Follow-up Report

Submission to the United Nations Human Rights Committee 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

HELSINKI COMMITTEE

International Rehabilitation Council for Torture Victims

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 published on 11 August 2017 (Follow-up Report).[1]

The Coalition is composed of the following 15 organisations:

- Association of Aliens Law Lawyers
- Better Psychiatry – National Association of Relatives
- Danish Association of Legal Affairs
- Danish Refugee Council
- Disabled People's Organisations Denmark (DH)
- DIGNITY – Danish Institute Against Torture
- The Danish Helsinki Committee for Human Rights
- 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 June 2016, we submitted a report to this Committee (Alternative Report)[2] expressing concerns that in various areas, improvements were lacking and the recommendations of the Committee, other UN Treaty Bodies and the European Committee for the Prevention of Torture (CPT)[3] had not been implemented. In addition, Denmark has received several decisions in individual cases in which the Committee concluded that Denmark did not fully implement the standards of the ICCPR – most recently decision of 27 July 2017 regarding deportation to Iraq and decision of 13 March 2017 regarding deportation to Egypt.[4]

The Committee's adopted its Concluding Observations (COs) in August 2016[5] and identified three principal subjects of concerns – for which implementation was a priority and in relation to which implementation should occur within a year[6]:

[1] CCPR/C/DNK/CO/6/Add.1.
[2] CSO Alternative Report, available at the Committee's website under Denmark.
[3] Last visit to Denmark was undertaken from 4 to 13 February 2014, see Report of 17 September 2014 (CPT/Inf (2014) 25.

[4] CCPR/C/120/D/2601/2015 and CCPR/C/119/D/2530/2015.
[5] CCPR/C/DNK/CO/6 of 15 August 2016.
[6] As stipulated in the Committee's guidelines on the follow-up procedure (para 6) that "the recommendation is implementable within a year after its adoption and the recommendation requires immediate attention"

A) Efforts to combat domestic violence (para 20 COs);
B) Bring legislation and practice regarding solitary confinement in line with the Mandela Rules (para 24 COs); and
C) Ensure full compliance with the rights of migrants, including asylum seekers, as protected under the ICCPR (para 31-32 COs).

Today over a year later, we reiterate our concern of lack of progress and highlight specifically in relation to issues B) and C) selected for the follow-up procedure that:

- The use of solitary confinement as a disciplinary measure (pursuant to *the Sentence Enforcement Act*) has increased (except for minors). The latest legislative amendment, which entered into force in August 2016,[7] entailed that possession of mobile phones in closed prisons was penalized and that the disciplinary sanction was tripled (i.e., first time sanction: 15 days; 2nd time: 21 days; and 3rd time: 28 days). This development is in our view contrary to the Committee's recommendation to bring the use of solitary confinement in line with the Mandela Rules.
- Further restrictions concerning asylum seekers and refugees continue to be imposed by law, and the current Danish government publicly announce the number of such restrictions on the website of the Immigration and Integration Ministry (as of today amounting to 64 new restrictions).[8] This development is in our view contrary to the concerns expressed and recommendations by Committee concerning the rights of aliens in Denmark.

As explained further below (page 4-8), the Coalition is of the opinion that current legislation and practice within these areas should be improved in order to fulfil the standards of ICCPR, and the Coalition therefore encourages the Committee under the follow-up procedure to ask for further clarification from Denmark, as well as a detailed Implementation Plan to ensure the implementation of all the Committee's recommendations in the COs as a matter of priority.

We would like to emphasize that the Coalition highly appreciates the cooperation 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 Human Rights Committee. Similarly, the Coalition wishes to express its appreciation that Danish authorities maintain a good and constructive dialogue and cooperation with NGOs.

Please find below our specific comments to subject B) and C).

[7] Law no 641 of 8 June 2016.
[8] See website of the Ministry of Integration www.uim.dk

B: Denmark "should bring its legislation and practice on solitary confinement in line with international standards as reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), by

- **abolishing solitary confinement of minors and**
- **reducing the total length of permissible solitary confinement for remand detainees even if it is used as a measure of last resort.**
- **The State party should regularly evaluate the effects of solitary confinement in order to continue to reduce it and to develop alternative measures where necessary."[9]**

As explained in our Alternative Report and during the Committee's examination of Denmark, the Coalition is generally highly concerned about the use of solitary confinement in Denmark.

Specifically with regard to isolation of minors, the Sentence Enforcement Act (in Danish: *Straffuldbyrdelsesloven*) continues to permit solitary confinement of up to four weeks for children imposed as an administratively, for both pre-trial detainees and those convicted. Moreover, the Criminal Procedure Code (in Danish: *Retsplejeloven*) permits isolation of minors due to the criminal investigation and this decision is made by the courts (see information submitted by Denmark[10]). Despite the limited use of isolation towards minors (15 cases in 2016) and positive efforts to limit the use of prolonged isolation (beyond 15 days), we would like to stress that the Danish legislative framework is in contravention with international standards that prohibit solitary confinement of children. In September 2017, the Committee on the Rights of the Child explicitly recommended that Denmark abolish the use of solitary confinement of minors.[11]

We welcome the recent initiative by the Danish Prison and Probation Service that resulted in some recommendations regarding reducing the use of isolation as a disciplinary sanction (presented by a working group in January 2017) and in the MoJ currently considering the possibilities of amending the law[12]. We urge Denmark to use this opportunity to finally abolish solitary confinement vis-à-vis minors altogether in accordance with international standards and recommendations.

Specifically with regard to reducing the total length of permissible court-imposed solitary confinement for remand prisoners, the Coalition reiterates our concern about the use of prolonged isolation (i.e., nearly 60 % of the 37 cases in 2016 exceed two weeks[13]) and we call for an amendment to the legislation, as recommended by the Committee.

Finally, the Committee recommended that Denmark should regularly evaluate the effects of solitary confinement in order to continue to reduce it and to develop alternative measures where necessary. We would like to focus on Danish prison authorities' use of ***isolation as a disciplinary measure***. This is

[9] Concluding Observations, CCPR/C/DNK/CO/6 of 15 August 2016, para 24.
[10] CCPR/C/DNK/CO/6/Add.1, para 26-35.
[11] CRC/C/DNK/CO/5 of 29 September 2017.
[12] CCPR/C/DNK/CO/6/Add.1, para 35.
[13] CCPR/C/DNK/CO/6/Add.1., para 38: "In 2016, there were 37 solitary confinements during pre-trial detention. 15 of these did not exceed two weeks and no one exceeded eight weeks".

done primarily on the grounds of necessity and a lack of alternatives and recently due to political directives to increase the use of disciplinary sanctions in general. In Denmark, the use of solitary confinement as a disciplinary measure (*strafcelle*) pursuant to the *Sentence Enforcement Act* – for both pre-trial detainees and convicted prisoners – is still high (except for children). In total, its use has more than doubled since 2001 and, during the last ten years, the numbers have fluctuated between 2430 (2008) and 3044 (2011). From 2015 to 2016, there has been an increase of more than 400 from 2579 in 2015 to an estimated 2995 in 2016, with half relating to long-term duration of 15 or more days. This is due to the recent strict regulation of unlawful possession (and use) of mobile phones. Last year, solitary confinement of 15 days or more was applied in 222 cases – of which 219 of the cases were about illegal communication (mobile phones etc.).[14]

DIGNITY organised in April 2017 an international conference in Denmark focusing on the use of solitary confinement as a disciplinary measure. The experts concluded that health studies extensively document the deleterious health impacts of solitary confinement that relate to physical, mental and social consequences. Despite variations in individual, environmental and contextual factors, there is consistency in findings on the health effects of solitary confinement.

Moreover, solitary confinement need not be prolonged (more than 15 days) for any suffering to be inflicted. By way of example, according to a research on Danish pre-trial detainees in isolation, 'acute isolation syndrome' entailing 'problems of concentration, restlessness, failure of memory, sleeping problems and impaired sense of time an ability to follow the rhythm of day and night' became evident after a few days in isolation. Thus, it is a widely held view that effects can occur after only a few days [and] rise with each additional day spent in such conditions' (see further Discussion Paper from the conference attached as Annex A).

Therefore, we recommend Denmark to evaluate the effects of solitary confinement – used as a disciplinary measure – and to develop alternatives and less intrusive disciplinary sanctions in prisons.

C: Denmark "should, while taking measures to control immigration, ensure their full compliance with the rights of migrants, including asylum seekers, as protected under the Covenant."[15]

In relation to the general compliance with the rights of migrants, including asylum seekers, we would like to highlight that the regime of tolerated stay has been further restricted in legislation adopted in February 2017[16]. Moreover, the Minister of Immigration and Integration, Inger Støjberg, has publicly stated that the conditions for persons on tolerated stay should be as unbearable as possible and that the Danish government is willing to go to the very edge of what the human rights conventions allow to persuade the persons to leave Denmark.[17]

[14] Presentation by the Prison Administration at the DIGNITY Conference held on 3 April 2017.
[15] Concluding Observations, CCPR/C/DNK/CO/6 of 15 August 2016, para 32.
[16] By law no. 189 of 28 February 2017 that entered into force 1 March 2017.
[17] See the debate about law no. 189.

Before the restriction in February 2017 a person on tolerated stay was assigned residence at an asylum center and imposed a duty of reporting daily to the police at the center. If the person did not compel to these duties, he or she could be convicted to pay a fine or risked facing prison for as much as one year. After the restriction in February 2017 a duty of notification has been imposed meaning that a person on tolerated stay is required to inform the staff at the center, if the person will not compel to the before mentioned duties. Furthermore, the length of a possible prison sentence for non-compliance with the duties has been extended to a maximum of 1 ½ year.

The above-mentioned 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). [18]

In 2016, the persons on "tolerated stay" were moved from the Center Sandholm, located on Zealand north of Copenhagen, to Center Kærshovedgård in Jutland that previously was an open prison. Kærshovedgård is located 6 km from Bording and 13 km from Ikast - without any public transportation available.

We have attached a report by the Danish Helsinki Committee who visited Kærshovedgård in March 2017 (Annex B). The Committee was critical of the conditions for persons on "tolerated stay" and recommended that the Danish authorities reconsider whether it is necessary to maintain such restrictive conditions for persons who are not able to return to their home country or to any other country.

a) **"Ensure that its policies and practices related to the return and expulsion of migrants and asylum seekers afford sufficient guarantees of respect for the principle of non-refoulement under the Covenant."[19]**

Non-refoulement in cases concerning adults

The Coalition disagrees with Denmark that measures and initiatives have already been taken to fully implement the Committee's recommendation[20] and we are concerned that diplomatic assurances may be used in the future. We would specifically like to highlight that:

- The UN Treaty Bodies continue to issue decisions finding Denmark to be in violation of its non-refoulement obligation (most recently decision of 10 August regarding deportation to Iraq).
- As mentioned in our Alternative Report, torture victims among asylum seekers are not systematically identified during the asylum procedure and the Asylum authorities (Immigration Service and the Refugee Appeals Board) only rarely request an examination for torture by the Forensic Institute when the asylum seeker claims to have been tortured. The lack of identification and torture examinations can negatively impact torture victims' access to an effective remedy in asylum procedures. When their torture trauma is not identified and acknowledged, they are denied important evidence to support their claims and psychological

[18] http://www.hoejesteret.dk/hoejesteret/nyheder/Afgorelser/Pages/Enudlaendingsovertraedelserafopholds-ogmeldepligt1.aspx
[19] Concluding Observations, CCPR/C/DNK/CO/6 of 15 August 2016, para 32 (a).
[20] CCPR/C/DNK/CO/6/Add.1., para 50.

symptoms such as avoidance and disassociation are not taken into account in processes that seek to assess the person's credibility. In its decision of 28 June 2017, the Committee noted that the Refugee Appeals Board should have "allowed F to be medically examined" (para 8.4) and that removal of rejected asylum seekers to Egypt "would violate their rights under article 7 of the Covenant" (para 9).[21] The Coalition would like to note that the lack of identification and examination of torture victims among asylum seekers possibly leads to violations of the principle of non-refoulement.[22]

- In a number of specific cases throughout 2017 the UN Human Rights Commitee (OHCHR) and the Committee against Torture (CAT) have criticized the decision of the Danish Refugee Appeals Board. The Refugee Appeals Board has reopened each case again (when the applicant was still in Denmark) but the new decisions did not reflect the criticism of the Committees. The applicant consequently was still in risk of deportation after the review of the Refugee Appeals Board in contrary to the decision of the Committees.

Non-refoulement in cases concerning children

The Coalition would like to refer to the recent recommendations by the Committee on the Rights of the Child in order to avoid violations of the principle of non-refoulement:

- Put into place mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their deportation, even in cases where return is voluntary, and act upon reports of torture and ill-treatment, including for the purpose of informing its asylum policies[23];
- Take specific measures and train law enforcement personnel, social workers and immigration personnel on identification of victims or girls at risk of FGM in order to ensure that they are under no circumstances subjected to refoulement, and also establish complaint mechanisms, including at airports, for girls who fear becoming victim of FGM;
- Ensure that the best interests of the child are a primary consideration in all decisions and agreements in immigration cases.[24]

Revocation of Somali residence permits

As of December 2016 The Immigration Service started a revocation process of Somali residence permits due to an alleged improvement of the general conditions in Mogadishu. The Refugee Appeals Board has confirmed the first processed cases on this issue. In two cases (concerning an unmarried couple with a daughter) the Board stated on the 19 June 2017 that there was a risk of FGM to the daughter if returned to Somalia from which the parents could not protect her. The applicants were therefore issued refugee convention status.

[21] Case no. 2530/2015.

[22] DIGNITY would like to note that it has participated in a training workshop with the Refugee Appeals Board and will participate in a similar workshop with the Immigration Service in January 2017, and that such dialogue is fruitful and highly appreciated.

[23] Reference is also made to the tragic case involving the return to Afghanistan of a minor and his 23-year-old brother (Vahid and Aboli).

[24] CRC/C/DNK/CO/5 of 29 September 2017, para 40.

Even if FGM is considered as a possible asylum motive in the revocation cases handled in the Asylum Section of the Immigration Service and before the Refugee Board, there is a lack of thorough investigation and legal safeguards on this issue when it comes to spouses to a Somali refugee and children who holds a residence permit in Denmark due to family reunification. In these cases the Immigration Service does not consider any asylum related risks, e.g. FGM if the family has to return to Somalia due to a revocation of the residence permit of the Somali refugee.

b) "Ensure that the detention of migrants and asylum seekers is reasonable, necessary and proportionate in the light of the circumstances, in accordance with the Committee's general comment No. 35 (2014) on liberty and security of persons, and that alternatives to detention are found in practice"[25]

The intention of the latest amendments to the Danish Aliens Act was to increase the use of detention of migrants and asylum seekers. 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 therefore encourage the Danish government to reconsider the legislation and practice regarding deprivation.

c) "Consider reducing the length of detention for migrants and asylum seekers who are awaiting deportation and improve the detention conditions of such persons, in particular at the detention facility of Vridsløselille"[26];

The Coalition notes that Denmark is referring to the judicial oversight of the detention of rejected asylum seekers, cf. Follow-up report, and would like to underline, as noted in the Alternative Report, that in the vast majority of cases, the judges decide to uphold the initial decision by the police to detain. 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 or generally his/her health conditions.

The Coalition would suggest the Committee to ask Denmark for further clarification on how many decisions regarding detention are not upheld by the courts and what is the average length of administrative detention.

d) "Repeal the amendment introduced to the Aliens Act in November 2015 in order to ensure that, in all cases, detained migrants have full access to fundamental legal safeguards, in particular to judicial review of the legality of their detention."[27]

Although the suspension-rule (Aliens Act para 37 k) has never been activated, the Coalition would urge Denmark to repeal the provision, as explained in our Alternative Report.

[25] Concluding Observations, CCPR/C/DNK/CO/6 of 15 August 2016, para 32 (b).
[26] Concluding Observations, CCPR/C/DNK/CO/6 of 15 August 2016, para 32 (c).
[27] Concluding Observations, CCPR/C/DNK/CO/6 of 15 August 2016, para 32 (d).

Annex A: Discussion Paper from DIGNITY's conference on solitary confinement as a disciplinary measure.

Annex B: Report by the Danish Helsinki Committee regarding visit to Kærshovedgård.