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**Human Rights Committee****Report on follow-up to the concluding observations of the Committee\*****Addendum****Evaluation of the information on follow-up to the concluding observations on Denmark\*\***

<i>Concluding observations (117th session):</i>	CCPR/C/DNK/CO/6, 7 July 2016
<i>Follow-up paragraphs:</i>	20, 24 and 32
<i>Follow-up reply:</i>	CCPR/C/DNK/CO/6/Add.1, 14 July 2017
<i>Committee's evaluation:</i>	Additional information required on paragraphs 20 [A], 24 [C] and 32 [B][B][C][E]
<i>Information from the national human rights institution:</i>	Danish Institute for Human Rights, 21 August 2017 <sup>1</sup>
<i>Information from non-governmental organizations:</i>	Dignity – Danish Institute against Torture and others, 1 November 2017 <sup>2</sup>

**Paragraph 20: Domestic violence**

**The State party should continue its efforts to combat domestic violence effectively, in particular violence against women, by ensuring effective reporting on acts of domestic violence, investigations, prosecutions and sanctions of perpetrators. The State party should ensure that guidelines on the application of its legislation are enforced by all police districts in a uniform manner. It should continue to provide training to all professionals involved in preventing and combating domestic violence.**

**Summary of State party's reply**

The police initiates investigations upon receiving a complaint or ex officio when there is a reasonable presumption that an offence has been committed. The Prosecution Service initiates criminal proceedings ex officio when evidence of a crime is found. A new national unit to combat violence in family and intimate relations, funded by the Government and

\* Adopted by the Committee at its 125<sup>th</sup> session (4 to 29 March 2019).

\*\* The assessment criteria are available at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/INT\\_CCPR\\_FGD\\_8108\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf).

<sup>1</sup> Submission available from [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en).

<sup>2</sup> Submissions available from [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en).

managed by five non-governmental organizations, has been operational since 1 October 2017 and runs a national hotline, provides legal counselling and collects data.

The Director of Public Prosecutions issued binding guidelines for the police and prosecutors on handling criminal cases, including cases of domestic violence (guidelines on interrelational violent crimes, updated on 1 July 2016); prosecutor's obligations to inform and guide victims are also outlined in the Administration of Justice Act. The Director also developed guidelines on restraining, exclusion and expulsion orders.

Under the national action plan against violence in intimate relations (2014–2017), a number of projects were implemented to educate professionals. Basic training in the handling of criminal cases, including domestic violence, is mandatory for all new legal staff in the Prosecution Service. Students at the Police Academy are trained in the prevention and detection of violence. The national centre for crime prevention, established in 2012, offers a two-day training course on the evidence-based risk assessment tools (116 investigators and caseworkers have obtained certification since 2015).

The State party reiterates information contained in its sixth periodic report (CCPR/C/DNK/6, para. 110) on the strategy and action plan against violence (2014–2017) in place in Greenland. The Danish act on restraining, exclusion and expulsion orders entered into force for Greenland (with adjusted conditions) on 1 April 2017. It enables the Chief Police Constable in Greenland to, *inter alia*, issue restraining orders.

Various measures have also been taken by the government in the Faroe Islands, including information pamphlets on avenues for protection and counselling; new legislation in force since March 2017 containing provisions protecting persons from violence, assault, harassment and stalking, authorizing the temporary expulsion of abusive persons from the home and providing for clear rules regarding restraining orders; and Criminal Code amendments in force since March 2017 that, *inter alia*, extend the statute of limitations for certain sexual offences, expand the definition of rape to include coercion and abuse of a person in a helpless state/situation, and add offences committed within marriage.

#### **Information from the national human rights institution**

There is no concrete definition or criminalization of psychological violence as a separate crime. The Ministry of Justice considers psychological violence to be criminalized under sections 245 (2), 260 and 266 of the Criminal Code on offences generally relating to bodily harm and coercion by violence or threats. Despite these provisions, case law shows that psychological violence is not recognized as a crime by the judiciary. A Danish study (2016) found a specific link between psychological violence and killings of women by their intimate partners.

There is no reference to psychological violence in the guidelines issued by the Director of Public Prosecutions referred to by the State party.

#### **Committee's evaluation**

[A]: The Committee welcomes the various legislative and policy measures taken to prevent and combat domestic violence in Denmark, Greenland and the Faroe Islands, including the update to the guidelines on interrelational violent crimes (1 July 2016), the operationalization of the national unit to combat violence in family and intimate relations (1 October 2017), the extension of the Danish Act on Restraining, Exclusion and Expulsion Orders to Greenland (1 April 2017), and the new legislation and Criminal Code amendments passed in the Faroe Islands (March 2017) that, *inter alia*, provide for clear rules regarding restraining orders, extend the statute of limitations for certain sexual offences and expand the definition of rape. The Committee requires further information on: (a) the practical impact of these measures, including of the national action plan (2014–2017) and the strategy and action plan against violence (2014–2017) of Greenland, on preventing domestic violence and facilitating the reporting of domestic violence, and on ensuring investigations, prosecutions and the sanctioning of perpetrators in Denmark, Greenland and the Faroe Islands (please provide relevant statistics since 2016); (b) the content of the latest update to the guidelines on interrelational violent crimes and any measures to ensure consistent application in practice;

and (c) the incidence of cases of psychological violence against current or former intimate partners in the courts and the outcomes.

The Committee appreciates the information on training in the prevention, detection and handling of violence and that the certification training on evidence-based risk assessment tools continues to be offered by the national centre for crime prevention. It requires additional information regarding: (a) any comprehensive and mandatory training offered to police officials (as opposed to police students) and professionals, other than prosecutors, involved in preventing and combating domestic violence; and (b) the number of professionals who obtained certification on evidence-based risk assessment tools since 2016 and the results of the training.

#### **Paragraph 24: Solitary confinement**

**The State party should bring its legislation and practice on solitary confinement into 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.**

#### **Summary of State party's reply**

The Administration of Justice Act sets out strict limits for the use of solitary confinement and requires compliance with the principles of necessity and proportionality. Solitary confinement of persons under 18 for up to four weeks is possible in exceptional circumstances when the nature of the crime and risk of tampering with the investigation warrants it, and extension is possible beyond six months for persons suspected of the most serious crimes. Two minors were held in solitary confinement during pretrial detention in 2016 (charged with terrorism and severe violations of weapons legislation). Pretrial detention, including solitary confinement, is ordered by district courts and can be appealed to the High Court and to the Supreme Court under certain conditions.

Solitary confinement can also be ordered by administrative decision for either punitive (disciplinary cell) or preventive reasons (exclusion from association). It concerns only a limited number of minors (13 in 2016), given that most minors get suspended sentences/community service or may serve their sentence outside the prison system. Time in solitary confinement is generally served in normal cells, with access to books, television and occupational activities. The Ministry of Justice was considering amendments to the law following the recommendations made by a working group under the Danish Prison and Probation Service in January 2017 that placement in a disciplinary cell should not exceed three days (seven days in exceptional circumstances) and should be implemented in ways that permit association with others for a few hours during work or study (this would not constitute solitary confinement as defined by the Nelson Mandela Rules).

Under the Administration of Justice Act, solitary confinement during pretrial detention cannot exceed two weeks when charges can lead to imprisonment of up to four years; four weeks where the maximum sentence faced would be six years; and eight weeks where the maximum sentence faced would be more than six years. It may be extended beyond eight weeks (up to six months) if crucial consideration regarding the investigation so requires and if the offence is expected to lead to imprisonment of at least two years; and beyond six months in cases involving the most serious forms of crime.

The use of solitary confinement is kept under close review, with reporting obligations for police districts (quarterly), State prosecutors (annually) and the Director of Public Prosecutions (annually). The department of prisons and probation conducts monthly monitoring of the use of disciplinary cells in relation to minors to clarify whether such use has been absolutely necessary.

**Information from the national human rights institution**

A total of 15 minors suspected of crimes were placed in solitary confinement in 2016; one such placement lacked any legal basis, and nine others were inconsistent with the Administration of Justice Act.

**Information from non-governmental organizations**

Solitary confinement continues to be permitted by law. Despite its limited use for minors (15 cases in 2016) and positive efforts to limit prolonged isolation (beyond 15 days), the relevant legislation is contrary to international standards. Prolonged court-imposed solitary confinement for remand prisoners remains a concern; it exceeded two weeks in nearly 60 per cent of the 37 cases in 2016.

The rate of use of solitary confinement as a disciplinary measure remains high, except for children. The number of cases in which it was used increased from 2,579 in 2015 to an estimated 2,995 cases in 2016, with half of the cases involving long-term confinement of 15 or more days. The increase was attributed to the recent strict regulation on unlawful possession (and use) of mobile phones (cited in 219 out of the 222 cases of solitary confinement for 15 days or more in 2016).

Non-governmental organizations also report on the deleterious health impact of solitary confinement as documented extensively in health studies (see annex A of the submission of non-governmental organizations).

**Committee's evaluation**

[C]: While taking note of the extensive information provided on solitary confinement and efforts to monitor and reduce its use, especially for prolonged periods of time, the Committee regrets that the State party neither abolished solitary confinement for minors nor reduced the total length of permissible solitary confinement for remand detainees even if it is used as a measure of last resort. It requires information on any amendments to the law adopted following the issuance of the recommendations regarding placement in a disciplinary cell made by the working group under the prison and probation service in January 2017. The Committee reiterates its recommendations.

**Paragraph 32: Rights of aliens, including migrants, refugees and asylum seekers**

**The State party should, while taking measures to control immigration, ensure their full compliance with the rights of migrants, including asylum seekers, as protected under the Covenant. In particular, the State party should:**

- (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;**
- (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 person, and that alternatives to detention are found in practice;**
- (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;**
- (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;**
- (e) **Repeal the amendment to the Aliens Act relating to the confiscation of asylum seekers' assets.**

## Summary of State party's reply

### *Reply relating to paragraph 32 (a)*

The State party elaborates on the information provided on the asylum procedure under the Aliens Act, including on the automatic appeal against negative asylum decisions that is made to the Refugee Appeals Board. Return decisions are not enforced if an alien in principle has the right to asylum under article 7 of the Aliens Act but is excluded from receiving a residence permit under article 10 of the Aliens Act or article 1 (F) of the Convention relating to the Status of Refugees, and is covered by the principle of non-refoulement. Such individuals may remain in Denmark on a "tolerated stay" basis until the Refugee Appeals Board decides that there is no longer any danger relating to refoulement. As an example of compliance with the principle of non-refoulement, the Board decided on 3 May 2017 to suspend the transfer of asylum seekers to Hungary under the Dublin Regulation due to systemic deficiencies in the Hungarian asylum system.

### *Reply relating to paragraph 32 (b)*

Under the Aliens Act, the detention of aliens awaiting deportation is always to be necessary and proportionate. Such cases are subject to individual examination and must be brought before the courts automatically within three days. Financial compensation for unlawful deprivation of liberty can be claimed in court.

### *Reply relating to paragraph 32 (c)*

Under the provisions of the Aliens Act implementing the European Union return directive (2008/115/EC), the maximum period of detention is 6 months, with extension of up to 18 months possible in exceptional circumstances. Detention is a measure of last resort, applied when aliens do not return voluntarily and less restrictive measures prove insufficient.

The living conditions for rejected asylum seekers detained at Vridsløselille significantly improved in autumn 2016. The Parliamentary Ombudsman (designated as the national preventive mechanism), who had previously criticized the conditions at Vridsløselille, informed the Ministry of Justice on 19 December 2016 that no further action was required.

### *Reply relating to paragraph 32 (d)*

A new subparagraph – (k) – introduced into paragraph 37 of the Aliens Act in November 2015, providing for the suspension of the automatic judicial review of detention within three days, was adopted for urgent situations entailing a significant increase in the number of asylum seekers and immigrants arriving within a short time. If the suspension provision is activated (no instances as at 14 July 2017), judicial review of detention may be initiated upon the alien's request rather than automatically. Thus, access to such review remains available.

### *Reply relating to paragraph 32 (e)*

Asylum seekers' assets may be seized to cover the expenses for maintenance during the asylum procedure. Any cash exceeding the value of DKr 10,000 (€1,300) will be seized. Assets exceeding the same value, except those having sentimental value, may also be seized. These rules have been applied on seven occasions (the seized amount was approximately DKr 174,000 (€23,000)) and are in line with the national fundamental principle that if one can sustain oneself, one must, which is also to apply to asylum seekers. There are no plans to repeal those rules.

## **Information from the national human rights institution**

Under the Aliens Act, children who are deemed too immature to undergo an asylum procedure will not have their asylum claim processed until they reach sufficient maturity. They can be granted a residence permit as unaccompanied children if certain conditions are met. There are reported instances of denial of such permits, with children remaining in asylum centres until considered mature enough to go through the asylum procedure.

### **Information from non-governmental organizations**

#### *Information relating to paragraph 32 (a)*

The regime of “tolerated stay” has been further tightened by Law No. 189 of 28 February 2017, which, inter alia, imposed a duty of notification for persons in Denmark on a “tolerated stay” basis in cases of inability to comply with their residence obligations, and increased the maximum imprisonment faced for non-compliance to 18 months. A few weeks earlier, on 17 January 2017, the Supreme Court concluded in a specific case that the regime of “tolerated stay” entailed a disproportionate limitation of the person’s rights.

United Nations treaty bodies continue to issue decisions finding Denmark in violation of the principle of non-refoulement, and the lack of identification and examination of torture victims among asylum seekers possibly leads to such violations. The reconsideration by the Refugee Appeals Board of specific cases following decisions adopted in 2017 by the Human Rights Committee and the Committee against Torture did not reflect their criticism and individuals were still at risk of deportation after the re-examination.

#### *Information relating to paragraph 32 (b) and (c)*

The latest amendments to the Aliens Act were aimed at increasing the use of detention for migrants and asylum seekers. While judicial review of detention of rejected asylum seekers is available, judges uphold such detentions in the majority of cases. Moreover, the decisions by first instance courts are taken without documentation as to whether persons are victims of torture or on their health conditions generally.

#### *Information relating to paragraph 32 (d)*

Paragraph 37 (k) of the Aliens Act should be repealed.

### **Committee’s evaluation**

**[B]** (a) and (b): The Committee takes note of the information on the asylum procedure and on respect for the principle of non-refoulement. It requires additional information on: (a) any measures taken to strengthen compliance with the principle of non-refoulement in practice, including any legal and procedural standards in place to ensure systematic and effective identification of torture victims among asylum seekers and effective medical forensic evaluation to support their non-refoulement claims; (b) the restrictions on “tolerated stay” introduced by Law No. 189 and any subsequent amendments that may have been adopted that affect the rights of persons under the “tolerated stay” regime, including on their compatibility with the Covenant; and (c) clarification as to whether decisions related to residence obligations for persons under the “tolerated stay” regime are subject to appeal, and whether such obligations might be lifted in individual cases.

The Committee welcomes the information that detention of aliens awaiting deportation is always to be necessary and proportionate and taken following an individual examination. It notes, however, the limited information provided on alternatives to detention. It requires additional information on: (a) measures taken to ensure that detention of migrants and asylum seekers is justified in practice as reasonable, necessary and proportionate in the light of the circumstances; and (b) alternatives to detention available in practice, including data on the use of alternatives. The Committee also invites the State party to comment on information that the latest amendments to the Aliens Act are aimed at increasing the use of detention of migrants and asylum seekers, and to provide information on the effect of the amendments.

**[B]** (c): The Committee notes that the maximum period of detention for migrants and asylum seekers awaiting deportation remains unchanged. It requires information on consideration given to reducing the length of such detention.

The Committee appreciates that the conditions for rejected asylum seekers detained at Vridsløselille have improved since autumn 2016, and requires an update on this matter in the next periodic report.

**[C]** (d): The Committee takes note of the information provided, but regrets that paragraph 37 (k) of the Aliens Act has not been repealed. It requires clarification on whether this provision

has been activated since the adoption of the concluding observations and, if so, on how many aliens, out of the total number of those detained, availed themselves of the right to request judicial review of their detention and on the procedural rights afforded to them, including clarification as to the availability of free legal representation in this process. The Committee reiterates its recommendation.

[E] (e): The Committee regrets that the State party did not implement the recommendation to repeal the amendment to the Aliens Act relating to the confiscation of asylum seekers' assets. The Committee reiterates its recommendation.

**Recommended action:** A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The requests for additional information will be included, as appropriate, in the list of issues prior to submission of the seventh periodic report of Denmark.

**Next periodic report:** 15 July 2022.

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