

Ministry of Foreign Affairs of Denmark

Att.: Mette Nørgaard Dissing-Spandet

Head of the office for international law and human rights at the Ministry of Foreign Affairs of Denmark

Copenhagen, 24 May 2016

Follow-up on the CAT (Committee Against Torture) Concluding Observations for Denmark

We would like to thank the Ministry for their interest in a discussion with civil society on the follow-up on last year's recommendations by the United Nations' Committee Against Torture. We value this dialogue as part of the ongoing effort to ensure effective implementation of the UN Convention against Torture.

In this letter, our main focus is the four recommendations under the one-year follow-up procedure, cf. para. 50 of the Concluding Observations (COs):

- 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).

In the following, we would like to put forward experience-based examples of the unfortunate consequences, for refugees who have suffered torture and other persons, of Danish practices within the above areas and make specific suggestions for changes in legislation and practice. We will be happy to expand on these examples at a later date in our discussions with the Ministry of Foreign Affairs and other relevant ministries. We also refer to the combined NGO shadow report submitted to the Committee last year (Appendix A) which addresses question (a) on pages 7 ff. and (c) on pages 26 ff. and 66.

a) Incorporation of the Convention against Torture in Danish law

When examining Denmark, the UN Committee Against Torture repeated its earlier recommendation of the incorporation of the Convention against Torture in Danish

DIGNITY
Danish Institute Against Torture
Borgergade 13
Postbox 2107
DK 1014 Copenhagen K

Tel. +45 33 76 06 00
Fax. +45 33 76 05 10

info@dignityinstitute.dk
www.dignityinstitute.dk

CVR no 69735118
P no (production unit number)
1002304764
EAN 5790000278114

Danske Bank no
4183-4310821209

law – in keeping with similar recommendations from other UN human rights committees and the CPT (European Committee for the Prevention of Torture). In response to this recommendation, the Danish delegation affirmed that Denmark would reconsider the question of incorporation (para. 12 COs) and would subsequently form an interdepartmental working group. Can the Ministry say whether this process has begun?

Since Denmark continues to be an active and strong advocate of full implementation of the obligations of the Convention (including as part of the CTI (Convention against Torture Initiative)), it is hard to understand why incorporation has not yet taken place. At the conclusion of the expert work on incorporation of seven human rights conventions at the end of 2014, a majority of independent experts recommended incorporation of the Convention against Torture, among other things.

We would like to reiterate some of the compelling reasons for making the Convention against Torture an integral part of Danish law:

- a) Concrete, improved application of the provisions of the Convention against Torture in Denmark to ensure that Denmark does not fall foul of the Convention;
- b) Reinforcement of the legal position and legal protection of private individuals, who will be able to have direct recourse to the Convention in courts of law and other authorities applying the law (see also para. 12 COs); and
- c) Greater awareness amongst judges and administrative authorities of the Convention and Denmark's obligations to ensure the rights of torture victims.

These points are further explained in the attached Information Note drafted by DIGNITY and Justitia (Appendix B), which also contains examples of areas of the law where the legal positions of citizens will be improved as a result of incorporation, including in respect of the use of force by the police, processual rights under Article 14 CAT, and compulsion in psychiatric care.

We further refer to the general obligation of Denmark and other UN Member States to prevent torture through effective legal measures (Article 2 of the Convention against Torture¹) as a further argument in favour of incorporation of the Convention in Danish law. Denmark has an obligation to carry out continual evaluation of

¹ We also refer to the Committee's General Comment No 2.

whether international legal obligations are properly observed in practice. Such evaluation should take into account more recent legal practice and development of legislation (for example with respect to the positive obligations of the state) and be attuned to changes in political prioritisation, for example with respect to the most recent flows of refugees to Denmark and Danish engagement in international military operations.

We wish to draw attention to the troubling nature, in terms of the rule of law, of the situation whereby torture victims who are amongst refugees cannot rely completely on the provisions of the Convention with respect to decisions made by the Danish asylum authorities. An incorporation in Danish law would allow the asylum authorities to make direct use of the Convention's provisions as well as interpretations of the Committee, including the coming revised General Comment No 1 on implementation of Article 3 - in addition to the European Convention on Human Rights (ECHR) which is already part of Danish law.

We also note that the latest draft 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.² For example, the legal base underlying cases of rendition, which potentially could involve a number of the Convention's provisions³, would become far more precise after incorporation and due consideration of the extent of Denmark's obligations under international law.

We thus maintain that the failure to incorporate the Convention against Torture in Danish law adds to the lack of clarity about Denmark's implementation of specific obligations under international law. We are therefore keen to know the current view of the government on whole or partial incorporation of the Convention in Danish law.

b) Removal of vulnerable persons

Following a tragic case involving the return to Afghanistan of a minor and his 23-year-old brother (Vahid and Aboli)⁴, the UN Committee Against Torture recommended that Denmark instigate monitoring mechanisms for vulnerable

² See Annex C: DIGNITY's representation to the Ministry of Defence, and Annex D: Information Note to the Defence Committee on the application of the non-refoulement principle in Denmark's engagement in the fight against ISIS.

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

⁴ 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/>

people after removal to their home country/receiving country, so that Denmark can react to any information on later mistreatment of persons removed from Denmark, for reasons including "the purpose of informing its asylum policies" (para. 21 COs).

We wish to point out that any post-removal requirements may not be allowed to entail a slackening of conditions when assessing the compatibility of the removal with Denmark's international obligations, including the absolute prohibition against removal to countries where there is a risk of torture, etc. Where a final decision on removal is made, monitoring and supervision – which could be undertaken in cooperation with international and local organisations – would reinforce protection of the removed person and help strengthen the basis for decision-making in similar situations subsequently.

c) Screening of and assistance for torture victims seeking asylum in Denmark

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

This recommendation has the four following elements:

1) Procedure for systematic screening

It is thought 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. 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 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 (in municipalities, where efforts are being made to abolish the obligatory health check, cf. L 189, proposed amendment to the

Act on Integration, and others⁵) has serious consequences for victims and significant social implications in the form of increased spending on health, failures of integration and more expensive integration measures, fewer job opportunities, etc. 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 (see below) 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.

In view of the above, we call on Denmark to carry out the Committee's recommendation of the introduction of obligatory health screenings of asylum applicants. We feel that such a change in practice would have only minimal economic and resource-related implications in the short term and, as said, will achieve savings in the long term.

2) Medical examination

The Danish Immigration Service and the Refugee Appeals Board very rarely request an examination by the Department of Forensic Medicine at the University of Copenhagen with respect to torture (two requests in 2015, and to our knowledge, so far one case in 2016).⁶ 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. In the worst cases, the failure to undertake an examination with respect to torture may lead to the refusal of entry of people who should find protection in Denmark, who may then be removed from Denmark in contravention of the prohibition of refoulement, cf. Convention against Torture, Article 3 and ECHR Article 3⁷.

Torture victims typically find it difficult to talk about their torture and often give diverging accounts of the torture itself as well as its duration. On a general note, one can say that many of the symptoms typically displayed by torture victims including problems concentrating, palpitations, perspiring and agitation are also

⁵ DIGNITY's representation with respect to L 189 can be found on our website: <https://dignityinstitute.dk/nyheder-og-aktiviteter/nyheder/2016/hoerings svar-til-lovaendring-vedroerende-helbredstjek-af-flygtninge/>

⁶ See the combined shadow report to the UN Committee Against Torture (Annex A), p. 66 ff.

⁷ See for example the ruling on 7 February 2013, CAT/C/49/D/464/2011, para 8.8.

characteristic of cases involving lack of credibility. Survivors of torture are thus people who are particularly vulnerable when they find themselves in our asylum system.⁸

It should be noted that the Danish Immigration Service and the Refugee Appeals Board are aware that credibility assessments of torture victims should proceed in a different manner than for other asylum seekers.⁹ A more gentle assessment of credibility is immensely important when considering the psychological and physical consequences of torture and the victim's ability to give a cohesive account of events. The 2015 recommendation and the three individual rulings by the UN Committee Against Torture concerning Denmark's violation of Article 3 and the related significance of examination for evidence of torture¹⁰ have not resulted in a change of practice. This was most recently made evident in a new case concerning a person who was removed to Turkey.¹¹

Exhaustive examinations for evidence of torture should be undertaken in order to ensure that Denmark fulfils her international obligations under CAT (particularly Articles 3, 12, 13 and 14), the fulfilment of general guarantees of the rule of law¹² and Denmark's obligations under international law to protect refugees.

3) Victims of torture may not 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 when ensuring the protection of human rights in Denmark to uphold the principle of "protection against deprivation of liberty [as] fundamental in a democratic society based on the rule of law".¹³ This human rights view implies that in a case, the first assessment to

⁸ Supporting literature is available, for instance in an article by Dr Juliet Cohen, Freedom from Torture: <https://www.freedomfromtorture.org/sites/default/files/documents/JulietCohenRecallandCredibility.pdf>

⁹ See the Annual Report by the Danish Refugee Appeals Board and the Information Note from the Danish Immigration Service and the Appeals Board: The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – Introduction, enforcement and Danish cases, Section 2.4 "with particular attention to the assessment of the credibility of the victim of torture".

¹⁰ 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).

¹¹ See article in *Politiken*, 6 May 2016.

¹² It is significant for this assessment of the rule of law that rulings by the Danish Refugee Appeals Board cannot be admitted under Danish law in a court of justice (with respect to assessment of evidence) and that there will no longer be legal aid for those wishing to bring a case before the UN committees.

¹³ Jens Elo Rytter: *Individets Grundlæggende Rettigheder* (Fundamental rights of the individual), p. 153.

be made is whether deprivation of liberty as such is legal. With regard to the period of deprivation of liberty, see the UN Committee Against Torture recommendation:

"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".¹⁴

With respect to conditions of deprivation of liberty, it is important to specify the legal entitlements of the victim of torture and to consider the fact that a health examination dictates that asylum seekers may not be deprived of liberty, or that special rules should apply.

In the worst cases, deprivation of liberty may incur a violation of the Convention against Torture Article 16.¹⁵

Deprivation of liberty may have serious consequences for psychologically vulnerable and traumatised people¹⁶, including asylum seekers.¹⁷ See the UN Special Rapporteur on the Human Rights of Migrants:

"detention can be particularly damaging to vulnerable categories of migrants, including victims of torture, unaccompanied older persons, persons with a mental or physical disability, and persons living with HIV/AIDS."¹⁸

We therefore call on Denmark to pay particular attention to the unfortunate effects of detaining victims of torture and to work towards implementation of the Committee's recommendation.

4) 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

¹⁴ Para. 25 of the Concluding Observations.

¹⁵ See the decision of the Committee Against Torture of 6 February 2013, no 412/2010, paras 3.1 and 7.3.

¹⁶ Steel and Silove (2001), 'The mental health implications of detaining asylum seekers', (2001) *MJA* 2001 175: 596-599.

¹⁷ Coffey et al. (2010), 'The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum', 70 *Social Science & Medicine* 2070-2079 and Newman, Dudley and Steel (2008), 'Asylum, Detention and Mental Health in Australia', 27(3) *Refugee Survey Quarterly* 110-127.

¹⁸ Report of the Special Rapporteur on the Human Rights of Migrants: Detention of Migrants in an Irregular Situation, para. 43.

¹⁹ Brymer et al, 2008.

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.

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.

d) Separation of convicts and remand prisoners

The Committee noted that at times, people given a short sentence were detained alongside remand prisoners. In this regard we refer to Article 10, point 2(a) of the ICCPR (International Covenant on Civil and Political Rights) and the underlying objective of this provision and ask that Denmark implement the recommendation of the Committee Against Torture.

Finally we would like to stress that we are looking forward to further dialogue and will be happy to offer our experience in future discussions about the implementation of all of the recommendations of the Committee Against Torture

²⁰ Song et al, 2015.

²¹ Bunn et al, 2016.

²² Porter & Haslam, 2015.

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

and the important dissemination of the recommendations in general, as well as specifically among authorities applying the law.

Sincerely,

The Danish Refugee Council, the Danish United Nations Association, the Danish association of immigration lawyers (Foreningen af Udlændingeretsadvokater), the Danish Anti-Torture Support Foundation, IRCT (the International Rehabilitation Council for Torture Victims) and DIGNITY – Danish Institute Against Torture

Appendix A: Combined NGO shadow report to the UN Committee Against Torture, November 2015

Appendix B: Information Note on incorporation of the UN Convention against Torture (DIGNITY and Justitia), November 2015

Annex C: DIGNITY's representation to the Ministry of Defence on the draft military manual, March 2016

Appendix D: Information Note to the Defence Committee on the application of the non-refoulement principle in Denmark's engagement in the fight against ISIS, April 2016.