# DENMARK

**List of Issues Prior to Reporting &**
**an assessment of the Implementation of**

**the International Covenant on Civil and Political Rights**

**Jointly reported by**

**Women's Council in Denmark**
**Rehabilitation and Research Centre for Torture Victims (Denmark)**
**Save the Children, Denmark**

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**Issue**

Incorporation of the ICCPR into domestic law

**Article/s**

Article 2

**Concluding observation/s**

Reconsider its decision not to incorporate the ICCPR into its domestic legal order, with a view to ensuring that all rights protected under the ICCPR are given full effect in domestic law.

**Implementation**

Several UN treaty bodies have repeatedly recommended incorporation of the UN human rights conventions and the Danish Committee on Incorporation of Human Rights Conventions into Danish Law recommended in 2001 incorporation of the International Covenant on Civil and Political Rights (ICCPR) as well as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention against Torture (CAT). While certain articles of ICCPR are incorporated into Danish legislation there have not yet been any systematic and consistent efforts made to fully incorporate all articles of ICCPR.

Consequently the entire body of ICCPR ought to be incorporated into Danish law and obtain the same legal standing as the European Convention on Human Rights.

**Issue**

Effective remedies for children

***Article/s***

Article 2

**Proposed new concern**

To ensure that all individuals enjoy the same rights in Denmark new legislation and other measures can be adopted. Since the Danish Government has not yet undertaken measures to incorporate the Convention of the Rights of the Child into its national legislation the rights of children are not fully recognized. One important measure to ensure that children's rights and freedoms are not violated is to establish an Ombudsman for children system which takes full account of the Convention on the Rights of the Child and covers all children within the Danish territory. It should be a transparent, well resourced and specialized facility to monitor the implementation of child rights and which is empowered to ensure that all individual and collective complaints are dealt with in Denmark.

**Issue**

Gender equality and representation of women in publicly elected bodies and private enterprises

**Article/s**

Articles 2, 3, 25, 26

*[CCPR/C/DNK/CO/5 paragraph 6]*

**Concluding observation/s**

a. Strengthen its efforts to increase the participation of women in political decision-making positions, especially at the local level, by means of, inter alia, awareness-raising campaigns and, where feasible, temporary special measures.

b. Seek ways to further support the participation of women in high-level and managerial positions and on boards of private enterprises through enhanced cooperation and dialogue with partners in the private sector.

**Implementation**
a. Though local elections in 2009 resulted in a modest increase in the number of elected women from 28 % to 32 %, the gender balance in municipals is still far from parity, and only 14 of 98 mayors are women. So far we have not seen any substantial initiatives from the Government aiming at changing the gender balance in local politics.
b. The low number of women in top management positions and in boards in private enterprises is still a fact. The Government has launched two initiatives "Charter on More Women in Top Management Positions" ("Charter for flere kvinder i ledelse") in 2008 and "Operation Chain Reaction" ("Operation Kædereaktion") in 2010. An evaluation of the Charter has indicated very limited effect.

The Government has not included temporary special measures in its strategy, and effective monitoring mechanisms are lacking.

**Issue**
Violence against women
**Article/s**
Articles 3, 7, 26
*[CCPR/C/DNK/CO/5 paragraph 8]*
**Concluding observation/s**
Continue its efforts to eliminate violence against women, including domestic violence, by means of, inter alia, information campaigns on the criminal nature of this phenomenon and the allocation of sufficient financial resources to prevent such violence and provide protection and material support to victims.
**Implementation**
The third Danish action plan "National Strategy to eliminate violence in close relations" ("National strategi til bekæmpelse af vold i nære relationer") was launched in 2010. It is a serious concern that the plan is not sufficiently comprehensive. It does not include rape and other forms of sexual violence. Violence against women in prostitution is not addressed, nor are there any initiatives to support vulnerable women such as female abusers who are victims of violence.

Women of foreign background exposed to violence by their spouse are in especially vulnerable situations, as they risk losing their residence permit if they choose to leave the violent spouse. Information campaigns and counseling/guidance targeted these women are still needed.

The Danish legislation in the field of rape and other forms of sexual violence is not in line with international standards and does not ensure an equal protection of all victims of rape, since there is a distinction in sanctions between rape committed in marriage and outside of marriage.

**Issue**
Rendition flights
**Article/s**
Articles 7 and 9
*[CCPR/C/DNK/CO/5 paragraph 9]*
**Concluding observation/s**

a. Provide the Committee with the report of the governmental task force investigating allegations related to transit through its territory of rendition flights as soon as the report becomes available.
b. Establish an inspection system to ensure that its airspace and airports are not used for such purposes

**Implementation**
A documentary "CIA's Danish connection" (2008) alleges that Danish and Greenlandic airports and airspace were used by the US Central Intelligence Agency (CIA) to transport prisoners as part of its renditions program. The Danish government has ordered an investigation into the alleged CIA rendition flights. Despite calls by the Special Rapporteur on Torture and by several Danish political parties and Greenlandic MPs, the investigation was not carried out with the inclusion of independent experts and civil society to ensure a fully inclusive and transparent process. It was conducted by an inter-ministerial working group. The final report of 23 October 2008 concludes that the Danish authorities had no knowledge of the CIA-flights, and that it can neither confirm nor disconfirm whether CIA rendition flight have taken place.
The question of an open and transparent investigation into the CIA Rendition flights was raised during the review of Denmark under the UPR on 2 May 2011. Here Denmark was recommended to assess the flights that were conducted over Danish territory and landings that took place in the context of the CIA extradition program. On 1 July 2011 Denmark rejected this recommendation.

**Issue**
Diplomatic Assurances
**Article/s**
Articles 7, 9, 14
*[CCPR/C/DNK/CO/5 paragraph 10]*
**Concluding observation/s**

a. Exercise the utmost care in relying on diplomatic assurances when considering the return of foreign nationals to countries where treatment contrary to article 7 of the ICCPR is believed to occur.
b. And monitor treatment of such persons after their return and take appropriate action when the assurances are not fulfilled

**Implementation**
In 2009, the Danish Ministry for Refugees, Immigrants and Integration issued a white paper drafted by an expert committee on the "Administrative expulsion of foreigners deemed a danger to state security". The Committee concluded that although diplomatic assurances are extremely problematic, there exists a narrow margin for their use under certain circumstances.

The question of diplomatic assurances has surfaced with the case of Niels Holck, a Danish citizen whom India has requested extradited since 2002 for prosecution under the terrorist clauses for smuggling weapons into West Bengal in 1995. This request has been denied until April 2010, when the Danish Ministry of Justice decided to extradite Holck to India. The decision was taken on the basis of the Indian authorities' acceptance of diplomatic assurances regarding the right to security of person and fair trial. Holck has later brought the Ministry of Justice's decision to court to have it rejected. In November 2010, the District Court found that there was a concrete and real risk that Holck, if extradited to India, would be exposed to torture or ill-treatment. The Court did not rule out diplomatic assurances in general, but found that they lacked precision and sufficient detail in the concrete case. The decision of the Court was appealed to the High Court by the Prosecution.

On 30 June 2011 The Eastern High Court of Denmark has ruled in the case of Niels Holck. Due to the prejudicial nature of the case the court was composed of five judges versus the normal three. In a unanimous decision the judges upheld the verdict of the District Court. In its decision the court has underlined that there is a real risk that if extradited Niels Holck could be subjected to torture and that the diplomatic assurances issued by India were not sufficient to guarantee that he would not be subjected to torture. The Director of Public Prosecution has decided not to appeal the case to the Supreme Court.

On 2 May 2011 Denmark was reviewed under the Universal Periodic Review of the Human Rights Council. During the review Denmark was recommended to strictly observe the principle of non-refoulement and not resort to diplomatic assurances to circumvent it. On 1 July 2011 Denmark formally communicated to the Working Group of the UPR that is has accepted the recommendation in full.

**Issue**

Solitary confinement in pretrial detention

**Article/s**

Articles 7, 9, 10

*[CCPR/C/DNK/CO/5 paragraph 11]*

**Concluding observation/s**

Review its legislation and practice in relation to solitary confinement during pretrial detention, with a view to ensuring that such a measure is used only in exceptional circumstances and for a limited period of time.

**Implementation**

The Research Department of the Danish Ministry of Justice has published a report on the use of solitary confinement with respect to pre-trial detention during 2001-2009. It illustrates that in 2006 475 persons were kept in solitary confinement, whereas in 2009 the number was 210. This represents a decrease of over 50 percent, and 2009 was the year with the lowest number of solitary confinements since 2001. The average duration of all solitary confinements in 2009 was 22 days and the total number of days of solitary confinement in 2009 was 4,642 while in 2008 it was 6,910 days, which is decrease of 33%. None of the solitary confinements in 2009 are related to persons below the age of 18. This represents a positive step for the use of judicially imposed solitary confinement during pre-trial detention.

On the contrary there has been an increase in the use of solitary confinement imposed by administrative decisions during incarceration. The annual statistical report from the Prison Probation Service from 2009[1] shows that the use of punitive cells as a disciplinary sanction since 2000 (1,386) was the highest in 2009 (2,677).

**Issue**

Deportation of asylum seekers

**Article/s**

Article 7

**Proposed new concern**

In May 2010, Denmark resumed the deportation of asylum seekers to Greece, a practice that had otherwise been suspended as the Greek Government could not guarantee an examination of the asylum claims, offer protection or guarantee suitable reception facilities. The European Court of Human Right has in June and September 2010 ordered Denmark to stop the deportation of asylum seekers to Greece.

**Issue**

Preventive arrests

**Article/s**

Article 9

**Proposed new concern**

[1] Kriminalforsorgen, Statistik 2009, http://www.kriminalforsorgen.dk/Default.aspx?ID=1365

In 2004[2] and 2009[3], respectively, the Danish Parliament introduced new legislation in order to strengthen the efforts against widespread disturbances of the public order. The police was authorised to make "preventive arrests" (administrative detention) of up to 12 hours. The police can make such preventive arrests at public gatherings/demonstrations of persons who pose a danger to the public order or to the security of individuals or the public. Those arrested do not have to be suspected or accused of any criminal offence.

An incident of preventive arrests occurred on 12 December 2009 in connection with the UN Climate Conference (COP15) in Copenhagen where the police carried out mass arrests. App. 1,000 persons were kept first on freezing pavement with no access to toilets and later detained in so-called "climate cages". The treatment of the arrested persons has been characterised as degrading by several human rights organisations.

**Issue**

Legal guarantees

**Article/s**

Article 14

**Proposed new concern**

Over the last few years, the Administration of Justice Act has been changed several times, hereby weakening the legal guarantees necessary for the defence of an accused person. At the request of the police, the court may decide that the rules on the right to information of the defence and the criminal suspect may be suspended, if this is deemed necessary out of consideration for other states, the state security, the solving of the case, the criminal investigation of another case or protection of confidential information about the methods of criminal investigation of the police. Consequently, the indicted person may be denied access to central documents in the criminal case, notably evidence and witnesses. In some instances, the defence lawyer is acquainted with the documents, but may not communicate its contents to his/her client. In certain cases, especially in suspected terror cases, lawyers who have been accepted by the secret police and whose identity is not disclosed are used instead of the defence lawyer.[4]

According to Administration of Justice Act (anti-terror legislation), it is a duty of tenders of telenet or -service to register and store for at least one year information about tele traffic for the investigation of possible criminal acts. The following information shall be stored: with whom did you talk over the phone? Where you were when you communicated? To whom do you send e-mails or from whom do you receive e-mails? Which homepages did you visit?

It is seen as a risk in itself that so many pieces of data are stored (82.000 pr person pr year in Denmark). The police can only demand knowledge as to what has been stored if a decision by a court is obtained.[5]

[2] Section 8 of Act no. 444 of 9 June 2004 on Police Activities

[3] Act no. 1107 of December 1 2009 amending the Criminal Code and the Act on Police Activities *(Lømmel-pakken*)

[4] Ibid, section 786.

[5] Ibid, section 729 c).

**Issue**
Administrative expulsions
**Article/s**
Article 13
**Proposed new concern**
In July 2010, the Danish state carried out administrative expulsions of 23 Roma EU-citizens. The reason for the expulsion was that they were a disturbance to the public order. None of the Roma has been expelled as a result of having committed a criminal offence in Denmark, other than trespassing and putting up tents and camping without permission.

**Issue**
Age of Criminal Responsibility/ Separation from adults in detention/trafficking/asylum rules
**Article/s**
Article 8, 10, 13 and 24
**Proposed new concerns**
a. Age of criminal responsibility: In 2010 the Danish Parliament passed a law to reduce minimum age of criminal responsibility from 15 to 14 years of age. This is contrary to recommendations made by a National Commission on Juvenile Delinquency which emphasized that the crime rate for 10-14 year juveniles has not increased in recent years. The maximum lengths of sentences of persons below 18 was also extended to be limited by only 'not life imprisonment'. The minimum age for criminal responsibility should be changed to 15 years of age and the maximum length of prison of 8 years for persons under 18 years of age should be reintroduced.

b. Separation from adults in detention: Children who have received a prison sentence are to be placed in secured residential centers managed by the social service according to Danish law. These institutions can refuse a young criminal and in addition there are also not sufficient places for children in the secure institutions. This means that young people increasingly are imprisoned in the ordinary prison system – the number increased from 164 in 2007 to 207 in 2008. With the existing resources there are not always sufficient recreational opportunities for the children which lead to de facto isolation of the young offenders in order to keep them from adults. It is recommends that children are not placed in prisons.

c. Trafficking: The Government should ensure that children who are the suspected victims of trafficking will not be imprisoned as a result of conditions which are the consequence of them being trafficked. It should furthermore be ensured, through appropriate legislative measures, that child victims of trafficking are not repatriated except where such repatriation is in their best interests.

d. Treatment and return of unaccompanied minors entering the state: A proposed legislation will reduce the special protection rights of separated children in Denmark. Changes are made with the intention to "limit the number of unaccompanied children entering the country", "to combat all forms of abuse of the rules" and a "deterrent signal value". However, children under 18 will be unable to renew their residence permit after age 18, if they have not been granted asylum. An assessment of the best interests of the child is not done before the return to country of origin or when a child is returned to special "reception centers" in countries of origin. The best interest of the child should be guiding principle in cases involving separated children.

**Issue**
"Stop and Search-zones" and seeking information from public authorities
**Article/s**
Article 17, 26
**Proposed new concern**
According to the Police Act of 2004[6], the police are entitled to establish "Stop and search-zones". In such zones, the police may search any person even if he/she is not suspected of a criminal offence. The objective is to control whether passers by carry illegal knives or other weapon. The size and reason for establishing the search zones is not defined by law, but is set administratively by the chief of police. In practice, the "stop and search-zones" have been extended to cover the entire city of Copenhagen.

In the efforts to prevent terrorism, the police have been given wide-ranging powers to take measures, which would formerly require a court order. Hereby, judicial control has been limited. The police may demand information from public authorities, if this may contribute to the prevention and investigation of violations of chapters 12-13 of the Criminal Code (crimes against state sovereignty and security; and crimes against state authorities, terrorism, etc.). For instance, the police may demand information from libraries and physicians about specific persons' use of libraries or doctors, etc. It is feared that this may lead to reluctance, on the part of the citizens, to seek information and to use of health/social services of the public authorities or private doctors.[7]

**Issue**
Children and asylum
**Article/s**
Article 17
**Proposed new concern**
When Denmark receives a family with children seeking asylum, the parents' case decides the children's fate. The child's independent claims to asylum are not systematically obtained in the Danish asylum process. If the family is returned to the country of origin after many years in Denmark, no considerations are given for children having lived the majority of their childhood in Denmark. The long waiting periods particularly for rejected asylum-seekers who cannot be repatriated and the many shifts between asylum centers have a very negative impact on the children's health and development.

Consideration should be given to the right of the child to their own private life and development when forced return is considered. Finally, the child's independent claim to asylum is systematically undermined in the Danish asylum process. The children's right to be heard should be guaranteed.

**Issue**
Acquisition of permanent residence
**Article/s**
Article 17, 26
**Proposed new concern**
In 2010, the Government amended the rules on acquisition of permanent residence (Aliens Act no 572/2010). The aim was to allow well-integrated immigrants to acquire a permanent residence permit already after 4 years. The Aliens Act stipulates that foreigners applying for a permanent residence permit must have obtained at least 100 points. First, applicants must fulfill eight indispensable conditions, including having resided lawfully in Denmark for 4 years; having received no social benefits the last 3 years;

[6] Law no. 444 of 9 June 2004 on the Police, section 6.
[7] Law no. 1053 of 29 October 2009 - The Administration of Justice Act (*Retsplejeloven*), section 116, available at: https://www.retsinformation.dk/Forms/R0710.aspx?id=126338

having signed a declaration on integration and active citizenship; having passed an advanced Danish language exam; having had full time employment in Denmark at least 2,5 years etc. Secondly, the applicant must demonstrate active "citizenship" and meet additional demands relevant to integration. Applicants may be exempted from meeting some of the demands, but only in so far it is required by Denmark's international obligations. The law does not specify the conditions or situations that entitle the applicants to dispensation, such as severe physical impairment or mental illness as is the case with the legislation on acquisition of citizenship. On several occasions, requirements for obtaining citizenship have been introduced with retroactive force, making it extremely difficult to obtain residency or citizenship, and creating human difficulties for persons applying for citizenship.

**Issue**
Acquisition of Danish citizenship
**Article/s**
Article 17, 26
**Proposed new concern**
The Government has significantly increased the requirements for acquisition of Danish citizenship, requiring possession of permanent residence; being financially self-supporting; managing the Danish language proficiently; having profound knowledge of Danish society, culture and history etc. According to a circular on naturalization (no 61/2008), persons with a severe physical impairment or mental illness may be exempt from the language requirement. However, persons suffering from post-traumatic stress syndrome (PTSD) - a common symptom among traumatized refugees and torture victims - are explicitly excluded from obtaining a dispensation, even if the condition is chronic and documented by a certificate issued by a medical doctor.

**Issue**
Family reunification
**Article/s**
Article 17 and 23
**Proposed new concern**
In the draft Finance Act 2011 (draft State budget 2011), the government proposes that all foreigners in Denmark who are applying for family reunification shall pay a fee of app. € 700 per person. This requirement will entail that a family father who wishes to be unified with his wife and two children, for instance, will have to pay an amount of app. € 2,100. In practice, the proposed rule raises serious concerns with regard to the right to family life.

**Issue**
Children of minorities
**Article/s**
Article 24 and art 27
**Proposed new concern**
According to section 5(7) of the Primary and Secondary School Act only children of EU or EEA citizens are entitled to mother-tongue tuition. Children from third-party countries have been deprived of publicly paid tuition in their mother tongue. In the school year 2007/2008, only 5,000 of the approx. 70,000 bilingual pupils received municipally organized mother-tongue tuition. This is a concern since children from third-party countries are overwhelmingly from socio-economically disadvantaged homes. This is often very detrimental to the general development of these children and has showed to be counteractive to the

inclusion of refugee children in Danish society. Non-Danish children between 15 and 18 do not have a statutory right to family reunification with their parents living in Denmark. In amendments of the Aliens Act adopted on 25 May 2010 the requirements on access to permanent residence have been strengthened to a degree that will prevent many foreigners from acquiring a permanent residence permit and thus also prevent them from access to citizenship. The changes may seriously impair the status of many children. Finally, there has been a political focus on so called 're-educational journeys' for children of ethnic minorities.

Since the amendments of the Aliens Act adopted on 25 May 2010 a residence permit for a child can now be repealed if the minor stays 3 months outside the country. Children risk loosing their residence permit and thus be sanctioned for a decision typically made by his/her parents.

Mother-tongue tuition should be reintroduced. The maximum age for family reunification of children ought to be increased to 18 years. Finally, no children raised in Denmark should risk losing their residence permit if sent out of the country by their parents.

**Issue**
Discrimination
**Article/s**
Article 26
**Proposed new concern**
In 2002, the Parliament amended the Aliens Act by introducing the so-called "24 years rule" governing family reunification. The rule entails that family reunification can only be granted, if both spouses have attained the age of 24 and if their cumulated attachment to Denmark is greater than that to another country. In 2003 the "28 years rule" was introduced in the Aliens Act. This rule removes the requirement for greater cumulated attachment to Denmark for couples seeking family reunification if one spouse has had a Danish citizenship for 28 years or more. The "28 year rule" has been brought before the Danish courts as indirectly discriminatory between Danish Citizens who are born Danish and the ones who are not. The High Court and Supreme Court found no human rights violation. In July 2010, the Supreme Court judgment was brought before the European Court of Human Rights.