluded that the Convention on the Rights of the Child does not automatically confer a right to family reunification on children below the age of 18 and therefore finds no reason to change the legislation in this area.

The Government furthermore found, that it can be derived from the existing case law from the European Court of Human Rights (ECHR) regarding article 8 in the European Convention of Human Rights in relation to family reunification with children that families according to the European Convention of Human Rights article 8 do not have an immediate right to choose the country where they wish to practice their family life, and that in each case where a child applies

for family reunification with parents residing in Denmark, a concrete assessment must be made as to whether it is proportionate to dismiss an application for residence permit.

In cases where the child at the time of application has been separated from the parent resident in Denmark a period of time, the Government finds that it can be derived from the case law of the ECHR that in applying the proportionality assessment emphasis must in particular be placed on the reason for the separation of the family in the concrete case. If the separation is due to the choice of the parent residing in Denmark to leave the child in the home country and seek a residence permit in the state of residence, this condition will weigh greatly in disfavour of granting the right to family reunification. Even more so this will be the case if a considerable time has passed since the entry into Denmark of the parent residing in Denmark and until family reunification is applied for.

In addition, when carrying out the proportionality assessment emphasis will amongst other factors be placed upon the applicant's cultural, linguistic and family ties to the country of origin, the applicant's age and whether there are substantial barriers to practicing family life in the country of origin and/or continuously to practice family life to the present extent via visiting stays.

In every case concerning an application for family reunification from a child the Danish immigration authorities will conduct an assessment of whether special reasons are present that render it necessary to grant permission to family reunification of a child in Denmark even though the child does not fulfil the condition that it should be under the age of 15 years at the time of application.

In cases where denial of family reunification would be in conflict with the international obligations of Denmark and family reunification cannot be granted according to the Aliens act section 9 (1) (2), a residence permit will thus be issued according to section 9 (c) (1) of the Aliens Act.

This could for instance be the case if the child and the parent residing in Denmark would otherwise have to live as a family in a country, which the person residing in Denmark does not have the possibility to enter into and reside in together with the applicant – for instance due to health reasons or rights connected to an asylum status.

Another example would be the situation where the child has not previously shared family life with one of the parents residing in the home country and the other of the child's parents – with whom the child resides – is granted permission to family reunification of spouses in Denmark with a person that is not the child's.

This also applies if the establishment of family life with the parent who is still residing in the home country must be assumed impossible for other reasons or if the best interest of the child goes against the child establishing family life with the parent who is still residing in the home country.

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.

Rules concerning financial security

The Government has taken note of the Committee's recommendation regarding the requirements concerning the deposit of a Bank Guarantee and the ability to be self-supporting.

The Government finds that as a starting point everyone must be self-supporting. This also applies to foreigners arriving to Denmark as part of a family reunification for spouses.

The position suggested by the Committee on indirect discrimination against minority groups who tend to suffer from socio-economic marginalization would imply that no countries would be able to maintain or introduce a requirement of self-maintenance as such a requirement per se will always concern the property or financial capacity of the persons concerned. The Danish Government does respectfully not support this position.

The financial security requirement ensures that the person in question does not burden the state financially, which should not be the result of family reunification. At the same time financial independence of newly arrived immigrants contributes to successful integration and to a greater goodwill and understanding towards foreigners from the public in general.

Family reunification of spouses is therefore as a starting point granted on the condition that the person residing in Denmark posts 56.567 DKK (2007 level) as financial security for the coverage of possible future public expenses for assistance granted to the applicant in accordance with the Act on an Active Social Policy or the Integration Act.

The demand for a financial security does not imply a demand that the person in question must actually posses 56.567 DKK as the person can provide a Banker's Guarantee, which typically carries with it a fee of 1.500 DKK per year.

An alternative to the financial security requirement was made available in 2006. The spouse residing in Denmark is now able to choose between providing a security and making a deposit corresponding to the size of the security in a financial institute. The deposit of the amount in a financial institute will usually be cheaper than providing security, as the deposit carries no annual fee.

It is emphasized, that exceptions can be made from the requirement for security, where family reunification of spouses is allowed as a consequence of Denmark's international obligations.

The Government would also like to draw the attention of the Committee to the fact that a simplification of the requirement for self-maintenance in the Aliens Act has been introduced rendering the decision independent of a person's income, as long as the person is self-maintaining, cf. act no. 89 of 30 January 2007. The decisive factor in regard to the assessment of ability to be self-supporting is whether help is received 1 year prior to the decision regarding family reunification and until the possible granting of a permanent residence permit.

The Government is hopeful that the Committee finds these explanatory remarks and comments useful in its continued work.