



Follow-up Report

Submission to the United Nations Committee Against Torture in relation to Denmark's One-Year Follow-up Response to the Committee's Concluding Observations and Recommendations

DENMARK

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RETSPOLITISK
FORENING
Danish Law Association

ANTI TORTURE
SUPPORT FOUNDATION



Introduction

The Coalition of NGOs in Denmark (the Coalition) is making this submission in response to Denmark's One-Year Follow-up information to the Concluding Observations and Recommendations of this Committee that was submitted on 9 December 2016 (Follow-up Response).¹ Our submission is drafted in accordance with the guidelines provided in the Committee's Guidelines for follow-up to concluding observations.

The Coalition is composed of the following 15 organisations:

- Anti-Torture Support Foundation
- Association of Aliens Law Lawyers
- Better Psychiatry – National Association of Relatives
- Danish Association of Legal Affairs
- Danish Refugee Council
- DIGNITY – Danish Institute Against Torture
- Disabled People's Organisations Denmark (DH)
- International Rehabilitation Council for Torture Victims
- Joint Council for Child Issues
- KRIM – National Association
- LGBT Denmark
- OASIS – Treatment and Counselling of Refugees
- Rehabilitation Centre for Torture Victims - Jutland
- United Nations Association Denmark
- Women's Council in Denmark

In advance of the Committee's examination of Denmark in November 2015, we submitted a report to this Committee (Alternative Report)² expressing concerns that in many areas improvements are lacking and the recommendations of the Committee, other UN treaty bodies and the European Committee for the Prevention of Torture (CPT) had not been implemented.

¹ Denmark's submission of 9 December 2016 (CAT/C/DNK/CO/6-7/Add.1), available at the Committee's website: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fDNK%2fCO%2f6-7%2fAdd.1&Lang=en

² Alternative Report, available at the Committee's website: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fDNK%2f22188&Lang=en

We reiterate our concern of lack of progress – also in relation to the recent recommendations in 20 specific areas of concern³ - in relation to which Danish authorities since the review in 2015 generally have not made any significant progress. No changes to legislation or practice have been introduced; by contrast a further restrictions of the rights of persons who might fall within the scope of the UN Convention against Torture (UNCAT) have been adopted, notably:

- The regime of tolerated stay has been further restricted in legislation adopted in February⁴ - contrary to the Committee’s recommendation and concern about the limitations of rights of persons on tolerated stay (Concluding Observation para 28-29). This legislative amendment was adopted only a few weeks after the Danish Supreme Court concluded in a specific case that the regime of tolerated stay entails an unproportioned limitation of the person’s rights (judgement of 17 January 2017).
- The scope of solitary confinement as a disciplinary measure has been extended with the latest legislative amendment adopted in June 2016⁵, which entails that solitary confinement is imposed on inmates who violate the rules concerning possession of mobile phones, and should be used for longer periods. This development is in our view contrary to the Committee’s recommendation to abolish the use of solitary confinement as a disciplinary measure (Concluding Observation para 33 (a)).

Moreover, no plan of implementation of the Committee’s recommendations has been submitted by the Danish government to the Committee, as required according to the follow-up Guidelines.⁶

The Committee identified four “principal subjects of concern and recommendations” – for which implementation was a priority and in relation to which implementation could occur within a year:

- a) Incorporation of the Convention against Torture in Danish law (para 13. COs);
- b) Removal of vulnerable individuals (para. 21 COs);
- c) Screening of and assistance to people seeking asylum in Denmark who are victims of torture (para. 23 COs); and
- d) Separation of convicts and remand prisoners (para. 37 COs).

We would like to emphasise that no initiative has been taken by the authorities to implement any of these four recommendations. As noted by the Danish government in its Follow-Up Response, Denmark takes the position that it already fulfils its legal obligations in the Convention against Torture within these four areas of concern. As further explained below, the Coalition strongly disagrees with the position of Denmark and encourages the Committee under the follow-up procedure to ask for further

³ Concluding Observations to Denmark of 4 February 2016 (CAT/C/DNK/CO/6-7).

⁴ By law no. 189 of 28 February 2017 that entered into force 1 March 2017.

⁵ Law no 641 of 8 June 2016.

⁶ However, we would like to note of positive developments that since last review the Independent Police Complaints Authority (IPCA) has started registering cases that fall within the scope of the Convention against Torture (in 2016, four such cases were registered of which one has terminated due to the withdrawal of the complaint and the other three are still pending) and that a new Danish Military Manual has been published.

clarification from Denmark, as well as a detailed Implementation Plan to ensure the implementation of all the Committee's recommendations during the coming years.

We would like to emphasize that the Coalition highly appreciates participating in meetings with the Danish Ministry of Foreign Affairs, who coordinates the dialogue among the relevant ministries within the inter-ministerial body entitled 'Human Rights Committee' (Menneskerettighedsudvalget) about, inter alia, the implementation of the recommendations of the Committee against Torture. Similarly, the Coalition wishes to express its appreciation that Danish authorities maintain a good and constructive dialogue and cooperation with NGOs.⁷

Finally, it should also be underlined that combatting and preventing torture continue to be a long-standing priority of Danish foreign and development policy, and that the Danish government continues its financial support to DIGNITY and other rehabilitation centres for torture victims and thereby contributes to the rehabilitation of torture victims residing in Denmark.

Yours sincerely,

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Director General
DIGNITY – Danish Institute Against Torture

⁷ By letter of 24 May 2016, the Coalition made specific suggestions for changes in legislation and practice to be undertaken to fulfil the recommendations of the Committee (see Annex A: Letter of 24 May 2016 to the Danish MFA).

a) Incorporation of the Convention against Torture in Danish law (recommendation no. 13)

When examining Denmark, the UN Committee Against Torture repeated its earlier recommendation of the incorporation of the Convention against Torture in Danish law – in keeping with similar recommendations from other UN human rights committees and the CPT (European Committee for the Prevention of Torture) and the Committee noted that “the State party intends to start a process of reconsider the matter”, cf. para. 12 CO.

In response, Denmark noted that “the Danish system is sufficient to ensure that the CAT can be invoked before and applied by the Danish court and other authorities”, cf. Follow-Up Response.

We regret that Denmark does no longer intend to start a process of reconsider the matter, as informed to the Committee in November 2015, and note that the lack of incorporation of the Convention in Danish law is not in accordance with Denmark’s international obligations.

By way of example, the recently published Danish military manual does not provide the necessary clarity concerning Denmark's human rights obligations under the Convention against Torture, including with respect to the non-refoulement principle. For example, the legal base underlying cases of rendition, which potentially could involve a number of the Convention's provisions⁸, would become far more precise after incorporation and due consideration of the extent of Denmark's obligations under international law.

b) Removal of vulnerable persons (recommendation no. 21)

Following a tragic case involving the return to Afghanistan of a minor and his 23-year-old brother (Vahid and Aboli)⁹, the Committee recommended that Denmark instigate monitoring mechanisms for vulnerable people after removal to their home country/receiving country.

In response, the Danish government noted that “Denmark does not have the legal competence to monitor the situation of rejected asylum seekers”, cf. Follow-Up Response.

We regret that the recommendation of the Committee has not prompted Danish authorities to consider lessons-learned of the tragic case and to consider practical arrangements for how in the future to prevent such incidents from happening. When a final decision on removal is made, monitoring and supervision – which could be undertaken in cooperation with international and local organisations – might provide some protection of the removed person and help strengthen the basis for decision-making in similar situations subsequently.

⁸ In particular Articles 1, 2, 3, 4, 12, 13, 14 and 16.

⁹ See <http://politiken.dk/indland/ECE2740242/saarbare-broedre-med-angstproblemer-hastesendt-til-kabul/>;
<http://politiken.dk/udland/ECE2881410/udvist-fra-danmark-taleban-slog-min-bror-ihjel/>

c) Screening of and assistance for torture victims seeking asylum in Denmark (recommendation no. 23a and 23 b)

The Committee recommended that Denmark take measures as follows:

- a) To establish a procedure for systematic screening and examination by a medical doctor of alleged torture victims - undertaken by qualified staff - during all stages of the asylum process such as at reception centres and places of detention, including Ellebæk.

The UN Committee on Human Rights repeated a similar recommendation to Denmark after the examination in June 2016.¹⁰

In response, Denmark concluded that “the procedures already in place to identify and assist victims of torture are sufficient”, cf. Follow-Up Response. The Coalition disagrees with this description of the situation for the following reasons:

1) Legislative shortcomings

First, the Danish asylum legislation does not define who has the obligation for the early identification of victims of torture during the asylum phase and what is the scope of the state’s obligations. Attached as [Annex B](#), the Committee will find a flow-chart showing the Danish system from asylum to eventual rehabilitation and the various legislative and other shortcomings.

Second, the government has removed the previously compulsory health-check of refugees following obtaining residence permit (legislation L191a). This has been highly criticized by health-professionals, as well as DIGNITY.

Finally, the recent legislation amendments rather further restrict the rights of asylum seekers and refugees, including victims of torture. By way of example, the monthly allowance (“integrationsydelsen”) has been reduced. One of the consequences is that torture victims who are referred to treatment at DIGNITY struggle to pay for transportation costs.

2) Lack of procedures, skills and systematic approach to the issue of screening

Based on various reports, it is estimated that approximately 30 per cent of refugees seeking asylum in Denmark are victims of torture and that this figure is higher amongst Syrian refugees arriving in Denmark.¹¹

The refugees come into contact with the authorities on various occasions throughout the asylum process, including during registration with the police; when filling out the asylum form; at the first and

¹⁰ Concluding Observations para 34.

¹¹ Reference is made to the following reports by Amnesty’s group of doctors: 2013: Frihedsberøvede Asylansøgere i Ellebæk; and 2008 Asylansøgere i Danmark. En undersøgelse af nyankomne asylansøgere’s helbredstilstand og traumatiseringsgrad.

any second interview with the Danish Immigration Service; and if rejected by this, at the Danish Refugee Appeals Board.

Today's practices do not encompass systematic identification of torture victims early in the asylum process (at the Red Cross or municipalities' reception and residential centres). The lack of screening at an early stage of the process and of refugees later in the asylum process has serious consequences for victims, including the continuous physical and psychological suffering of the victims and their families; their pursuit of a fulfilling life in Denmark is further complicated when this trauma is not addressed; risk of deprivation of liberty (see below) further compounding their trauma; denial of an effective remedy in the refoulement proceedings (lack of supportive measures and incomplete evidence) and ultimately the risk of being returned to torture.

The lack of screening may furthermore lead to a situation whereby the conditions for specific persons who may be deprived of liberty (during the asylum process or before removal) may contravene human rights requirements and, in the worst cases, may result in contravention of the non-refoulement principle.

Health screening will have two main aims: a) the identification of torture victims in the asylum system with the aim of taking into account the fragile state of the victim, and the existence of a well-informed background against which asylum cases can be decided; and b) the identification of torture victims for treatment/rehabilitation.

Finally, in our view, the reception facilities lack competence, training and experience in this matter. In collaboration with Amnesty International and Copenhagen University (MESU), DIGNITY is currently in the process of validating a new screening instrument to identify victims of torture (this is also described in the February 2017 report by FRA – European Union Agency For Fundamental Rights: Current Migration situation in Europe: Torture, trauma and its possible impact on drug use.¹²

3) *Lack of Medical examination by the Forensic Department*

Denmark responded to the recommendation of the Committee to ensure a systematic medical examination that if “a medical examination is of significance to the asylum decision, a medical examination to assess the claim will be conducted”, cf. Follow-Up Response. Thus, Denmark referred to the discretion of the authorities to assess whether such examination would be of “significance of the asylum decision”.

We would like to note that the Danish Immigration Service continues not to request any medical examination (no request in 2016) and that the Refugee Appeals Board very rarely request an

¹² Annex C. See also <http://fra.europa.eu/en/news/2017/migrant-torture-and-trauma-victims-overlooked-member-states>

examination by the Department of Forensic Medicine (two requests in 2015, and 8 requests in 2016 in relation to which no decision has yet been made according to our information).¹³

As often noted by the Coalition, this lack of expert assessment can affect the authorities' judgement of credibility and lead to inadequate consideration within the asylum process itself of the fragile state of victims. Moreover, medical evidence of past torture can be an essential piece of evidence in the personal risk assessment.

Thus, the 2015 recommendation by the Committee, the similar recommendation by the UN Human Rights Committee¹⁴ and the three individual rulings by the Committee concerning Denmark's violation of Article 3¹⁵ have not resulted in a change of practice.

We would also like to note that on 3 March 2017 the Copenhagen first Instance Court (Byretten) provide an initial procedural decision in a case regarding a Kurdish man whose asylum application was rejected and who claimed that deportation to Turkey would entail a violation of Article 3 of CAT (see the Committee's decision in case 743/2016 and the letters of 28 April and 30 June 2016). Byretten decided to suspend the decision to deport pending the court's decision on the merits of the case.¹⁶

The Committee also recommended that Denmark take measures as follows:

- B) to ensure that victims of torture are "not held in places of deprivation of liberty" and have "prompt access to rehabilitation".

1) Victims of torture may be deprived of liberty

The intention of the latest amendments to the Danish Aliens Act was to increase the use of deprivation of liberty. This will inevitably affect torture victims amongst asylum seekers. In light of the most recent development, cf. the criticism by the Ombudsman of the conditions in Vridsløselille, it is important to uphold the principle of protection against deprivation of liberty as fundamental in a democratic society based on the rule of law. We encourage the Danish government to reconsider the legislation and practice regarding deprivation in accordance with the Committee's recommendation.

Moreover, with regard to the period and length of detention, the Committee recommended:

"The State Party should (a) reduce the length of administrative detention of asylum-seekers authorized under the Aliens Act for as short a period as possible, bearing in mind that detention should be used as measure of last resort".¹⁷

¹³ See the combined shadow report to the UN Committee Against Torture (Annex A), p. 66 ff.

¹⁴ Concluding Observation 16 August 2016, para 34.

¹⁵ Decision of 22 December 2015 (CAT/C/56/D/580/2014); Decision of 7 February 2013 (CAT/C/49/D/464/2011); and Decision of 30 November 2010 (CAT/C/45/D/393/2008).

¹⁶ Case BS21C6893/2016.

¹⁷ Para. 25 of the Concluding Observations.

The Coalition notes that Denmark is referring to the judicial oversight of the detention of rejected asylum seekers, cf. Follow-up Response, and would like to underline, as noted in the Alternative Report (page 12-13), that in the vast majority of cases, the judges decide to uphold the initial decision by the police to detain and that in practice, the rules in the Aliens Act are not administered in accordance with the intention that administrative detention and extension beyond 6 months should be the exception. This was also noted by the UN Human Rights Committee in the examination June 2016.¹⁸ Moreover, the decision by the first instance courts (i.e., Hillerød Court regarding Ellebæk and Glostrup Court regarding Vridsløselille) are taken without documentation regarding whether the person is a victim of torture (due to lack of identification as noted above) or generally his/her health conditions.

The Coalition would suggest the Committee to ask Denmark for further clarification on how many decisions re detention are not upheld by the courts and what is the average length of administrative detention. Moreover, the Coalition is unaware of any practice by the police to impose less restrictive measure towards victims of torture and would encourage Denmark to submit examples of such measures.

2) Torture victims should have prompt access to rehabilitation

A series of research studies highlight the necessity of acting quickly when dealing with refugees and asylum seekers. There is a clear correlation between early intervention and successful rehabilitation.¹⁹ A long wait after arrival in a receiving country is singled out as the most significant factor in the development of mental health problems and is linked to mental health conditions such as PTSD, depression and anxiety.²⁰

The research found that traumatised asylum seekers and survivors of torture suffer from social isolation and loneliness; that they lose trust in their fellow country-men and lose their feeling of social identity; and that they suffer anxiety, guilt, self-reproach and fear.²¹ The perception of social isolation is of greater significance in the development of mental health conditions than the amount of trauma suffered before the arrival in the receiving country.²² If these challenges are not addressed in time, there may be a pronounced effect on the state of asylum seekers and refugees and negative consequences for their integration in society.

Prompt measures help to establish trust in both fellow country-men and people in the receiving country and at the same time provide the tools that can help the newly arrived person handle specific challenges and take responsibility for themselves, also when seeking employment. At the same time early measures prevent the displaced person from feeling frightened or reacting violently when experiencing symptoms that are linked to a trauma such as torture.

¹⁸ Concluding observations para 35.

¹⁹ Brymer et al, 2008.

²⁰ Song et al, 2015.

²¹ Bunn et al, 2016.

²² Porter & Haslam, 2015.

Implementation of the right to rehabilitation²³ is also relevant for victims of torture who have been granted a residence permit in Denmark; equally so for people whose asylum application has been refused and where the need for treatment may have implications for conditions during the removal phase and for the final decision on removal. We would like to recommend that Denmark informs the Committee about which steps will be taken to implement the right to rehabilitation.

d) Separation of convicts and remand prisoners (recommendation no. 37)

The Committee noted that at times, people given a short sentence were detained alongside remand prisoners. We do not have further comments to the explanation provided by Denmark.

Annex A: Letter of 24 May 2016 to the Danish MFA

Annex B: Flow-Chart from Asylum to Rehabilitation in Denmark.

Annex C: Report by FRA - European Union Agency For Fundamental Rights: Current Migration situation in Europe: Torture, trauma and its possible impact on drug use (February 2017)

²³ We also refer to the Committee's General Comment No 3.