



DENMARK

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 24TH SESSION OF THE UPR WORKING GROUP, JANUARY/FEBRUARY 2016

FOLLOW UP TO THE PREVIOUS REVIEW

During the first UPR of Denmark in May 2011 reviewing states made recommendations relating to a range of human rights concerns in the country, including counter-terrorism;¹ asylum-seekers, refugees and migrants;² and violence against women.³ Amnesty International welcomes the government's acceptance of most of the recommendations, as well as the decision, in June 2014, to accept 20 previously rejected recommendations.

Denmark has implemented many of the recommendations, including raising the age of criminal responsibility from 14 years to 15 years,⁴ and acceding to both the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities⁵ and the Third Optional Protocol to the Convention on the Rights of the Child.

However, Amnesty International does not consider all the accepted recommendations to have been properly fulfilled and several of the concerns raised during the first UPR remain relevant. For example, Denmark has stated that the recommendation to assess the United States Central Intelligence Agency's (CIA) alleged use of Danish territory in the context of the CIA's rendition program has been fulfilled through the investigation carried out by the Danish Institute for International Studies.⁶ Amnesty International believes this investigation was inadequate: the Institute focused exclusively on the territory of Greenland, relied entirely on written documents and did not collect any new information or use data dating back later than 2008.⁷

THE NATIONAL HUMAN RIGHTS FRAMEWORK

International human rights framework

Amnesty International regrets the government's decision not to incorporate the full spectrum of international human

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Denmark*, A/HRC/18/4, 11 July 2011 and its addendum, A/HRC/18/4/Add.1, 13 September 2011 (A/HRC/18/4), recommendations 106.118 (Switzerland), 106.132 (Switzerland), 106.120 (Mexico) and 106.133 (Netherlands).

² A/HRC/18/4 and A/HRC/18/4, recommendations 106.102 (Turkey), 106.103 (France), 106.116 (Greece), 106.117 (Switzerland), 106.125 (Netherlands), 106.126 (Republic of Korea), 106.127 (United Kingdom), 106.128 (Brazil), 106.129 (Sweden), and 106.131 (Slovakia).

³ A/HRC/18/4 and A/HRC/18/4/Add.1, recommendations 106.34 (Norway), 106.35 (Switzerland) and 106.36 (Belgium).

⁴ *Mid-term Progress Report 2014 - Update by Denmark on follow-up of the recommendations of UNHRC under the Universal Periodic Review mechanism (Mid-term Progress Report 2014)*, recommendation 106.99 (Kyrgyzstan).

⁵ See <http://english.sm.dk/en/international-priorities/bilateral-agreements/denmark-has-acceded-to-the-optional-protocol-for-the-un-convention-on-the-rights-of-persons-with-disabilities> and *Mid-term Progress Report 2014 - Update by Denmark on follow-up of the recommendations of UNHRC under the Universal Periodic Review mechanism (UPR)*, recommendations 106.3 (Spain), 106.6 (Austria), 106.7 (France), 106.8 (Australia), 106.9 (United Kingdom), and 106.10 (Burkina Faso).

⁶ *Mid-term Progress Report 2014*, recommendation 106.132 (Switzerland).

⁷ Amnesty International press release, *Denmark: Review of US rendition flights over Greenland "toothless"*, 8 November 2011, <https://www.amnesty.org/en/latest/news/2011/11/denmark-review-us-rendition-flights-over-greenland-ectoothlessed/>

rights obligations into national legislation despite recommendations to this effect by a government appointed Committee of Experts.⁸ It is also disappointing that the government has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, as recommended during its first review.⁹ The Ministry of Justice has said that it is currently assessing whether amendments to Danish law is required to ensure conformity with the Convention.¹⁰ Amnesty International is not aware of any such obstacles and hopes the Convention can be ratified without further delay.

Amnesty International is also concerned that a number of declarations and territorial exemptions entered by Denmark when it ratified a number of international instruments remain in place which limit the applicability of international law in the semi-autonomous regions of Greenland and the Faroe Islands. For example, when ratifying the Council of Europe Convention on Action against Trafficking in Human Beings in 2007, Denmark made a declaration exempting the Faroe Islands and Greenland from this treaty.¹¹ Similarly, Denmark entered a territorial exclusion when ratifying both the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons.¹² In its UPR mid-term report in 2014, Denmark acknowledged that it has yet to finalize the examination of the need for legislative amendments for Greenland and the Faroe Islands in order to be able to remove these territorial exemptions.¹³

National human rights framework

Special Office for Children

In 2012, Denmark established the Special Office for Children,¹⁴ a welcome step in the protection and enhancement of children's rights. This Office carries out supervision and inspections of care-centers and open and closed institutions for neglected children and children displaying criminal behavior.¹⁵

However, due to restrictions in the mandate and powers of the Office it cannot fulfill its role effectively. Firstly, the Office is restricted to considering only the legality of a decision regarding a child. Whether that decision is in fact "the best decision" in a given situation is outside of its mandate. The Office is primarily mandated to investigate and identify procedural flaws which, in many cases, is not the primary concern.

Secondly, the Office cannot consider a complaint until all administrative remedies have been exhausted, making it difficult for children to access the Office. As a result this, the Office has had to inform approximately 93% of the complainants that they are not presently able to look into their cases. Amnesty International recognizes that, in light of this restriction, the Office can signpost the child complainant to the relevant administrative complaints mechanisms, and does in fact do so, but it is not mandated to accompany or further support the complainant through those processes.

Faroe Islands: Effective remedy

⁸ In December 2012, the government appointed a Committee of experts with the task of considering the positive and negative implications of incorporating human rights instruments into Danish law and formulating recommendations. The Expert Committee concluded its work in 2014. The majority of the non-governmental members and independent experts of the committee were in favour of incorporation. Mid-term Progress Report, 2014, recommendation 106.3 (Spain), 106.22 (Ecuador).

⁹ *Mid-term Progress Report 2014*, recommendations 106.4 (Spain), 106.11 (France), 106.17 (Brazil), and 106.21 (Ecuador).

¹⁰ *Mid-term Progress Report 2014*, recommendation 106.4 (Spain)

¹¹ Council of Europe Treaty Office,

<http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=197&CM=8&DF=17/06/2015&CL=ENG&VL=1>, accessed 17 June 2015.

¹² UNODC, *signatories to the UN Convention against Transnational Organise Crime*, <https://unodc.org/unodc/en/treaties/CTOC/signatures.html>, accessed 20 June 2015.

¹³ *Mid-term Progress Report 2014* recommendation 106.1 (Hungary) and 106.24 (Ecuador).

¹⁴ Folketingets Ombudsmands Børnekontor

¹⁵ The Danish Parliamentary Ombudsman, The Annual Report of the Parliamentary Ombudsman, 2013 and 2014, <http://beretning2013.ombudsmanden.dk/english/ar2013/> and <http://beretning2014.ombudsmanden.dk/english/ar2014/>

The police complaints system in the Faroe Islands is inadequate. Complaints are examined by the Local Board, which decides whether a complaint should be forwarded to the State Prosecutor for further investigation or be dismissed. The Local Board is comprised of the Head of the Police in the Faroe Islands, two police officers and four members of the Faroese Government, which means that the process is neither impartial nor objective.

Pursuant to the Faroese Administration of Justice Act, there is no time limit for pre-trial detention, and this applies also in cases of detention in solitary confinement. According to Faroese law pre-trial detention can be prolonged indefinitely.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Human rights violations in the context of counter-terrorism

In 2011, the government announced that it would carry out an evidence-based review of counter-terrorism legislation. An expert group has recently been appointed to carry out this task; however, Amnesty International is concerned that additional counter-terrorism legislation could be passed before the review has even been carried out.

Access to fair removal and deportation proceedings

The Danish Aliens Act and the Administration of Justice Act allow for expulsion and deportation of foreign nationals suspected of involvement in terrorism-related activities, on the basis of judicial procedures that allow for the use of secret evidence to support expulsion on "national security grounds". The documentation is not disclosed to the individual concerned, nor to his or her lawyer of choice.

When the authorities wish to expel or deport foreign nationals on "national security grounds", based on such secret material, the court appoints a "secret" lawyer from a list of pre-approved security-cleared lawyers to act for the individual concerned.¹⁶ This lawyer has access to the secret material during closed hearings, but is barred from discussing the evidence with the individual concerned or his or her lawyer of choice in the open part of the proceedings. Consequently, the individual is unable to effectively challenge the secret material or the allegations based on it. Amnesty International is concerned that these measures breach Denmark's obligation to provide due process and equality of arms and deny the individual the right to a fair procedure.¹⁷

Weakened legal safeguards for the protection of privacy

The introduction of a number of bills has disproportionately restricted the right to privacy and - by weakening legal safeguards - has eroded judicial protection of this and other rights, including the right to a remedy for violations.¹⁸ Since 2006, a series of amendments to the Administration of Justice Act and other laws have also weakened independent judicial oversight of police access to private and confidential information.¹⁹

¹⁶ Aliens Act Part VIIb, and in particular sections 45b, 45e and 45f.

¹⁷ Until 2009 the regime was exclusively administrative, and as such the judicial oversight represents an improvement – with regard to independent oversight and the right to effective remedy. In 2011, the Supreme Court found that the evidence presented to a Tunisian citizen (one of the individuals that gave rise to the Bill of 2009 establishing the above system) was not sufficient to enable him to defend himself effectively, given that it did not give an adequate representation of the evidence presented by the prosecution in the closed track. Hence, the Court found that the Tunisian had not been granted a fair trial and effective remedy.

¹⁸ Bill 217 of 31 March 2006 on amendments of the Penal Code, the Act on Administration of Justice and various other laws, Bill 124 of 4 February 2009 on amendment of the Act on Administration of Justice, Bill 192 of 2 May 2014 on amendments of the Act on Centre for Cyber Security.

¹⁹ Of particular concern is amendment allowing for the tapping of telephones and computers of an unlimited number of individuals - including relatives, acquaintances, colleagues, neighbours - who are not themselves being investigated, but who are in some way connected to an individual under investigation for involvement in terrorism-related activities, drugs-related crimes or homicide. This can be done on the basis of a single warrant, i.e. the warrant pertaining to the individual under investigation. In addition, Parliament granted the Police Intelligence Agency the power to compel any public authority, doctor, psychiatrist or other individual working in an official capacity to hand over confidential and private information pertaining to individuals under investigation – without judicial oversight or control. In bill 161 of 27 February 2013 on the Police Intelligence Agency (and a parallel bill on the Military Intelligence Agency), the Danish government and Parliament established a new supervisory body to monitor the practices in terms of the Intelligence Agencies' collecting data about individuals and legal persons by way of tapping of telephones and computers. The

Asylum seekers, refugees and migrants

Family reunification

In 2014, Parliament adopted an amendment to the Aliens Act, providing temporary protection to certain foreign nationals fleeing widespread human rights violations and abuse (i.e. Syrian nationals).²⁰ In the first instance, this protection is granted for one year and is thereafter revised to see if the risk of persecution is still present. However, those granted protection as "war refugees" (krigsflygtninge)²¹ are not entitled to family reunification until after one year, contrary to those given refugee status in Denmark under standard procedures. This does not take into account that Syrian war refugees are under additional pressure, knowing that their families would be struggling to survive in insecure camps caught up in a civil war and a humanitarian crisis. The government has dismissed these concerns, arguing that the one-year rule is justifiable and proportionate given that newly arrived Syrian war refugees do not have any ties to the Danish society, and that it is necessary to maintain efficient control of migration. The wish to maintain effective and efficient immigration control, however, should not be considered relevant in connection with people fleeing persecution.

Rights of the child

Current practice in asylum cases fails to ensure that sufficient consideration is given to the best interests of the child.²² If parents do not meet requirements for being granted asylum on grounds of persecution the whole family is rejected and ordered to leave the country. The effect on the child is not considered in the decision even if the family is likely to experience extreme hardship in supporting itself, including the children.²³

supervisory body has access to all information, but it can only present opinions on the practices of the Intelligence Agencies. It cannot compel the Agencies to stop a given surveillance activity. And it cannot take its observations to Parliament or to the judicial system. In cases where the Police Intelligence Agency chooses to ignore a recommendation from the supervisory body, the Police must notify the Ministry of Justice, but the notification does not have any legal consequences or ramifications. Individuals are not entitled to know if they have been subjected to investigation. Any individual who suspects that he or she has been subjected to illegal investigation/tapping can lodge a complaint with the Supervisory Body. The Supervisory Body can take measures that the individual is not subjected to illegal/unwarranted investigation and inform the complainant of these measures, but not inform the complainant if he or she has actually been subjected to illegal investigations at some point previously. As a result the individual does not have means of legal redress and effective remedies.

²⁰Note: L 72 of 14 November 2014 on amendment of the Aliens Act. The protection granted to war refugees from Syria does not expand the field of protection, nor does it lower the threshold with regard to the definition of "persecution". The commentary notes emphasize this fact and state that the protection granted pursuant to the new section 7, subsection 3, would otherwise have to be granted pursuant to section 7, subsection 2.

²¹"War refugees" (krigsflygtninge) is a the term used in common parlance in Denmark to describe the situation of people given "temporary protection status" as a consequence of a particularly serious situation in the country arising from armed conflict (L 72 of 14 November 2014 amending the Aliens Act).

²² Cf. article 3 of the UN Convention on the Rights of the Child,

²³ For example, an Afghan family, where the father is mentally ill and has lived all his life in Tehran hence being without a network in Afghanistan, and therefore are unable to support his family. The mother also has no clan or family network. There are two children – a son of 10 and a daughter of 8 years of age. The boy has to support the family. In effect there is a high risk that families in such circumstances will suffer poverty and hardship, on the basis of their personal circumstances and the general situation in Afghanistan. Nevertheless – in the absence of other aggravating circumstances - a family in this situation will, eventually, be deported.

Detention of asylum-seekers and vulnerable persons (torture survivors)

In its 2013 report, the Medical Group in Amnesty International Denmark examined a number of rejected asylum-seekers who were in detention while awaiting deportation from Denmark.²⁴ Out of 43 individuals, 22 persons were found to have been subjected to torture in their country of origin. Concerns remain about whether an appropriate monitoring system exists to ensure that victims of torture and other vulnerable persons are not detained. The government contends that the general medical check performed by a nurse with all newly arrived asylum-seekers is an adequate means of identifying torture victims. However, in practice the process appears to be inadequate.

Violence against women and girls

Lack of protection of victims of rape in Denmark

In 2013, the Criminal Code provisions covering rape and other forms of sexual abuse were strengthened. The legislation now penalizes non-consensual sex with a victim in a “helpless state”²⁵ as rape, and all reductions or exclusions of punishment for rape and sexual violence within marriage have been annulled.²⁶ The attrition rates, however, remain high.

Between 400 and 600 cases of rape are reported annually to the police. The number of actual rapes committed is estimated to be up to 4,400 per year.²⁷ According to a report by the European Union Agency for Fundamental Rights, 19% of all Danish women had experienced sexual violence since the age of 15.²⁸ This indicates that only a minority of rapes committed are actually reported to the police.

Furthermore, only one out of five reported rapes results in a conviction. The vast majority of cases are closed by the police or prosecution and never reach trial. Most cases are closed due to “the state of the evidence”. In almost half of these cases, the victim has suffered physical injuries.²⁹ The failure to effectively prosecute alleged perpetrators of rape indicates that Denmark does not fully comply with its responsibilities to protect women from gender-based violence.

Faroe Islands: Flaws in rape legislation

Although Denmark has now improved its provisions on rape, the Faroe Islands Penal Code lags behind: Faroese legislation penalizes non-consensual sex with a victim in a “helpless state” as sexual abuse rather than rape and sets a much lighter penalty for such acts.³⁰ In certain instances, it also reduces the level of penalty for rape and sexual violence within marriage, or provides for exclusion of punishment altogether.³¹

²⁴ Amnesty Internationals danske lægegruppe, *Frihedsberøvede asylansøgere i Ellebæk, Traumatiseringsgrad og helbredstilstand blandt frihedsberøvede asylansøgere i Institutionen Ellebæk*, 2013, http://www.amnesty.dk/sites/default/files/mediafiles/44/Frihedsber__vede_asylans__gere_i_Elleb__k_2013.pdf.

²⁵ “Helpless state” refers to victims who are unable to defend themselves because of e.g. illness, self-imposed intoxication, disability, paralysis etc. and are thereby less protected in law.

²⁶ Act no 633 of 12 June 2013.

²⁷ Anne-Julie Boesen Pedersen, Britta Kyvsgaard og Flemming Balvig, Udsathed for vold og andre former for kriminalitet, Offerundersøgelserne 2005-2013 med særligt afsnit om køn og vold, 2014, http://www.dkr.dk/sites/default/files/offerrapport_2013.pdf.

²⁸ European Union Agency for Fundamental Rights, Violence against women: an EU-wide survey, 2014, http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results_en.pdf. The survey is based on interviews with 42,000 women across the EU, who were asked about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence (‘domestic violence’).

²⁹ Amnesty International, Case Closed – Rape and Human Rights in the Nordic Countries, 2010, Index: ACT 77/001/2010 and Det Kriminalpræventive Råd, Camilla Laudrup, Bjarne Laursen, Katrine Sidenius, Flemming Balvig, Maj-Britt Elise Martinussen og Karin Sten Madsen, Voldtægt der anmeldes, del VI: Voldtægtsanmeldelsers vej gennem retssystemet, 2010, <http://www.dkr.dk/sites/default/files/Voldtaegt-del-VI-vej-gen-retssys.pdf>.

³⁰ Faroese Penal Code (Chapter 24):

<http://logir.fo/Lovbekendtgorelse/215-af-24-06-1939-af-Straffeloven-som-senest-aendret-ved-anordning-nr-1139-af-4#chapter-94a2710-2856-4994-a303-6b3db328cbbe>. The penalty relating to offences where the victim is considered to have been in a “helpless” state is half of the penalty for “rape”. The penalty for rape is 8 years maximum (§2016) and there is a 4 years maximum penalty for non-consensual sex with a victim in a “helpless state” (§2018).

³¹ For example, non-consensual sex with a “helpless” victim is not considered a crime if the victim and the perpetrator are married (Article 218), and if the perpetrator enters into or continues a marriage with his victim the punishment for rape can be reduced or

Rights of lesbian, gay, bisexual and inter-sex persons

Transgender persons

Since June 2014, transgender persons are allowed to obtain official documents reflecting their gender identity, without having to undergo surgery or being diagnosed with a mental disorder. Amnesty International welcomes these simplified procedures to obtain a legal sex change, but remains concerned that the rules on medical treatment counteract the move towards recognizing transgender persons' innate sense of their own gender identity. The new bill allows for the health authorities to lay down a series of procedural rules on access to hormone treatment and correctional surgery. Any hormone treatment must be agreed upon by the doctors at the Sexology Clinic at the National Hospital³² and independent medical specialists have been barred from providing this treatment. This has resulted in long waiting lists, and a drawn-out diagnostic process during which the transgender person must convince a multi-disciplinary medical team that he or she is indeed a transgender person and not someone primarily suffering from a mental illness. Consequently, it may be several years before the transgender person is given access to hormone treatment.

Faroe Islands: Equal right to marriage

Legislation legalizing same-sex marriage in Denmark does not extend to the Faroe Islands, where persons of the same gender are not permitted to marry.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Denmark to:

International human rights framework

- Sign, ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Optional Protocol to the International Covenant of Economic, Social and Cultural Rights;
- Withdraw reservations and territorial exclusions to international human rights treaties to which Denmark is a party and take all necessary steps to ensure their applicability in all Danish territories, including the Faroe Islands and Greenland;
- Offer assistance to the self-governing authorities in the Faroe Islands and Greenland to examine the need for and make any necessary legislative amendments to meet the obligations under international human rights treaties. The self-governing authorities in Greenland and the Faroe Islands should themselves take active steps towards removing any legal barriers to the application of these instruments.

National human rights framework

- Provide the Special Office for Children with additional powers and a mandate that enables it to provide advisory or legal assistance in a wider range of cases;
- Put forward a bill for the self-governing authorities of the Faroe Islands to ensure that the Faroese Administration of Justice Act is amended and a time limit established for how long someone can be held in pre-trial detention. The government of Faroe Islands should produce regular statistics on how many people are held in such detention, and for how long. In addition, an independent police complaints mechanism should urgently be established in the Faroe Islands.

remitted (Article 227). Faroese Criminal Law (Chapter 24): <http://logir.fo/Lovbekendtgorelse/215-af-24-06-1939-af-Straffeloven-som-senest-aendret-ved-anordning-nr-1139-af-4#chapter-94aa2710-2856-4994-a303-6b3db328cbbe>

³² Rigshospitalet, also referred to in English, including in Amnesty International reports, as the Copenhagen University Hospital.

Counter-Terrorism

- Conduct a full and independent investigation of Denmark's role in the CIA rendition program;
- Postpone the introduction of any new counter-terrorism legislation until the government appointed expert group has completed its review and ensure that new legislation does not violate Denmark's human rights obligations;
- Reform deportation processes in national security cases to provide due process and equality of arms.

Asylum-seekers, refugees and migrants

- Grant family reunification to "war refugees" and their families after arrival in Denmark and their recognition as "war refugees";
- Ensure that the best interests of the child are effectively included when deciding on asylum cases;
- Establish a monitoring system – with the participation of medical specialists, including psychiatrists – to effectively identify torture survivors and ensure that they are not placed in custody.

Violence against women and girls

- Establish an independent monitoring mechanism to systematically analyze all rape investigations that have been closed before coming to trial;
- Develop and adopt a comprehensive action plan to prevent and combat rape and other forms of sexual violence;
- The authorities in the Faroe Islands should amend the Penal Code to ensure that the definition of rape is brought in line with international standards and that there is equal protection for all rape victims. Marriage of the perpetrator and the victim should not be a mitigating factor in sentencing and rape should be criminalized under all circumstances;
- Put forward a bill for the self-governing authorities of the Faroe Islands to ensure that the Faroese Administration of Justice Act is amended to ensure that a time limit is established for how long someone can be held in pre-trial detention. The government of the Faroe Islands should produce regular statistics on how many people are held in such detention, and for how long. In addition, an independent police complaints mechanism must be established in the Faroe Islands as a matter of priority.

Rights of lesbian, gay, bisexual and inter-sex persons

- Adopt rules to establish reasonable time limits for the provision of hormone treatment, reinstall the right of independent doctors to carry out hormone treatment, remove transgender from the official list of diagnosable mental illnesses, and adjust the medical treatment so as to recognize that transgender persons are not mentally ill or unstable, but rather persons with a physical disorder;
- The self-governing authorities of the Faroe Island must ensure compliance with the International Covenant on Civil and Political Rights, including as regards discrimination, and in particular amend the Marriage Law to allow same sex marriages.