



## Denmark

### Amnesty International submission to the UN Universal Periodic Review 11<sup>th</sup> session of the UPR Working Group, May 2011

#### C. Promotion and protection of human rights on the ground

##### 1. Human Rights violations in the context of counter-terrorism

Amnesty International is concerned that counter-terrorism measures in Danish legislation have given rise to human rights violations with regard to the rights to effective remedy, fair proceedings, and privacy.

##### *Diplomatic assurances*

Amnesty International is particularly concerned by the Danish government's ongoing position that it would not rule out the possibility of deporting individuals suspected of terrorism-related activity to states on the basis of diplomatic assurances, despite the real risk of torture and ill-treatment they would face upon being returned.<sup>1</sup> Amnesty International considers that unenforceable diplomatic assurances cannot reliably, effectively and sufficiently mitigate the risk of torture and ill-treatment of the individual upon return and that they undermine the integrity of the prohibition of torture.<sup>2</sup>

##### *Access to fair removal and extradition proceedings*

In 2009, the Danish Parliament passed a bill amending the Aliens Act<sup>3</sup> to introduce court review in cases concerning expulsion and deportation of foreign nationals suspected of involvement in terrorism-related activities.<sup>4</sup> However, these new provisions allow for the use of secret evidence in cases where the authorities wish to expel or deport foreign nationals on "national security grounds". Such material will not be disclosed to the individual concerned or 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 lawyer from a pre-approved list of security-cleared lawyers to act for the individual concerned. The security-cleared lawyer has access to the secret material during the closed hearings, but is barred from discussing it with the individual concerned or his or her lawyer of choice. Consequently, the individual is unable to comment on or effectively challenge the secret material or the allegations stemming from it. Amnesty International is concerned that these measures are incompatible with

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<sup>1</sup> See explanatory comments to the Bill L 209 of 28 April 2009, which introduced certain amendments to the Aliens Act. The Danish government recently negotiated assurances with India in relation to the extradition of a Danish National, Niels Holck, to India. However, on 1 November 2010, a local Danish court ruled that the assurances did not offer sufficient protection against the risk of torture and other ill-treatment, and that the extradition should not proceed. The decision was appealed by the public prosecution and the case is still pending.

<sup>2</sup> See *Dangerous Deals: Europe's reliance on 'Diplomatic Assurances' against torture*, AI Index: EUR 01/012/2010, April 2010.

<sup>3</sup> Bill of L 209 of 28 April 2009 amending the Aliens Act and the Act on Court Fees, which was adopted as Act no. 487 of 12 June 2009.

<sup>4</sup> The new system replaced a regime that was exclusively administrative and did not provide the individual suspected of terrorism-related activity with any means to effectively appeal against the decision as such. In that regard the new system represents an improvement; however, it remains flawed.

Denmark's obligation to provide due process and equality of arms, and that they deny the individual the right to a fair procedure.

### ***Weakened judicial control with tapping, procuring of private information***

Amnesty International is concerned that a series of bills have been passed which have weakened legal safeguards aimed at protecting the fundamental right to privacy.<sup>5</sup> The organization considers that these measures disproportionately restrict the right of individuals to privacy and erode judicial protection of this and other rights, including the right to a remedy for violations.

In 2006, an amendment to the Act on Administration of Justice and other laws weakened the independent judicial oversight of police access to private and confidential information. Of particular concern is the amendment to allow for the tapping of telephones and computers of an unlimited number of individuals (relatives, acquaintances, colleagues, neighbours) who are not under suspicion, but in some way connected to an individual who is under investigation for involvement in terrorism-related activity, drugs-related crime or homicide, on the basis of a single warrant: the one pertaining to the individual under investigation. The grounds for this are simply that it cannot be ruled out that the individual under investigation could use the phone or computer of a relative or acquaintance to communicate information related to terrorism. In 2009, the Parliament expanded the application of these provisions to 11 additional criminal offences.<sup>6</sup> In addition, the amendment granted the Police Intelligence Agency the power to compel any public authority, doctors, psychiatrists or others to hand over confidential and private information pertaining to individuals without judicial oversight or control. The police are only required to indicate that the information requested may have a bearing on their efforts to prevent crimes against the state. No remedy, judicial or otherwise, is available to contest the demand for disclosure of confidential information on an individual.

## **2. Asylum-seekers, refugees and migrants**

### ***Expulsions to Iraq***

Amnesty International is concerned that Denmark continues to forcibly return individuals to Iraq, including to central and southern Iraq, contrary to the advice of the United Nations High Commissioner for Refugees,<sup>7</sup> and in violation of the prohibition of *refoulement*.<sup>8</sup> In May 2009, the Danish authorities

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<sup>5</sup> L 217 of 31 March 2006 on amendments of the Penal Code, the Act on Administration of Justice and various other laws., L 124 of 4 February 2009 on amendment of the Act on Administration of Justice.

<sup>6</sup> L 124 of 4 February 2009 on amendment of the Act on Administration of Justice, L 211 of 29 April 2009 on amendment of the Penal Code, the Act on Administration of Justice, Act on Arms, Act on policing, Act on Imprisonment, Act on Public Administration, cf. section 783, sub-section 2.

<sup>7</sup> The UNHCR has repeatedly reiterated the ongoing validity of its Iraq eligibility guidelines, including as recently as September 2010, calling on states not to forcibly remove anyone to the provinces of Ninewa (Mosul), Kirkuk, Salah al-Din, Diyala and Baghdad (Iraq's five central governorates). See UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 1 April 2009, <http://www.unhcr.org/refworld/docid/49f569cf2.html>; UNHCR; UNHCR, *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 28 July 2010, <http://www.unhcr.org/refworld/docid/4c4fed282.htm>, and *UNHCR concerned at ongoing deportations of Iraqis from Europe Briefing Notes*, 3 September 2010, <http://www.unhcr.org/4c80cad89.html>.

<sup>8</sup> See UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 1 April 2009, <http://www.unhcr.org/refworld/docid/49f569cf2.html>; UNHCR; UNHCR, *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 28 July 2010, <http://www.unhcr.org/refworld/docid/4c4fed282.htm>, and *UNHCR concerned at ongoing deportations of Iraqis from Europe Briefing Notes*, 3 September 2010, <http://www.unhcr.org/4c80cad89.html#>.

reached an agreement with Iraq to return asylum-seekers whose claims had been turned down. Since then, at least 66 Iraqi asylum-seekers have been forcibly removed from Denmark, including to central and southern Iraq. In September 2010, the UNHCR reported that among a group of about 61 Iraqis who were returned on 1 September 2010 on a joint chartered flight from Sweden, Denmark, Norway and the United Kingdom, several were from particular dangerous provinces, including Baghdad and Mosul.<sup>9</sup>

### ***Immigration detention of migrants and asylum-seekers***

Under Danish law, irregular migrants and asylum-seekers can be detained, including to ensure the presence of asylum applicants while their claims are being considered by the authorities and to effect their removal from Denmark if their claims are unsuccessful. The Aliens Act does not set a maximum length of detention. A detained alien must appear before a court within three days of detention for it to rule on the lawfulness of the deprivation on liberty and to set a time limit for the detention; however, this time limit may be repeatedly extended every four weeks.<sup>10</sup> In his report on Denmark in 2009, the UN Special Rapporteur on Torture raised concern that this procedure may not in practise be effective, pointing to the fact that since 2004 on only two occasions did the court not confirm the extension of the period of detention requested by the police.<sup>11</sup> He further emphasized that ‘deprivation of liberty for administrative reasons for a prolonged period without knowing the length of the detention may amount to inhuman and degrading treatment’.<sup>12</sup>

## **3. Violence against Women**

### ***Lack of protection of victims of rape***

Amnesty International considers that inadequate laws and failure to effectively investigate and bring to justice perpetrators of rape and other forms of sexual abuse of women indicate that Denmark is failing to fully comply with its responsibility to protect women from gender-based violence.

International human rights law requires that criminal law recognises the absence of genuine consent, rather than the use of physical force, as the essential element of rape;<sup>13</sup> however, the Danish Penal Code does not comply with these standards. Danish legislation penalises non-consensual sex with a victim in a “helpless state”<sup>14</sup> as sexual abuse rather than rape and sets a much lighter penalty for such acts. Furthermore, the Penal Code reduces the level of penalty or excludes punishment for rape and sexual violence within marriage (Article 218, 220, 221, 227). 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 a perpetrator enters into or continues a marriage with his victim the punishment for rape can be reduced or remitted (Article 227). Such provisions are inconsistent with international human rights

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<sup>9</sup> UNHCR: UNHCR concerned at continuing deportations of Iraqis from Europe, 3 September 2010, <http://www.unhcr.org/4c80ebd39.html>

<sup>10</sup> The Danish Aliens Act, § 36-37.

<sup>11</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Mission to Denmark. 18 February 2009. A/HRC/10/44/Add. 2.

<sup>12</sup> Ibid.

<sup>13</sup> See European Court of Human Rights judgment, *M.C v. Bulgaria*, Application No. 39272/98, 4 December 2003.

<sup>14</sup> “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.

standards that require that all victims are equally protected and do not recognise an exception for marital rape.<sup>15</sup>

In Denmark around 500 cases of rape are reported annually to the police.<sup>16</sup> The number of rapes actually committed is not known, but studies suggest that only a minority are reported.<sup>17</sup> Research by Amnesty International and others indicates that survivors of sexual violence find that there is only a slim chance that reporting the assault to the police will result in criminal proceedings and conviction of the perpetrator. Only around one in five reported rape cases results in a conviction; the majority of cases are closed by the police or the prosecution and never reaches the courts. The majority of cases where an alleged perpetrator has been identified are closed due to the ‘state of the evidence’, including in cases where forensic evidence indicates that the victim had sustained physical injury.<sup>18</sup>

### ***Trafficking***

Amnesty International is concerned that victims of trafficking are treated primarily as illegal migrants, rather than victims of a serious crime. Policies and practice emphasise return of the victims to their home countries rather than ensuring redress and protection. Only those victims who agree to cooperate with the authorities on their voluntary return are offered a 100-day ‘reflection period’ in Denmark before returning to their country of origin, while others are offered only 30 days. Only a small minority of victims are offered protection in Denmark.<sup>19</sup>

## **D. Recommendations for action by the State under review**

### **Amnesty International calls on the government of Denmark:**

#### *Counter-terrorism:*

- To stop requesting or agreeing *diplomatic assurances* in cases where the individual concerned would face a real risk of serious human rights abuses if returned;
- To ensure respect for the right to privacy, including by strengthening judicial oversight of requests to intercept electronic or telephonic communications.

#### *Rights of refugees, migrants and asylum-seekers:*

- To stop involuntary or forced removals of individuals to the provinces of Ninewa (Mosul), Kirkuk, Salah al-Din, Diyala and Baghdad in Iraq, and other particularly dangerous areas such as parts of al Anbar province, due to their facing a real risk of persecution or serious harm;
- To ensure that detention of refugees, migrants and asylum-seekers is a last resort, including by giving full consideration to alternatives to detention.

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<sup>15</sup> E.g. The UN Declaration on Elimination of Violence against Women, A/RES/48/104 20 December 1993, European Court of Human Rights in the case of *C.R. v. The United Kingdom*, Application number 20190/92, 22 November 1995.

<sup>16</sup> Criminal statistics (‘Kriminalitet’) from ‘Statistics Denmark’, <http://www.dst.dk/>

<sup>17</sup> Balvig & Kyvsgaard 2006: Vold og overgreb mod kvinder. Dansk rapport vedr. Deltagelse i International Violence Against Women Survey.

<sup>18</sup> Amnesty International, Case Closed. Rape and Human Rights in the Nordic Countries 2008, March 2010.

<sup>19</sup> Amnesty International Annual Report 2010, CEDAW (C/DEN/CO/7), 7 August 2009, The UN Special Rapporteur on Torture A/HRC/10/44/Add.2, 18 February 2009.

*Violence against women:*

- To amend the Penal Code to ensure that the definition of rape is in line with international standards and to ensure equal protection for all rape victims. Non-consensual sex with a victim in a “helpless state” should be considered rape pursuant to the Penal Code;
- To delete from the provisions of the Penal Code covering rape and sexual abuse (Article 218, 220, 221, 227) any reference to the marital relations of the victim and alleged perpetrator, thus ensuring that the marriage of the perpetrator and the victim is not a mitigating factor in sentencing or lead to impunity for rape and sexual abuse;
- To establish an independent monitoring mechanism to systematically analyze all rape investigations that are closed before coming to trial, and to report publicly on the reasons;
- To develop and adopt a comprehensive action plan to prevent and combat rape and other forms of sexual violence;
- To ensure that all victims of trafficking are offered a 100 day ‘reflection period’ regardless of any agreement to cooperate on return to the individual’s country of origin;
- To provide additional protection to victims of trafficking who face a risk of further human rights abuse, include re-trafficking, if returned.

*International human rights standards:*

- To sign, ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- To sign, ratify and implement the Optional Protocol to the International Covenant of Economic, Social and Cultural Rights;
- To sign, ratify and implement the Optional Protocol to the International Convention on the Rights of Persons with Disabilities.