

**AMNESTY
INTERNATIONAL**



Mr. Rafael RIVAS POSADA
Chairperson, Human Rights Committee
Office of the High Commissioner for Human
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Dear Mr. Rivas Posada,

RE: DENMARK – REPORT OF THE COUNTRY REPORT TASK FORCE OF THE HUMAN RIGHTS COMMITTEE

Amnesty International would like to draw your attention to the following areas of concern in relation to Denmark's implementation of the International Covenant on Civil and Political Rights (ICCPR), ahead of the Committee's adoption of a list of issues arising from the periodic report submitted by Denmark. We would appreciate if you would make this information also available to other members of the Committee.

■ **Prohibition of discrimination (Articles 2 and 26)**
'Starting allowance'

Amnesty International is concerned that the application of the so-called 'starting allowance' (*Starthjælp*) has a disproportionate and discriminatory impact on newly-arrived residents in Denmark, in particular members of ethnic minorities. People who have not been permanently resident in Denmark for at least seven of the last eight years are not entitled to claim regular social welfare benefits, but are restricted to the 'starting allowance'. For people over the age of 25, this amounts to between 45 and 65 per cent of regular social benefits. Newly arrived residents, in particular members of ethnic minorities who experienced more difficulty in finding employment than people born in Denmark, are over-represented among recipients of the 'starting allowance'.

Recent changes to the law, adopted in April 2007, have made it even harder for migrants to Denmark to move from the 'starting allowance' to regular social welfare benefits. Whereas previously a newly arrived resident would become entitled to claim full social welfare benefits after seven years of residence on the 'starting allowance', the law as amended imposes a new requirement: that a person must have been in regular employment for a period equivalent to at least two and a half years' full time employment before they can be entitled to claim regular social welfare benefits if they become unemployed. The effect of this is that some people who experience difficulties in finding employment in Denmark, including those who are recognized as refugees or who have been given residence permits on humanitarian grounds, will find it even harder to establish an entitlement to regular social welfare benefits, because it will be hard for them to acquire the length of employment needed.

The situation for those who have been granted residence permit on humanitarian grounds is particularly stark. Current law and practice in Denmark defines such "humanitarian grounds" as

being exclusively medical: a person will be given residence on “humanitarian grounds” only if he can show that he suffers from a serious and painful disease, or one which is fatal if is not treated medically, for which treatment is not available in the applicant’s country of origin. A residence permit granted on such grounds can be revoked if at any point within nine years of its being issued the holder of the permit recovers from their illness. By definition, therefore, anyone who is given a residence permit on these grounds cannot establish the two and a half years’ employment required to be entitled to full social welfare benefits, since their residence permit would automatically be lost if at any stage they were well enough to work. In effect, it is almost impossible for a person given a residence permit on “humanitarian grounds” to move from the ‘starting allowance’ to full social welfare benefits. Individuals in this position are at real risk of being condemned to live in poverty for a prolonged period.

■ **Right to life, prohibition of torture and cruel, inhuman or degrading treatment or punishment, (Articles 6 and 7, together with Article 2)**

Offence of torture

Amnesty International is concerned that the continued refusal of the Danish government to create a distinct offence of torture in the criminal code fails to reflect the particular seriousness and abhorrence with which the international community regards torture.

Recent changes to the law, adopted in June 2008, identify torture as an aggravating factor to be taken into account for the purposes of sentencing on conviction for existing criminal offences, such as assault. Amnesty International continues to call for the creation in Danish law of a specific, distinct offence of torture defined in a manner consistent with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Police accountability

Amnesty International is concerned that the mechanisms in Denmark for addressing alleged human rights violations by police officers fail to respect victims’ rights to redress and reparation. The current system fails to ensure that such allegations are investigated promptly, thoroughly, independently and impartially, that persons responsible for such violations are brought to justice, and that victims receive adequate reparation, including compensation. Amnesty International’s research highlighted a range of alleged human rights violations, from excessive use of force, physical ill-treatment, to death in custody. Alleged victims, and relatives of alleged victims, have sought redress through the appropriate channels available to them, and claim that their complaints have not been dealt with effectively. Many others have told Amnesty International that they have not submitted their complaints to the appropriate bodies, because they have no confidence that their rights to redress and reparation will be addressed independently and effectively. The cases addressed by Amnesty International’s research raise questions about the thoroughness and impartiality of investigations, the lack of separation between the police and the prosecution authorities, and lack of transparency in decision-making. For more detail on these concerns, Amnesty International refers the Committee to its report *Police accountability mechanisms in Denmark*, AI Index: EUR 18/001/2008¹.

Refoulement and deportation with assurances

Amnesty International is concerned that procedures whereby individuals deemed to pose a threat to national security can be deported from Denmark do not offer sufficient protection against the risk of *refoulement*, and therefore against the risk of violations of Article 7 ICCPR, *inter alia*. Amnesty International is further gravely concerned by recent comments from a member of the Danish government which appear to indicate a new willingness on Denmark’s part to seek and rely on diplomatic assurances to facilitate returns of individuals to countries where they will face a real risk of grave human rights violations, including torture.

¹ Available online, in English, at <http://www.amnesty.org/en/library/info/EUR18/001/2008/en>; a summary of the report is available at <http://www.amnesty.org/en/library/info/EUR18/002/2008/en>.

The power, under section 25 of the Aliens Act, to expel non-nationals deemed to pose a danger to national security, or to public order, safety or health, allows such expulsions to go ahead without the individual in question being told on what grounds they are considered to pose such a danger. That information can also be withheld from the Immigration Service and from the Refugee Appeals Board, which are supposed to conduct an assessment of the risk that the individual in question might face in the country to which he is to be expelled. Amnesty International considers that, in the absence of any information as to why he or she is deemed a threat to national security, it is not possible for an individual to make thorough and effective representations as to why he or she would be at risk if expelled. Moreover the person facing expulsion has no right to challenge the expulsion order in a court of law. These provisions therefore could allow individuals to be expelled to countries where they will face a real risk of grave human rights violations, including torture or other ill-treatment or a flagrantly unfair trial. Amnesty International is aware of a number of cases – including, most recently, two Tunisian nationals arrested, but not charged, in connection with an alleged plot to kill one of the cartoonists responsible for controversial depictions of the Prophet Muhammad – where individuals face deportation under these provisions to countries where they would be at a real risk of grave human rights violations².

In April 2008 the current Minister for Justice was reported³ to have told journalists that the government was contemplating promoting the use of diplomatic assurances, either obtained bilaterally or in the context of a European Union (EU)-wide initiative, as a means of returning or otherwise sending foreign nationals to states where they face a real risk of torture or other cruel, inhuman or degrading treatment or punishment, as well, possibly, as a risk of other serious human rights violations. The Minister has established a ministerial committee to examine the possibility of seeking and relying on such assurances⁴.

Cases of forcible returns to Iraq

During May and June 2008 the Danish authorities forcibly returned a number of men to Iraq, despite the fact that they would face a real risk of grave human rights violations, including torture or death, upon return⁵.

According to information provided by the Danish police, at least eight Iraqis were forcibly returned to the Iraqi capital, Baghdad, since the beginning of May 2008. All of the men had been convicted of criminal offences while in Denmark. All were legally resident in Denmark; some had been granted refugee status.

These men had completed sentences ranging from 40 days to 13 years in Danish prisons. Although it was part of their original sentences, the men had not been forcibly returned to Iraq

² At the time of writing – 23 June 2008 – the two Tunisian nationals in question remain in detention in Denmark, pending deportation to Tunisia; see a joint public statement issued by Amnesty International and the Euro-Mediterranean Human Rights Network, *Two Tunisians face expulsion to Tunisia despite risk of torture or other ill-treatment*, available on-line at <http://tinyurl.com/5z735q>.

³ See, in Danish, 'Lene Espersen: Vi skal ikke være en magnet for terrorister', *Berlingske Tidende*, 20 April 2008, available at <http://www.berlingske.dk/article/20080420/danmark/704200034/>; or, in English, 'Minister proposes deportation to torture countries', *The Copenhagen Post*, 21 April 2008, available at <http://www.cphpost.dk/get/106800.html>.

⁴ For details of the concerns of Amnesty International and other NGOs about these remarks see the joint open letter to the Minister from Amnesty International, Human Rights Watch, the International Commission of Jurists and the Redress Trust, *Denmark and diplomatic assurances against grave violations of human rights*, AI Index: www.refugees.org, 2008.

⁵ For further details see the Urgent Action appeal issued by Amnesty International, AI Index: www.refugees.org, on 10 June 2008.

when they completed their prison sentences. The Danish Refugee Board had decided that the men could safely be returned to Baghdad.

Amnesty International considers that any asylum-seekers or refugees forcibly returned to Iraq face very real risks of being tortured or otherwise ill-treated, detained arbitrarily by the security forces or even killed, or kidnapped for ransom by the various armed groups operating in the country. Amnesty International remains opposed to the forcible return of any refugee or asylum-seeker to any part of Iraq.

Amnesty International wrote to the Danish Refugees, Immigration and Integration Minister on 23 May 2008 to raise concerns about plans to continue with forcible returns to Baghdad. In her reply, the Minister expressed confidence in the Refugee Board's assessment that the men in question could return to Baghdad in safety; she also said that more Iraqi nationals would be returned from Denmark in the future.

Allegations of involvement in renditions

Amnesty International is concerned that Denmark has failed to date to initiate a fully adequate, thorough and independent investigation into allegations of involvement in the US-led programme of secret detentions and renditions. In a letter to the European Parliament's Temporary Committee investigating the alleged use of European territory and airspace in renditions and secret detention carried out by the US Central Intelligence Agency, the Danish government reported more than 100 flights through Danish airspace, and 45 stopovers in Danish airports, by aeroplanes which have been credibly alleged to have been involved in rendition flights. To date, the Danish government has not instigated a thorough and independent investigation into all allegations of Denmark's involvement in the programme of renditions and secret detention⁶.

■ **Treatment of detainees (Articles 10 and 7)**

Amnesty International continues to be concerned about provisions in Danish law allowing for prolonged solitary confinement during the pre-trial phase of criminal proceedings⁷. In particular Amnesty International is concerned about the length of time a person suspected of terrorism related offences may be held in solitary confinement pre-trial. As is confirmed at paragraphs 249-251 of the periodic report, individuals, including those under 18 years of age, who are charged with offences under Parts 12 or 13 of the Criminal Code, concerning offences related to terrorism, and who could be liable on conviction to a sentence of more than two years, could in theory be held for more than six months in solitary confinement, if that is considered to be essential for the purposes of the investigation. Amnesty International is concerned that such prolonged solitary confinement could amount to inhuman treatment, contrary to Articles 10 and 7 ICCPR.

Amnesty International is further concerned that prison authorities retain the power to place convicted prisoners in solitary confinement as an administrative sanction, without due process and judicial review or independent supervision. In 2002, the Parliament passed a law, the Act on Imprisonment, authorizing prison authorities to place convicted prisoners in solitary confinement for a number of reasons including to prevent escape, crime, or violent behaviour, or out of concerns for the security and good order of the prison. In November 2006, Amnesty International spoke to a prisoner who stated that he had, at that time, been in administrative solitary confinement for two and a half years. He was reportedly unable to challenge the ground underlying his placement in solitary confinement, nor was there any independent judicial supervision of the decision or its implementation.

⁶ See Amnesty International press release, *Denmark: Authorities must come clean about renditions*, AI Index: [ACT/HR/01/02/03](#).

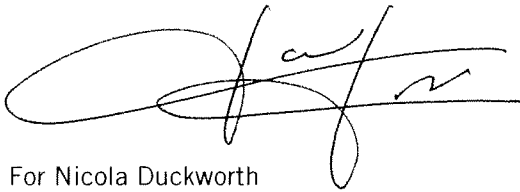
⁷ For further information, see Amnesty International's briefing to the Committee against Torture in April 2007, AI Index: [ACT/HR/01/02/03](#).

■ **Detention of asylum-seekers (Article 9)**

Amnesty International is concerned that provisions in Danish law governing the detention of asylum-seekers do not set any upper limit on the length of time for which they can be detained. Section 36 of the Aliens Act allows for the detention of rejected asylum-seekers on a number of grounds, including a risk of absconding or a failure to co-operate fully with the asylum determination process. Section 37 provides for judicial review of decisions to detain asylum-seekers, but sets no mandatory maximum period of detention. As of March 2008, there were reported⁸ to be 68 individuals in detention under the powers created by Section 36 of the Aliens Act. Amnesty International's research has found cases where rejected asylum-seekers have remained in detention for up to two years, often because the authorities in their country of origin would not provide them with the relevant documentation to allow them to be returned⁹.

I hope that this information will be of use to the Committee in preparing its list of issues for its consideration of Denmark's periodic report. Amnesty International plans to prepare and submit a fuller briefing ahead of the Committee's public consideration of Denmark's periodic report in October of this year. In the meantime, if there is any further assistance that Amnesty International may be able to provide to the Committee, please do not hesitate to contact me.

Yours sincerely,



For Nicola Duckworth
Director
Europe and Central Asia programme

⁸ Figures provided to Amnesty International by the Danish police, 7 March 2008.

⁹ See also concerns expressed by the Committee against Torture in its Concluding Observations on Denmark's periodic report in 2007: "the Committee is concerned at unduly long waiting periods in asylum centres and the negative psychological effects of long term waiting and of the uncertainty of daily life on asylum-seekers". CAT/2007/10, 16 July 2007, para. 17; and by the Council of Europe Commissioner for Human Rights in his Memorandum to the Danish Government in July 2007, (http://dh2007.coe.int): "Living in a stalemate between the authorities' insistence on deportation and the impossibility to do so for a host of technical reasons [...], finally rejected foreigners nowadays have to face the prospect of having to stay in the Danish centres for what could be the rest of their lives. This results often in serious consequences for their (mental) health".